

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN

Defendants

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CAUSE OF ACTION NO.
1:24-cv-0090

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Avelino Medel II brings this 42 U.S.C. § 1983 case against Defendant Austin Police Department officer Gabriel Walker Prado for the excessive force inflicted on him and against Defendant City of Austin for its practices that caused such excessive force to be employed.

I. PARTIES

1. Plaintiff Avelino Medel II is a resident of Austin, Texas.

2. Defendant Gabriel Walker Prado is a police officer with the Austin Police Department (APD) and is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Officer Prado was acting under color of law as an APD officer. He can be served with process at 715 E. 8th Street, Austin, Texas 78701. *Service is hereby requested.*

3. Defendant City of Austin is a municipality that operates the Austin Police Department and employed Defendant Prado at all relevant times. The City's policymaker for policing matters at the time of the incident was and still is interim Chief of Police Robin Henderson. The City may be served with process through its City Manager at 301 W. 2nd Street, Austin, Texas 78701. *Service is hereby requested*

II. JURISDICTION AND VENUE

4. This Court has federal question jurisdiction over this 42 U.S.C. § 1983 action pursuant to 28 U.S.C. §§ 1331 and 1343.

5. This Court has general personal jurisdiction over Defendants as they are located in or reside in Travis County, Texas.

6. This Court has specific *in personam* jurisdiction over Defendants because this case arises out of conduct by Defendants that injured Plaintiff that occurred in Travis County, Texas, which is within the Western District of Texas.

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

III. FACTS

A. OFFICER PRADO'S SHOCKING USE OF EXCESSIVE, DEADLY FORCE ON PLAINTIFF AVELINO MEDEL.

8. Plaintiff Avelino Medel, a young Hispanic male, was the victim of police brutality.

9. During the early morning hours of April 6, 2024, Medel was at home with his father, with whom he was having a discussion.

10. After a neighbor called to complain about noise, APD Officer Prado, who had graduated from APD's Cadet School only seven months earlier, arrived to the scene along with several other APD officers.

11. Officer Prado positioned himself outside the glass doors to Medel's apartment. He then told the other officers that he saw an elderly man and a younger man, Medel and his father, just yelling.

12. Officer Prado stood by the apartment's sliding glass doors while the other APD officers went to the door. Prado could see Medel but did not announce his presence.

13. One officer pounded on the front door of Medel's apartment with his baton.

14. Given the hour, Medel was surprised by the loud pounding on the door.

15. Medel thus approached the front door of his apartment to check who was outside. As a precaution, he grabbed and held his legally-owned gun, pointed up in the air.

16. As Medel approached his apartment's front door to see who was there, Officer Prado saw him walk toward the door with the gun pointed directly in the air.

17. At no point during the incident did Medel pose a threat to any officer, nor did he point the gun in the direction of any officer.

18. In fact, Medel did not point his gun in the direction of any person, did not know Prado was outside, and did not even know police were at his door.

19. Medel was merely holding his legally-owned gun inside his own home while checking to see who had just loudly banged on his front door at 2am.

20. Yet Officer Prado panicked.

21. Prado shouted, he's got a gun! Gun! Gun! Gun!

22. Then, without any warning whatsoever to Medel, Prado shot Medel three times through the glass doors.

23. Prado never attempted to de-escalate the situation, never told Medel to drop his gun, and never warned Medel that he was going to shoot him.

24. He could have done each of these things before firing at Medel and avoided the entire event.

25. After Medel was shot multiple times and had fallen to the ground, Prado inexplicably shot him one more time.

26. As he lay bleeding on the floor, Medel slowly reached up and turned the handle to open the front door for the other officers. He kept his hands up and visible.

27. Though he could see Medel was moving slowly and keeping his hands visible to let the officers into the apartment, Prado twice yelled at Medel stop moving or I'll shoot you again while continuing to point his gun at Medel.

28. Though Medel repeatedly asked APD officers what happened, none of the officers provided any explanation.

29. The other APD officers on scene then detained Medel without further incident.

30. No charges were brought against Medel.

31. As a direct and proximate consequence of Prado's actions, Medel suffered serious ongoing injuries.

B. THE AUSTIN POLICE DEPARTMENT HAS A LONG HISTORY OF OFFICERS USING EXCESSIVE FORCE, FAILING TO DE-ESCALATE, AND FAILING TO DISCIPLINE OFFICERS WHO COMMIT VIOLENT ACTS.

32. Unfortunately, the actions of Defendant Prado are part of a longstanding pattern of APD officers using excessive force and failing to de-escalate.

33. APD fails to adequately train its officers and failed to adequately train Defendant Prado on the appropriate use of force in situations in which homeowners possess weapons, how to use de-escalation strategies, and the need to provide a warning before utilizing deadly force.

34. APD fails to train its officers to warn citizens and give them time to comply before using force and failed to train Defendant Prado on the need to warn and give time to comply before using force.

35. Moreover, the City of Austin has systematically failed to supervise or discipline its officers, rarely disciplines officers for using excessive force and rarely investigates or disciplines for failing to de-escalate, or not warning civilians before using force.

36. As a consequence, APD officers' engaging in excessive force, failing to warn and failing to de-escalate has become the de facto practice/policy of APD and the City of Austin which is well-known by the City's policymakers, including its Chief of Police.

37. Some of the most egregious and notorious examples are detailed below (among others):

- a. **Nathaniel Sanders and Sir Smith:** On May 11, 2009, then-Officer Leonardo Quintana shot both Nathaniel Sanders and Sir Smith without warning after approaching their car while they were asleep—Sanders died, Smith survived. Quintana and another officer came up on the car from behind, and could tell through the car windows that both occupants were asleep. Instead of making a plan, communicating with his partner, or identifying himself as police, Quintana woke Sanders, saw that Sanders had a pistol in his waistband, unsuccessfully tried to grab it, then backed away and opened fire on the car without warning, killing Sanders. Smith, unarmed and suddenly under fire, awoke from sleeping and tried to escape by running from the car. Instead of letting Smith escape to safety, Quintana shot him without warning while Smith was fleeing, unarmed, and posed no danger to anyone. The police chief disciplined Quintana only for failing to activate his squad car's video camera, rejecting an internal recommendation to discipline him for his poor tactics that ultimately led to deadly force. He was not disciplined for shooting an unarmed

Smith who was doing nothing threatening. Quintana's partner and the other officer present did nothing to stop the improper tactics or excessive force throughout the ordeal.

- b. **Carlos Chacon:** On April 29, 2011, APD officers Eric Copeland and Russell Rose used excessive force against Carlos Chacon when he called 911 to report he was the victim of an armed robbery. When Copeland and Rose arrived and saw Chacon, they immediately brandished their firearms before saying a word. When Chacon did not immediately comply with contradictory commands issued by the officers, Copeland and Rose escalated to punching and electrocuting Chacon with a TASER rather than taking the time to issue clear commands and given Chacon time to comply. In reviewing the undisputed facts from the video, Judge Sparks concluded that “[b]oth officers’ involvement in the entire struggle could likely have been avoided had the officers behaved reasonably,” and “[i]t was, after all, *the officers* who escalated the situation by drawing their weapons and shouting profanity.” The Fifth Circuit affirmed and a jury found against the officers on May 13, 2015. Yet APD never disciplined Copeland or Rose for abusing Chacon. APD likewise did not investigate either of them for failing to intervene.
- c. **Byron Carter and L.W.:** On May 30, 2011, Officer Nathan Wagner fatally shot Byron Carter, Jr., a 20-year-old Black man without warning. Carter was in a vehicle driven by L.W., a Black 16-year-old child, while exiting a tight parallel parking space downtown, just east of I-35, after 11:00 pm. Unbeknownst to Carter and L.W., Wagner and his partner were nearby on foot,

and had been following Carter and L.W. surreptitiously and without suspecting the young men of any crime. L.W. heard Carter say, “go,” in a fearful tone, so he accelerated out of the parking space. Although there was no danger, Wagner fired his weapon without any warning five times into the driver’s side doors as the car drove away. Wagner’s shots wounded L.W. and killed Carter. Wagner’s partner did nothing to intervene and stop the shooting, even as the car drove away. In ensuing excessive force litigation, Judge Yeakel denied summary judgment to Wagner. Although neither officer was disciplined by APD, then-Police Monitor Margo Frasier and a Citizen Review Panel told the chief that the shooting was unjustified. APD never investigated Wagner’s partner for failing to intervene.

- d. **Peter Hernandez:** On June 7, 2012, at least three officers used excessive force against Pete Hernandez, whose only “crime” was exiting a Wal-Mart store. As Hernandez walked through the parking lot, an APD officer suddenly yelled from behind him to “stay,” and then, “get on the ground.” Confused, Hernandez stopped—he testified that all he heard was to “Move out of the way,” not “get on the ground.” Then, less than four seconds after the first command, Officer John Sikoski ordered his colleagues to “grab him.” Officer Jesus Sanchez executed a flying tackle into Hernandez, slamming him into the ground. Officer Robert Escamilla then stepped on Hernandez’s hand. The City found the officers did not violate any policies. (Albeit, without even investigating whether the officers failed to intervene.) Magistrate Judge Austin recommended denial of summary judgment on the excessive force claims against Sikoski, Sanchez,

and Escamilla, and that recommendation was adopted by Judge Yeakel. A jury found Sanchez used excessive force, awarding Hernandez \$877,000 (later reduced on remittitur). APD never investigated any of the officers for failing to intervene to stop the initial use of force nor its escalation.

- e. **John Schaefer:** On March 1, 2013, 70-year-old John Schaefer called 911 to report that he had been attacked by a dog on his property, had shot and killed it in self-defense, and needed police assistance. When APD officer Jonathan Whitted arrived, Schaefer came out to meet him wearing his legally owned handgun in its holster. Without warning Whitted attempted to wrestle the holstered weapon away from Schaefer and, when Schaefer resisted having his legally owned handgun forcibly removed from him when he had done absolutely nothing wrong, Whitted shot him twice in the chest, killing him. Though the Citizen's Review Panel found serious problems with Whitted's use of force, Whitted was not disciplined by APD. In litigation brought by Schaefer's estate, Judge Sparks denied both Whitted's motion to dismiss the excessive force claim against him and the City of Austin's motion, finding that plaintiff stated a claim against the City for failing to train or supervise its police officers concerning the use of deadly force, how to interact with individuals legally entitled to possess and carry weapons, and citizens' Second Amendment right to possess weapons for self-defense in their own homes.
- f. **Hunter Pinney:** On December 20, 2013, APD officers Michael Nissen, Cassandra Langston, and Chance Bretches were sent to an apartment in search of Jason Brown, whom Williamson County said was involved in a domestic

disturbance, to arrest Brown. Instead of Brown, the officers encountered Hunter Pinney, who lived at the apartment. The officers knocked on the door persistently and demanded that Pinney come out. When Pinney complied, he told the officers his name. Instead of letting Pinney re-enter the apartment he had just voluntarily exited to get his ID and prove the officers were at the wrong address, the APD officers suddenly grabbed Pinney without warning and, Nissen claimed, demanded that Pinney allow them to frisk him for weapons. When Pinney “began to tense up” and “pull away,” the officers escalated their use of force and ultimately Nissen struck Pinney with his knee and electrocuted Pinney with a TASER. Although APD officers charged Pinney with resisting arrest, those charges were dismissed and the City settled Pinney’s ensuing lawsuit against Nissen and the other officers. Nissen and the other officers were not disciplined for their uses of force or investigated for failing to intervene.

- g. **Jawhari Smith:** In March 2014, APD Sergeant Greg White shot Jawhari Smith, a young black man, after confronting Smith when Smith was holding a small BB gun. Smith honestly and immediately told White that the “pistol” was just a BB gun and held it up in his right hand over his head, according to White. Smith reported that he quickly dropped the BB gun on the ground. White disagreed, claiming Smith still kept his right hand holding the BB gun above his head. Nonetheless, instead of giving Smith time to comply, White shot Smith, though his patrol car audio recording shows White gave Smith less than two seconds to comply with his commands. APD did not discipline White, but the City paid Smith a settlement.

- h. **Grady Bolton:** On February 9, 2015, APD Officers Manuel Jimenez, Michael Nguyen, and Rolando Ramirez approached Grady Bolton after Bolton was told to leave a bar on 6th Street. Jimenez escalated the encounter by suddenly and without warning grabbing Bolton's wrist, twisting it behind Bolton's back, and then kicking out Bolton's legs. Instead of intervening to stop Jimenez, Ramirez joined in the use of force, including by hitting Bolton in the neck. Next, Nguyen also did nothing to stop the force, instead joining and repeatedly kicking Bolton with knee strikes. In ensuing litigation by Bolton, Judge Sparks denied summary judgment to Jimenez, Nguyen, and Ramirez. APD never investigated the officers for failing to intervene.
- i. **Joseph Cuellar:** On February 15, 2015, Joseph Cuellar, who was intoxicated, encountered a "phalanx" of APD officers on horseback on 6th Street, while APD Detective Otho Deboise stood nearby. When Cuellar did not immediately yield to the horses, the officer riding ordered him to back away. Cuellar complied, but in a dancing motion. Cuellar then "danced" back towards one of the horses. Deboise reacted by advancing and grabbing Cuellar when he was one to three yards from the horse and throwing him to the ground. Deboise gave Cuellar no warning he was going to use force, much less time to comply. None of the other three officers intervened to stop Deboise or assist Cuellar. Deboise initially claimed that Cuellar had merely "stumbled" when pushed by the officer and fallen to the ground but revised his report when a bystander's cell phone footage revealed Deboise had brutally thrown Cuellar down. In ensuing litigation by Cuellar, Judge Sparks denied summary judgment on excessive force claims

against Deboise on October 11, 2018. APD never investigated the other officers for failing to intervene.

- j. **Justin Scott:** On February 20, 2015, APD Officer Greg White (apparently the same officer who shot Jawhari Smith) tackled and repeatedly struck Justin Scott, who was only passively resisting—Scott argued with White before the tackle, then “twisted and turned” on the ground. Judge Pitman denied summary judgment on January 7, 2019, and the Fifth Circuit dismissed a subsequent appeal. White was not disciplined for this use of force.
- k. **Adrian Aguado:** On April 25, 2015, APD Officers Eric Copeland (apparently the same Officer who used excessive force on Carlos Chacon) and Mark Bergeson had ordered Adrian Aguado out of the back of Copeland’s patrol vehicle to reapply his handcuffs, which had slipped off one hand, when Copeland suddenly fired his TASER at Aguado without warning. Aguado had been complying with Copeland’s command to exit the vehicle and had not even put his second foot on the ground to exit the patrol vehicle when Copeland fired, causing Aguado to fall. As Bergeson stood by doing nothing, Copeland then “dropped his body weight onto” Aguado’s shoulder using his knee, then fired his TASER a second time. Copeland was disciplined for using objectively unreasonable force, while Bergeson was not even investigated for failing to intervene.
- l. **Breaion King:** On June 15, 2015, Officer Bryan Richter used excessive force against Breaion King, a 120-pound Black woman that he had stopped for speeding. Without warning, Richter hauled King from her seat, slammed her

into a nearby vehicle, and then repeatedly knocked her onto the ground despite King's minimal resistance and very small stature. Richter later falsely told fellow officers King tried to punch him. In denying Richter summary judgment, Judge Sparks concluded, "a reasonable jury could find Officer Richter's use of force was clearly excessive and objectively unreasonable." Tellingly, APD command staff failed to take formal disciplinary action or even respond seriously to Richter's misconduct until after the civil lawsuit was filed. Thus, Judge Sparks also denied summary judgment as to the City on May 1, 2018, concluding that a reasonable jury could find the City's use of force, training, and discipline policies were inadequate, causing Richter's use of force against King, and that the City was deliberately indifferent to these known inadequacies.

- m. **Armando Martinez:** On August 27, 2015, APD Officers Christopher Van Buren and Daniel Jackson approached Armando Martinez, suspected of public urination, who was laying under a tree in a park just east of downtown Austin. Jackson ordered Martinez to "show me your hands," then Van Buren ordered, "stand up," "get off the ground," and "walk in front of that vehicle, or I'm going to tase you now." Martinez kept laying on the ground, and so, because the City did not adequately train him and Jackson did not tell him to wait, Van Buren fired at Martinez with his TASER four seconds later. Jackson agreed with APD investigators that he would not have used a TASER; Martinez was not preparing to fight, "just kind of sitting there." Jackson then handcuffed Martinez. EMS was called to remove the TASER barb, and they determined Martinez was

suffering a hyperglycemic reaction that required him to be hospitalized. Despite the fact that Martinez was obviously never a threat to anyone and Van Buren audibly threatened to use a TASER anyway, Jackson was not investigated for failing to intervene.

- n. **Gregory Jackson:** On December 20, 2015, Gregory Jackson was attempting to cross to the north side of 6th Street with his party when officers were about to close the street. He encountered APD Officers Jason Jones and Brian Huckaby on bicycles, among many other patrol officers. Jones' bike bumped into Jackson, they had an eleven-second conversation, then Jones suddenly grabbed Jackson to place him under arrest. Contrary to the officers' testimony, Jackson complied—or at least “did not actively resist.” Nonetheless, in seconds, Jones and Huckaby grabbed Jackson's arms and kicked him with their knees multiple times before escalating to punching his head and face, all without warning. Video evidence revealed a large number of officers surrounded Jackson and assisted in the use of force, causing a facial fracture, concussion, and other head injuries. Many APD officers were present and could see Jackson was not resisting, but none of them intervened to stop the use of excessive force. Magistrate Judge Austin denied summary judgment for Jackson's excessive force claims against Jones and Huckaby. APD never investigated any of the officers for failing to intervene.
- o. **Jason Roque:** On May 2, 2017, APD Officer James Harvel shot at Jason Roque—whom Harvel knew to be suicidal—three times, including twice after Roque dropped his BB-gun and was stumbling away from the police, hitting

and killing him with the third shot. Though four other APD officers were on the scene standing right next to Harvel watching him take one shot after another, none of them did anything to try to prevent Harvel from continuing to fire on Roque. In ensuing litigation by Roque's survivors, Judge Yeakel denied summary judgment on excessive force claims against Harvel. The Fifth Circuit affirmed. The City settled the matter for \$2,250,000. APD never investigated the officers who were standing right next to Harvel for failing to intervene and stop the shooting—particularly after Roque dropped the BB gun and fled.

- p. **Landon Nobles:** On May 7, 2017, APD Officers Richard Egal and Maxwell Johnson encountered twenty-four-year-old Landon Nobles on 6th Street. Johnson found Nobles with other APD officers, and Nobles ran when he saw Johnson approach. Egal intercepted the pursuit and pushed a bicycle into Nobles' path, causing Nobles to stumble and fall to the ground. Johnson and Egal testified at trial that they saw a gun in Nobles' hand, so they drew their own weapons, but another APD officer, Nobles' cousin, and two security guards testified that Nobles never had a gun in his hands. Egal and Johnson fired at Nobles five times without any warning, hit him three times, and killed him. A jury found a constitutional violation, rejected the qualified immunity defense, and awarded Nobles' family \$67,107,500 in damages. Neither Egal, Johnson, nor any of the APD officers present was disciplined for their conduct surrounding Nobles' death.
- q. **Joseph Figueroa:** On April 17, 2018, APD Officers Mario Aquino and Daniel McLeish stopped a person for walking against a pedestrian signal near 6th Street

when Aquino decided to physically move a third person, Joseph Figueroa, who was standing against a nearby wall. Aquino pushed Figueroa's arm at the same time as he told him to move, prompting Figueroa to move but angrily tell the officer not to touch him. Instead of ignoring the compliant (and understandably annoyed) Figueroa, Aquino repeatedly taunted him, eventually being joined by McLeish who spoke up not to stop his fellow officer but to join the goading. Reacting to the incessant taunts, Figueroa moved toward the officers, so Aquino slammed him on the ground. Although the City temporarily suspended Aquino for starting a completely unnecessary fight with a person who was just standing nearby, McLeish was never investigated for failing to intervene.

- r. **Justin Grant:** On July 4, 2018, Justin Grant had an argument with security at a downtown bar who refused to let him rejoin his party. Grant walked away, but APD officers Gadiel Alas and Corey Hale approached Grant from behind. Alas and Hale grabbed Grant without warning, then violently threw him to the ground. Once Grant was on the ground, Alas escalated further by electrocuting Grant with his TASER while Alas sat on top of Grant. Instead of intervening to stop Alas' excessive force, Hale then punched Grant in the face repeatedly. Alas then punched Grant in the face repeatedly as well. Neither Alas nor Hale were disciplined by APD.
- s. **Michael Yeager-Huebner:** On November 18, 2018, Michael Yeager-Huebner and his girlfriend were heading back to their hotel from 6th Street when four unidentified assailants attacked Yeager while he waited at a crosswalk. APD Officers Bradley Hoover and Timothy Skeen witnessed the assault, dispersed

the assailants, and then followed Yeager to a nearby parking lot where they immediately threatened to electrocute him with a TASER. Then a third APD officer, Dusty Jester, sprinted over thirty yards to intentionally “surprise” tackle Yeager, pulling him to the ground, and then began to repeatedly punch him in the face. Instead of stopping Jester, Hoover and Skeen piled on—and called for backup, leading to a large mass of APD officers pummeling Yeager. Skeen testified in subsequent litigation that he would intervene to assist an officer who used unjustified force if their victim tried to defend themselves. Jester was given an informal reprimand but no additional punishment. The City did not even investigate, much less discipline, Hoover or Skeen.

- t. **Paul Mannie:** On March 28, 2019, numerous officers, including officers Chance Bretches (apparently the same officer who failed to intervene in the use of excessive force against Hunter Pinney) and Gregory Gentry, mercilessly and without warning punched and kicked Paul Mannie in the face while they had him pinned to the ground and he was not resisting. Although many officers were present, none of them intervened to stop the obviously excessive force. While APD decided not to discipline any of the officers—indeed, no one was even investigated for failing to intervene—Bretches was indicted for aggravated assault by a public servant on January 20, 2021.
- u. **Javier Ambler:** On March 28, 2019, Javier Ambler was prone on the pavement begging for help and telling officers “I can’t breathe.” APD Officer Michael Nissen (apparently the same officer who used excessive force on Hunter Pinney) was present and did nothing to help Javier Ambler. Instead, he assisted

the deputies' use of excessive force on Ambler and caused him to die at the scene. Despite knowing that Nissen was present while other officers were hurting Ambler, APD never investigated Nissen for not intervening.

- v. **Mauris DeSilva:** On July 31, 2019, Mauris Desilva, a Ph.D. neuroscientist from Sri Lanka, suffered a mental health crisis. Neighbors called 911 to specifically request a mental health officer. Instead, APD officers Christopher Taylor and Karl Krycia responded, though neither was trained as a mental health officer. APD had twice responded to mental health calls for DeSilva and Taylor and Krycia specifically knew he was mentally ill. When officers encountered DeSilva, he was holding a knife to his throat. When he complied with officers' commands and took a step towards officers, APD officer Joseph Cast fired a kinetic projectile from his shotgun without warning. Taylor and Krycia then shot DeSilva several times with their handguns without warning and without waiting to see if the projectile fired by Cast had stopped DeSilva from continuing to walk forward. DeSilva later died from his wounds. APD did not discipline any of the officers involved.
- w. **Michael Ramos:** On April 24, 2020, Michael Ramos was unarmed when APD Officer Mitchell Pieper fired a lead pellet-bag at him without warning. When Ramos tried to drive away from officers who had just fired a weapon at him, APD Officer Christopher Taylor shot him dead. Although Officer Taylor was indicted for murder and Ramos was unarmed, APD has not disciplined Taylor or Pieper.

- x. **2020 Black Lives Matter/ George Floyd Protests:** Dozens of APD officers shot at non-violent demonstrators with kinetic projectiles fired from shotguns and launchers without any warning over the course of May 30 – June 1, 2020. Despite the extensive police presence at the demonstrations, including numerous officers who could have intervened to prevent demonstrators from being seriously injured, no bystander officers intervened to protect unarmed civilians. This failure to intervene and put a stop to the illegal, unconscionable, and unreasonable shooting left numerous innocent individuals at the protest with serious, life altering injuries. Not a single officer has been disciplined for the intentional firing of kinetic projectiles into crowds without warning or the failure to intervene to stop their misuse during the protests, even though Chief Henderson and her predecessors Chacon and Manley personally knew that shotguns and kinetic projectiles were being used inappropriately, dangerously, and against hundreds of nonviolent people without warning. In another incident during the protests exemplifying the failure to APD officers to intervene, no fewer than three APD officers all used excessive force against a single non-violent protestor on May 30, 2020: Officer John Siegel pepper-sprayed Jason Gallagher in the face, then while Gallagher was still reacting to the pain of the first attack, Officer Salvador Gonzalez-Galvan also sprayed him in the face. When Gallagher turned away and tried to wipe his eyes, Officer Bryan McCulloch shoved Gallagher down a concrete hill while he was effectively blinded by the OC spray, causing significant injury to Gallagher. None of these officers warned Gallagher before they used force against him.

- y. **Armando Herrera-Amaro:** On December 1, 2020, APD officers Gadiel Alas (apparently the same officer who assaulted Justin Grant) and Alexander Khidre brutally tasered and hit an autistic, bipolar Hispanic young man for no justifiable reason and without warning. The force used by Officer Alas was excessive, unreasonable, and pure police brutality. Despite the egregious nature of the abuse, which was caught on video, another APD officer stood by and helped it happen. As a consequence, Amaro faced bogus charges for nearly two years before the County Attorney dismissed them. Tellingly, APD's leadership approved of Alas' misconduct and his fellow officer's decision to allow it to continue.
- z. **L.N.R.:** On June 23, 2021, APD Officer Nikolas Warren shot a fifteen year-old, unarmed girl who posed no danger to anyone without adequately warning her that he was going to do so. The girl had committed no crime, was not suspected of committing a crime, and yet was shot for walking forward instead of backwards. Rather than disciplining the officers involved, Chief Chacon approved and ratified the conduct of his officers. The City of Austin settled the excessive force case.
- aa. **Alex Gonzales, Jr. and Jessica Arellano:** In the early morning hours of January 5, 2021, off-duty APD officer Gabriel Gutierrez cut off Gonzales and Arellano while driving. Within seconds of Gonzales pulling his car next to Gutierrez a few blocks later to ask him what his problem was, Gutierrez opened fire into Gonzales's and Arellano's car without warning and despite making eye contact with Arellano, who was in the passenger seat. Gutierrez shot Arellano

three times and struck Gonzales in the head. When Gonzales's and Arellano's car slowly rolled to a stop a short distance ahead, Arellano attempted to check on their infant son in the backseat of the car but, unable to stand, fell from the car screaming for her baby. Gutierrez then called 911, reporting that he was an off-duty officer and that shots had been fired, though he failed to report that he was the only one who had fired a weapon. When Gonzales slowly got out of the car to check on his son, Gutierrez yelled at him—with 911 still on the line—to drop his weapon even though Gutierrez could see Gonzales's hands were empty of any weapon. APD officers Serrato and Nenno then responded to the scene. Grievously wounded, Gonzales slowly walked to the back passenger side of the vehicle, supporting his weight on the car. When Gonzales leaned into the back right seat to check on the baby, Serrato opened fire, killing him. Though both the Office of the Police Monitor the Community Police Review Commission (CPRC) recommended terminating Gutierrez, APD declined to discipline him. APD likewise declined to discipline Serrato, despite the CPRC's recommendation.

bb. **James Johnson:** On August 22, 2021, James Johnson was brutally attacked by APD officer Brandon Salter who repeatedly punched him in the head without warning after he had been taken to the ground, shattering his jaw. APD Officer Samuel Noble then fired his TASER on the unresisting James. Neither Officer Salter nor Noble intervened in the other's use of force. APD Officer Alzola, who was under investigation at the time for failing to intervene in another use of excessive force, watched both uses of force but again failed to intervene. As

is the pattern of the APD, none of the officers were disciplined despite the dangerous excessive force used against James.

cc. **Rajan Moonesinghe:** On November 15, 2022, Raj Moonesinghe was fatally shot by APD Officer Daniel Sanchez on the front steps of his own home. That night, Moonesinghe had arrived back at his home after a trip and saw signs that there was a burglar in his home. Moonesinghe was holding his legally owned gun on his own front steps when APD officers arrived and shot Moonesinghe within seconds of arriving on scene without any warning. Moonesinghe never pointed his weapon at officers or threatened anyone before being shot and killed by APD. Officer Sanchez has since been indicted for his conduct.

dd. **Louis Flores:** On January 15, 2023, APD Officer Felix Perez attacked Louis Flores without justification on Sixth Street and without any attempt to de-escalate or even any warning. Perez brutally threw Louis to the concrete before Officers Pierron and Pastore joined to apply more force by kneeing Louis in the back and shoving his head into the ground. As a result of the officers' assault, Flores suffered multiple spinal fractures, a traumatic brain injury, and a dislocated shoulder. Again, none of the officers involved were disciplined.

ee. **Anthony Marquis Franklin:** Shortly before midnight on January 15, 2023, APD officers shot and killed Anthony Marquis Franklin, a young Black man, as he ran away from police. During the foot pursuit, APD officers Kelby Radford, Ryan Rawlins, and Jacob Bowman watched him fall to the ground after trying to jump off a porch and, while Franklin lay on the ground in the

fetal position, shot him in the back several times without warning, killing him.

On information and belief, none of the officers were disciplined.

38. As is shown by the extensive history above, the City of Austin fails to discipline officers for using excessive force, failing to de-escalate, and failing to issue warnings before resorting to force.

39. APD's own reports reflect that its officers routinely use force against those who are not resisting at all—like Medel—as well as those who it deems to be engaged in mere “verbal,” “passive,” or “defensive” resistance. This is despite the fact that any significant force against people engaged in that level of resistance is unconstitutional.

40. Upon information and belief, there are numerous other instances where APD officers have used excessive force, failed to de-escalate, and failed to issue warnings to give citizens a chance to comply before using force.

41. Upon information and belief, the City has adopted policies and practices of encouraging its officers to rapidly escalate encounters with citizens, encouraging grotesque uses of force, and failing to discipline officers when they commit these violent acts.

42. These problems with APD's training and supervision had been festering for years by the time of this incident and were well-known to its policymakers, including the chief of police.

43. The Office of the Police Monitor (OPM), an agency created by the City to facilitate public complaints against police officers, participated in investigations of APD officers and made non-binding policy recommendations to APD.

44. OPM recommended APD rethink its missing de-escalation training and aggressive tactics as early as 2007—based on 2005 data—due to a high number of complaints and allegations of misconduct.

45. For 2005, OPM reported citizens made a total of 73 use-of-force-related allegations, and succeeding years saw between 47 and 123 such complaints each year through 2015, for a total of 815 allegations of excessive force reported to OPM from 2004 to 2015.

46. Critically, every year beginning in 2009, OPM warned that this number was under-inclusive, with succeeding reports stating that APD was not obeying its own written use-of-force complaint and investigation procedures—hampering oversight of misconduct both by deterring citizens from raising excessive force matters and by failing to internally investigate potential excessive uses of force.

47. In 2015, OPM observed that multiple high-profile cases highlighted the deficiency in the manner in which APD reviews responses to resistance or uses of force.

48. The OPM emphasized that the uses of force against Breion King and another use of force against Tyrone Wilson—a young man who was pepper sprayed in the face while handcuffed in the back of a prisoner transport van for only harmlessly kicking the van door—were originally determined by APD to be reasonable, only to later result in officer discipline when the videos were leaked to the press.

49. Sadly, Chief Henderson has continued the pattern of failing to discipline numerous officers who have committed acts of excessive force, failed to de-escalate, and failed to issue warnings before resorting to force.

50. In 2015, OPM again recommended APD revise policies and training for de-escalation and officer communication, but APD again declined.

51. In January 2021, the Austin Office of Police Oversight (OPO) recommended that APD update its policies concerning the discharge of firearms and use of deadly force, finding that existing policies failed to require officers to give a warning or specify how to warn before using

deadly force, leaving officers without guidance. OPO specifically noted that requiring officers to identify themselves, give a clear command, and provide adequate time for citizens to comply with commands could decrease the need to use deadly force.

52. APD declined to make these changes and, in fact, specifically left language in its use of firearm policy concerning warnings that the OPO identified as problematic.

53. A January 2022 report from Kroll Associates, a consultant hired by the City to evaluate APD uses of force, identified several instances just between June and November 2019 where APD officers used TASERS on individuals who were compliant or were uninvolved with any criminal activity and where officers failed to warn individuals before using their TASERS. Kroll noted that in each of these situations, APD did not even address, much less discipline the officers involved.

54. As a result, APD officers like Defendant continued to unnecessarily escalate encounters with violence and without warning.

55. As a direct and proximate result of the City's policies and practices, Officer Prado failed to de-escalate the encounter with Medel, failed to warn Medel before using force, and used excessive force on Medel.

IV. CAUSES OF ACTION

A. FOURTH AND FOURTEENTH AMENDMENT EXCESSIVE FORCE BY DEFENDANT PRADO

56. Plaintiff incorporates by reference the foregoing paragraphs and further alleges as follows:

57. Defendant Prado, while acting under color of law, shot Plaintiff Avelino Medel four times when Medel posed no danger to anyone and had not done anything justifying Prado's use of deadly force.

58. Defendant Prado's uses of force were wholly excessive to any conceivable need, objectively unreasonable in light of clearly established law, and directly caused Medel to suffer serious injuries. Therefore, Defendant Prado's actions violated Medel's clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.

59. In fact, Medel was not suspected of having committed any serious crime, posed no immediate threat to anyone, and was not at risk of flight.

60. As a direct and proximate result of Prado's actions, Medel suffered and continues to suffer significant injuries.

B. PUNITIVE/EXEMPLARY DAMAGES AS TO DEFENDANT PRADO

61. Plaintiff incorporates all of the foregoing as if alleged herein.

62. Defendant Prado's conduct was egregious, reckless, and endangered Medel and his father. Plaintiff therefore, in hopes of deterring future acts of violence like the one Medel suffered, seeks punitive or exemplary damages as to Defendant Prado.

63. Plaintiff brings this claim pursuant to 42 U.S.C. § 1983.

C. FOURTH AND FOURTEENTH AMENDMENT § 1983 *MONELL* CLAIM AGAINST DEFENDANT CITY OF AUSTIN ONLY.

64. Plaintiff incorporates all of the foregoing and further alleges as follows:

65. The conduct by APD Officer Prado discussed in this complaint and described herein constituted excessive force in violation of the Fourth Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment.

66. At all material times, Officer Prado acted under color of state law, as an agent of Defendant City of Austin.

67. At all material times, Defendant Prado was acting within the course and scope of his duties as a City of Austin police officer at the time he shot Medel.

68. Defendant City of Austin's policymaker for all matters related to the activities of the Austin Police Department at the time of the wrongful shooting was interim APD Chief, Robin Henderson.

69. The City of Austin, had or ratified the following policies, practices, or customs in place when Defendant Officer Prado shot Medel without justification:

- a. Using excessive force;
- b. Not providing warnings before using deadly and non-deadly force;
- c. Failing to train officers to provide warnings to citizens before using deadly and non-deadly force;
- d. Failing to train officers on reasonable use of force when interacting with citizens legally possessing firearms;
- e. Failing to train officers regarding citizens' right to bear arms in their own homes;
- f. Tolerating excessive force and deadly force without warning;
- g. Not disciplining or supervising officers who use excessive force;
- h. Failing to train officers on the need to use of de-escalation techniques;
- i. Not using de-escalation techniques and/or tolerating officers' repeated failures to use de-escalation techniques;
- j. Tolerating officers' failures to warn before using force;
- k. Not disciplining officers who fail or refuse to warn citizens before resorting to force despite having adequate opportunity for such a warning;
- l. Failing to adequately supervise officers who fail or refuse to warn citizens before resorting to force despite having adequate opportunity for such a warning;
- m. A culture of impunity.

70. Chief Henderson was aware of the pattern of similar incidents that occurred before and after Officer Prado wrongfully shot Medel as well as the culture of impunity at APD and the City, although it was also apparent and obvious that a constitutional violation was a highly

predictable consequence of the City's above delineated policies. Chief Henderson was specifically aware that her officers had violated the constitution by using excessive force in each of the specific incidents of excessive force listed in this complaint, as well as hundreds more incidents reported by APD, and that no additional procedures, policies, training, or practices had been implemented that would resolve this ongoing risk of constitutional harm to citizens.

71. Likewise, Chief Henderson knew or should have known that failing to correct the dangerous culture of impunity and failing to train her officers in the appropriate use of force, the use of de-escalation techniques and warnings, and interacting with lawfully armed citizens were particular omissions in the City's training program that would cause City employees to violate the constitutional rights of members of the public they encountered, like Medel. Nevertheless, though Chief Henderson knew of these obvious deficiencies, she acted with deliberate indifference and chose to retain the City's dangerously flawed training program.

72. Moreover, upon information and belief, the Austin Police Department hierarchy and Chief Henderson ratified Officer Prado's conduct and continued to approve the shocking and unreasonable shooting of Medel.

73. Each of the policies, practices, or customs delineated above was actually known, constructively known, approved, and/or ratified by City of Austin and its then policymaker for law enforcement purposes, Chief of Police Robin Henderson, and was promulgated with deliberate indifference to Avelino Medel's Fourth and Fourteenth Amendment rights under the United States Constitution. Moreover, the known and obvious consequence of these policies, practices, or customs was that APD officers would be placed in recurring situations in which the constitutional violations described within this complaint would result. Accordingly, these policies also made it

highly predictable that the particular violations alleged here, all of which were under color of law, would result.

74. Consequently, the policies and conduct delineated above were a moving force of Medel's constitutional deprivations and injuries, and proximately caused him to suffer severe injuries.

V. DAMAGES

75. Plaintiff Avelino Medel seeks the following damages:

- a. Past and future lost wages and loss of earning capacity;
- b. Past and future physical pain;
- c. Past and future mental anguish;
- d. Past and future impairment;
- e. Past and future disfigurement;
- f. Past and future medical expenses;
- g. Attorneys' fees, including costs, expert fees, and attorneys' fees pursuant to 42 U.S.C. § 1988;
- h. Pre-judgment and post-judgment interest at the highest rates allowable under the law;
- i. All other compensatory and/or general damages to which Medel is entitled under state or federal law; and,
- j. Punitive damages in the highest amount allowed by law against Defendant Prado only.

VI. JURY DEMAND

76. Plaintiff respectfully requests a trial by jury.

VII. PRAYER FOR RELIEF

77. To right this grave injustice, Plaintiff requests the Court:

- a. Award compensatory damages to the Plaintiff against all Defendants;
- b. Award punitive damages to Plaintiff against Defendant Prado only;
- c. Award Plaintiff costs including expert fees and attorneys' fees pursuant to 42 U.S.C. § 1988;
- d. Award pre-judgment and post-judgment interest at the highest rate allowable under the law; and,
- e. Award and grant such other just relief as the Court deems proper.

Dated: August 26, 2024.

Respectfully submitted,

EDWARDS LAW
603 W. 17th Street
Austin, TX 78701
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By /s/ Jeff Edwards
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ATTORNEYS FOR PLAINTIFF

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Avelino Medel II

(b) County of Residence of First Listed Plaintiff Travis
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Edwards Law, 603 W. 17th Street, Austin, Texas 78701,
(512) 623-7727

DEFENDANTS

Gabriel Walker Prado in his individual capacity and the City of Austin

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:
Excessive force by APD Officers

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/26/2024

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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

AVELINO MEDEL II
Plaintiff

v.

**GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN**
Defendants

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**CAUSE OF ACTION No.
1:24-CV-00990**

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

TO THE HONORABLE UNITED STATES DISTRICT COURT:

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

ORIGINAL ANSWER

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

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1.
2. The allegations contained in Paragraph 2 are not addressed to this Defendant and therefore no response is required of this Defendant.
3. Admitted.
4. Admitted.

¹ Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiff's Original Complaint.

5. Defendant admits that this court has general personal jurisdiction over the City. The remaining allegations contained in Paragraph 5 are not addressed to this Defendant and therefore no response is required of this Defendant.
6. Defendant admits that this court has *in personam* jurisdiction over the City. The remaining allegations contained in Paragraph 6 are not addressed to this Defendant and therefore no response is required of this Defendant.
7. Admitted.
8. Denied.
- 9-31. Defendant is without information sufficient to form a belief as to the truth of the allegations asserted in these paragraphs and therefore denies same.
- 32-55. Denied.
56. Defendant incorporates by reference its responses to the preceding paragraphs of the Complaint.
- 57-60. Defendant is without information sufficient to form a belief as to the truth of the allegations asserted in these paragraphs and therefore denies same.
61. Defendant incorporates by reference its responses to the preceding paragraphs of the Complaint.
- 62-63. Defendant is without information sufficient to form a belief as to the truth of the allegations asserted in these paragraphs and therefore denies same.
64. Defendant incorporates by reference its responses to the preceding paragraphs of the Complaint.
- 65-67. Defendant is without information sufficient to form a belief as to the truth of the allegations asserted in these paragraphs and therefore denies same.

68. Defendant admits that the City's policymaker for all matters related to the activities of the Austin Police Department at the time of this incident was APD Chief Robin Henderson. Defendant denies the remaining allegations contained in this paragraph.

69-75. Denied.

76. This paragraph merely contains Plaintiff's jury demand and therefore no response is required of this Defendant.

77. Defendant denies the allegations contained in this paragraph and specifically denies that the Plaintiff is entitled to any relief whatsoever of and from this Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

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

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, INTERIM CITY ATTORNEY

MEGHAN RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
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City of Austin Law Department
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Austin, Texas 78767-1546
gray.laird@austintexas.gov
Telephone (512) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

I certify that on the 17th day of September, 2024, I served a copy of *Defendant City of Austin's Answer and Affirmative Defenses to Plaintiff's Original Complaint* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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ATTORNEYS FOR PLAINTIFF

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

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-DII

**DEFENDANT GABRIEL WALKER PRADO'S ORIGINAL ANSWER
TO PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant, Austin Police Officer Gabriel Walker Prado, by and through his attorneys of record, and files this Original Answer to Plaintiff's Original Complaint (Dkt. 1), and in support thereof would respectfully show the Court as follows:

I.

ORIGINAL ANSWER

A. Parties.

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 1 of Plaintiff's Original Complaint.
2. As to the allegations contained within Paragraph 2 of Plaintiff's Original Complaint, Defendant denies that an APD officer may be validly served at 715 E. 8th Street, Austin Texas 78701 through means other than personal service of process. Defendant otherwise admits the remaining allegations therein.

3. As to the allegations contained within Paragraph 3 of Plaintiff's Original Complaint, Defendant is without sufficient knowledge to form a belief as to the truth of who the policymaker is, nor how service of process may be served upon the City. Otherwise, admit.

B. Jurisdiction and Venue.

4. Defendant admits the allegations contained within Paragraphs 4 – 7 of Plaintiff's Original Complaint.

C. Facts.

5. As it pertains to the allegations contained in Paragraph 8 of Plaintiff's Original Complaint, Defendant denies that Plaintiff was the victim of police brutality. Otherwise, admit.

6. As it pertains to the allegations contained in Paragraphs 9 – 13 of Plaintiff's Original Complaint, Defendant denies that Medel was having a discussion with his father, and would instead characterize it as Medel aggressively screaming at his father, intimidating him by getting in his face, and furiously pacing about the room—with a handgun sitting atop the counter feet away from him. Defendant admits that someone called 911 reportedly concerned about what was ostensibly happening inside the residence after hearing Medel's furious screams. Defendant denies that collectively constitutes "just yelling." Defendant admits that he had graduated from APD Cadet School relatively recently. Defendant admits that he arrived around the same time as a few other APD officers. Defendant admits that he did look through the glass sliding doors and saw Medel and an older male (now known to be Medel's father), and that he did not announce his presence. Defendant denies that he stayed positioned in front of the glass doors the entire time. Defendant admits that he encouraged another officer to knock on the door because he saw the suspect once again acting aggressively in a manner that made an assault of the older man seem

imminent. Defendant further admits that another officer did knock on the door—and then announced that he was an APD officer loud enough for anyone inside to hear.

7. As to the allegations contained within Paragraphs 14 – 19 of Plaintiff’s Original Complaint, Defendant denies that Medel could have been surprised that police had arrived at his door, because any person who screams loudly and repeatedly in an apartment complex late at night should expect police to arrive. Defendant admits that Medel angrily grabbed his pistol, loaded a magazine, and chambered a round while he aggressively walked toward the door and the APD officers standing on the other side of it—who had no idea an armed suspect was now angrily advancing toward them. Defendant admits Medel at one point carried his gun in the “high ready” position. Defendant denies that Medel’s muzzle never pointed in the direction of the door—and thus the unknowing officers on the other side—and accordingly denies that at no point did the armed, angry, and advancing Medel pose a threat to APD officers. Defendant is without sufficient knowledge to form a belief as to the truth of whether he legally owned the firearm, nor whether it was legal for him to possess it at that time.

8. As to the allegations contained within Paragraphs 20 – 25 of Plaintiff’s Original Complaint, Defendant denies that he panicked. Defendant admits that he yelled “gun, gun, gun!” to try to warn the unknowing officers on the other side of Medel’s door that the suspect was armed and advancing angrily toward them while actively chambering a round in his gun. Medel’s reaction to an officer announcing his presence was to load his gun and advance toward him. Officer Prado determined there was no chance those officers would get away from the door fast enough to avoid being shot if the suspect chose to do so with any haste. Thus, Officer Prado determined that announcing his presence would not be reasonable, nor was their time to do so given the imminent threat to the officers who had already announced their presence. Defendant admits he shot the suspect three

times, and then again because he believed the suspect was still armed and was moving or reaching toward the door where the other officers had been standing.

9. As to the allegations contained within Paragraphs 26 – 31 of Plaintiff’s Original Complaint, Defendant admits that he issued additional commands to the suspect still moving on the ground, and that he kept his gun trained on the suspect until it could be confirmed he was no longer armed or otherwise a potential threat to the other officers and the other man in the room who he had just been angrily yelling at. Defendant is without sufficient knowledge to form a belief as to the truth of what any other officers said to the suspect thereafter, whether charges were brought against Medel or why, and the specific nature of Plaintiff’s injuries.

10. As to the allegations contained within Paragraphs 32 – 36 of Plaintiff’s Original Complaint, Defendant denies any such failures to train, denies any failure to supervise, denies any failure to discipline, denies any widespread history of failing to de-escalate, and denies that APD has a “long” history of excessive force incidents.

11. Defendant is currently without sufficient knowledge to form a belief as to the truth of the specific allegations contained within Paragraph 37 of Plaintiff’s Original Complaint as written.

12. As to the allegations contained within Paragraphs 38 – 54 of Plaintiff’s Original Complaint, Defendant denies that APD or its officers have acted wrongfully as implied. Otherwise, Defendant is currently without sufficient knowledge to form a belief as to the truth of the remaining allegations therein as written.

13. Defendant categorically denies the allegations contained within Paragraph 55 of Plaintiff’s Original Complaint.

D. Causes of Action.

i. Fourth and Fourteenth Amendment Excessive Force by Defendant Prado.

14. As to the allegations contained in Paragraphs 56 – 63 of Plaintiff’s Original Complaint, Defendant admits that he was acting under the color of law during the incident that forms the basis of this lawsuit. Otherwise, denied.

ii. Fourth and Fourteenth Amendment *Monell* Claim against Defendant City of Austin Only.

15. As to the allegations contained in Paragraphs 64 – 74, no response is necessary from this Defendant. If a response is ultimately deemed necessary, then Defendant adopts and incorporates his responses to the previous Paragraphs of the Complaint, admits he was acting within the course and scope of his duties as a City of Austin police officer, but denies all allegations therein not addressed *supra*.

E. Damages, Jury Demand, & Prayer.

16. As to the allegations contained in Paragraphs 161 – 163, no answer is necessary from this Defendant. To the extent any answer is deemed necessary, Defendant admits that Plaintiff seeks the relief requested therein but denies that any of his alleged conduct at issue amounted to an injustice of any kind that is compensable under the law. Otherwise, denied.

II.

AFFIRMATIVE DEFENSES & IMMUNITIES

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

18. Defendant hereby invokes the doctrine of Qualified Immunity and Official Immunity. Defendant discharged his obligations and public duties in good faith and would show that his

actions were objectively reasonable in light of the law and the information possessed at that time. Moreover, no clearly established law exists that would put him on notice that using deadly force against a person who is acting angrily and erratically, responds to officer presence by retrieving and loading a firearm, and charges toward where the announcing police officers are positioned.

19. Further and in the alternative, the incident in question and the resulting harm to Plaintiff was caused or contributed to by another persons' own threatening or reckless conduct, including but not limited to the conduct of Plaintiff himself. To the extent legally applicable herein, Defendant invokes the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.¹

20. Defendant further pleads that, in the unlikely event they are found to be liable, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons, including Plaintiff himself.

21. Defendant pleads that he had legal justification for each and every action taken by him relating to this incident based on the information available to him at the time.

22. Defendant asserts the limitations and protections of Chapter 41 of the Texas Civil Practice & Remedies Code, and the Due Process Clause of the United States Constitution.

23. Defendant asserts the limitations and protections of Chapter 101 of the Texas Civil Practice & Remedies Code.

24. Defendant reserves the right to assert additional affirmative defenses throughout the development of this case.

25. To the extent Defendant did not address a specific averment made by Plaintiff in his Original Complaint, Defendant expressly denies all such averments.

¹ See TEX. CIV. PRAC. & REM. CODE ANN. § 33.001.

III.

JURY DEMAND

26. Pursuant to Federal Rule of Civil Procedure 48, Defendant hereby requests a jury trial.

IV.

PRAAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant Gabriel Walker Prado prays that upon a final hearing of this cause, the Court dismiss all of Plaintiff's claims with prejudice, that all costs of court be assessed against Plaintiff, that he be awarded attorney fees incurred in the defense of this suit, and for all further relief to which he may be justly entitled.

Respectfully submitted,

WRIGHT & GREENHILL, P.C.

4700 Mueller Blvd., Suite 200

Austin, Texas 78723

(512) 476-4600

(512) 476-5382 – Fax

By: /s/ Blair J. Leake

Blair J. Leake

State Bar No. 24081630

bleake@w-g.com

Stephen B. Barron

State Bar No. 24109619

sbarron@w-g.com

ATTORNEYS FOR DEFENDANT

GABRIEL WALKER PRADO

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2024, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail and/or Regular U.S. Mail, in accordance with the Federal Rules of Civil Procedure, as follows:

Jeff Edwards

jeff@edward-law.com

Mike Singley

mike@edwards-law.com

David James

david@edwards-law.com

Lisa Snead

lisa@edwards-law.com

Paul Samuel

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EDWARDS LAW

603 W. 17th St.

Austin, TX 78701

Jason Feltoon

Jason@feltoon.law

FELTOON LAW, PLLC

2520 S I-35 Frontage Rd. #200

Austin, TX 78704

Attorneys for Plaintiff

H. Gray Laird III

Assistant City Attorney

gray.laird@austintexas.gov

City of Austin Law Department

P.O. Box 1546

Austin, Texas 78767-1546

Attorneys for Defendant

City of Austin

/s/ Blair J. Leake

Blair J. Leake

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN

Defendants

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CAUSE OF ACTION NO.
1:24-cv-00990

PROPOSED SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16, the following Scheduling Order is issued by the Court:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed on or before October 30, 2024.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before December 1, 2024, and each opposing party shall respond, in writing, on or before January 1, 2025. All offers of settlement are to be private, not filed. The parties are ordered to retain the written offers of settlement and responses so the Court may use them in assessing attorney's fees and costs at the conclusion of the trial.
3. Each party shall complete and file the attached "Notice Concerning Reference to United States Magistrate Judge" on or before December 1, 2025.
4. The parties shall file all motions to amend or supplement pleadings or to join additional parties on or before January 15, 2025.
5. All parties asserting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before January 31, 2025. Parties resisting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the

materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before March 4, 2025. All parties shall file all designations of rebuttal experts and serve on all parties the material required by Federal Rule of Civil Procedure 26(a)(2)(B) for such rebuttal experts, to the extent not already served, 15 days from the receipt of the report of the opposing expert.

6. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within **11 days** from the receipt of the written report of the expert's proposed testimony, or within **11 days** from the completion of the expert's deposition, if a deposition is taken, whichever is later.
7. The parties make two separate proposals. Plaintiff asks that the Court order that any dispositive motion based upon qualified immunity be filed by January 15, 2025. Defendant Prado asks that all parties be subject to the same dispositive motion deadline of May 28, 2025 regardless of the grounds for the motion.
8. The parties shall complete all discovery on or before April 28, 2025.
9. Except as limited by the Court's ultimate decision regarding whether to create a separate qualified immunity dispositive motion deadline as discussed in paragraph 7 *supra*, all dispositive motions shall be filed on or before May 28, 2025 and shall be limited to 20 pages. Responses shall be filed and served on all other parties not later than 14 days after the service of the motion and shall be limited to 20 pages. Any replies shall be filed and served on all other parties not later than 7 days after the service of the response and shall be limited to 10 pages, but the Court need not wait for the reply before ruling on the motion.
10. The Court will set this case for final pretrial conference at a later time. The final pretrial conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of the final pretrial conference.

The parties shall not complete the following paragraph. It will be completed by the Court at the initial pretrial conference to be scheduled by the Court.

10. This case is set for _____ trial commencing at 9:00 a.m. on _____, 20_____.

By filing an agreed motion, the parties may request that this Court extend any deadline set in this Order, with the exception of the dispositive motions deadline and the trial date. The Court may impose sanctions under Federal Rule of Civil Procedure 16(f) if the parties do not make timely submissions under this Order.

SIGNED on _____, 20_____.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

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MIKE SINGLEY

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DAVID JAMES

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PAUL SAMUEL

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Feltoon Law, PLLC

2520 S I-35 Frontage Rd. #200

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Texas Bar No. 24123424

Tel. (737) 281-9100

By /s/ Jason Feltoon

Jason Feltoon

State Bar No. 24123424

Jason@feltoon.law

ATTORNEYS FOR PLAINTIFF

WRIGHT & GREENHILL, P.C.

4700 Mueller Blvd., Suite 200

Austin, Texas 78723

(512) 476-4600

(512) 476-5382 – Fax

By: /s/ Blair J. Leake – by permission

Blair J. Leake

State Bar No. 24081630

bleake@w-g.com

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sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT
GABRIEL PRADO**

City of Austin Law Department

P.O. Box 1546

Austin, TX 78767-1546

Telephone: (512) 974-1342

Facsimile: (512) 974-1311

By: /s/ H. Gray Laird – by permission

H. Gray Laird

Assistant City Attorney

State Bar No. 24087054

gray.laird@austintexas.gov

**ATTORNEY FOR DEFENDANT CITY
OF AUSTIN**

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN

Defendants

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CAUSE OF ACTION NO.
1:24-cv-00990

**PLAINTIFF AND DEFENDANTS' JOINT REPORT ON ALTERNATIVE DISPUTE
RESOLUTION**

The Parties file this joint alternative dispute resolution report pursuant to Western District
Local Rule CV-88.

Jeff Edwards is responsible for settlement negotiations on behalf of Plaintiff. Blair Leake
and Stephen Barron are responsible for settlement negotiations on behalf of Defendant Gabriel
Prado. H. Gray Laird is responsible for settlement negotiations on behalf of Defendant City of
Austin.

The parties are prepared to submit this matter to a mutually agreed mediator following the
close of discovery and no later than 90 days before any trial date.

Date: October 30, 2024.

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
MIKE SINGLEY
State Bar No. 00794642
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LISA SNEAD
State Bar No. 24062204
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DAVID JAMES
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PAUL SAMUEL
State Bar No. 24124463
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Feltoon Law, PLLC

2520 S I-35 Frontage Rd. #200
Austin, TX 78704
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Tel. (737) 281-9100

By /s/ Jason Feltoon

Jason Feltoon
State Bar No. 24123424
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ATTORNEYS FOR PLAINTIFF

WRIGHT & GREENHILL, P.C.

4700 Mueller Blvd., Suite 200
Austin, Texas 78723
(512) 476-4600
(512) 476-5382 – Fax

By: /s/ Blair J. Leake – by permission

Blair J. Leake
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bleake@w-g.com
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sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT
GABRIEL PRADO**

City of Austin Law Department
P.O. Box 1546
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Telephone: (512) 974-1342
Facsimile: (512) 974-1311

By: /s/ H. Gray Laird – by permission

H. Gray Laird
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov

**ATTORNEY FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas on October 30, 2024.

By /s/ Jeff Edwards
JEFF EDWARDS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,
Plaintiff

v.

GABRIEL WALKER PRADO,
CITY OF AUSTIN,
Defendants

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No. 1:24-cv-00990-DII

ORDER SETTING INITIAL PRETRIAL CONFERENCE

The Court hereby sets and directs the parties, or counsel acting on their behalf, to appear by phone for a telephone conference on **Monday, December 2, 2024, at 3:30 PM**. The parties are directed to use the below dial-in information:

****Please call in 5 minutes prior to start of hearing.****

1. Toll free number: (866) 390-1828
2. Access code: 6054147

The parties should be prepared to discuss potential trial settings as the Court intends to set a trial date in this action at the initial pretrial conference.

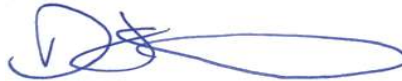
Multiple hearings in other cases may start at the same time; attorneys should call in with their phones on “mute” and wait for the Judge or the Courtroom Deputy to call their case before they speak.

The Court holds telephonic hearings for the convenience of counsel, especially those from out of town. Due to the significant number of lawyers who fail to appear by telephone as ordered, **THE COURT MAY SANCTION NON-APPEARING**

ATTORNEYS WITH COSTS INCURRED BY APPEARING ATTORNEYS. A second non-appearance (whether in the same or different cases) will result in non-compliant attorneys being required to appear in person for all subsequent initial pretrial conferences.

If there are questions regarding the telephonic appearance, the parties should contact Natalie Bayer, natalie_bayer@txwd.uscourts.gov. **IT IS SO ORDERED.**

SIGNED October 31, 2024.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN

Defendants

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CAUSE OF ACTION NO.
1:24-cv-00990-DII

PLAINTIFF'S ADVISORY TO THE CLERK OF COURT

Plaintiff in the above-captioned case elects as follows:

- ☐ I consent to proceed before a United States Magistrate Judge in accordance with provisions of Title 28 U.S.C. Section 636. Plaintiffs in the above-captioned case waive the right to proceed before a United States District Judge and consents to have a United States Magistrate Judge conduct any and all further proceedings in this case, including rendering a decision, and to order the entry of final judgment. Any appeals shall be taken to the United States Court of Appeals for the Fifth Circuit in accordance with Title 28 U.S.C. Section 636(c)(3).
- ☒ I do **not** consent to proceed before a United State Magistrate Judge. Plaintiff in the above-captioned case elects **not** to have this case decided by a United States Magistrate Judge and prefers that this case proceed before the United States District Judge.

AVELINO MEDEL II
Plaintiff's Name

Respectfully submitted,

EDWARDS LAW

603 W. 17th St.

Austin, TX 78701

Tel. 512-623-7727

Fax. 512-623-7729

By: /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

jeff@edwards-law.com

MICHAEL SINGLEY

State Bar No. 00794642

mike@edwards-law.com

LISA SNEAD

State Bar No. 24062204

lisa@edwards-law.com

DAVID JAMES

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PAUL SAMUEL

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Feltoon Law, PLLC

2520 S I-35 Frontage Rd. #200

Austin, TX 78704

Texas Bar No. 24123424

Tel. (737) 281-9100

By /s/ Jason Feltoon

Jason Feltoon

State Bar No. 24123424

Jason@feltoon.law

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS



Activity in Case 1:24-cv-00990-DII Medel II v. Prado et al Pretrial Conference - Initial

From TXW_USDC_Notice@txwd.uscourts.gov <TXW_USDC_Notice@txwd.uscourts.gov>

Date Fri 12/6/2024 9:45 AM

To cmecf_notices@txwd.uscourts.gov <cmecf_notices@txwd.uscourts.gov>

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U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/6/2024 at 9:43 AM CST and filed on 12/2/2024

Case Name: Medel II v. Prado et al

Case Number: [1:24-cv-00990-DII](#)

Filer:

Document Number: [13](#)

Docket Text:

Minute Entry for proceedings held before Judge Dustin M. Howell: Initial Pretrial Conference held on 12/2/2024. Written order forthcoming. (Minute entry documents are not available electronically.). (Court Reporter web ex.)(cc3)

1:24-cv-00990-DII Notice has been electronically mailed to:

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

David Anthony James david@edwards-law.com, greg@edwards-law.com, willy@edwards-law.com

Henry Gray Laird , III gray.laird@austintexas.gov, Chinonyelum.Okoli@austintexas.gov, priscilla.chavez@austintexas.gov

Jeffrey S. Edwards jeff@edwards-law.com, ben@edwards-law.com, breann@edwards-law.com, carson@edwards-law.com, clemens@edwards-law.com, david@edwards-law.com, jeffedwardslaw@gmail.com, lisa@edwards-law.com, marlee@edwards-law.com, matthew@edwards-law.com, paul@edwards-law.com, stephen@edwards-law.com

Lisa A. Snead lisa@edwards-law.com, ben@edwards-law.com, carson@edwards-law.com, clemens@edwards-law.com, matthew@edwards-law.com, stephen@edwards-law.com

Michael Singley mike@edwards-law.com, greg@edwards-law.com, willy@edwards-law.com

Paul G Samuel paul@edwards-law.com, clemens@edwards-law.com, matthew@edwards-law.com, stephen@edwards-law.com

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

1:24-cv-00990-DII Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

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Electronic document Stamp:

[STAMP dcecfStamp_ID=1080075687 [Date=12/6/2024] [FileNumber=31394727-0] [08f4289ad6799e52c101a5e1cf78f4d085c29700a7dd51422ac65fee3bf4a77a43ad430418e0c0c40d0821aa6cc8ac31138bf1a1e742f62d05ba8df3849a3e26]]

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN

Defendants

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CAUSE OF ACTION
NO. 1:24-cv-00990-DII

SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16, the following Scheduling Order is issued by the Court:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed on or before October 30, 2024.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before December 1, 2024, and each opposing party shall respond, in writing, on or before January 1, 2025. All offers of settlement are to be private, not filed. The parties are ordered to retain the written offers of settlement and responses so the Court may use them in assessing attorney's fees and costs at the conclusion of the trial.
3. Each party shall complete and file the attached "Notice Concerning Reference to United States Magistrate Judge" on or before December 1, 2025.
4. The parties shall file all motions to amend or supplement pleadings or to join additional parties on or before January 15, 2025.
5. All parties asserting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before January 31, 2025. Parties resisting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the

materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before March 4, 2025. All parties shall file all designations of rebuttal experts and serve on all parties the material required by Federal Rule of Civil Procedure 26(a)(2)(B) for such rebuttal experts, to the extent not already served, 15 days from the receipt of the report of the opposing expert.

6. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within **11 days** from the receipt of the written report of the expert's proposed testimony, or within **11 days** from the completion of the expert's deposition, if a deposition is taken, whichever is later.
7. The parties shall complete all discovery on or before April 28, 2025.
8. All dispositive motions shall be filed on or before May 28, 2025 and shall be limited to 20 pages. Responses shall be filed and served on all other parties not later than 14 days after the service of the motion and shall be limited to 20 pages. Any replies shall be filed and served on all other parties not later than 7 days after the service of the response and shall be limited to 10 pages, but the Court need not wait for the reply before ruling on the motion.
9. The Court will set this case for final pretrial conference at a later time. The final pretrial conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of the final pretrial conference.

The parties shall not complete the following paragraph. It will be completed by the Court at the initial pretrial conference to be scheduled by the Court.

10. This case is set for jury trial commencing at 9:30 a.m. on December 1, 2025.

By filing an agreed motion, the parties may request that this Court extend any deadline set in this Order, with the exception of the dispositive motions deadline and the trial date. The Court may impose sanctions under Federal Rule of Civil Procedure 16(f) if the parties do not make timely submissions under this Order.

SIGNED on December 5, 2024.

A handwritten signature in blue ink, appearing to read "Robert Pitman", is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

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State Bar No. 00794642

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DAVID JAMES

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Texas Bar No. 24123424

Tel. (737) 281-9100

By /s/ Jason Feltoon

Jason Feltoon

State Bar No. 24123424

Jason@feltoon.law

ATTORNEYS FOR PLAINTIFF

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(512) 476-5382 – Fax

By: /s/ Blair J. Leake – by permission

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State Bar No. 24109619

sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT
GABRIEL PRADO**

City of Austin Law Department

P.O. Box 1546

Austin, TX 78767-1546

Telephone: (512) 974-1342

Facsimile: (512) 974-1311

By: /s/ H. Gray Laird – by permission

H. Gray Laird

Assistant City Attorney

State Bar No. 24087054

gray.laird@austintexas.gov

**ATTORNEY FOR DEFENDANT CITY
OF AUSTIN**

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards

JEFF EDWARDS

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-DII

**NOTICE CONCERNING REFERENCE TO
UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 626(c), Federal Rule of Civil Procedure 73, and the Local Rules of the United States District Court for the Western District of Texas, the following parties **Defendant Gabriel Walker Prado**

through counsel **Blair J. Leake**

 X consents to having a United States Magistrate Judge preside over the trial.

 declines to consent to trial before a United States Magistrate Judge.

Respectfully submitted,

WRIGHT & GREENHILL, P.C.
4700 Mueller Blvd., Suite 200
Austin, Texas 78701
(512) 476-4600
(512) 476-5382 – Fax

By: /s/ Blair J. Leake

Blair J. Leake
State Bar No. 24081630
bleake@w-g.com
Stephen B. Barron
State Bar No. 24109619
sbarron@w-g.com

**ATTORNEY FOR DEFENDANT
GABRIEL WALKER PRADO**

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2024, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

_____/s/ Blair J. Leake
Blair J. Leake

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

AVELINO MEDEL II,
Plaintiff,

v.

**GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN**
Defendants.

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CIVIL ACTION NO. 1:24-CV-00990-DII

NOTICE CONCERNING REFERENCE TO UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and the Local Rules of the United States District Court for the Western District of Texas, the following party **The City of Austin**
through counsel **H Gray Laird**

____ consents to having a United States Magistrate Judge preside over the trial in this case.

X declines to consent to trial before a United States Magistrate Judge.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, INTERIM CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin- Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 9th day of December, 2024.

Via CM/ECF:

Jeff Edwards
State Bar No. 24014406
jeff@edwards-law.com
Mike Singley
State Bar No. 00794642
mike@edwards-law.com
David James
State Bar No. 24092572
david@edwards-law.com
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**ATTORNEYS FOR DEFENDANT
GABRIEL PRADO**

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Reynaldo Hernandez

vs.

The City of Austin

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NO: AU:24-CV-00565-DAE

TRANSFER ORDER

In accordance with the provisions of Title 28 U.S.C. Section 636(c) and Federal Rule of Civil Procedure 73, the parties in this case have waived the right to proceed before a judge of the United States District Court and consent to have a United States Magistrate Judge conduct any and all proceedings in the case, including trial and the entry of judgment (Dkt no. 14 & 15).

It is, therefore, ORDERED that the consent is APPROVED and the instant case shall be removed from the docket of the Undersigned Judge and assigned to United States Magistrate Judge Susan Hightower for all proceedings and the entry of final judgment. The remaining deadlines and trial date in this cause of action are hereby VACATED until further order of the Court.

Any appeal shall be taken to the United States Court of Appeals for this judicial circuit in accordance with Title 28 U.S.C. Section 636(c) and Rule 73(c).

IT IS SO ORDERED.

DATED: Austin, Texas December 13, 2024.



DAVID ALAN EZRA
SENIOR U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

Defendants

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CAUSE OF ACTION NO.
1:24-cv-00990

JOINT MOTION TO AMEND SCHEDULING ORDER

Plaintiff Avelino Medel, II, Defendant City of Austin, and Defendant Gabriel Walker file this joint motion to amend the operative Scheduling Order to extend the Parties' respective expert designation deadlines.

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

Under the current Scheduling Order, Plaintiff must file his designation of testifying experts and serve the materials required by Fed. R. Civ. P. 26(a)(2)(B) on or before January 31, 2025, and Defendants must do the same on or before March 4, 2025. Doc. 14. The Parties must complete all discovery by April 28, 2025, and the Court set the case for trial December 1, 2025. *Id.*

The Parties agree that additional time is needed to designate experts as discovery which those experts will consider is ongoing. Accordingly, the Parties respectfully request the Court enter the attached proposed amended scheduling order, which extends Plaintiff's deadline to designate

testifying experts to March 3, 2025 and Defendants' deadline to designate testifying experts to April 3, 2025.

Respectfully submitted,

EDWARDS LAW

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By /s/ Jeff Edwards

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By /s/ Jason Feltoon

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By: /s/ Stephen Barron [by permission]

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By: /s/ H. Gray Laird [by permission]

H. Gray Laird

Assistant City Attorney

State Bar No. 24087054

gray.laird@austintexas.gov

**ATTORNEY FOR DEFENDANT CITY
OF AUSTIN**

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for all parties have conferred and agreed to the relief sought in this motion.

/s/ Lisa Snead
Lisa Snead

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

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ORDER REGARDING DII DOCKET

Civil and criminal cases on the DII Docket shall be randomly assigned between Judge Robert Pitman (RP), Judge Alan Albright (ADA), and Senior Judge David Ezra (DAE) in accordance with the percentage shares provided by the Amended Order Assigning the Business of the Court on January 31, 2025. For clarification, Judge Pitman shall be assigned 40% of the DII docket; Judge Albright shall be assigned 40% of the DII docket; and Judge Ezra shall be assigned 20% of the DII docket. This Order and the Amended Order Assigning the Business of the Court on January 31, 2025 effectively dissolve the DII docket.

SIGNED on February 3, 2025.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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

AVELINO MEDEL II,
Plaintiff,

v.

**GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN**
Defendants.

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CIVIL ACTION NO. 1:24-CV-00990-RP

**DEFENDANT CITY OF AUSTIN'S UNOPPOSED
MOTION FOR PROTECTIVE ORDER**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

COMES NOW Defendant City of Austin, and respectfully asks the Court to enter a protective order in this case for good cause.

Defendant City of Austin proposes that the Court enter the protective order attached hereto as Exhibit A, which is the standard protective order for the Western District of Texas. Defendant requests that the Court enter this protective order so that Defendant may produce discoverable employee disciplinary, employee personnel, and employee training files and records that are otherwise protected by the confidentiality provisions of Texas Local Government Code § 143.089(g) and other state law provisions. Without entry of the protective order, Defendant will be placed in the untenable position of either withholding potentially discoverable documents or violating applicable state law confidentiality statutes. Plaintiff Avelino Medel II is not opposed to this motion.

PRAYER FOR RELIEF

For the above stated reasons, Defendant City of Austin respectfully requests that the Court enter the protective order attached hereto.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, INTERIM CITY ATTORNEY
SARA SCHAEFER, ACTING LITIGATION
DIVISION CHIEF

/s/ H. Gray Laird III
H. GRAY LAIRD III
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**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF CONFERENCE

This is to certify that on February 18, 2025, I conferred via email with Plaintiff's counsel and counsel for Defendant Walker-Prado regarding this motion. They are unopposed to the motion.

/s/ H. Gray Laird III
H. Gray Laird III

CERTIFICATE OF SERVICE

I certify that on February 19, 2025 I served a copy of *Defendant's Unopposed Motion for a Protective Order* on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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Mike Singley
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David James
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**ATTORNEYS FOR DEFENDANT
GABRIEL PRADO**

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

FILED

February 21, 2025

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**BY: Julie Golden
DEPUTY**AVELINO MEDEL II,**
Plaintiff,

v.

**GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN**
Defendants.§
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§**CIVIL ACTION NO. 1:24-CV-00990-RP****PROTECTIVE ORDER**

Upon the unopposed motion of the Defendant City of Austin for a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED that:

1. Confidential Information

“Confidential information” means any information of any type, kind, or character that is designated as “Confidential” by any of the supplying or receiving persons, whether it be a document, information contained in a document, information revealed during discovery, or otherwise.

2. Qualified Persons

“Qualified Persons” means:

- a. the party, if a natural person;
- b. if the party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case who, by their receipt of Confidential information, are bound by the terms of this Protective Order;
- c. retained counsel for the parties in this litigation and their respective staff;
- d. this court and its staff and any other tribunal, special master, or dispute resolution officer duly appointed or assigned in connection with this litigation;
- e. actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, by their receipt of Confidential information are bound by the terms of this Protective Order;

- f. jury and trial consultants and their staff and mock jurors who, by their receipt of Confidential information are bound by the terms of this Protective Order;
- g. litigation vendors, court reporters, video camera operators, translators, and other litigation support personnel;
- h. any person who was an author, addressee, or intended or authorized recipient of the Confidential information and who agrees to keep the information confidential, provided that such persons may see and use the Confidential information but not retain a copy; and
- i. such other person or persons as this court may designate after notice and an opportunity to be heard.

3. Designation Criteria

a. A party shall designate as “Confidential” only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Confidential.

Information and documents that may be designated as Confidential information include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, and competitive analyses, personnel files, personal information that is protected by law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to third parties.

Correspondence and other communications between the parties or with nonparties may be designated as Confidential information if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public.

- b. Confidential information shall not include information that either:
 - i. is in the public domain at the time of disclosure, as evidenced by a written document;
 - ii. becomes part of the public domain through no fault of the recipient, as evidenced by a written document;
 - iii. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or
 - iv. lawfully comes into the recipient’s possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the

receiving party.

4. Use of Confidential Information

All Confidential information provided by any party or nonparty in the course of this litigation shall be used solely for the purpose of preparation, trial, and appeal of this litigation and for no other purpose and shall not be disclosed except in accordance with the terms of this Order.

5. Marking of Documents

Documents provided in this litigation may be designated by the producing person or by any party as Confidential information by marking each page of the documents so designated with a stamp indicating that the information is “Confidential.” The designation should be made in a fashion or form that is conspicuous yet allows the Confidential information to remain legible. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. Originals shall be preserved for inspection.

6. Disclosure at Depositions

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty may be designated by any party as Confidential information by indicating on the record at the deposition that the testimony is “Confidential.”

Any party also may designate information disclosed at a deposition as Confidential information by notifying all parties in writing not later than 30 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Confidential information. All deposition transcripts shall be treated as Confidential information for a period of 30 days after initial receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as Confidential information with blank, consecutively numbered pages being provided in a non designated main transcript. The separate transcript containing Confidential information shall have page numbers that correspond to the blank pages in the main transcript.

Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Confidential information pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Confidential information is being used or discussed.

7. Disclosure to Qualified Persons

Confidential information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction. But if a disclosure is compelled by law or court

order, the receiving party will notify the producing party as promptly as practicable (if at all possible, before making such disclosure). The receiving party shall seek a protective order or confidential treatment of such information or cooperate with the producing party to protect the information.

8. Unintentional Disclosures

Documents unintentionally produced without designation as Confidential information later may be designated and shall be treated as Confidential information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

9. Documents Produced for Inspection Prior to Designation

In the event documents are produced for inspection prior to designation, the documents shall be treated as Confidential information during inspection. At the time of copying for the receiving parties, Confidential information shall be marked prominently “Confidential” by the producing party.

10. Consent to Disclosure and Use in Examination

Nothing in this order shall prevent disclosure beyond the terms of this order if each party designating the information as Confidential information consents to such disclosure or if the court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this order prevent any counsel of record from utilizing Confidential information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Confidential information, irrespective of which party produced such information.

11. Challenging the Designation of Confidential Information

A party shall not be obligated to challenge the propriety of a designation Confidential information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Confidential information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who designated the document or information as Confidential information. The designating party shall then have 14 days to move the court for an order preserving the designated status of the disputed information. The disputed information shall remain Confidential information unless the court orders otherwise. Failure to move for an order shall constitute a termination of the status of such item as Confidential information.

12. Challenging Release of Confidential Information to Qualified Persons

In the event that any party in good faith believes that a particular Qualified Person or the disclosure of particular Confidential information to such person should be precluded, the objecting party shall give written notice to the opposing party and the parties shall first try to resolve the dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party shall have 21 days from the date of the written notice to move the court for an order denying the disputed person (a) status as a Qualified Person, or (b) access to particular Confidential information. The objecting party shall demonstrate that disclosure to the disputed person would expose the objecting party to a substantial risk of harm. Upon the timely filing of such a motion, no disclosure of Confidential information shall be made to the disputed person unless the court enters an order preserving the designation.

13. Manner of Use in Proceedings

In the event a party wishes to use any Confidential information in affidavits, declarations, briefs, memoranda of law, or other papers filed in this litigation, the party shall do one of the following: (1) with the consent of the producing party, file only a redacted copy of the information; (2) where appropriate (e.g., in connection with discovery and evidentiary motions) provide the information solely for *in camera* review; or (3) file such information under seal with the court consistent with the sealing requirements of the court.

Nothing in this Order shall limit the parties' rights or ability to offer evidence at a hearing or trial. The manner of using any Confidential information at a hearing or trial and the status of Confidential information resulting from any such use will be determined by the court.

14. Filing Under Seal

The clerk of this court is directed to maintain under seal all documents, transcripts of deposition testimony, answers to interrogatories, admissions, and other papers filed under seal in this litigation that have been designated, in whole or in part, as Confidential information by any party to this litigation consistent with the sealing requirements of the court.

15. Return of Documents

Not later than 120 days after conclusion of this litigation and any appeal related to it, any Confidential information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any of the persons specified in paragraph 2 shall be returned to the producing party or destroyed, except as this court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including document indices, so long as that work product does not duplicate verbatim substantial portions of the text of any Confidential information.

16. Ongoing Obligations

Insofar as the provisions of this Protective Order, or any other protective orders entered

in this litigation, restrict the communication and use of the information protected by it, such provisions shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used as exhibits in open court unless such exhibits were filed under seal, and (b) a party may seek the written permission of the producing party or order of the court with respect to dissolution or modification of this, or any other, protective order.

17. Duty to Ensure Compliance

Any party providing Confidential information to a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order.

18. Waiver

Pursuant to Federal Rule of Evidence 502, neither the attorney-client privilege nor work-product protection is waived by disclosure connected with this litigation.

19. Modification and Exceptions

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this court modifying this Protective Order.

It is SO ORDERED this 21st day of February, 2025.


United States District Judge

APPROVED AS TO FORM:

/s/ H. Gray Laird III
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**ATTORNEYS FOR DEFENDANT
GABRIEL PRADO**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

Defendants

§ § § § § § § § § §

CAUSE OF ACTION NO.
1:24-cv-00990

UNOPPOSED MOTION TO EXTEND SCHEDULING ORDER DEADLINES

Plaintiff Avelino Medel, II respectfully files this unopposed motion to extend the expert deadlines in the operative Scheduling Order.

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

Under the current Scheduling Order, Plaintiff must file his designation of testifying experts and serve the materials required by Fed. R. Civ. P. 26(a)(2)(B) on or before March 3, 2025, and Defendants must do the same on or before April 3, 2025. *See* Doc. 18; Text Only Order (Jan. 28, 2025). The Parties must file any dispositive motions by May 28, 2025, and the Court set the case for trial December 1, 2025. Doc. 14, p. 2.

Additional time is needed to designate experts as discovery which those experts will consider is ongoing. This includes *Monell*-discovery for which the parties are conferring and awaiting supplementation from the City of Austin, as well as information from Plaintiff's treating physicians which is expected to relate to the cost of his medical care. Accordingly, Plaintiff

respectfully requests the Court extend Plaintiff's deadline to designate testifying experts to April 6, 2025 and Defendants' deadline to designate testifying experts to May 6, 2025.

Respectfully submitted,

EDWARDS LAW

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By /s/ Jason Feltoon
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for all parties have conferred and Defendants are unopposed to the relief sought in this motion.

/s/ David James
David James

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

Defendants

§ § § § § § § § § §

CAUSE OF ACTION NO.
1:24-cv-00990

PLAINTIFF'S DESIGNATION OF TESTIFYING EXPERT WITNESSES

Plaintiff, in accordance with the Court's Scheduling Order and agreement of the parties, hereby identifies and designates the following expert witnesses and would show as follows:

I. EXPERT WITNESSES

A. Retained Experts

1. Jeffrey Noble
3 Via Liebre
Rancho Santa Margarita, CA 92688
(979) 279-4678

Mr. Noble is an expert in police conduct and police practices. Mr. Noble has been a police officer for 28 years and he retired as Deputy Chief of Police with the Irvine Police Department in 2012. He also has experience being retained by municipal police departments, including the City of Austin in 2007 and 2009, to review their internal affairs department policies. His qualifications are set out more fully in his expert report and resume.

Mr. Noble will testify as to any subject on which he has factual knowledge or is within his area of expertise. He will testify as to any police conduct or policy issue in this case. He will testify regarding any opinion or fact or issue raised by Defendants, Defendants' employees, or Defense expert(s) within his area of expertise. He will testify concerning the conduct of the officers, Officers Gabriel Walker Prado, Adam Reinhart, Ryan Daniel, and Arlene Lozano, and the City of Austin's policies and training as they related to Officer Walker Prado's wrongful conduct of shooting Mr. Medel without warning, without identifying himself as a police officer, without any attempt to de-

escalate, and despite the fact that Mr. Medel posed no immediate threat. His testimony will include opinions about the liability and damages issues related to the use of force against Mr. Medel at issue in this case. Mr. Noble will testify that APD Officer Walker Prado improperly escalated the encounter he initiated with Mr. Medel without cause or justification. Mr. Noble will testify that Mr. Medel did not pose any threat to any officer or person at any time based upon the information available to Officer Walker Prado and based upon the minimal training, experience, and perception expected of all police officers in the United States and from the perspective of a reasonable police officer. Mr. Noble will testify that Officer Walker Prado failed to provide any warning to Mr. Medel, that Officer Walker Prado failed to identify himself as a police officer, and that Officer Walker Prado used grossly disproportionate, deadly force on Mr. Medel. Mr. Noble will testify that any minimally competent police officer and any reasonable police officer would have recognized that Mr. Medel did not have time to comply as no commands were given. Mr. Noble will testify that the uses of force against Mr. Medel were excessive, unreasonable, and egregiously inconsistent with widely accepted police practices, including because no officer had justification to use that level of force against Mr. Medel.

Mr. Noble will also testify that the City of Austin's failure to train and supervise APD officers, including Officer Walker Prado, to de-escalate, to warn, and to properly identify resistance were all severely lacking, unreasonable, and fell below minimum police standards based on Officer Walker Prado's testimony and any testimony of the City of Austin or its policing leaders disclosed in this case.

Mr. Noble will also testify that APD's official training using the concept of preparatory resistance, in conjunction with the rationale that officers should react to preparatory resistance at the level of force which the officer assumes is being prepared, is inherently flawed, is objectively unreasonable, and poses an open and obvious risk of constitutional violations. Mr. Noble will opine that the official training, as explained by Officer Walker Prado, undercuts the required presumption that de-escalation and prior warnings are feasible to resolve most encounters without the use of any force—much less deadly force. As a direct, foreseeable, and proximate result of APD's official training, a minimally competent or reasonable police chief would understand officers like Officer Walker Prado would engage in unnecessary, excessive force including deadly force. Mr. Noble will testify that this risk would have been obvious from the official training itself, but also reflected to APD's chief of police from other prior incidents such as the uses of force by APD officers against Michael Yeager-Huebner, Richard Munroe, Jason Roque, David Joseph, and Michael Ramos. Mr. Noble will testify that this risk would further have been demonstrated to a minimally competent or reasonable police chief by the Kroll Associates report relating to APD's uses of force as well as the widespread lack of discipline of APD officers despite their failures to de-escalate that the Kroll report revealed. This widespread lack of enforcement of APD policies and lack of discipline is also reflected in numerous other incidents of force by APD officers which were known to the police chief. Mr. Noble will testify that APD thus encouraged a widespread pattern of excessive force via a culture of impunity that reflected a de facto custom, ratified by APD policymakers, of using excessive force,

failing to de-escalate, and failing to warn—a custom that is unreasonable and far below minimum acceptable police standards. Mr. Noble will testify that this de facto custom was actually known to APD policymakers past and present, but that no steps were taken to seriously mitigate the custom. Mr. Noble will testify that APD’s dangerous approach to training on preparatory resistance defies generally accepted police practices, where any reasonable or minimally competent police chief would foresee that unnecessary, unreasonable, and dangerous force would be used in violation of generally accepted police practices such as occurred to Mr. Medel.

Mr. Noble will testify that this constellation of related policy-level failures independently caused and was a moving force of the excessive force against Mr. Medel and his injuries. Mr. Noble will also testify that APD’s failure to discipline Officer Walker Prado subsequent to the incident at issue in this case reflected knowledge and recognition by the policymaker of the factual basis for Officer Walker Prado’s conduct and the conduct he did engage in, yet, by declining to discipline Officer Walker Prado, the policymaker effectively ratified the misuse of force despite the officer using force in a manner that departed from minimum acceptable police standards, violated APD’s own written policy, was dangerous, was unreasonable, and was excessive to any need.

Mr. Noble’s opinions are based on the documents listed in his report, including, but not limited to, videos related to the use of force against Mr. Medel, police reports, City of Austin policies, use of force reports, investigation files into the Officer Walker Prado’s misconduct, investigation files relating to earlier uses of force by APD officers, depositions taken and to be taken in this case, public reports on the APD’s policies and training, discovery responses in this case, all documents produced by Defendants in this cause, as well as his education, training, and experience. Additionally, as discovery in this case is ongoing, Mr. Noble is expected to rely on documents that are produced by the City or testimony that is elicited after his report was completed. Expected exhibits to which this witness may refer or rely upon when giving his testimony at trial are not fully known at this time but are expected to include related videos and audio recordings, police records, relevant literature, any written report of this witness or other witness, documents and materials listed in his report and any of the testimony of any party or other witness, the documents produced in this cause, depositions in this cause, exhibits to said depositions. This witness may refer to or rely upon any exhibit shown to or admitted into evidence by any other witness. He will be paid a fee of \$450/hour for report writing, travel, and consulting, and \$3,000 for the first four hours of depositions, plus \$650 per hour for each hour of depositions beyond four.

Please see Mr. Noble’s report and his CV, which contains his list of prior testimony and list of prior publications, that have been contemporaneously produced to Defendants.

Mr. Noble may testify regarding any matter set forth in his report or regarding any materials referenced in his report.

**2. Arthur Joyce, Ph.D., A.B.N.
 Neuropsychological Systems of Texas
 4201 Wingren Dr.
 Irving, Texas 75062
 972-650-6166**

Dr. Arthur Joyce is a practicing clinical neuropsychologist with a board certification in neuropsychology. His complete curriculum vitae is attached. Dr. Joyce's focus is on people suffering from executive dysfunction and other mental deficits. He holds Diplomate status in the field of neuropsychology through the American Board of Professional Neuropsychology.

Dr. Joyce will rely upon his experience, training, in-person evaluation and testing of Mr. Medel, interview with Mr. Medel, all records referred to in his report, video from the body worn cameras depicting the events on April 6, 2024, Mr. Medel's medical records, and any other records that relate to his testimony including reports of Defendants' experts and their depositions. He will describe the tests he performed on Mr. Medel, and the nature and significance of the results, as set forth in his attached report. He will describe neuropsychological and neurocognitive testing and methodology generally, and for the specific testing he performed on Mr. Medel. He will testify regarding his interview with Mr. Medel. He will opine that Mr. Medel provided full effort during his testing, and will opine that he has ruled out the possibility of malingering on the part of Mr. Medel.

Dr. Joyce will testify to the opinions and matters contained in his attached report. Dr. Joyce will opine that Mr. Medel suffers from significant psychiatric disorder, mental anguish, and emotional distress as a result of a trauma caused by Officer Walker Prado's use of excessive force at issue in this case. Dr. Joyce will testify that as a result Mr. Medel suffers from terror about coming into contact with police, avoidance behaviors, reduced trust in others, decreased enjoyment of life, suicidal thoughts, disrupted mental health stability, severe anxiety, depression, and misplaced feelings of guilt. Dr. Joyce will further opine that Mr. Medel has suffered worsened anxiety and major depressive disorder, as well as a new diagnosis of Post Traumatic Stress Disorder (PTSD) as a result of this incident. Dr. Joyce will testify that Mr. Medel suffers from many PTSD symptoms, including intrusive memories, terror of law enforcement, flashbacks, dissociative reactions, cued psychological distress, and cued physiological distress. Dr. Joyce will testify that Mr. Medel experiences cognitive and mood symptoms as a result of the PTSD, including exaggerated negative beliefs or expectations, distorted cognitions leading to blame, persistent negative emotional states, diminished interest and participation in activities, detachment and estrangement from others, persistent inability to experience positive emotions, hypervigilance, problems with concentration, and sleep disturbance. Dr. Joyce will opine that these symptoms are consistent with and show that Mr. Medel's posttraumatic stress disorder was caused by the use of force. Dr. Joyce will testify that because PTSD interacts with his major depressive disorder, the shooting has worsened Mr. Medel's pre-existing mental health disorder.

Dr. Joyce will describe the impact that the psychological problems caused by this use of force have on Mr. Medel's day to day life and daily activities, including but not limited to causing suicidal ideation, memory loss, distraction, difficulty concentrating, paranoia, and decreased contact with friends.

As far as future care to address the psychological problems caused by this use of force, Dr. Joyce will opine that Mr. Medel would benefit from and has a medical need for therapy and psychiatric care for the foreseeable future.

Dr. Joyce may testify as to any matters set forth in his report or in the records he has reviewed. He will likely review the expert reports, depositions, and any supplemental discovery related to his opinions, and may supplement his opinions accordingly based on that information and any other information related to his opinion that he is provided as the case develops. All of Dr. Joyce's opinions and testimony will be to a reasonable degree of medical certainty, based on reasonable medical probability, and in reliance on records and methods that are widely accepted in her fields of medicine and life care planning.

Dr. Joyce's fee schedule; CV, which contains his prior publications; and testimony list have been contemporaneously produced.

3. Dr. Christine Vidouria, DO, CLCP
11550 W I-10, Suite 273
San Antonio, TX 78230
(210) 501-0995

Dr. Christine Vidouria is a Physical Medicine & Rehabilitation specialist, and a Pain Medicine specialist who has practiced medicine in Texas since 2001. Dr. Vidouria is a licensed physician in the state of Texas and is a member of the American Board of Physical Medicine & Rehabilitation. She is also certified in Pain Medicine by the American Board of Anesthesiology as well as Fellowship trained in Interventional Pain Management. Dr. Vidouria is a Certified Life Care Planner designated by the International Commission on Health Certification.

Dr. Vidouria has served as Medical Director for HealthSouth Rehabilitation Institute of San Antonio and Pain Management Program and Methodist Specialty Transplant Hospital in the acute rehab unit. Dr. Vidouria also received an adjunct faculty position at the University of the Incarnate Word School of Osteopathic Medicine.

Dr. Vidouria's professional associations include the American Academy of Physical Medicine & Rehabilitation, the American Academy of Physician Life Care Planners, the Bexar County Medical Society, the North American Spine Society, the Society of Interventional Spine, the Texas Medical Association, and the Texas Osteopathic Medical Association.

Dr. Vidouria earned a Doctor of Osteopathic Medicine from The University of North Texas HSC—Fort Worth—Texas college of Osteopathic Medicine and a Bachelor of Science in Microbiology from the University of Texas—El Paso in El Paso, TX.

Dr. Vidouria's experience and expertise is detailed further in her attached CV.

Dr. Vidouria's testimony will be based upon her extensive education and experience; her interview of Plaintiff Medel; as well as her review of Plaintiff Medel's medical records, Dr. Burrus' narrative, other expert reports in this case, any documents listed in her expert reports and any supplements or amendments thereto, any applicable material relied upon by Defendants' experts, and any applicable opinions, testimony, or reports by Defendants' experts.

Dr. Vidouria will testify as to Plaintiff Medel's future medical requirements and costs. Dr. Vidouria will testify that Plaintiff Medel's future medical requirements resulting from being shot will be nominally valued at \$1,582,522.65 based upon Mr. Medel's healthcare needs, life expectancy, and a vendor survey. Dr. Vidouria will also testify that the remaining fragments of the projectile will cause Mr. Medel to have progressive symptoms and impairments requiring lifelong medical care that will cause him pain, adversely impact his quality of life, impair his work, and impair his ability to engage in recreational activities. Dr. Vidouria will testify that Mr. Medel's ability to live without pain, dress himself, get out of bed, walk long distances, sleep, bathe, cook, clean, mow the lawn, change a light bulb, perform minor home repairs, lift, lie flat, lie sideways, stand for long periods, rotate his left arm, look to his right, and take care of himself have been impaired or require significant modification due to his physical injury in this incident. Mr. Medel also suffers from post-traumatic stress disorder which contributes to impairments to Mr. Medel's capacity for enjoyment of life and maintain personal relationships. Dr. Vidouria will testify that Mr. Medel's remaining life expectancy is likely 45 years as of the time of her most recent report. Dr. Vidouria will testify that Mr. Medel will require pain management, epidural steroid injections, medial branch blocks, radiofrequency ablations, behavioral psychologist care, neurologist care, follow up radiology, antidepressant medications, physical therapy, and surgical intervention due to his injuries from this shooting. Dr. Vidouria will testify as to the methodology employed and documents reviewed in assembling the life care plan for Plaintiff Medel. All of Dr. Vidouria's opinions and testimony will be to a reasonable degree of medical certainty, based on reasonable medical probability, and in reliance on records and methods that are widely accepted in her fields of medicine and life care planning.

Dr. Vidouria's opinions are more fully detailed in her expert report, which has been contemporaneously produced to the Defendants, along with her CV. Dr. Vidouria will be paid \$10,950 for preparing the life care plan and examining Mr. Medel, \$4,250 per half-day for testimony, \$8,500 per full day for testimony, \$850 per hour for any additional testimony time, and \$750 per hour for travel and other preparation time for expert services rendered in this case. Please also refer to the attached list of her prior

testimony. Dr. Vidouria reserves the right to supplement should additional evidence or records be relevant to her opinions.

B. Non-Retained Experts

1. Matthew Tyrrell Burrus, M.D.

**Austin Area Orthopedics
3707 S. 2nd St., Ste. 100
Austin, Texas 78704
512-634-7024**

Mr. Medel has received treatment for his injuries caused by APD from Dr. Burrus. Dr. Burrus is a medical doctor and practicing orthopedic surgeon licensed to practice medicine in Texas. Dr. Burrus received his medical degree from the University of Texas Medical School at Houston. Dr. Burrus then underwent orthopedic surgery internship and residency at the University of Virginia in Charlottesville, Virginia. He then completed a fellowship in sports medicine at a University of Michigan in Ann Arbor, Michigan. He is certified by the American Board of Orthopedic Surgery in orthopedic surgery and sports medicine. Dr. Burrus has extensive experience and training in orthopedic surgery.

Dr. Burrus will testify that, through his training and experience, he is knowledgeable about the accepted standards of care applicable to physicians caring for patients presenting with traumatic and orthopedic injuries, including bullet wounds, such as the injuries and symptoms suffered by Mr. Medel, the surgical treatment of these conditions, and the long-term outcomes. He may testify about any applicable standards of care applicable to the treatment of Mr. Medel.

Dr. Burrus will testify consistently with his medical records, any medical narrative, any supplemental documents provided in this case, and any deposition he gives in this case. All of Dr. Burrus' opinions and testimony are to a reasonable degree of medical probability and certainty. Dr. Burrus' opinions will be based on his treatment of Plaintiff and the medical records of Plaintiff, including the review of records from other providers. Dr. Burrus will offer all of his opinions to a reasonable degree of medical probability and certainty. Dr. Burrus reserves the right to review and update his opinions regarding any expert reports disclosed by Defendants, any materials relied upon by them, or any other materials subsequently provided to him.

Dr. Burrus will opine that Plaintiff Medel sustained significant injuries as a result of Officer Walker Prado's excessive force at issue in this case, including multiple bullet fragments dispersed in Mr. Medel's shoulder and thigh. The thigh injury proximately caused an infection requiring a complicated and painful hospital course. The shoulder injury left significant fragments that could not initially be retrieved surgically and which posed an ongoing risk of pain and may require surgical intervention in the future. Due to Mr. Medel's youth, symptoms, and the location of the fragments, Dr. Burrus is expected to testify that Mr. Medel likely will eventually need surgical intervention to

remove fragments of the bullet which hit his shoulder. Dr. Burrus will testify that this use of force proximately and directly caused Mr. Medel's acute and progressive injuries to a reasonable degree of medical probability and certainty.

Dr. Burrus will describe the nature of the injuries, including shoulder and thigh injuries, that Mr. Medel suffered as a result of this incident and will describe all relevant portions of anatomy. He may testify about any and all medical treatment Mr. Medel received in the past to treat injuries at issue in this case, not only his own treatment of Mr. Medel but treatment rendered by other providers based on a review of records, and will opine that such treatment was reasonable and necessary. He will explain the results of Mr. Medel's scans and imaging, and the manners and mechanisms by which Mr. Medel's injuries have caused him pain and other symptoms. He will testify regarding any relevant pre-existing conditions or lack thereof for Mr. Medel.

He will opine that the amount of Mr. Medel's medical expenses, not only for his own treatment of Mr. Medel but also treatment rendered by other providers based on a review of records, was reasonable and necessary. He will opine regarding all future medical care required in reasonable medical probability to treat Mr. Medel's injuries caused by this incident, will describe such care, and will opine regarding the reasonable and necessary cost of any and all such future care. Dr. Burrus may testify regarding any matters set forth in his medical records or in the medical records of other providers that he has reviewed, or the reports of other expert he has reviewed, including but not limited to the life care plan report by Dr. Vidouria. He may testify regarding the nature and results of the shoulder surgery.

Dr. Burrus will opine that although future medical care will reduce Mr. Medel's pain, in reasonable medical probability his pain will not resolve even with diligent treatment and he will continue to experience pain and stiffness in his shoulder for the rest of his life that will require ongoing medical treatment. Dr. Burrus will testify that in reasonable medical probability the remaining bullet fragments in Mr. Medel's body will migrate, cause additional pain, and require future treatment such as radiology to monitor them and surgery to remove them. Dr. Burrus will testify that the past expenses of Plaintiff's medical treatment were reasonable and necessary, and he will opine that the future medical care and estimated charges for the future medical treatment described in his narrative are reasonable and necessary to treat injuries and symptoms caused by the incident at issue in this case. He will offer an opinion regarding the estimated cost of the treatment Mr. Medel will require in the future including radiology and surgery.

Expected exhibits to which he may refer are not fully known at this time, but are expected to include the deposition testimony, Plaintiff's medical records, the testimony of the Defendants and any other witnesses, documents produced in this case, relevant literature he may have reviewed, his curriculum vitae, the videos of the use of force, and relevant photographs. Plaintiff will supplement the list of expected exhibits and testimony as discovery proceeds and before the trial in this case.

Although Dr. Burrus is not under Plaintiff's direct control, he has been compensated for his time spent treating Plaintiff as indicated by the medical billing records previously disclosed in this case. Dr. Burrus has also been compensated for his medical record review and medical narrative by payment of \$1,500. Dr. Burrus's medical narrative is enclosed, and it is anticipated that he will supplement with additional details in any deposition or testimony.

2. Other Medical Providers

The following persons are medical providers, including physicians, technicians, nurses, radiologists, physicians' assistants, healthcare providers, records custodians, clinics, hospitals and their agents, representatives and employees, where, or by whom, Plaintiff received medical care and treatment. Plaintiff identifies the following health care providers as persons who may give expert testimony at the trial of this cause. To the extent it is necessary to call live at the trial of or deposition in this cause any custodian of records for any of the following health care providers, Plaintiff identifies any such custodian as a person who may have expert knowledge regarding issues related to the incident in question, including the costs of care provided to Plaintiff and the reasonable certainty of future medical care. The health care providers listed below are not within the control of Plaintiff and have not been retained by Plaintiff as expert witnesses (and therefore have not provided to Plaintiff any specific written report other than their respective medical records); therefore, for the mental impressions held by and the opinions of and facts known by any of the following witnesses, please refer to their medical records of Plaintiff and any deposition testimony given or to be given by any such healthcare providers.

A. St. David's South Austin Medical Center

**901 West Ben White Blvd.
Austin, Texas 78704
512-816-7138**

B. Austin-Travis County Emergency Medical Services

**15 Waller Street, 2nd Floor
Austin, TX 78702
(512) 972-7200**

C. USA Emergency Center – South

**8721 Manchaca Road
Austin, Texas 78748
512-371-0911**

D. SATX Emergency Physicians PLLC d/b/a Ally Medical Emergency Room

**PO Box 843478
Dallas, Texas 75284
512-371-0911**

E. Epic Pain Management, PLLC

Raheel Bengali, MD

Sarah B

Dr. Kanishka Monis

Mustafa Monis PA-C

James Houston PA-C

Luis Trevino PA-C

8522 Broadway, Ste. 216

San Antonio, Texas 78217

210-874-5260

F. Northwest Hills Surgical Hospital of Austin

6818 Austin Center Blvd.

Austin, Texas 78731

512-346-1994

G. Austin Area Orthopedics, PLLC d/b/a Orthopedic Associates of Central Texas

P.O. Box 1415

Hutto, Texas 78634

512-634-7024

H. Pro-Care Medical Center

1015 W. 39th & ½ St., Austin, Teas 78756

512-371-7478

I. Walgreens Co.

P.O. Box 653042

Dallas, Texas 75265

217-554-8590

J. Joseph Hagen, PA

805 E. 32nd St., Ste. 101

Austin, Texas 78705

210-874-5260

K. Results Physiotherapy

Caylee Boozer, PT

Cullen Richardson, PT

Victoria Martin PTA

3267 Bee Caves Rd., Ste. 126

Austin, Texas 78746

512-202-8634

L. Express Pain & Urgent Care

2020 Babcock, Ste. 24

San Antonio, Texas 78229

210-874-5260

M. ASP Cares

**1210 Cottonweed Creek Trail, Ste. 210
Cedar Park, Texas 78612
512-649-5425**

N. Robert Marks, M.D.

**Diagnostic Pain Center
12176 N Mopac Expressway
Austin, TX 78758**

O. Longhorn Imaging Center

**4316 James Casey St., Bldg. F, Ste. 100
Austin, Texas 78745
Tel. (512) 444-8900**

P. Elevate HC Texas

**Elevate Health
Elevate Neurology
Elis Medical Corporation d/b/a MaxHealth
Erin Silvertooth, MD, FAPA, FACP
Debbie Valadez
Maria Rodriguez, MPsyh. LPC
712 N. Washington Ave., Ste. 200
Dallas, Texas 75246
855-435-3828**

The above doctors, nurses, physicians' assistants, medical device specialists, radiologists, psychologists, other medical staff, hospitals (including their agents, representatives, and employees, and clinics (including their agents, representatives, and employees) treated Plaintiff for his injuries. They are expected to testify regarding his injuries and the treatment described in the medical records.

Plaintiff has furnished no documents, tangible things, reports, models or data compilations to any of Plaintiff's medical providers for their review, nor has Plaintiff prepared any such information for any medical provider in anticipation of their testimony. Plaintiff's treatment is ongoing. Plaintiff refers to and incorporates the medical records of his medical providers he has seen since the shooting, including any records which are supplemented before the time of trial.

Plaintiff does not have possession of the curriculum vitae of any relevant medical provider and has not retained any such medical provider to testify live at the trial of this cause. Therefore, if any of the relevant medical providers are produced for oral deposition, the parties may at that time subpoena any such resume from the provider.

3. Austin Police Department
715 E. 8th Street
Austin, Texas 78701
Tel. 512-974-5000

Officers, Employees, Representatives, Agents, and Staff and all other custodians of record of the Austin Police Department, including but not limited to the following:

Crime scene investigators and other APD and City employees were involved in collecting evidence, evaluating the evidence, and cataloguing evidence related to the events described in the complaint. They are likely to have expertise in police practices, forensic science, and crime scene investigation. Their identities are known to Defendant City of Austin.

c/o H. Gray Laird III
Assistant City Attorney
Gray.laird@austintexas.gov
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-1342
Facsimile (512) 974-1311

Current and former APD officers who were involved in the use of excessive force, or failed to intervene to prevent excessive force, including, but not limited to, the following:

Adam Johnson
Jaime Carrillo
Adam Farris
Adam Farris
Adrien Chopin
Alejandro Gaitan
Alex Hitzelberg
Alexander Khidre
Alexander Lomostev or Lomovstev
Alexandra Dickenson
Ana Aguilar
Andrew Cobb
Andrew Wunderlich
Benjamin Hart
Benjamin Rogers
Bradley Hoover
Brandon Bender
Brandon Salter

Brandon Swindell
Brenda Glasgow
Brent Gray
Brett Tableriou
Brian Huckaby
Brian O'Quinn
Brian Yarger
Bryan McCulloch
Bryan Menduni
Bryan Pietrowski
Bryan Richter
Calvin Fusilier
Cameron Caldwell
Casey Kasan
Cassandra Langston
Chad Smith
Chance Bretches
Charles Kleinert
Christopher Allen
Christopher Irwin
Christopher King
Christopher Leleux
Christopher Limmer
Christopher Salacki
Christopher Taylor
Christopher Van Buren
Corey Connelly
Corey Hale
Curtis Pandorf
Daniel Jackson
Daniel Levine
Daniel McCameron
Daniel McLeish
Daniel Pruitt
Daniel Sanchez
Darrell Cantu-Harkless
Davis Trinh
Deborah Lindeman

Derrick Lehman
Donald Petraitis
Donovan Hunter
Dustin Turner
Dusty Jester
Edward Boudreau
Eliot Forton
Eric Boudreau
Eric Copeland
Eric Heim
Eric Pastor
Eric Perez
Felix Perez
Gabriel Gutierrez
Gadiel Alas
Gavin Smart
Geoffrey Freeman
Greg White
Gregory Cherne
Gregory Gentry
Gustave Gallenkamp
Jackson Pierron
Jacob Bowman
Jacob Dawson
Jaime Carrillo
James Ayers
James DeStaso
James Harvel
James Morgan
James Starnes
Jason Brown-Wright
Jason Jones
Jason Meurer
Jeffrey Rodriguez
Jeffrey Teng
Jeffrey Vance
Jeffrey Vrba
Jeremy Fisher

Jesse McDowell
Jesus Sanchez
John Contreras
John Gabrielson
John Nelson
John Nicklason
John Ricker
John Siegel
John Sikoski
Jonathan DiGuglielmo
Jonathan Pax
Jonathan Whitted
Jorge Pastore
Jose Robledo
Joseph Cast
Joseph Murray
Joseph Peche
Joshua Blake
Joshua Jackson
Julie Schroeder
Justin Berry
Justin Boehm
Justin Scott
Justin Wright
Karl Krycia
Katherine Alzola
Katrina Ratcliff
Kelby Radford
Kenneth Conner
Kevin Perrymore
Kourtney Smalls-Vanslyke
Kyle Felton
Kyle Jennings
Kyu An
Leonardo Cardenas
Leonardo Quintana
Limary Barajas
Luis Brito

Luis Comacho
Luis Serrato
Luis Soler
Manuel Jimenez
Marco Pena
Marcos Ramon
Mario Aquino
Marissa Edwards
Mark Bergeson
Mark Bozyk
Mark Dale
Mark Lakes
Matt Murphy
Matthew Henion a/k/a Matthew Hennion
Matthew Murphy
Maxwell Johnson
Michael Crossen
Michael Harris
Michael Joseph
Michael Nguyen
Michael Nissen
Michael Olsen
Michael Rauert
Michael Rowland
Michelle Gish
Mitchell Pieper
Mohammad Siddiqui
Nathan Canche
Vanessa Jimenez
Nathan Wagner
Nathaniel Stallings
Nelson Reyes
Nicholas Brunnet
Nicholas Gebhart
Nicholas LaBarbera
Nicholas Moore
Nikolas Warren

Otho Duboise
Patrick Nelsen
Patrick Oborski
Patrick Spradlin
Randy Dear
Randy Lee
Ricardo Aguilar-Lopez
Ricardo Cardona
Richard Egal
Richard Smith
Robert Escamilla
Robert Gilbert
Robert Mathis
Robert Mattingly
Robert Pfaff
Rolan Rast
Rolando Ramirez
Ross Pranter
Gabriel Dobkin
Roy Martinez
Rudy Cadena
Russell Rose
Ryan Dandignac
Ryan Rawlins
Salvador Gonzalez-Galvan
Samuel Noble
Sara Crain
Scott Truho
Sean McWhorter
Shaun Donovan
Stanley Vick
Stephen Johnson
Stephen McCurley a/k/a Steven McCurley
Thomas Childress
Timothy Cobaugh
Timothy Skeen

Todd Gilbertson
Tony Bishop
Tracy Zimmerman
Troy Brown
Tyler McCollum
Valerie Tavaréz
Vanessa Jimenez
Vincent Garcia
William Johns
William Lefebvre
William Norrell
Willis Rounds

c/o H. Gray Laird III
Assistant City Attorney
Gray.laird@austintexas.gov
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-1342
Facsimile (512) 974-1311

The foregoing officers have knowledge of specific uses of excessive force by APD and many also have knowledge of specific instances where APD officers failed to intervene to stop ongoing excessive force. They are expected to testify consistently with their prior statements regarding those instances that have been disclosed in discovery. They are likely to have expertise in APD policy, APD practices, and APD training.

Lisa Davis
Robin Henderson
Joseph Chacon
Brian Manley
Art Acevedo
Austin Police Department
715 E. 8th Street
Austin, Texas 78701
Tel. 512-974-5000

Ms. Henderson was the APD chief at the time of incident at issue in the complaint. She can testify to the facts described in the complaint, the practices, training, and policies of the Austin Police Department, changes to those policies, and investigation of APD officers since the incident. She has since been succeeded by Chief Davis. Mr. Chacon was the preceding chief, who had been succeeded by Ms. Henderson on August 31,

2023. Mr. Manley was the APD chief until March 2021, and his tenure was preceded by Chief Acevedo's. The current chief, former interim chief, and former chiefs can testify to the practices, training, and policies of the Austin Police Department in the months and years leading up to the incident at issue in this complaint. Ms. Davis, Mr. Manley, Ms. Henderson, Mr. Acevedo, and Mr. Chacon are expected to testify to all matters in any of their previous depositions in other litigation, or any future deposition in this case. Ms. Davis, Mr. Manley, Ms. Henderson, Mr. Acevedo, and Mr. Chacon may testify to APD's training, practices, and policy on excessive force and failure to intervene, APD's historical failure to discipline officers for failing to intervene to stop excessive force, chronic problems with APD's academy training, APD's improper investigation procedures for officer misconduct, and any other matters raised in their writings.

Troy Gay
 Joe Chacon
 Richard Guajardo
 Jennifer Stephenson
 Brent Dupre
 Jason Staniszewski
 James Mason
 Scott Perry
 Alice Thomas
 Jeff Greenwalt
 Gizette Gaslin
 Craig Smith
 Lee Davis
 JJ Schmidt
 Jerry Bauzon
 Catherine Johnson
 Austin Police Department
 715 E. 8th Street
 Austin, Texas 78701
 Tel. 512-974-5000

The above individuals are the current or former members of the leadership team of APD. They can testify to the practices and policies of the Austin Police Department and the facts described in the complaint.

For the substance of the testimony of each APD employee, or former employee, please refer to their writings disclosed in this case, their public statements, and their deposition testimony, if any.

4. City of Austin

City Hall
 City policymaker for law enforcement
 The City's mayor

The City Manager
All members of the City Council
301 W. 2nd Street
Austin, Texas 78701

Kirk Watson
512-978-2100
Natasha Harper-Madison
512-978-2101
Paige Ellis
512-978-2108
Delia Garza
512-978-2102
Jose Velasquez
512-978-2103
Jose “Chito” Vela
512-978-2104
Ann Kitchen
512-978-2105
Jimmy Flannigan
512-978-2106
Don Zimmerman
512-978-2106
Leslie Pool
512-978-2107
Kathie Tovo
512-978-2109
Mackenzie Kelly
Zohaib "Zo" Qadri
Sheri Gall
Spencer Cronk
Sabino “Pio” Renteria
Alison Alter
Steve Adler
Gregorio Casar
Marc Ott
Elaine Hart
Nuria Rivera-Vandermyde
Rey Arellano
Gina Fiandaca
Rodney Gonzales
Christopher Shorter
Elaine Hart
Jason Alexander
Ora Houston
Ellen Troxclair

The above are current and former members of the City of Austin's government. They have knowledge and expertise regarding the department's policies, training, and procedures. They are expected to testify consistently with their past public statements and any deposition testimony they provide, and their writings disclosed in this case.

5. Office of Police Oversight

512-974-9090
1520 Rutherford Lane
Austin, Texas 78754

Sylvia Hardman
Farah C. Muscadin
Deven Desai
Dominic Gonzales
Rebecca Webber
Alexis Gonzales
Kevin Cole
Robert Lauder
Sumit DasGupta

Ms. Hardman is the former director of police oversight through 2023. Ms. Muscadin was the Director of the Office of Police Oversight until October 2022. Mr. Desai is the former interim monitor. Dominic Gonzales, Rebecca Webber, Alexis Gonzales, Kevin Cole, Robert Lauder, and Sumit DasGupta are former members of the department's Citizen Review Panel. They have knowledge and expertise regarding the Department's policies, training, and procedures. They are expected to testify consistently with their past public statements and any deposition testimony they provide, and their writings disclosed in this case.

6. Travis County Employees

A. Travis County District Attorney's Office

José Garza
Margaret Moore
Ronald Earle Building
416 West 11th St.
Austin, TX 78701
(512) 854-9400

The Travis County District Attorney's Office as well as its current and former employees have knowledge of the history of use of excessive force by APD, as well as the allegations in the complaint.

For the substance of the testimony of each Travis County employee, or former employee, please refer to their writings disclosed in this case, their public statements, and they deposition testimony, if any.

B. Records Custodian
500 W. 10th St.
Austin, TX 78701
(512) 854-9889

The Records Custodian for Travis County will authenticate any records of Travis County that the parties cannot stipulate are authentic. The Travis County District Attorney's Office investigated the allegations in the complaint and may have knowledge of documents relevant to the case.

7. Non-Parties with Expertise in the Austin Police Department

A. Margo Frasier, J.D.
3300 Plover Rain Way
Pflugerville, Texas 78660
512-565-0464

Ms. Frasier is the former City of Austin Police Monitor. She has knowledge and expertise regarding the Department's policies and procedures. She is expected to testify consistently with her past public statements, her writings disclosed in this case, and any deposition testimony she may provide.

B. Department of Justice investigators
Shanetta Cutler
202-514-0195
Jonathan Smith
202-514-6255
950 Pennsylvania Ave, NW
Washington, DC 20530

Ms. Cutler and Mr. Smith are attorneys with the U.S. Department of Justice who participated in the DoJ's investigation of the Austin Police Department. They have knowledge and expertise of the department's policies, training, and procedures, applicable constitutional standards, and best practices for a police department. They are expected to testify consistently with their report on the APD.

C. Academic researchers

Phillip Atiba Goff, PhD.
524 West 59th St., Rm. 6.63.14
New York, NY 10019
310-206-3438

Dean Obermark
Nancy La Vigne
Jennifer Yahner
2100 M Street NW
Washington, DC 20037
202-833-7200
Amanda Geller, PhD.
70 Washington Square South
New York, NY 10012
212-998-1212

Prof. Goff is co-founder of the Center for Policing Equity & John Jay College of Criminal Justice. Mr. Obermark and Ms. Yahner are research associates for the Urban Institute, and Ms. La Vigne is director of the Institute's Justice Policy Center. Prof. Geller is Clinical Associate Professor of Sociology at New York University. They have knowledge and expertise of the APD's policies, training, and practices. They are expected to testify on any subjects within their knowledge and expertise including in their public report from 2016.

D. James C. Harrington
512-928-1138

Mr. Harrington is the former director of the Texas Civil Rights Project, and brought a Title VI Department of Justice complaint against the APD. He has knowledge of the department's policies, training, and practices.

E. Kroll Associates, Inc.
2000 Market Street, Suite 2700
Philadelphia, PA 19103
John R. Brown
Daniel Linskey
Dr. Robin Engel
J. Larry Mayes
Dr. Cassi L. Fields
A.J. Bingham
Mark Ehlers

Kroll Associates, Inc. contracted with the City of Austin's Office of Police Oversight, in consultation with the City Manager's Office, to author a review and assessment of Austin Police Department's Training Academy as well as Uses of Force; Public Interaction; and Recruitment, Selection, and Promotion. They have knowledge and expertise of the department's policies, training, and procedures, and of best practices for a police department. They are expected to testify consistently with their reports on the APD.

F. The victims, and surviving family members and heirs of the following victims, of APD's use of excessive force against other Austin citizens:

- a. Kevin Brown (survived by Ethel Washington, A.P.B., and Freddie Brown)
- b. Paul Cantu
- c. Jason Roque (survived by Albina and Vicente Roque)
- d. Hunter Pinney
- e. Jawhari Smith
- f. David Joseph (survived by Ketty Sully)
- g. Javier Ambler, Jr. II (survived by Javier Ambler, Sr., Maritza Ambler, J.R.A., and J.A.A.)
- h. Michael Yeager-Huebner
- i. Justin Howell
- j. Paul Mannie
- k. Louis Flores
- l. L.N.R. (survived by Shivon Beltran)
c/o Jeff Edwards
603 W. 17th Street
Austin, Texas 78701
(512) 623-7727
- m. Daniel Rocha
- n. Sir Smith
- o. Carlos Chacon
- p. Pete Hernandez
- q. John Schaefer
- r. Nathaniel Sanders II
- s. Byron Carter
- t. Leonardo Browning
- u. Joseph Cuellar
- v. Richard Munroe
- w. Carvius Jackson
- x. Derek Zelonka
- y. Christopher Swain
- z. Kamrey Wooldridge
- aa. Chadley Trombka
- bb. Manuela Garcia
- cc. Daniel Trevino Jackson
- dd. Matthew Wallace
- ee. Jeremy King
- ff. Gregory Jackson
- gg. Justin Grant
- hh. Ahmede Bradley
- ii. Larry Jackson, Jr.
- jj. Morgan Rankins
- kk. Landon Nobles
- ll. Victor Ancira
- mm. Dr. Mauris de Silva
- nn. Michael Ramos

oo. Rajan Moonsinghe
pp. Drayshad Hayes
qq. Brenna Williams
rr. Roberto Morales
ss. Armando Herrera-Amaro
tt. Alexander Bailey
uu. Anthony Marquis Franklin
vv. Alan Licon
ww. Adrian Aguado
xx. Tyrone Wilson
yy. Louis Rhyne
zz. Abel Soto-Torres
aaa. Cursha Townsend
bbb. Joseph Figueroa
ccc. Ricardo Hand
ddd. Zakory Hughto
eee. Armando Martinez
fff. Joe McDonald

Austin Police Department officers used excessive force against the above people prior to the facts described in the Complaint in this case. At this time, Plaintiff does not know the identities of their surviving family members and heirs of the deceased individuals listed above where none are listed, but believes the City has that information.

G. Victims of APD's unsafe discharge of bean bag rounds during the May 2020 protests

1. Anthony Evans
2. Justin Howell
3. Arianna Chavez
4. Jose Herrera
5. Steven Arawn
6. Meredith Drake
7. Tracy Cates
8. Nicole Underwood
9. Cesar Fuentez
10. Christen Warkoczewski
c/o Jeff Edwards
603 W. 17th St.
Austin, Texas 78701
(512) 623-7727
11. Brad Levi Ayala
c/o Dicky Grigg
Spivey & Grigg
3303 Northland Dr. #205

Austin, Texas 78731
(512) 474-6061
Jeff Edwards
603 W. 17th St.
Austin, TX 78701
(512) 623-7727

12. Tyree Talley

13. Samuel Kirsch
c/o Hendler Flores Law, PLLC
Rebecca Webber
Scott Hendler
1301 W. 25th St., Ste. 400
Austin, Texas 78705
(512) 439-3202

14. Bomani Barton

c/o Myles Lenz
1111 West Mockingbird Lane, Suite 1160
Dallas, Texas 75247
(214) 389-7333

15. Saraneka "Nemo" Alexander

c/o Tycha Kimbrough
Kimbrough Legal, PLLC
tycha@kimbroughlegal.com
P: 833-553-4251
Jeff Edwards
603 W. 17th St.
Austin, TX 78701
(512) 623-7727

16. Gemicah Volter-Jones

c/o Courtney E. Anderson Broadhead
660 S. Bagdad Rd., Ste. 120
Leander, Texas 78641
(737) 373-3373

17. Sage Avvocato

18. Adam Campbell
c/o Ryan K. Brent
2211 South Interstate 35, Suite 302
Austin, TX 78741
Tel. No. (512) 672-6585
Fax No. (512) 532-6810
E-mail: ryan@acamposlaw.com

James H. Hada
Texas Bar No. 08671050
Three Riverway, Ste. 1910
Houston, Texas 77056
Phone: (713) 465-9944
Fax: (877) 521-5576
jhada@shhlaw.com
Sico, Hoelscher & Harris LLP

19. Maya van Os
c/o David Van Os
DAVID VAN OS & ASSOCIATES, P.C.
8620 North New Braunfels Ave. #101
San Antonio, TX 78217

20. Jesse Barron
21. Hank Doe
22. Brandon Keeton
23. Modesto Rodriguez
24. Meredith Williams

Austin Police Department officers shot the above individuals with less lethal beanbag shotguns at a protest of racial inequities in policing prior to the facts described in the Complaint in this case. For those where no contact information is provided Plaintiff does not know their identities, but believes the City has their contact information.

8. Attorneys' Fees

Jeff Edwards
603 West 17th St.
Austin, TX 78701
Tel. (512) 623-7727
Fax. (512) 623-7729

Mike Singley
603 West 17th St.
Austin, TX 78701
Tel. (512) 623-7727
Fax. (512) 623-7729

David James
603 West 17th St.
Austin, TX 78701
Tel. (512) 623-7727
Fax. (512) 623-7729

Lisa Snead

603 West 17th St.
Austin, TX 78701
Tel. (512) 623-7727
Fax. (512) 623-7729

Paul Samuel

603 West 17th St.
Austin, TX 78701
Tel. (512) 623-7727
Fax. (512) 623-7729

Jason Feltoon

2520 S I-35 Frontage Rd. #200
Austin, TX 78704
Tel. (737) 281-9100

The above are Plaintiff's counsel, and have knowledge of the hours worked and reasonable hourly rates for Plaintiff's claim for § 1988 attorneys' fees. They will testify that the hours were worked on this case and were necessarily incurred to reach the ultimate result.

In addition, the following individuals may testify regarding the reasonableness of the hourly fees in the relevant market:

Jason Panzer
Herring & Panzer, L.L.P.
1411 West Avenue, Suite 100
Austin, TX 78701

Jeremy Doyle
Reynolds Frizzell
1100 Louisiana, Suite 3500
Houston, Texas 77002

Mr. Panzer and Mr. Doyle's CVs have been contemporaneously produced.

Plaintiff will also produce the underlying documents and opinions related to attorney's fees at an appropriate time after judgment, as that is when attorneys' fees issues are typically resolved to minimize the impairment of the attorney work product privilege. Plaintiff further reserves the right to supplement with expert testimony by other attorneys in the relevant market(s).

Plaintiff also incorporates all witnesses disclosed by Defendants in this case.

- B. Plaintiff reserves the right to elicit, by way of cross-examination, opinion testimony from

experts designated or to be designated and called by other parties to the suit. Plaintiff also reserves the right to elicit, by way of cross-examination, opinion testimony from Defendants and their employees. Plaintiff expresses his intention to possibly call, as witnesses associated with adverse parties, any of Defendants' experts. Plaintiff does not have any control over any such witness to be named by Defendants, nor do they have any superior right to ascertain the subject matter on which any such witness may testify and/or opinions held by any such witness, beyond the information disclosed in deposition testimony and/or by Defendants' discovery responses. In that regard, Plaintiff refers Defendants to Defendants' discovery documents, deposition testimony, and documents produced by Defendants for the subject matter, facts known, and opinions and impressions of these witnesses. Plaintiff reserves the right to obtain opinion testimony from any such witness within their area of expertise or related to this case, including Defendants.

- C. Plaintiff reserves the right to call undesignated rebuttal expert witnesses, whose testimony cannot reasonably be foreseen until the presentation of the evidence against the Plaintiff.
- D. Plaintiff reserves the right to withdraw the designation of any expert and to aver positively that any such previously designated expert will not be called as a witness at trial, and to re-designate same as a consulting expert, who cannot be called by opposing counsel.
- E. Plaintiff reserves the right to supplement this designation with additional designations of experts within the time limits imposed by the Court or any alterations of same by subsequent Court Order or agreement of the parties, or pursuant to the Federal Rules of Civil Procedure.
- F. Plaintiff reserves the right to elicit any lay opinion testimony at the time of trial which would be truthful, which would be of benefit to the jury to determine material issues of fact, and which would not violate any existing Federal Rule of Civil Procedure or Federal Rule of Evidence. Specifically, Plaintiff reserves the right to elicit such testimony from persons with knowledge of relevant facts who have been identified in response to discovery propounded to Plaintiff.
- G. Plaintiff reserves all additional rights he has with regard to experts pursuant to the Federal of Civil Procedure, the Federal Rules of Evidence, the case law construing same, and the rulings of the trial court.
- H. Plaintiff names all of those persons identified as having knowledge of relevant facts whose training and background enables them to testify as experts and who may be called as experts by any of the parties to this litigation. Furthermore, Plaintiff adopts the designation of experts of Defendants to this litigation, without necessarily adopting their opinions or validating their qualifications as experts.
- I. Plaintiff reserves the right to call former and current employees and/or representatives of Defendants as they are identified in discovery.

Dated: April 7, 2025.

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
MICHAEL SINGLEY
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paul@edwards-law.com

FELTOON LAW, PLLC

2520 S I-35 Frontage Rd. #200
Austin, TX 78704
Tel. (737) 281-9100

By /s/ Jason Feltoon

Jason Feltoon
State Bar No. 24123424
Jason@feltoon.law

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas and the associated materials have been served on all parties through electronic mail.

By /s/ Jeff Edwards

Jeff Edwards

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-RP

**DEFENDANTS' JOINT UNOPPOSED MOTION TO EXTEND SCHEDULING ORDER
DEADLINES AS TO EXPERT DESIGNATIONS AND DISCOVERY**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants, Officer Gabriel Walker Prado and the City of Austin, file this Joint Unopposed Motion to Extend Scheduling Order Deadlines as to: **(1)** Defendants' expert designations deadline and **(2)** the Parties' Discovery deadline. The Defense would respectfully show the Court as follows:

1. Plaintiff filed two unopposed motions to extend the parties' expert designations deadlines on January 24, 2025 (Dkt. 18) and March 3, 2025 (Dkt. 22), respectively. The Court granted both motions via Text Orders on January 28, 2025 and March 4, 2025. Accordingly, Plaintiff filed his expert designations on April 7, 2025 (Dkt. 23).

2. Pursuant to the Court's March 4, 2025 Text Order, Defendants' current deadline to file their expert designations is on or before May 6, 2025. Defendants' respectfully request that this deadline be extended to **June 3, 2025**. Plaintiff is unopposed to this requested extension.

3. Pursuant to the current Scheduling Order (Dkt. 14), the Parties must complete all discovery by April 28, 2025. Defendants' respectfully request that this deadline be extended to **August 4,**

2025. Plaintiff is unopposed. The Parties agree that additional time will be needed to complete discovery, including expert depositions, after all parties have filed their designations. The Joint Defendants respectfully submit that these requested deadline extensions will not affect the May 28, 2025 dispositive motions deadline or the December 1, 2025, trial setting.

4. The undersigned has conferenced with Plaintiff's counsel. Counsel for Plaintiff is unopposed.

PRAYER

5. WHEREFORE PREMISES CONSIDERED, Defendants Gabriel Walker Prado and the City of Austin respectfully request that this Court grant this Joint Unopposed Motion to Extend Defendants' expert designation deadline to **June 3, 2025**, and the parties discovery deadline to **August 4, 2025**, and for all other relief to which they may be justly entitled in law or equity.

Respectfully submitted,

WRIGHT & GREENHILL, P.C.
4700 Mueller Blvd., Suite 200
Austin, Texas 78723
(512) 476-4600
(512) 476-5382 – Fax

By: /s/ Stephen B. Barron
Blair J. Leake
State Bar No. 24081630
bleake@w-g.com
Stephen B. Barron
State Bar No. 24109619
sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT
GABRIEL WALKER PRADO**

- JOINED -

**DEBORAH THOMAS, Interim City Attorney
SARA SCHAEFER, Acting Chief of Litigation**

By: /s/ H. Gray Laird III

H. Gray Laird III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF CONFERENCE

Counsel for the Defendants have complied with the Court's requirement to confer. After conference, counsel for Plaintiff is unopposed.

_____/s/ Stephen B. Barron
Stephen B. Barron

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

_____/s/ Stephen B. Barron
Stephen B. Barron

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

AVELINO MEDEL II
Plaintiff

v.

**GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN**
Defendants

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**CAUSE OF ACTION NO.
1:24-CV-00990-RP**

DEFENDANT CITY OF AUSTIN’S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant the City of Austin, Texas files this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as follows:

I. Introduction

Plaintiff Avelino Medel II brings a §1983 claim for excessive force against Officer Gabriel Walker Prado and a §1983 *Monell* claim against the City of Austin. The claims arise out of use of force incident which occurred on April 6, 2024 in Austin, Texas. The City denies the Plaintiff’s claims and maintains that Plaintiff cannot meet his considerable evidentiary burden to establish liability against the City under 42 U.S.C. §1983. The Plaintiff does not have viable claims against the City of Austin. Accordingly, summary judgment in favor of the City of Austin is proper as a matter of law.

II. Summary Judgment Evidence

Exhibit 1	Declaration of Robin Henderson
Exhibit 2	Declaration of Lee Davis

III. Facts

The facts of the underlying event are detailed in the motion for summary judgment filed by Defendant Prado, which is incorporated by reference [filed May 28, 2025]. The City of Austin's Police Department (APD) maintains extensive and detailed policies and procedures regarding the use of force, forbidding the use of excessive force, and requiring close investigation of all incidents involving police officer use of force. (Exhibit 1, Henderson Decl, ¶¶ 1-23, and Attachment 1). APD disciplines officers determined to have used excessive force, and regularly reviews whether officers show a pattern of using force that calls for closer scrutiny. *Id.* at ¶¶ 19-23. These policies and procedures were followed in this incident. In addition, APD has rigorous hiring standards and carefully screens its potential employees to determine that they do not pose any unusual risk of using excessive force. *Id.* at ¶ 4-6. APD also trains all of its cadets and officers on all facets of police work, including the use of force, providing warnings prior to the use of deadly force, proper search and seizure, as well as de-escalation. (Ex. 2, Davis Decl.). APD's training requirements far exceed the minimum standards required by the state. *Id.* All of APD's policies and procedures were followed with respect to the hiring, screening, and training of Officer Prado. (Ex. 1, Henderson Decl; Ex. 2, Davis Decl). Moreover, APD closely investigated this incident, and that investigation revealed that Officer Prado did not violate any APD policies or criminal laws. (Ex. 1, Henderson Decl, ¶¶ 19-20).

A. Use of Force Policies and Investigation

At the time of this incident, April 6, 2024, APD had policies in place specifically forbidding the use of excessive force. The policies specified when an officer may use force, and, when appropriate, the level of force that may be used. A copy of the policies in effect at the time of this incident is attached and incorporated herein (Ex. 1, Henderson Decl, Attach. 1) (APD General

Orders valid March 29, 2024 to April 29, 2024. The policies are set out in Chapter 2 - Response to Resistance and Pursuit. APD policies also included a specific policy (GO 200.1.3) regarding the duty to intercede when an officer has a reasonable opportunity to prevent harm, and GO 200.2 De-escalation of Potential Force Encounters, GO 200.2.1 Assessment and De-escalation, GO 200.3 Response to Resistance, GO 200.3.1 Determining the Objective Reasonableness of Force, GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search, GO 200.5.2 Duty to Give Aid and Medical Care, and GO 202.2 Firearm Discharge Policy which includes providing a warning, if feasible, before resorting to deadly force.

APD officers are required to report any use of force to a supervisor. APD investigates every reported use of force by one of its officers. *Id.* APD initially tailors investigations for use of force incidents depending on the level of force used. APD applies its highest level of scrutiny for any incident categorized as Level 1. Henderson Decl ¶¶ 8-19. For any Level 1 use of force, the APD's special investigations unit (SIU) conducts a complete criminal investigation of the incident—securing and gathering evidence and working with prosecutors to present the evidence to a grand jury. *Id.* SIU has all of APD's resources at its disposal—including crime scene personnel, DNA testing, drug testing, and firearms testing. *Id.* At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the determination whether to present cases to a grand jury to consider whether to indict. *Id.* at ¶¶ 12,19. Concurrent with the SIU criminal investigation, APD's Internal Affairs Division (IAD) conducts its own review to determine whether the officer violated any APD policies (regarding the use of force or other policies). *Id.* at ¶¶ 10-13. IAD has complete access to the evidence gathered by SIU. *Id.* IAD investigators may also compel officers to give statements regarding their actions. *Id.* IAD may also take its own investigatory steps. *Id.* Ultimately, IAD

presents its evidence to the involved officer's chain-of-command, including the chief of police. *Id.* at ¶¶ 13-14. The chief of police makes the final decision whether to discipline the officer. *Id.* According to APD's disciplinary matrix, any officer who uses deadly force in violation of APD policy will be terminated from his employment. *Id.* at ¶ 15, Attachment 1 at APD GO Policy 903. APD has disciplined officers who violated APD policies regarding use of force and the duty to intercede. *Id.* In this case, APD conducted an Internal Affairs investigation into the incident. *See* Exhibit 1, ¶¶ 19-20. At the conclusion of the Internal Affairs investigation, Chief Henderson found that Officer Prado did not violate any APD policies. *Id.*

B. APD Hiring

APD has a rigorous and thorough hiring process to ensure that its cadets and potential police officers are honest, professional, and possess the appropriate temperament to be APD police officers. In particular, all successful applicants to APD's police academy must fill out a detailed application, undergo a comprehensive background check, pass a cognitive exam, pass an oral interview, pass a polygraph test, undergo a psychological examination, pass a physical, and pass a physical fitness test. *See* Ex. 1, Henderson Decl ¶¶ 4-6. APD will not hire any applicants whose background or psychological evaluation indicates that they pose a higher-than-normal risk of using excessive force, or that they are otherwise unfit for law enforcement work. *Id.*

C. APD Training

APD has policies and procedures in place requiring all officers to be appropriately and robustly trained for their positions. In particular, every APD officer must be licensed by the Texas Commission on Law Enforcement (TCOLE). (Ex. 2, Davis Decl). Furthermore, before becoming an officer, every APD cadet receives considerably more than the minimum amount of training required by TCOLE. *Id.* Before becoming full-time officers, every APD officer must successfully

complete an eight-month course of instruction at the APD training academy. *Id.* In addition to a wide range of other policing topics, APD cadets receive both practical and classroom instruction on use of force. *Id.* APD cadets receive considerably more training in use of force than the 24 hours required by TCOLE. *Id.* This classroom training includes instruction on the standards for use of force espoused by the Supreme Court in *Graham v. Connor*, and *Tennessee v. Garner*. *Id.* Additionally, APD command staff critically reviews each incident involving Level 1 Force Incidents.

APD officers and cadets also receive considerable training on interacting with the public. In general, APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public. (Ex. 2, Davis Decl). Officer Prado successfully completed the course of instruction at the APD training academy before becoming a full time APD officer. (Ex. 2, Davis Decl). At the academy, he received instruction in use of force, search and seizure, communicating effectively with the public, and the entire range of other core police skills. *Id.* He received many hours of instruction in excess of the TCOLE minimum requirements. *Id.* He has been licensed as peace officers for his entire career as a full-time APD police officer. *Id.* Officer Prado has also fulfilled the continuing education requirements called for by TCOLE. *Id.*

D. APD Officer Discipline

APD has numerous policies and procedures to ensure that officers accused of wrongdoing are properly investigated and, if appropriate, disciplined. (Exhibit 1, Henderson Decl ¶¶ 7-20, and Attach. 1). APD has a set of policies that all officers must obey. *Id.* Officers are provided with a copy of APD policies. APD policies govern all forms of officer conduct, from appropriate arrest procedures to appropriate use of force. *Id.* The APD Chief of Police is responsible for making policy within APD and for disciplining officers. *Id.* at ¶ 3. As described above, every APD

officer involved in a use of force incident must report it to his or her supervisors. *Id.* ¶¶ 7-20, Attach. 1. APD supervisors, internal affairs, or the APD's SIU conducts a review of every reported use of force. *Id.* at ¶¶ 7-20, Attach. 1.

In cases involving Level 1 uses of force, the chief of police will closely review the results of the internal investigation and make a decision whether the officer violated policy. *Id.* at ¶¶ 14-16. If the chief believes that an officer has violated APD general orders, he may discipline that officer with an oral reprimand, written reprimand, unpaid suspension, or terminate the officer's employment. *Id.* at ¶ 15. At the time of this incident, APD general orders included a disciplinary matrix. Under the matrix, if the chief finds that an officer used excessive or unreasonable deadly force, the officer will be terminated. *Id.* at Attach. 1.

APD also proactively screens its officers to identify those that may, among other things, pose a higher-than-normal risk of using excessive force. Specifically, it uses algorithms that will notify an officer's supervisors if the officer is the subject of a high number of citizen complaints or has more frequent than expected uses of force. Supervisors must re-review each use of force or complaint to determine if the officer poses any unusual risk. *Id.* at ¶ 21. APD's disciplinary process also has substantial citizen oversight. (Exhibit 1, Declaration of Henderson, ¶¶ 17-18). At the time of this incident in April 2024, the Office of Police Oversight (OPO) monitored APD in several ways. For instance, OPO staff sat in on interviews conducted by IAD investigators to ensure that they are conducted fairly and impartially. The OPO received complaints from the public and ensured that they were investigated by IAD. The OPO also reviewed IAD investigative files, reviewed disciplinary decisions made by the Chief of Police, and created reports on APD performance.

STANDARD OF REVIEW

Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id.* at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325. Moreover, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant's burden." *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996).

IV. ARGUMENT & AUTHORITIES

A. Claims against Municipalities under 42 U.S.C. §1983

The general contours of municipal liability for the conduct of its employees under 42 U.S.C. §1983 are well-defined in the Fifth Circuit. A city may not be held liable if the court finds that the plaintiff's constitutional rights were not violated. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Mace v. City of Palestine*, 333 F.3d 621, 625 (5th Cir. 2003). Even if a city employee or police officer violated a plaintiff's constitutional rights, a city may not be found liable under §1983 under a theory of *respondeat superior*. *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978); *Johnson v. Deep East Texas Regional Narcotics Trafficking Task Force*, 379 F.3d 293, 308 (5th Cir. 2004). Cities are almost never liable under §1983 for the isolated actions of their employees, and they can only be held liable for acts that are directly attributable to it "through some official action or imprimatur." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001).

To establish municipal liability under §1983, a plaintiff must show: (1) an official policy (2) promulgated by the municipal policy maker (3) which was the moving force behind the violation of a constitutional right. *Id.* A policy or custom is official only “when it results from the decision or acquiescence of the municipal officer or body with final policymaking authority over the subject of the offending policy.” *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989); *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 847 (5th Cir. 2009). To establish the “moving force” element, a plaintiff must show a direct causal link between the policy and the constitutional violation. *Piotrowski*, 237 F.3d at 580; *Peterson*, 588 F.3d at 848.

Where a plaintiff alleges that his injury resulted from the lack of an appropriate policy, instead of from a facially unconstitutional policy, a plaintiff must establish municipal liability by showing that the city’s failure to adopt a policy needed to circumvent predictable violations of federal law amounted to deliberate indifference. *James v. Harris County*, 577 F.3d 612, 617 (5th Cir. 2009); *see also City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989) (discussing city liability for lack of training); *Piotrowski*, 237 F.3d at 579-80 (municipal liability for lack of supervision). To show “moving force” causation based on a municipality’s alleged failure to train, supervise, investigate, or otherwise adopt appropriate hiring or retention policies, a plaintiff must show that the decision not to adopt appropriate policies or procedures amounts to deliberate indifference. *Valle v. City of Houston*, 613 F.3d 536, 542 (5th Cir. 2010). In other words, “the plaintiff must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision. Deliberate indifference is a high standard—a showing of simple or even heightened negligence will not suffice.” *Id.* (internal quotes and citations omitted).

The Fifth Circuit has emphasized the need for *Monell* plaintiffs to establish both the causal

link (“moving force”) and a city’s degree of culpability (“deliberate indifference” to federally protected rights.) *Snyder v. Trepagnier*, 142 F.3d 791, 796 (5th Cir. 1998); *Piotrowski*, 237 F.3d at 580. “These requirements must not be diluted, for “[w]here a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability.” *Snyder*, 142 F.3d at 796.

B. Plaintiff’s Claims against the City should be Dismissed.

Plaintiff contends that the City had a number of “policies, practices or customs” at the time of this incident which allegedly reflected deliberate indifference to Plaintiff’s constitutional rights. (Doc. 1, ¶ 69). The bulk of these alleged policies involve the failure to properly train, discipline, and supervise officers. *Id.* Plaintiff alleges that the City’s training and policy failures were a proximate cause of his injuries. *Id.*

First, the Plaintiff’s claims should be dismissed because Officer Prado did not violate Plaintiff’s constitutional rights by using excessive force or otherwise. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). For the reasons set forth in Officer Prado’s Motion for Summary Judgment [Filed May 28, 2025 and incorporated herein] Officer Prado’s use of force was objectively reasonable. It is well-established that a municipality may not be held liable if a plaintiff’s constitutional rights were not violated. *Heller*, 475 U.S. at 799. (“[I]f the [police officer] inflicted no constitutional injury on [the plaintiff], it is inconceivable that [the city] could be liable to [plaintiff].”). As a result, since Officer Prado inflicted no constitutional harm onto the Plaintiff, the Plaintiff does not have a viable claim against the City of Austin. Accordingly, summary judgment in favor of the City of Austin is proper as a matter of law.

Even if Plaintiff can raise an issue of fact on their underlying claim that the officer violated his rights, Plaintiff still does not have sufficient evidence to raise an issue of material

fact to demonstrate that: (1) the City had a policy or practice of using excessive force and failing to de-escalate; (2) the City is liable for failing to train APD officers or (3) the City is liable for failing to adequately supervise or discipline APD officers.

1. Plaintiff has not established a policy or practice of using excessive force or failing to de-escalate.

Plaintiffs allege that the City of Austin had a policy or practice of “[u]sing excessive force,” “not using de-escalation techniques” and “not providing warnings before using deadly and non-deadly force.” (Doc. 1, ¶ 69). None of the allegations are supported by the evidence. It is undisputed that APD had policies in place forbidding excessive force. These policies, in considerable detail, discussed the standards for the application of force, including a duty to provide a warning, if feasible, before resorting to the use of deadly force. (Ex. 1, Henderson Decl ¶¶ 8-11, Attach. 1). Additionally, APD Policy 200.2 addresses an officer’s duty to use de-escalation techniques when safe and reasonable under the circumstances. (Ex. 1, Attach. 1). Plaintiff does not make any specific allegations about how these policies are deficient. Instead, Plaintiff appears to contend that APD does not enforce them since it fails to adequately investigate the use of force. To prove this claim, Plaintiff must establish that there is some pattern in the use of excessive force that demonstrates that the City had an unwritten policy permissive of excessive force. *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 850 (5th Cir. 2009) Simply put, Plaintiff has produced no evidence to support these allegations.

A pattern amounts to an official policy “when it is so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Id.* at 850 (internal quotes and citations omitted). To establish that prior incidents constitute a pattern, a plaintiff must show that the incidents have occurred for so long or with such frequency that policymakers must know that the improper conduct is the ordinary and accepted practice of the municipal employees. *Id.* A pattern

will not be established based on isolated incidents. Instead, the pattern must be composed of incidents that are numerous and similar to the specific violation alleged. *Id.* at 850-851. “Prior instances must point to the specific violation in question; notice of a pattern of similar violations is required.” *Valle v. City of Houston*, 613 F.3d 536, 548 (5th Cir. 2010). A pattern requires similarity and specificity; “[p]rior indications cannot simply be for any and all ‘bad’ or unwise acts, but rather must point to the specific violation in question.” *Estate of Davis v. City of N. Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005). To meet these criteria, a plaintiff must place the prior incidents in context. For instance, the mere existence of 27 complaints of excessive force over a four-year period does not show a pattern of allowing excessive force when the city has a large police force that makes thousands of arrests per year. *Id.* at 851.

Here, the undisputed evidence is that APD has enforced its policies. APD policy in effect at the time of this incident required the reporting and investigation of every use of force. (Ex. 1, Henderson Decl). Plaintiff has no evidence that this investigation does not occur or that officers are not disciplined for violating the policies. APD has disciplined officers who violated APD policies regarding use of force including the use of deadly force. (Ex. 1, at ¶ 14) *See Peterson*, 588 F.3d at 852 (finding that the city investigated every excessive force complaint cuts against the allegation that the city condoned excessive force).

In sum, Plaintiff has no evidence to demonstrate a pattern of prior incidents that are sufficiently numerous and similar to this incident to show that the City tolerates the use of excessive force by its officers. Simply listing other use of force incidents falls far short of establishing sufficient similarity to this incident to constitute an unconstitutional unwritten policy. The majority of incidents cited by Plaintiffs in their Original Complaint were not officer-involved shootings and thus did not involve an alleged failure to provide a warning prior to resorting to

deadly force. The stringent standard in *Peterson* requires more than a list of isolated incidents in order to find an unwritten policy and pattern of excessive force or failure to intervene. *Peterson*, 588 F.3d at 850-851; *see also Roque v. Harvel*, 2020 WL 6334800 *10, (W.D. Tex., March 23, 2020).

2. No moving force causation

Plaintiff must meet the heightened standard of moving force causation in order to hold a municipality liable under §1983. *Valle v. City of Houston*, 613 F.3d 536, 546 (5th Cir. 2010). Because APD investigates and routinely disciplines officers who use excessive force, Plaintiff cannot prove that any alleged policy permissive of excessive force was the moving force behind the alleged violations in this case. *See James v. Harris Cty.*, 577 F.3d 612, 618-19 (finding that alleged policies of lax investigation and discipline in officer-involved shootings could not have been the moving force behind the violations because the officer did not have any knowledge of such policies). Accordingly, Plaintiff's claims should be dismissed.

3. The Plaintiff's Inadequate Training Claims should be Dismissed.

"A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick v. Thompson*, 563 U.S. 51, 131 S. Ct. 1350, 1359 (2011). For a plaintiff to prevail on a failure to train claim, he must allege with specificity how a city's training program is inadequate. *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). A plaintiff seeking to recover on a theory of failure to train must prove that: "(1) [the city's] training policy or procedures were inadequate, (2) [the city] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the plaintiff's injury]." *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010).

To show deliberate indifference in the context of a failure to train allegation, a plaintiff

may pursue two paths. *Kitchen v. Dallas Cty., Tex.*, 759 F.3d 468, 484 (5th Cir. 2014). The first, and more common path, involves proving that the city had notice of a pattern of prior violations which involved events similar to what transpired when the plaintiff's rights were allegedly violated. *Id.*, citing *Sanders-Burns*, 594 F.3d at 381. Alternatively, a plaintiff can show, based on a single-incident alone, that "in light of the duties assigned to specific officers or employees, the need for more or different training is obvious, and the inadequacy so likely to result in violations of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Sanders-Burns*, 594 F.3d at 381, quoting *Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 386 (5th Cir. 2005). This "single-incident" path is "difficult, although not impossible," for plaintiffs to successfully follow. *Id.* This is because it is not sufficient for a plaintiff to show that additional training may have avoided the injury, but a plaintiff (following either path) must show that the training was so inadequate that it would pose a "patently obvious risk of recurring constitutional violations." *Kitchen*, 759 F.3d at 485.

As part of their failure to train claim, Plaintiff contends that the City had unconstitutional policies in place and failed to properly train its officers in the proper use of force and failed to properly train its officers regarding civil rights by alleging that the City inadequately training its officers by:

- "c. Failing to train officers to provide warnings to citizens before using deadly and non-deadly force;
- d. Failing to train officers on reasonable use of force when interacting with citizens legally possessing firearms;
- e. Failing to train officers regarding citizens' right to bear arms in their own homes;
- h. Failing to train officers on the need to use of de-escalation techniques;

(Doc. 1, ¶ 69)

Plaintiff only makes bald allegations without adequate factual details as to how he claims the City's training of its officers is constitutionally inadequate. In this case, Plaintiff has no evidence to support an inadequate training claim. APD provides comprehensive training to its cadets and police officers. (Ex. 2, Davis Decl); *see Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010) (finding that compliance with state training minimums "counsels against" finding a failure to train). It is undisputed that the City provides extensive training to its officers (which far exceeds TCOLE state minimums) and specific training—both in practical application and in the law—on the use of force, providing a warning, if feasible, before resorting to deadly force as well as de-escalation techniques (Ex. 2, Davis Decl.) Accordingly, Plaintiff cannot show that the City was deliberately indifferent to the need for more or different training. (Ex. 1, Henderson Decl, Attach. 1):

Plaintiff has identified no specific failure of the City's training policies. Although Plaintiff lists in the Complaint several prior incidents, he has failed to produce evidence that the listed incidents were factually or legally similar to this incident and has failed to produce evidence that the other incidents were caused by inadequate training or policies. Plaintiff has not demonstrated those other incidents would have put the City on notice of a need for specific or altered training. Plaintiff also has not produced evidence why different training procedures should have been obvious to the City. At its essence, Plaintiff's training claim against the City is little more than bare assertions, unsupported by the type of detailed allegations and evidence mandated by cases like *Monell* and *Connick*. Accordingly, Plaintiff's failure to train claims should be dismissed.

4. Plaintiff Has Not Established a Policy or Practice of Inadequate Supervision, Discipline, and Investigation.

Plaintiff cannot establish that the City has a policy or practice of failing to supervise and

discipline its officers or failing to adequately investigate the use of force by its officers. These claims are analyzed under virtually the same stringent, deliberate indifference standard as the failure to train claim. *See Porter v. Epps*, 659 F.3d 440, 446-47 (5th Cir. 2011) (requiring a plaintiff to prove deliberate indifference for failure to promulgate policy, train, and supervise claims); *Gros v. City of Grand Prairie, Texas*, 34 Fed. Appx. 150 *6 (5th Cir. 2002) (per curiam) (requiring a plaintiff to prove deliberate indifference for hiring, training, and supervision claims); and *Barrios-Barrios v. Clippis*, 825 F.Supp.2d 730, 744 (E.D. La. 2011) (citing *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410-11 (1997) (analyzing hiring, training, and supervision claims under a deliberate indifference standard). A showing of even heightened negligence does not suffice to demonstrate deliberate indifference. *Brown*, 520 U.S. at 407.

To prove deliberate indifference in the context of hiring or retention claims, a plaintiff must show that the policymaker hired or retained an individual knowing that the person posed an obvious risk of committing constitutionally unlawful excessive force. *Brown*, 420 U.S. at 412; *see also Estate of Davis*, 406 F.3d at 382-85 (holding that there was no deliberate indifference even though the city knew that the officer had inappropriately fired a weapon, had a propensity for violence, and received several citizen complaints about the officer); *Snyder v. Trepagnier*, 142 F.3d 791, 198 (5th Cir. 1998) (finding no deliberate indifference even though the plaintiff introduced evidence showing that the officer was stressed, had a quick temper, and had exhibited aggressive behavior). To prove deliberate indifference in the context of a claim that a city failed to supervise or discipline a police officer accused of excessive force, a plaintiff must identify the individual supervisor who failed to supervise or discipline and demonstrate that the supervisor had subjective knowledge that the police officer posed a serious risk to cause harm by using excessive force. *James v. Harris Cty.*, 508 F.Supp.2d 535, 551-52 (S.D. Tex. 2011). In essence, for all of

these types of claims, a plaintiff must prove (usually through demonstrating a pattern of prior similar violations) that the risk of the officer using excessive force was obvious to policymakers.

Id.

In this case, Plaintiff again only make a bare allegation that the City did not properly discipline, supervise or take other reasonable steps to supervise officers on the use of force. (Doc. 1) Simply put, Plaintiff has produced no evidence that Officer Prado was inadequately supervised on the date of this incident and that any alleged failure to supervise was done so with deliberate indifference to the risk of a constitutional violation. Similarly, Plaintiff cannot point to any evidence to show that the City had any indication before the date of this incident that Officer Prado posed an obvious risk of using excessive force. It is undisputed that Officer Prado passed an extensive background check prior to hiring, and successfully completed the training academy, and continuing education and training to ensure that they remained TCOLE certified and received the latest training. (Ex. 2, Davis Decl. ¶ 9, and Attach. 1-3, TCOLE for Prado). Moreover, the undisputed evidence shows that APD had a program in place to screen officers based on uses of force, citizen complaints, and other criteria. (Ex. 1, Henderson Decl.) As a result, Plaintiff's inadequate supervision and discipline claims are without merit and should be dismissed.

5. Medel's Ratification Claim should be Dismissed.

Plaintiff alleges that the City of Austin ratified Prado's alleged unconstitutional actions when it did not discipline Prado as a result of this incident. (Doc. 1, ¶ 72) None of the actions of Prado or the City support a claim for ratification.

The Fifth Circuit has recognized a municipality's liability under the theory of ratification only in very limited circumstances. Ratification occurs when a subordinate's actions are subject to review by the municipality's authorized policymakers, and the authorized policymakers approve

a subordinate's actions and the improper basis for them. *James v. Harris County*, 508 F. Supp.2d 535, 554 (S.D. Tex. 2007)(quoting *City of St. Louis v. Praprotnick*, 485 U.S.112, 121 (1988)). However, the Fifth Circuit has stated that the theory of ratification is limited to “extreme factual situations.” *Peterson v. City of Fort Worth, Tex.*, 588 F.3d 838, 848 (5th Cir. 2009); *Snyder v. Trepagnier*, 142 F.3d 791, 798 (5th Cir. 1998). A municipality can be held liable under a theory of ratification only if the version of the story ratified by the city was manifestly indefensible. *Coon v. Ledbetter*, 780 F.2d 1158, 1162 (5th Cir. 1986).

The Fifth Circuit has stated that its precedent “does not stand for the broad proposition that if a policymaker defends his subordinates and if those subordinates are later found to have broken the law, then the illegal behavior can be assumed to have resulted from an official policy.” *Peterson*, 588 F.3d at 849, quoting *Coon*, 780 F.2d at 1161. Courts have stressed that the mere fact that policymakers failed to take disciplinary action does not prove that they knew of and approved the illegal character of the officers' actions or that the actions accorded with municipal policy. *Allen v. City of Galveston*, 2008 WL 905905 at p. 8 (S.D. Tex. 3-31-08) citing *Milam v. City of San Antonio*, 113 Fed. Appx. 622, 626 (5th Cir. 2004).

Ratification creates liability only where “a municipality's final policymakers are held effectively to have made policy or condoned creation of a custom by ratifying the unconstitutional or illegal actions of subordinate officers or employees.” *Allen v. City of Galveston*, 2008 WL 905905 at p. 8 (S.D. Tex. 3-31-08) citing *Turner v. Upton County*, 915 F.2d 133, 137 (5th Cir. 1990). Thus, a plaintiff is required to present sufficient evidence not merely that a policymaker knew and approved of the officer's conduct and the alleged constitutional violation, but that the policymaker knew that the officer's conduct violated the plaintiff's civil rights because the conduct was unlawful and clearly unconstitutional. See *Allen v. City of Galveston*, 2008 WL 905905 at p.

8 (S.D. Tex. 3-31-08).

Plaintiff contends that the City ratified Prado's alleged unconstitutional conduct since it did not discipline Prado as a result of this officer-involved shooting. The conduct of Prado in this case does not rise to the level of an "extreme factual situation" where his conduct was manifestly indefensible. The facts of this case are not remotely similar to the facts of the very few cases in which courts have found ratification claims to be viable.

In *Grandstaff v. City of Borger*, 767 F.2d 161, 165 (5th Cir. 1985), police officers opened fire on a landowner after the police engaged in a high-speed chase with a suspect who drove onto the landowner's ranch. The officers "poured" gunfire into the landowner's truck and killed the landowner without any evidence suggesting that he was the suspect involved in the high-speed chase. *Id.* The Fifth Circuit characterized the actions of the officers and supervisors as an "incompetent and catastrophic performance, there were no reprimands, no discharges, and no admissions of error." *Id.* at 171. The Fifth Circuit held that the City could be liable under §1983, noting that if an "episode of such dangerous recklessness obtained so little attention and action by the City policymaker, the jury was entitled to conclude that it was accepted as the way things are done and have been done in the City of Borger." *Id.*; see also *Hobart v. City of Stafford*, 916 F.Supp.2d 783, 797-98 (S.D. Tex. 2013)(officer's actions of firing a weapon, while losing consciousness, at an unarmed mentally ill individual without any awareness of the presence of innocent bystanders was manifestly indefensible).

Plaintiff has not produced sufficient evidence that Prado's actions in this case were manifestly indefensible such that the City can be held liable under a theory of ratification. As a result, the City is entitled to summary judgment on the ratification claim.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant its Motion for Summary Judgment and dismiss the Plaintiff's claims against it with prejudice with all costs assessed to the Plaintiff. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY
SARA R. SCHAEFER, ACTING CHIEF,
LITIGATION

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**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 28th day of May, 2025.

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-RP

**DEFENDANT GABRIEL WALKER PRADO'S
PARTIAL DESIGNATION OF TESTIFYING EXPERTS**

Pursuant to the Court's Scheduling Order (Dkt. 14) and FED. R. CIV. P. 26(a)(2)(B), Defendant Austin Police Officer **Gabriel Walker Prado** hereby designates the following testifying experts:

A. RETAINED EXPERT WITNESSES:

1. Albert Rodriguez

4501 McCormick Mtn. Dr.
Austin, Texas 78734
(512) 656-4354

- (i) Statements of all opinions the witness will express and the basis and reasons for them is found in Mr. Rodriguez's report, which has been provided to counsel and pro se plaintiff and marked **Exhibit No. 1**. Additionally, the expert is expected to offer testimony regarding law enforcement policies, practices, customs, and training both generally and as it pertains to the specific facts and issues in this case, including but not limited to responding to shots-fired calls, engaging subjects who reportedly just used deadly force against another and is plausibly in possession of a firearm, and the decision to use deadly force generally. His testimony will also be based on his extensive law enforcement training and experience; his review of the documents and data related to the subject incident; depositions and/or discovery from this case; any document listed in his expert report(s) and any supplements or amendments to the same.

- (ii) The facts and data considered by the witness in forming them can be found in Mr. Rodriguez's report including but not limited to the section entitled "Research and Assessment." Defendant expects the witness to review more documents and data as they become available and for him to supplement his report accordingly.
- (iii) Any exhibits that will be used to summarize or support his testimony include but are not limited to those contained or referenced within Mr. Rodriguez's aforementioned report, as well as any video, screenshot, document, or other evidence that has been produced by any party through discovery. Defendant reserves the right to supplement this section promptly if or when any new exhibits or demonstratives are created that are responsive to this section.
- (iv) The witness's qualifications, including a list of all publications authored in previous 10 years, are contained in Mr. Rodriguez's curriculum vitae, which has been provided to counsel and marked as **Exhibit No. 2**. Moreover, the same and/or additional information may be contained in his aforementioned report, including but not limited to the "Introduction" and "Summary of Qualifications" sections.
- (v) A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition is contained in the document provided to counsel and pro se plaintiff and marked as **Exhibit No 3**.
- (vi) Mr. Rodriguez will be paid at a rate of \$200 per hour plus expenses and fees for report writing and consulting. Fees for depositions and trial testimony are at a rate of \$2,800.00 for the first 4 hours and \$300 per hour thereafter, plus travel time and expenses. A statement of the compensation to be paid for the study and testimony in the case is contained in Mr. Rodriguez's aforementioned report, including but not limited to the last page of the report.

B. NON-RETAINED EXPERT WITNESSES:

The following individuals are hereby designated as potential testifying experts in this matter. These individuals were not retained or specially employed as expert witnesses, and thus have produced no reports other than those provided in their ordinary course of business and previously or subsequently produced in this matter. They are hereby designated as individuals with expert knowledge, training and experience with respect their respective areas of expertise who may be called upon to testify in Court and/or through their written records, as to their personal observations as well as their professional opinions and conclusions.

Defendant herein designates the following non-retained as experts in the areas they are qualified:

Ofc. Gabriel Walker Prado, AP9876
 c/o Blair J. Leake
 Stephen B. Barron
 WRIGHT & GREENHILL, P.C.

4700 Mueller Blvd., Suite 200
Austin, Texas 78723
(512) 476-4600

Defendant is expected to offer testimony regarding his background, his own training and experience as a law enforcement officer, the facts and circumstances at issue in this lawsuit, and that at all relevant times he acted as a reasonable officer would based on his training, experience, policies, procedures, and prevailing standards of law enforcement based on the facts known to him. He is expected to apply his law enforcement training and experience, including but not limited to training such as deadly force training, shoot-don't-shoot training, preparatory violence cues training, and firearms training, and compare the training and concepts to his own conduct during this incident to determine if it conformed with the acceptable police practices taught to him and gleaned through his own experience.

He is expected to testify that he was trained to only use deadly force when he observes an imminent threat of death or serious bodily injury to himself or others, and that he followed such training during the incident because he observed Walked Prado acting in an aggressive, irrational fashion, and then observed him respond to police arrival by retrieving a gun, chambering a round, stalking toward the three officers standing behind a hollow core door, and then begin to lower his gun toward the door.

He is expected to testify that his training taught him to recognize cues and signs of probably violence, as well as signs of imminent serious deadly threats, and that enough cues were present in this case to lead a reasonable officer to believe Medel's conduct posed a heightened threat level that made violence more imminently likely. Such cues include but are not limited to repeatedly yelling and screaming within inches of an elderly man's face, physically menacing the elderly man, pacing back and forth, and then irrationally responding to the arrival of police by retrieving a gun, chambering a round, stalking toward the three officers standing behind a hollow core door, and then begin to lower his gun toward the door.

He is expected to testify that police training includes teaching officers to send a volley of rounds at an existing deadly threat until the threat has ended, and that his four-shout volley conformed with such practices because he observed Medel arm retrieve a gun, chamber a round, stalk toward the three officers standing behind a hollow core door, begin to lower his gun toward the door, and then still hold onto the gun when he dropped to the ground hidden behind a couch.

He is also expected to testify that he has been trained to provide a warning before using deadly force, but only if feasible. He is expected to testify that law enforcement training standards would not have required a warning during this incident because the threat of harm appeared to be imminent, and a hesitation could have risked the assailant shooting the other officers while he waited for the assailant to comply. Here, that includes but is not limited to the fact that the exterior doors and walls only provided concealment and would not stop bullets passing through them; Medel had acted in an unhinged and irrational manner up to that point, and it would be reasonable to conclude he would not be an ideal candidate for listening to reason during a negotiation with police; he was already showing conduct suggesting he wanted to shoot police he had never met, so it would not make sense for him to listen to a different police officer he had never met; Medel

appeared filled so full of rage that he might be incapable of stopping himself mid-attack; and it had only taken two seconds for Medel to arm himself, chamber a round, and begin pointing his gun downward toward the door, and thus Medel had the capability of finishing leveling his gun and shooting through the door in an instant.

Defendant further incorporates by reference herein as part of this designation his IA statement, his discovery responses, his unsworn declaration filed in support of his motion for summary judgment, and his deposition transcript. All documents and data referenced have already been provided to all counsel during discovery by one party or another.

1. Cross-designations, reservations, and stipulations.

Defendant cross-designates and incorporates by reference herein any and all experts designated by every other party to this lawsuit at any time, and incorporates by reference herein the Rule 26 information provided for each such expert witness, respectively. In doing so, however, Defendant does not necessarily adopt or ratify his opinions nor validate or approve of their qualifications as experts. Additionally, Defendant's cross-designation of experts is **not** meant to waive Defendant's right to object to any such experts' testimonies for any reason.

Defendant further reserves the right to: (1) elicit fact or opinion testimony from any witness designated or called to testify by any party to this litigation at trial or in deposition; (2) designate and call additional expert witnesses as allowed by the Court; and/or (3) call expert witnesses and to offer testimony or other evidence in rebuttal to that offered by any expert witness called by any other party at trial or in deposition; and (4) call undesignated rebuttal expert witnesses, whose testimony cannot reasonably be foreseen until the presentation of the evidence against Defendant.

Defendant reserves the right to withdraw the designation of any retained or non-retained expert witness for any reason, and to aver positively that any such previously designated expert will not be called to testify as a witness at trial, and/or to re-designate experts as consulting-only experts who cannot be called to testify by opposing pro se parties or counsel.

Defendant further reserves the right to supplement and/or amend these designations as proves advisable, and/or as new information, evidence, and/or witnesses are discovered in this matter, to the extent permitted by the applicable procedural and local rules.

Respectfully submitted,

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By: /s/ Blair J. Leake

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**ATTORNEYS FOR DEFENDANT
GABRIEL WALKER PRADO**

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake

Blair J. Leake

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-RP

**UNOPPOSED MOTION FOR LEAVE TO EXCEED PAGE LIMITS OF
DEFENDANT GABRIEL WALKER PRADO'S
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant Gabriel Walker Prado who files this Unopposed Motion for Leave to Exceed Page Limits of his Motion for Summary Judgment and in support thereof, would respectfully show unto the Court as follows:

I. RELIEF SOUGHT

1. Defendant respectfully requests leave of Court to file his Motion for Summary Judgment in excess of the page limits as set forth by the Local Rules of the Western District. Pursuant to Local Rule CV-7(c)(2), dispositive motions are permitted twenty (20) pages. Defendant now requests leave of the Court to file his Motion in excess of the limit by an additional twelve (12) pages—for a total of thirty-two (32) pages excluding the caption, signature block, and certificates.

2. Defendant requests such leave because the additional pages are necessary and important to this Court's ability to receive a full discussion of the facts and legal issues presented. Defendant's Motion is approximately thirty-two (32) pages in length, exclusive of the caption, signature block,

certificates, and accompanying documents. This Motion for Summary Judgment involves an excessive force claim, which the Fifth Circuit has held are “necessarily fact intensive.”¹

3. Counsel has conferenced with Plaintiff’s counsel regarding this issue, and Plaintiff’s counsel are unopposed to this motion.

II. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court grants his Motion for Leave, allow Defendant to file his motion for summary judgment that is no longer than thirty-two (32) pages, and for such other and further relief to which he may justly be entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
GABRIEL PRADO**

¹ *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009).

CERTIFICATE OF CONFERENCE

Counsel for the defense has complied with the Court's requirement to confer. On May 28, 2025, Defense counsel conferred with all counsel. Upon conference, all counsel of record are unopposed.

/s/ Blair J. Leake
Blair J. Leake

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake
Blair J. Leake

FILED

May 29, 2025

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

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

BY: klw
DEPUTY

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-RP

OFFICER WALKER PRADO'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Austin Police Officer, **Gabriel Walker Prado** (hereinafter "Officer Walker Prado"), Defendant in the above entitled and numbered cause, respectfully files this Motion for Summary Judgment and dismissal on the grounds that he is entitled to Qualified Immunity and dismissal on all of Plaintiff Avelino Medel's (hereinafter "Medel") claims:

I. SUMMARY OF THE ARGUMENT

1. Officer Gabriel Walker Prado and three other APD officers responded to a late-night physical disturbance 911 call at an apartment building. Looking through the apartment's window, he observed an extremely agitated and aggressive younger man repeatedly screaming at and physically intimidating an elderly man. The screaming and physical intimidation was so extreme that Walker Prado concluded something had to be wrong with the young man, and that he was not in a rational-minded state. The elderly man was visibly scared. Walker Prado signaled for the three other officers on scene to knock on the front door to engage the man to prevent what appeared to be an imminent assault of the elderly man. APD Officer Reinhart knocked on the front door with his police baton and loudly announced, "***AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!***"

2. The agitated man responded to the arrival of police in one of the most threatening ways imaginable—***grabbing a handgun off his counter, inserting a magazine, chambering a round, and aggressively walking toward the door where three unknowing police officers waited on the other side***. Residential doors do not stop bullets, and the vulnerable officers on the other side had no idea the agitated man was suddenly armed and advancing toward them.

3. Officer Walker Prado understandably interpreted the agitated man's acts of arming himself and charging toward the door as threatening—as anyone would. The agitated man initially put the gun in the high ready position, but then ***he began lowering his gun downward toward the door***. Officer Walker Prado had a split-second decision to make: (1) negotiate with the man and hope he does not immediately pull the trigger, or (2) shoot him to make sure does not kill anyone. Officer Walker Prado chose the latter option, yelling "he's got a gun! Gun, gun, gun, gun, gun!" and

discharging his own firearm through the window four times at the agitated, armed, and gun-pointing man.

4. Officer Reinhart's loud announcement of "**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**" ended at 02:09:03 on the body worn camera time stamp. Officer Walker-Prado began firing a single volley of rounds at time stamp 02:09:05. In *roughly two seconds*, the agitated man had turned a normal disturbance call into an imminent deadly threat—creating a split-second Hobson's Choice if Officer Walker Prado wanted to protect the vulnerable and unknowing officers behind the hollow core door.

5. Officer Walker Prado's actions did not violate the Constitution because a reasonable officer in his position would view as an imminent deadly threat *the armed and agitated man's response to police arrival by grabbing a gun, loading it, chambering a round, aggressively charging toward them, and then lowering his gun toward them*. Using deadly force to stop an imminent deadly threat is neither excessive nor unreasonable as a matter of law.

6. Plaintiff also will necessarily fail to carry his burden to overcome the second prong of qualified immunity. There is simply no binding precedent in existence that would have put Officer Walker Prado on notice that using deadly force against an agitated, aggressive man who in two seconds suddenly armed himself and aggressively charged toward newly arrived police—*and then began levelling his gun in their direction*—would violate clearly established law. Officer Walker Prado is therefore entitled to the defense of qualified immunity as a matter of law.

II. SUMMARY JUDGMENT FACTS & EVIDENCE¹

¹ Summary judgment evidence need not be authenticated or presented in admissible form to be competent under Rule 56. *See Flores v. United Rd. Servs. Midwest, Inc.*, No. 5:19-CV-1066-

A. Prior to the hours-long loud fight that generated a 911 call, Medel consumed enough alcohol to produce a 0.24 blood alcohol content—three times the legal intoxication limit— and was otherwise intoxicated.

7. Leading up this incident, Medel had consumed alcohol—and more—as demonstrated in the sealed exhibits filed in support of this motion.² He omitted much of this information when he told investigators he had merely consumed four shots of vodka earlier in the night.³ The DA’s officer later noted that his blood alcohol content immediately after the incident was determined to be 0.24⁴—three times the legal intoxication limit in Texas.⁵

8. The subject least 911 call likewise stated the men involved in the disturbance sounded intoxicated.⁶ Officer Reinhart recalled that he heard Medel yelling sounded like he was slurring his speech “through the door and through the wall,” and had consequently concluded Medel was potentially intoxicated.⁷ He also explained that Medel’s yelling sounded loud, belligerent, and as if the individual was “a person who is overcome by their rage and can’t control it.”⁸ As discussed in more detail *infra*, Officer Walker Prado interpreted the same or similar information to mean broadly that something was wrong with Medel, that he was very obviously not acting rationally, and that the threat level of what he might do was higher as a result.

B. Neighbors called 911 after Medel aggressively screamed and yelled at his father for several hours late into the night.

DAE, 2021 WL 9908546, at *5 (W.D. Tex. July 22, 2021) (citing *inter alia* *Lee v. Offshore Logistical & Transp.*, L.L.C., 859 F.3d 353, 355 (5th Cir. 2017)).

² See **Ex. 10**, *Toxicology Records*, **pgs. 4-5**; see also **Ex. 6**, *Pl. Ans. to Interrogatories*, **No. 11**.

³ **Ex. 7**, *APD SIU General Offense Report*, **pg. 16**.

⁴ See e.g., **Ex. 9** – *CRU Case Closure Memo*, **pg. 1**.

⁵ “Intoxicated” under Texas law is defined as “not having normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, [or] a combination of two or more of those substances,” *or* “having an alcohol concentration of 0.08 or more.” See TEX. PENAL CODE § 49.01(2).

⁶ See e.g., **Ex. 14**, *1st 911 Call*, **02:10 – 02:25**.

⁷ **Ex. 12**, *Reinhart SIU Interview*, **pgs. 20, 32-33**.

⁸ *Id* at 32-34.

9. On Saturday, April 6, 2024, at approximately 1:55 a.m., an Austin Police Department 911 operator received a call from Medel's upstairs neighbors about loud noises of a physical disturbance, and the caller stated the noises she and her roommate were hearing made them were really scared for the people involved.⁹ The woman later stated that Medel had been yelling and slamming doors in the apartment for the past two hours before they finally called 911.¹⁰

C. Officer Walker Prado arrived at the correct apartment first, and observed a younger male exhibiting extreme aggression toward an elderly male, including screaming at him, getting in his face, cursing at him, and physically menacing him. The old man appeared afraid of the younger man.

10. At the time, Officer Gabriel Walker Prado was a newer officer originally from Puerto Rico. At approximately 1:56 a.m., Austin Police Officer Walker Prado joined Officers Arlene Lozano, Adam Reinhart, and Ryan Daniel in responding to the reported physical disturbance at 3050 Tamarron Boulevard, the Cliffs at Barton Creek, at apartment number 8106. The officers were informed that it was a "*disturbance hotshot*" call, meaning a high urgency call where injury to person or property should be expected.¹¹

11. Dispatch informed the officers it was a male-on-male disturbance in building number eight. Officer Walker Prado was the first officer to locate and arrive at the correct apartment, and he positioned himself to the right of the sliding glass door of the apartment number 8106.¹² He observed a younger male yelling at an older male, and he positioned himself so that he could observe what was happening inside the apartment before he engaged the subjects. Based on his training and experience, it is useful to do so in order to ascertain what is happening and who is the

⁹ Ex. 14, *1st 911 Call*, 00:00 – 00:34.

¹⁰ See Ex. 13, *SIU Presentation*, pg. 10; see also generally Ex. 15, *SIU Rikita Ghimire Interview*.

¹¹ See e.g., Ex. 16, *SIU Investigative Summary*; see also Ex. 4, *Walker Prado IA Interview*, pgs. 6-7; see also Ex. 3, *Walker Prado Decl.*, pgs. 1-2.

¹² See e.g., Ex. 1, *Walker Prado BWC*, 02:05-25.

aggressor, because victims in domestic violence incidents often decline to cooperate out of fear of the abuser. He positioned himself to where his body was hidden behind a pillar with his head peaking out so as not to be seen. As a result, his chest-mounted body camera captured footage across the sliding glass door, while his head was turned to the right facing directly into the kitchen.¹³

12. Officer Walker Prado did not know the relationship between the younger man and the elderly male, did not know who was the lawful resident, and did not know whether an assault had already occurred. The two males were standing in the apartment's kitchen. He saw and heard the "younger man repeatedly yell and scream at the elderly man;" the younger man "pacing back and forth in an extremely agitated manner" and "get in the elderly man's face [] only inches away, in what looked like attempts to physically intimidate the elderly man." He also saw that the younger man looked "seething angry, showing his teeth, flaring his elbows, broadening his chest at [the elderly man], and making what sounded like growling noises." Based on his law enforcement training and experience, these constituted cues that violence was more likely to be imminent." He recalled that "[t]he obvious visible anger, agitation, and erratic behavior of the younger man toward the elderly man was so extreme that I concluded something must be wrong with the younger man...that he was not thinking or acting rationally or reasonably, and that the threat level of the situation was higher as a result of his extreme agitated state."¹⁴

13. Officer Walker Prado relied on his training and experience to observe and conclude that "[t]he elderly man did not move from his position the entire time ... [and] ... he looked like he was in distress and his body language indicated to me he was scared of the younger man." He also

¹³ See e.g., **Ex. 4**, *Walker Prado IA Interview*, pgs. 1-2.

¹⁴ *Id.* at pg. 2.

observed that the elderly man’s “back was effectively pinned against the counter, he was leaning backwards away from the younger man, and his arms were out to the side.”¹⁵

14. Officer Walker Prado testified that he believed the elderly man to be the victim on scene.¹⁶ Aggressive yelling from inside the apartment can be heard on Officer Walker Prado’s body worn camera recording starting at time stamp 2:07:48 a.m. At 2:08:56 a.m., Medel’s voice is captured on Officer Walker Prado’s body worn camera aggressively yelling, “*shut the fuck up!*” with more yelling following that. At 02:08:57, Medel “get[s] in the elderly man’s face again, and then loudly yells” again “shut the fuck up!”¹⁷

15. “It was at that point that [Officer Walker Prado] believed the agitated man was about to physically attack the elderly man. [He] immediately signaled to the other three officers standing at the front door to knock because [he] believe[d] [they] needed to engage the subject to prevent the agitated man from imminently assaulting the elderly man.”¹⁸

D. Officer Reinhart used his baton to knock on the door with two other officers standing next to him, and loudly announced “AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!”

16. Officer Reinhardt knocked loudly on the door to apartment #8106 by striking the door roughly seven times with his police baton and loudly announcing, “***AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!***” The announcement can be heard clearly on Officer Walker Prado’s body worn camera footage, even though he was around the corner from the knocking.¹⁹ Officer Prado reasoned that since he could hear Medel talking inside that Medel would have been able to hear him outside, and further that Medel obviously heard the announcement of

¹⁵ *Id.*

¹⁶ **Ex. 5, Walker Prado Dep., pg. 146, lns. 12-16.**

¹⁷ **Ex. 3, Walker Prado Decl., pgs. 2-3; see also Ex. 1, Walker Prado BWC, 02:08:55-69.**

¹⁸ **Ex. 3, Walker Prado Decl., pgs. 2-3; see also Ex. 1, Walker Prado BWC, 02:08:55- 02:09:05.**

¹⁹ **Ex. 1, Walker Prado BWC, 02:08:56 – 02:09:03.**

police arriving because he visibly responded to the knock and announcement.²⁰ He also reasonably concluded that anyone who has been yelling loudly in an apartment complex late at night would expect that police officers will be showing up at the door soon as a result.²¹

17. Officer Reinhardt later described his volume on the police presence announcement as “pretty darn loud,” and that when announcing that he was a police officer he “put [his] face maybe six inches away from the door, kind where the door cracked to try to get my voice to emanate a little bit more through the door.”²²

E. The heretofore unhinged man continued his unhinged behavior when he learned police had arrived: he grabbed a gun off the counter, loaded it, chambered a round, charged toward the door holding the gun upright, and then *began lowering the gun toward the door and the three officers standing behind it.*

18. Officer Walker Prado observed that “the agitated man looked at the door” immediately after the announcement of “***AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!***” The last word of the announcement of police being at the door finished at time stamp 02:09:03. ***The remainder of the activity in this section occurred in roughly two seconds***—until 02:09:05.

19. The kitchen counter was extremely cluttered, and thus it was hard to make out what objects were located on the counter from Officer Walker Prado’s vantage point—and thus he had no idea a handgun was on the counter.²³ Up to this point, there had been no reason to believe this was an armed confrontation, and Officer Walker Prado had not even drawn his gun.

²⁰ **Ex. 5, Walker Prado Dep., pg. 43, lns. 15-20, pg. 44, lns. 1-10.**

²¹ ***Id.* at pg. 30, lns. 13-25, pg. 31, lns. 1-2.**

²² **Ex. 12, Reinhart SIU Interview, pg. 38.**

²³ **See Ex. 17, Screenshot of Walker Prado BWC; see also Ex. 3, Walker Prado Decl., pg. 3.**

20. After looking at the door, the agitated man suddenly grabbed a “silver object” off the counter that was L-shaped. It took a moment for Officer Walker Prado to realize that the agitated man had just grabbed a handgun, and the situation had suddenly turned exponentially more serious.²⁴

21. He then observed the agitated man load a magazine into the well, chamber a round into the gun, muzzle sweep the door to bring his gun up into the high ready position, and then aggressively walk toward the door the other three officers stood behind with no idea that the agitated man suddenly armed and advancing toward them.²⁵

22. The fact that Medel chambered a round into the gun—making it ready to fire—is corroborated by the fact that Officer Reinhart later picked up the weapon, cleared it, and found a round in the chamber.²⁶ Though the chest-mounted camera is often obfuscated by a nearby wall, Medel can briefly be seen walking from the kitchen area toward the door and three officers.²⁷

23. Officer Walker Prado expected the man to respond by asking who was at the door or looking through the peephole. Based on his training and experience, the agitated man’s act of instead retrieving a gun, chambering a round, and stalking toward the door was yet another irrational, unreasonable response that further convinced Officer Walker Prado something was wrong with the man and the threat level was significantly higher than usual.²⁸ Officer Walker Prado responded by drawing his own gun given the sudden and unexpected armed confrontation that had just unfolded.²⁹

²⁴ See **Ex. 4**, *Walker Prado IA Interview*, **pg. 19**, **lns. 835-846**.

²⁵ See **Ex. 3**, *Walker Prado Decl.*, **pg. 3**, **¶ 10**.

²⁶ See **Ex. 2**, *Reinhart BWC*, **02:16:15 – 02:16:50** (picking up the gun, clearing it, and saying “one round in the chamber”); see also **Ex. 13**, *SIU Presentation*, **pg. 23** (“1 round in the chamber”).

²⁷ See **Ex. 1**, *Walker Prado BWC*, **02:09:03 – 05**.

²⁸ See **Ex. 3**, *Walker Prado Decl.*, **pg. 3**, **¶ 11**.

²⁹ **Ex. 1**, *Walker Prado BWC*, **02:09:03-05**.

24. The agitated man's gun at this point was being held in the "high ready" position, either pointed directly upwards, or even slightly backwards behind the man's head, as seen on the video footage.³⁰ Shockingly, the agitated man then began to lower his gun from the roughly 90 to 110 degree position downward in front of him while holding it with a two-hand shooting grip—in the direction of the door the three unknowing officers stood behind.³¹ The agitated man had successfully lowered gun had been lowered to roughly a 45-degree position before Officer Walker Prado discharged his own gun and stopped him from fully levelling the gun and shooting at the officers behind it. This entire flurry of activity happened in roughly two seconds—between time stamp 02:09:03 and 02:09:05.

F. Officer Walker Prado fired one four-shot volley of rounds at the now-armed, charging, and gun-lowering man in a two-second fusillade.

25. Officer Walker Prado had to think through numerous data points and make multiple decisions within that two-second span:

I had just seen the other three officers standing behind the front door seconds earlier. Based on my training and experience, exterior doors and exterior walls do not stop bullets...the other three officers were vulnerable to gunfire through the door, and they had no idea the agitated man was armed, quickly walking toward the door, and now lowering the toward them...I knew the officers very likely did not have time to move away because only I knew the agitated man was now armed and moving toward them. I truly believed that if I did not shoot the man that he was about to start firing his own gun through the door at the officers standing behind it...I did not believe it was feasible to negotiate with the man or warn him I was going to use deadly force, because those options would not definitely stop the attack I believed was actively about to happen. I also knew that the sliding glass door between us meant that other force options, such as a taser or OC spray, would be completely useless. I decided to act.³²

³⁰ *Id.* at **02:09:03-04**.

³¹ *Id.* at **02:09:03-05**.

³² **Ex. 3, Walker Prado Decl., pgs. 3-4, ¶¶ 12-15.**

26. Officer Walker Prado “made [his ultimate] decision to shoot based on everything that had happened up to that point.”³³ Officer Walker Prado yelled, “he’s got a gun! Gun, gun, gun, gun, gun!” and simultaneously stepped to his left, aimed at the man’s center mass, and began firing one volley of four rounds to neutralize the threat that had just appeared unexpectedly in the prior two seconds. “[T]he agitated man dropped behind the couch” still holding his gun, which required Officer Walker Prado to perform a “mid-volley” sight realignment to fire his last shot through the couch at where he thought the armed and agitated man’s center mass would be. This re-alignment of his sights to shoot at a now-moved-and-hidden target took a moment, which is why the video depicts a longer time period between shots three and four of the volley compared to the other three shots. Right before he fired his final shot, the man reached out with his hand “toward the door with what [Walker Prado reasonably] believed was his gun in his hand.”³⁴ The entire four-shot volley was fired in roughly two seconds—with the first shot being fired at 02:09:05 and the final shot being fired at 02:09:07.³⁵

27. He did not fire a second volley of shots because he believed the officers at the door now had the time and cause to move away from the door the agitated man had been lowering his gun toward. He proceeded to instruct the agitated man to stop moving so that the officers could evacuate the elderly victim and begin rendering first aid.³⁶

G. The Travis County District Attorney’s Office has already reviewed this matter, agreed that Medel was pointing his gun in the direction of the officers, and declined to prosecute Officer Walker Prado in the ‘Interest of Justice.’

³³ *Id.* at pg. 4, ¶ 17.

³⁴ *Id.* at pg. 4, ¶ 15; see also Ex. 1, *Walker Prado BWC*, 02:09:05 – 02:09:07.

³⁵ Ex. 1, *Walker Prado BWC*, 02:09:05 – 07.

³⁶ Ex. 3, *Walker Prado Decl.*, pg. 4, ¶ 16.

28. This incident was subsequently reviewed by the Travis County District Attorney’s Office—arguably the most aggressive district attorney’s office in the country when it comes to prosecuting police officers. Travis County’s most experienced civil rights division prosecutor, ADA Dexter Gilford, drafted a summary of his observations, which are incorporated herein by reference. He ultimately agreed that the video footage showed that after Officer Reinhart announced “Austin Police Department, open the door!” Medel in turn “began to lower his weapon in the direction of the door where” the three officers were standing when Officer Walker Prado discharged his firearm to stop him. The DA’s office formally closed its case and concluded that this incident did not warrant criminal charges “in the interest of justice.”³⁷ This lawsuit follows.

III. LEGAL STANDARD

A. Summary Judgment Standard.

29. Pursuant to Federal Rule of Civil Procedure 56, summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.³⁸ What facts are material is determined by substantive law.³⁹ The mere existence of some factual dispute cannot defeat an otherwise properly-supported motion for summary judgment. There is no genuine dispute for trial when the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.⁴⁰

B. Qualified Immunity Standard.

30. Qualified immunity cases present two questions. First, did the officer violate a constitutional right? Second, was the right at issue clearly established at the time?⁴¹ The qualified

³⁷ **Ex. 9**, *CRU Case Closure Memo*.

³⁸ FED. R. CIV. P. 56.

³⁹ *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986).

⁴⁰ *Scott v. Harris*, 550 U.S. 372, 380 (2007).

⁴¹ *Dawes v. City of Dallas*, No. 22-10876, 2024 WL 2268529, at *1 (5th Cir. May 20, 2024).

immunity analysis is an entirely objective standard.⁴² “Once an official pleads the defense, the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official’s allegedly wrongful conduct violated clearly established law.”⁴³ “In so doing, the ‘court must ‘ask whether the law so clearly and unambiguously prohibited [the police officer’s] conduct that *every* reasonable [police officer] would understand that what he is doing violates [the law].’”⁴⁴

31. At the summary judgment stage, a Court must assign greater weight “to the video recording taken” at the scene and may discount a plaintiff’s version of the facts that are clearly contradicted by that video evidence.⁴⁵ “It is the plaintiff’s burden to find a case in his favor that does not define the law at a ‘high level of generality.’”⁴⁶ “[O]fficer negligence is not a basis to deny qualified immunity.”⁴⁷ Qualified immunity “represents the norm, and courts should deny a defendant immunity only in rare circumstances.”⁴⁸

IV. ARGUMENTS & AUTHORITIES

A. Plaintiff’s claims for excessive force sound solely under the Fourth Amendment.

32. As a matter of housekeeping, Medel’s claims under the Fourteenth Amendment must be dismissed.⁴⁹ The Fourteenth Amendment ensures a person’s right to procedural and substantive due process. Under binding Supreme Court and Fifth Circuit precedent, claims “involving

⁴² *Poole v. City of Shreveport*, 691 F.3d 624, 630 (5th Cir. 2012).

⁴³ *Baker v. Coburn*, 68 F.4th 240, 244 (5th Cir. 2023), as revised (May 19, 2023).

⁴⁴ *Argueta v. Jaradi*, 86 F.4th 1084, 1088 (5th Cir. 2023), *cert. denied*, 145 S. Ct. 435 (2024) (emphasis in original) (citation omitted).

⁴⁵ *Betts v. Brennan*, 22 F.4th 577, 582 (5th Cir. 2022).

⁴⁶ *Vann v. City of Southaven*, 884 F.3d 307, 310 (5th Cir. 2018) (per curiam) (internal quotation marks and citation omitted).

⁴⁷ *Mason v. Faul*, 929 F.3d 762, 764 (5th Cir. 2019).

⁴⁸ *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018) (internal quotation marks and citations omitted).

⁴⁹ See Pl. Orig. Compl. pgs. 24 – 25, Dkt. 1.

excessive force and false arrest based on incidents arising pre-trial are properly analyzed under the Fourth Amendment’s reasonable search and seizure standards, not under substantive due process.”⁵⁰ Since Medel has cognizable claims under the Fourth Amendment for excessive force, it is the Fourth Amendment that provides his relief and “not the more generalized notion of ‘substantive due process’” of the Fourteenth Amendment.⁵¹ Officer Walker Prado respectfully requests that this Court dismiss all Fourteenth Amendment claims against him.

B. Officer Walker Prado is entitled to qualified immunity on Medel’s excessive force claim because (1) his force did not violate the Constitution and (2) his force was not a violation of clearly established law.

33. The force Officer Walker Prado used **(1)** did not violate the Fourth Amendment, and **(2)** a comprehensive review of the Fifth Circuit’s precedent reveals that Officer Walker Prado did not violate Medel’s clearly established rights.⁵²

a. First prong: Officer Walker Prado did not use force excessive to the need based on what a reasonable officer in the same circumstances would perceive.

i. The *Graham* factors.

34. “All claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard.”⁵³ “Determining whether an officer’s use of force was objectively reasonable requires careful attention to the facts and circumstances of each particular case, including (1) the severity of the crime at issue, (2) whether

⁵⁰ *Wright v. City of Houston*, No. 4:22-CV-2225, 2023 WL 319956, at *3 (S.D. Tex. Jan. 19, 2023), *report and recommendation adopted*, No. 4:22-CV-02225, 2023 WL 1994417 (S.D. Tex. Feb. 14, 2023) (citing *Albright v. Oliver*, 510 U.S. 266, 273 (1994)); *see also Cuadra v. Houston Indep. Sch. Dist.*, 626 F.3d 808, 814 (5th Cir. 2010).

⁵¹ *Id.*

⁵² *Graham v. Connor*, 490 U.S. 386 (1989).

⁵³ *Deshotels v. Marshall*, 454 Fed. Appx. 262, 267 (5th Cir. 2011) (citing *Bazan ex rel. Bazan v. Hidalgo Cnty.*, 246 F.3d 481, 487 (5th Cir. 2001)).

the suspect poses an immediate threat to the safety of the officers or others, and (3) whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.”⁵⁴ These elements are referred to as the *Graham* factors after the Supreme Court’s seminal decision in *Graham v. Connor*.

35. *Graham* teaches that the “reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”⁵⁵

ii. The “threat-of-harm” factor is the primary *Graham* factor analyzed in a deadly force case, and it undeniably weighs in favor of Officer Walker Prado’s decision to use deadly force.

36. “While all [Graham] factors are relevant, the ‘threat-of-harm factor typically predominates the analysis when deadly force has been deployed.’”⁵⁶ “An officer’s use of deadly force is not unreasonable when the officer has reason to believe that the suspect poses a threat of serious harm to the officer or to others.”⁵⁷ The decision to use deadly force must be judged from the perspective of a reasonable officer on the scene, rather than with the perfect 20/20 vision of hindsight.⁵⁸ In other words, this case should not be analyzed as if Officer Walker Prado had the benefit of pause and rewind buttons in the safety of a lawyer’s office.

⁵⁴ *Id.* (numerals added) (citing *Graham*, 490 U.S. at 396).

⁵⁵ *Graham*, 490 U.S. at 396 – 97.

⁵⁶ *Crane v. City of Arlington, Texas*, No. 21-10644, 2022 WL 4592035, at *5 (5th Cir. Sept. 30, 2022) (internal citation omitted).

⁵⁷ *Argueta*, 86 F.4th at 1088 (5th Cir. 2023) (citing *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2023)).

⁵⁸ *See id.*

37. The all-important “threat-of-harm” factor weighs heavily in favor of Officer Walker Prado. He was called to the scene via APD’s highest priority level of call—a hotshot call—where it is believed a person has been injured and/or the suspect and victim are still on the scene.⁵⁹ Dispatch advised it was a physical disturbance, and thus violence should be expected. He arrived on scene to find a younger man repeatedly screaming at, cursing at, and physically menacing an elderly man. The elderly man looked visibly afraid of the younger man, who kept getting within inches of the elderly man’s face, and had effectively pinned the him against a kitchen counter. The agitated man’s rage and aggression was so extreme and visibly unhinged that Officer Walker Prado concluded there must be something wrong with the agitated man. His extreme agitation and aggression led him to the conclusion the agitated man was not acting rationally, and the threat level was consequently higher than normal. The urgent physical disturbance nature of the call, as well as the heightened threat level due to the man’s extreme rage, ongoing irrational conduct, and/or mental instability form part of the totality of circumstances for the heightened “threat of harm” the officers faced.

38. The agitated man was still unarmed, however, and deadly force was not yet warranted. Tragically, that all changed in an *instant*. What followed constituted a buffet of *Manis* acts that would make any reasonable officer believe deadly force was warranted.⁶⁰

39. Officer Reinhart knocked on the door with his baton and loudly announced “**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**” The final word of his announcement rang out at time stamp 2:09:03. Over the next *two seconds*—from 2:09:03 to 2:09:05 when Officer Walker

⁵⁹ **Ex. 3**, *Walker Prado Decl.*, ¶ 3. Hotshot calls can also involve damage to property, but in this case dispatch had made it known that it was a possible physical disturbance call.

⁶⁰ See e.g., *Reyes v. Bridgwater*, 362 F. App’x 403, 408 (5th Cir. 2010) (noting that an immediate threat requires a *Manis* act—where a latent threat materializes into a risk of harm).

Prado fired his volley of rounds—a flurry of threatening conduct occurred that turned a physical disturbance call into a potential capital murder scene.

40. Rather than ask who is at the door, calmly look through the peephole—or pause and consider that his unhinged screams in the middle of the night may have generated 911 noise complaints in an apartment complex—the agitated man responded to police announcing their arrival at his door in the most unhinged, threatening manner possible. He aggressively grabbed a handgun off the counter, muzzle swept their position, loaded the gun, chambered a round, charged toward the door, and then ***began lowering the previously upright weapon downward toward the door.***⁶¹ The three officers standing on the other side of the door had no idea any of this was happening—and thus no idea that their lives were now at the mercy of an unstable-and-suddenly-armed-and-charging man’s trigger finger.

41. The only officer who witnessed the two-second flurry of threat-escalating conduct was Officer Walker Prado. In those ***two seconds***, Officer Walker was forced to (1) process that the silver object the agitated man had just grabbed off the counter was actually a gun;⁶² (2) process that three officers were behind the door; (3) process that there had not been time or cause for the officers to move away from the door; (4) process that the agitated man had just dangerously muzzle swept the door with what might be an already-loaded gun; (5) process that the agitated man was now actively loading a magazine into and chambering a bullet into the gun; (6) process that the

⁶¹ **Ex. 1**, *Walker Prado BWC*, **02:09:04–05**. The video evidence shows that the gun never reached its final 0-degree trajectory of being fully levelled, but the footage indisputably shows that the agitated man initially had the gun pointed straight up in the air (or even slightly back behind his head) before he began lowering it downward in front of his body. The gun had lowered from a roughly 90 to 110-degree position to a roughly a 45-degree position when Officer Walker Prado discharged his weapon to stop the agitated man from lowering the gun any further toward the unknowing officers.

⁶² **Ex. 4**, *Walker Prado IA Transcript*, **pgs. 19 – 20**.

door is merely “concealment” and thus vulnerable to bullets; (7) process that the agitated man was now charging toward the door; (8) process whether he can use any manner of non-deadly force; (9) process that he needs to draw his own gun;⁶³ (10) process that he needs to turn off the safety; (11) process whether he can or should issue a warning or command, what specifically he should say, and what negative consequences might result from doing so; (12) process and determine how many shots would be appropriate; and (12) process that he needs to aim and fire at center mass—and then do so. The extremely limited two-second time window to act constituted the archetypal “split-second” *Graham* decision, but in reality what was happening during those two seconds involved mentally synthesizing a breakneck *flurry* of rapidly-evolving data points and making numerous independent decisions—***all within only two seconds, and with life or death on the line.***

42. The last of many decisions he was forced to make—shoot-or-don’t-shoot—proved to be a Hobson’s Choice once the agitated man’s began lowering his gun downward toward the door and the oblivious officers behind it. Officer Walker Prado was forced to act. The threat of harm was simply too deadly and too immediate. The corresponding *Graham* factor therefore weighs entirely in favor of Officer Walker Prado’s decision to utilize deadly force.

iii. The *Manis* acts in this case included the agitated man arming himself with a gun in response to the arrival of police, loading it, chambering a round, charging toward police, and lowering the gun downward toward the unknowing three officers behind the door.

43. Simply possessing a gun is usually not enough to warrant deadly force. There must be a *Manis* act—such as a furtive or threatening gesture—that transforms the situation into an imminent deadly threat in the eyes of a reasonable police officer. *Manis* acts abound in this case.

⁶³ **Ex. 1, Walker Prado BWC, 02:09:04.**

44. First, retrieving a gun specifically as a response to the arrival of police constitutes a *Manis* act. “Whether a suspect is armed is often the key factor in determining if a threat to an officer justifies the use of deadly force.”⁶⁴ There is a difference between a suspect already possessing a gun versus a suspect drunkenly grabbing a gun from the kitchen counter *specifically because the suspect just learned police had arrived*. Any reasonable officer who observed such an act would plausibly believe that the man intended to use that gun against the newly arrived police officers. Retrieving a gun as a direct response to police arrival is undeniably a sufficient *Manis* act, as reflected by all of the cases that hold that merely *reaching* for a gun—or what *might* be a gun but was *not*—in the presence of police merited deadly force (including *Manis* itself).⁶⁵ It indisputably follows that if reaching for a gun upon police arrival is a *Manis* act, then reaching for and *actually retrieving* that gun upon the arrival of police would be an even stronger *Manis* act.

45. Loading the gun—and then ***especially chambering a round***—constituted even stronger and more menacing *Manis* acts, especially since both acts were performed as direct responses to the arrival of police. Officer Walker Prado visually observed the agitated man chamber a round into his gun. Officer Reinhart confirmed Medel had loaded a bullet into the chamber when he cleared the weapon afterwards. “While the mere presence of a gun may not be enough to engender the belief in an officer that someone is dangerous, ***on hearing the sound of racking a weapon, making it ‘available for ready use,’ ‘an officer is ‘not required to wait and hope for the best’***”

⁶⁴ *Poole*, 13 F.4th at 425.

⁶⁵ See e.g., *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (affirming qualified immunity for officer who used deadly force against suspect who reached under his seat for what officer believed might be a gun); see also e.g. *Argueta*, 86 F.4th at 1088 (affirming qualified immunity for officer who used deadly force against a suspect who concealed his right hand from view in a manner that looked like he was reaching for a gun on his right hip); see also e.g., *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (holding that deadly force was warranted when police arrived and a suspect reached into a chest-high boot for what could have been a gun but was later determined not to be.).

before using deadly force.⁶⁶ Other courts have likewise noted the inherently threatening nature of an officer knocking on a door and in response hearing or seeing “*a firearm slide being racked...indicating that someone within the house was feeding a round of ammunition into the firing chamber of a gun.*”⁶⁷ This Court previously reached the same conclusion in *Lozano*, when the sound of a round being chambered made APD Officer Roger Boudreau believe “he was ‘about to be shot and killed through the door’.”

In this case, Officer Boudreau reasonably (and correctly) believed the suspect was armed, had *threatened him with the sound of a bullet being chambered*, and was proceeding out the door with his gun toward Officer Boudreau. There is no doubt, considering the foregoing law, that Officer Boudreau had reason to believe Plaintiff posed an immediate and serious threat to his life at that moment ... *There is no rule of law which requires police officers to wait for armed suspects to fire the first shot in order for them to reasonably use deadly force in response*; in fact, such a rule would have disastrous implications for the safety of police officers. Indeed, the Fifth Circuit has specifically stated the “Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists.” The suggestion that any such rule should be the law is “more reflective of the ‘peace of a judge’s chambers’ than of a dangerous and threatening situation on the street.”⁶⁸

46. The agitated man’s armed charge toward the officers alone likewise constituted a sufficient *Manis* act, especially given his unstable conduct up to that point. In *Lozano*, this Court noted as part of the threatening conduct that the man advanced toward the officer with a gun in his hand.⁶⁹ In *Cass*, the Fifth Circuit affirmed qualified immunity when a detective used deadly force against

⁶⁶ *Shullaw v. McMullen*, No. 3:23-CV-13317-MCR-ZCB, 2025 WL 976283, at *7 (N.D. Fla. Mar. 31, 2025) (citing *Powell v. Snook*, 25 F.4th 912, 922 (11th Cir.), *cert. denied*, 143 S. Ct. 110 (2022) (quoting *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010))).

⁶⁷ *Padilla v. City of Farmington, New Mexico*, No. 1:23-CV-00790-MLG-KK, 2025 WL 1414287, at *2 (D.N.M. May 15, 2025) (emphasis added).

⁶⁸ *Lozano v. City of Austin*, No. A-09-CA-200-SS, 2010 WL 3069811, at *7 (W.D. Tex. Aug. 4, 2010) (emphasis added) (citing *inter alia Ramirez v. Knoulton*, 542 F.3d 124, 130 (5th Cir. 2008)).

⁶⁹ *Lozano*, 2010 WL 3069811, at *7 (noting as part of the deadly threat conduct that the man advanced toward the officer with a gun in hand).

a man who was “approaching him and drawing his handgun.”⁷⁰ In *Rice*, the final threatening fact was when an armed and suicidal man “began walking toward the kitchen” where the officers had re-positioned themselves.⁷¹

47. As the *Manis* coup de grâce, Medel’s act of lowering his gun downward in the direction of police officers is arguably the penultimate of possible *Manis* acts—second only to committing attempted or actual capital murder by pulling the trigger. The Fifth Circuit has recognized that, in contrast to other weapons, “[a] gun can kill instantaneously [from a] distance.”⁷² The existence of a door or exterior wall between a suspect and potential victims will not stop bullets, nor does it extinguish an imminent deadly threat according to both law enforcement experts and the Supreme Court of the United States.⁷³ It is indisputable from the video footage that a reasonable officer would have concluded an imminent deadly threat existed if he observed an extremely aggressive, agitated man respond to the arrival of police by retrieving and chambering a round into a gun, aggressively walking toward the door, and then actively begin to lower his gun from an upright position downward in front of him toward the door.

48. Precedents involving pointing guns at police are surprisingly sparse because such incidents so rarely generate a § 1983 lawsuit because they are inherently doomed to fail.⁷⁴ Any argument

⁷⁰ *Cass v. City of Abilene*, 814 F.3d 721, 731 (5th Cir. 2016).

⁷¹ *Rice v. ReliaStar Life Ins. Co.*, 770 F.3d 1122, 1127 (5th Cir. 2014).

⁷² *Reyes*, 362 F. App’x at 407.

⁷³ See **Ex. 11**, *Rodriguez Report*, **pg. 28**; see also **Ex. 3**, *Walker Prado Decl.*, ¶ **12**; see also e.g., *Michigan v. Bryant*, 562 U.S. 344, 373 (2011) (the Supreme Court recognizing that **when a gun is involved physical separation is not sufficient to end an ongoing deadly threat because “Covington was shot through the back door of Bryant’s house...if an out-of-sight sniper pauses between shots, no one would say the emergency ceases during the pause.”**) (emphasis added); see also e.g., *United States v. Thompson*, No. 3:11-CR-272-D (01), 2012 WL 1161609, at *2 (N.D. Tex. Apr. 9, 2012) (“There was also the potential that someone inside the apartment would shoot through the door.”).

⁷⁴ See *Hodge v. Engleman*, 636 F. Supp. 3d 727, 737 (N.D. Tex. 2022), *aff’d*, 90 F.4th 840 (5th Cir. 2024) (noting that the Plaintiff failed to find “any case where the Fifth Circuit has found a

that a reasonable officer making a split-second assessment could not possibly view the agitated man's act of loading and lowering his gun from upright downward in front of him as an act of aiming at the officers "does not pass the straight-face test."⁷⁵

49. This Court may choose from a buffet of *Manis* acts in this case. There can be no doubt, however, that a reasonable officer would view the agitated man's collective conduct as an imminent deadly threat to the officers he was charging toward with a newly-loaded gun. Any suggestion that the intoxicated, rage-filled Medel was instead merely a calm and righteous second-amendment practitioner is an insult to safety-conscious gun owners everywhere.

iv. Even if this Court disagrees that a reasonable officer would not perceive beginning to lower the gun as equal to pointing it toward officers, Medel's conduct was still sufficient to merit deadly force pursuant to *Knoulton*.

50. Officer Walker Prado maintains that a reasonable officer—in the context of a split-second assessment without the benefit of a pause and rewind button—could view the agitated man's lowering of his gun downward in front of him as equal to aiming it at the officers. Stopping Medel from finishing his act of fully lowering the gun toward the officers should not count against Officer Walker Prado. Even if this Court disagrees, his conduct would still be sufficient to warrant deadly force.

51. In *Knoulton*, the magistrate judge initially refused to apply qualified immunity because the subject "did not raise his weapon, discharge the weapon, or even point it at the officers," and otherwise performed no definitive "threatening gestures."⁷⁶ The Fifth Circuit disagreed, concluding that the magistrate judge made the mistake of "employ[ing] 20/20 hindsight," and

violation of a clearly established right where officers used deadly force against an armed suspect who pointed a weapon at one or more officers.).

⁷⁵ See *Kisela v. Hughes*, 584 U.S. 100, 108 (2018).

⁷⁶ *Ramirez v. Knoulton*, 542 F.3d 124, 129 (5th Cir. 2008)

“fail[ed] to take into account the reasonable beliefs of officers standings yards away from a defiant, disturbed, and armed man.”⁷⁷ One of the armed subject’s final acts was to bring “his hands together in what [the Fifth Circuit panel] believe could reasonably be interpreted as a threatening gesture, as if to grip the handgun with both hands in preparation to aim it at the officers.”⁷⁸ Officer Walker Prado likewise reasonably perceived that Medel was a disturbed man armed with a gun, and he likewise knew the three other officers behind the door were standing mere feet away from him. He also perceived that the agitated man had suddenly loaded, chambered a round, and advanced toward the other officers’ position all as a response to learning that police had arrived. Plaintiff then, with the *Knoulton*-referenced “two-handed grip,” suddenly began lowering the previously upright gun while facing the door the officers stood behind. In *any* context, *any* human being watching an angry man grab a nearby gun, load it, chamber a round, advance toward them, and then begin to lower the gun downward in their direction would fear they are about to be shot. It defies logic to suggest that a police officer witnessing the same should feel any different. It was altogether reasonable for Officer Walker Prado to perceive that the unknowing officers standing behind the door were in imminent serious danger.

v. The mentally disturbed and/or intoxicated state of Medel was knowable to a reasonable officer on the scene, and are an important part of the totality of the circumstances.

52. The qualified immunity analysis does not consider the specific subjective considerations of a defendant officer. It considers “only the facts that were *knowable* to the defendant officers” and how a reasonable officer in that same situation would interpret them.⁷⁹ In this case, Officer Reinhart heard that Medel’s speech was slurred and concluded he was intoxicated. Officer Walker

⁷⁷ *Id.* at 130.

⁷⁸ *Id.* at 131.

⁷⁹ *White v. Pauly*, 580 U.S. 73, 76–77 (2017) (emphasis added).

Prado likewise heard Medel’s speech, as reflected by the video footage and every statement he has given. The specific drugs or alcohol ingested would not be “knowable,” but an observable state of intoxication would be. Officers are trained that an intoxicated subject—especially one that is armed with a deadly weapon—creates a heightened threat potential.⁸⁰

53. Officer Walker Prado also visually observed Medel’s extreme conduct—screaming in the face of an elderly man, effectively pinning him against the wall, pacing back and forth, showing his teeth in anger, flaring his elbows, and otherwise repeatedly physically menacing the elderly man—and concluded something was wrong with him. These facts would be knowable to a reasonable officer on the scene, and a reasonable officer would correctly conclude the man was either intoxicated or mentally unstable. Officers are trained that an emotionally disturbed subject—especially one that is armed with a deadly weapon—creates a heightened threat potential.⁸¹

54. Officer Walker Prado knew something was wrong with Medel, and that he was not acting rationally nor reasonably. A reasonable officer would synthesize the same knowable information and conclude the same—whether that be because of a perceived state of intoxication or a perceived emotionally disturbed state—and likewise believe the threat level of the situation was higher as a result. These knowable facts and corresponding heightened threat level⁸² are an important part of the totality of the circumstances faced by Officer Walker Prado.

b. The other two *Graham* factors cannot overcome the threat-of-harm factor, but nevertheless collectively weigh in Officer Walker Prado’s favor.

⁸⁰ **Ex. 11, Rodriguez Report, pg. 24.**

⁸¹ **Ex. 11, Rodriguez Report, pgs. 25-26.**

⁸² See e.g., *Mace ex rel. Revell v. City of Palestine, Texas*, 213 F. Supp. 2d 691, 696 (E.D. Tex. 2002), *aff’d sub nom. Mace v. City of Palestine*, 333 F.3d 621 (5th Cir. 2003) (“the uncontested facts show that Chief Henderson was confronted with an *intoxicated, disturbed individual* wielding a sword within ten to twenty feet of him and his other officers”).

55. The other two *Graham* factors are essentially trumped by the second threat-of-harm factor once it has been established that a reasonable officer would perceive an imminent deadly threat. The first factor deals with the nature of the crime. Pointing a gun in the direction of police officers would at the very least constitute Deadly Conduct, if not Aggravated Assault with a Deadly Weapon.⁸³ However, “it would be insignificant whether [the suspect] was to be arrested for a minor crime or was not even a criminal suspect if it reasonably appeared that he was about to shoot a gun at an officer from close range.”⁸⁴ The reasons prompting the APD officers’ dispatch are immaterial to the question of reasonableness in responding to the imminent deadly threat created by Medel’s actions.

56. Similarly, the final *Graham* inquiry, which addresses whether Medel actively resisted or attempted to evade arrest, is likewise wholly irrelevant once it has been established that Medel’s conduct posed a severe risk of imminent deadly harm to others. The incident had not progressed to the point of arrest when the deadly threat to the officers was created by the agitated man’s conduct. Nevertheless, “anyone who appears to be ready to shoot an officer certainly appears to be ready to resist arrest.”⁸⁵ The two lesser factors as a whole weigh in favor of Officer Walker Prado’s decision to resort to deadly force to protect the vulnerable and unknowing persons standing behind the door.

c. Officer Walker Prado’s final shot in his four-round volley was likewise constitutionally permissible.

⁸³ See e.g., TEX. PENAL CODE ANN. § 22.05 (West) (“A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury” and “[r]ecklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another.”).

⁸⁴ *Padilla*, 2025 WL 1414287, at *8.

⁸⁵ *Est. of Valverde by & through Padilla v. Dodge*, 967 F.3d 1049, 1061 (10th Cir. 2020).

57. Officer Walker Prado explained in his deposition and in his declaration that he fired a single volley of four rounds. The relatively longer time span observed on video between the third and fourth round was a result of having to adjust his aim once the agitated man dropped to the ground behind a couch while still holding his gun. The difference in time span does not change the fact that the entire fusillade was fired in roughly two seconds.

58. A reasonable officer would still perceive the agitated man to be a threat on the ground because he had just exhibited a flurry of conduct making it seem like he was about to shoot newly-arrived police officers—and because he was seen still holding the gun. “[I]f the officer believes the suspect has a gun, the calculation changes—even if there was never, in fact, a gun.”⁸⁶ Thus, even if Medel conveniently claims he had dropped the gun, a reasonable officer in the heat of the moment could reasonably conclude otherwise. An officer should assume an armed and dangerous man who has moved out of sight is still armed and dangerous unless or until it is confirmed he is not.

59. The Supreme Court has emphasized that “*if police officers are justified in firing at a suspect in order to end a severe threat to public safety the officers need not stop shooting until the threat has ended.*”⁸⁷ That includes when officers continue to fire after the assailant has fallen to the ground.

It may well be true that Conley continued to fire as Berube fell to or lay on the ground. But it is clear from the very brief time that elapsed that she made a split-second judgment in responding to an imminent threat and fired a fusillade in an emergency situation. Conley's actions cannot be found unreasonable because she

⁸⁶ *Allen v. Hays*, 65 F.4th 736, 744 (5th Cir. 2023).

⁸⁷ *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (emphasis added); *see also Roy v. Inhabitants of City of Lewiston*, 42 F.3d 691, 695 (1st Cir. 1994) (noting that “the Supreme Court's standard of reasonableness is comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.”).

may have failed to perfectly calibrate the amount of force required to protect herself.⁸⁸

60. Officer Walker Prado’s belief that the agitated man now hidden behind a couch was still a threat was only heightened when suddenly the man reached out again toward the door from behind the couch—which Officer Walker Prado reasonably believed in the moment was him reaching toward the door with his gun for a second time. Officer Walker Prado then fired the fourth and final round of his volley. The Fifth Circuit “has often found ‘an officer’s use of deadly force to be reasonable when a suspect moves out of the officer’s line of sight such that the officer could reasonably believe the suspect was reaching for [or still holding] a weapon,’” as here.⁸⁹

d. Persuasive cases outside the Fifth Circuit are illustrative of why officers sometimes are forced into inherently threatening situations involving residents who arm themselves in response to the arrival of police.

61. As discussed *infra*, there is no factually analogous clearly established law within the Fifth Circuit, but this fact pattern generally is not unprecedented nationwide. In a nation where guns are numerous than registered motor vehicles, scenarios have unfolded where police officers have reasonably perceived threats when a resident makes the decision to arm themselves before engaging police officers at their door. The persuasive cases *infra* are illustrative of why Officer Walker Prado’s decision to utilize was deadly force was constitutionally permissible under the totality of the split-second circumstances he faced.

⁸⁸ *Berube v. Conley*, 506 F.3d 79, 85 (1st Cir. 2007); *see also Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211, 1230 (9th Cir. 2014), *rev’d in part, cert. dismissed in part sub nom. City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600 (2015) (finding it reasonable that the officer’s final shot was fired after the assailant had fallen because “**it is clear from the very brief time that elapsed that [Reynolds] made a split-second judgment in responding to an imminent threat and fired a fusillade in an emergency situation.**”); *see also Est. of Rodgers ex rel. Rodgers v. Smith*, 188 F. App’x 175, 183 (4th Cir. 2006) (holding the officers were reasonable when they fired a second volley of shots after the man fell to the ground because they were “**acting to ensure the neutralization of a deadly threat.**”).

⁸⁹ *Id.* (citing *Manis v. Lawson*, 585 at 844).

62. In *Young*, an officer was knocking on a door looking for a man he had just pursued on a motorcycle, but he never announced that he was a police officer. He encountered what proved to be a *different* man opening his front door holding a gun, and then the man began retreating backwards in what was ostensibly a suspicious manner. The officer “reasonably perceived [the retreat as] an attempt by [the subject] to take cover so [the subject] could fire” at him. The Court noted that “the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”⁹⁰ “[T]he events, from the time the door opened until the time shots were fired, took place rapidly within two to three seconds.”⁹¹ The court found no issue with the officer’s use of force without issuing a warning beforehand, noting that “[f]or all [the officer] knew, the hesitation involved in giving a warning could readily cause such warning to be his last... We will not second-guess the split-second judgment of a trained police officer merely because that judgment turns out to be mistaken, particularly where inaction could have resulted in death or serious bodily injury to the officer and others.”⁹² The Court concluded that:

By any measure, this is a tragic case... But Andrew Scott made a fateful decision that night: he chose to answer his door with a gun in his hand. That changed everything. That is the one thing that – more than anything else – led to this tragedy.⁹³

63. Decided four years later, the *Howe* court reached a similar result. Officers were called to the scene regarding a domestic disturbance. The officers believed the resident was the perpetrator of the domestic disturbance, and thus dangerous. The officers knew he possessed firearms in the

⁹⁰ *Young v. Borders*, No. 5:13-CV-113-OC-22PRL, 2014 WL 11444072, at *16 (M.D. Fla. Sept. 18, 2014), *aff’d*, 620 F. App’x 889 (11th Cir. 2015) (citing *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007)).

⁹¹ *Id.*

⁹² *Id.* at 17 (citing *McLenagan v. Karnes*, 27 F.3d 1002 (4th Cir. 1994)).

⁹³ *Id.* at 21.

home. When the officers knocked on the door—*without* announcing they were police—the suspect opened the door holding a gun. Only one and a half seconds passed between opening the door and the officers’ utilization of deadly force against him—without a warning beforehand—after he made a move that appeared to look like he was retreating to cover to prepare to shoot them. The court held that it was “reasonable for the officers to have believed their lives were in danger,” and was “unwilling to hold that the officers were unreasonable in not waiting to see if plaintiff would raise the gun in their direction.”⁹⁴

64. The case at bar includes far, far more threatening facts than either *Young* or *Howe*, as well as more reasonable conduct by the officers involved. Medel did not retreat backwards away from officers—he advanced quickly towards them holding a gun he had just chambered a round into. Medel did not answer the door with a gun down by his side—he chambered a round, put it in the high-ready position, and then began to lower the gun toward where the officers stood as if to shoot them through it. Perhaps most crucially—unlike in *Young* and *Howe*—the APD officers here loudly knocked and announced “**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**” loud enough for Medel to clearly hear—or at least loud enough that a reasonable officer could believe Medel heard. Medel’s collective threatening response to the arrival of police far outstripped anything in *Young* or *Howe*, and Officer Walker Prado is therefore even more deserving of the same protections of qualified immunity.

65. In the 2025 *Padilla* decision, officers were likewise dispatched to a possible domestic violence situation, an officer knocked and announced “Farmington Police” multiple times, and they were soon greeted with “the sound of a firearm being racked ... indicating someone within

⁹⁴ *Howe v. City of Enter.*, No. 1:15CV113-JA-SRW, 2018 WL 8545947, at *24 (M.D. Ala. Sept. 17, 2018), *report and recommendation adopted sub nom. Howe v. City of Enter., Al.*, No. 1:15CV113-ECM, 2019 WL 8723922 (M.D. Ala. Mar. 12, 2019).

the house was feeding a round of ammunition into the firing chamber of the gun.”⁹⁵ An armed man emerged and “placed both hands on his firearm and raised it in the direction” of the officers. “Just two seconds elapsed from the moment [the man] opened his front door to the time the Defendant officers shot him.”⁹⁶ The officers did not issue a warning that they would utilize deadly force, but the Court found no issue with the lack of a warning because “officers [are] not required to ‘await the ‘glint of steel’ before taking self-protective action.”⁹⁷ The court also noted that “[n]o citizen can fairly expect to draw a gun on police without risking tragic consequences, [a]nd no court can expect any human being to remain passive in the face of an active threat on his or her life.”⁹⁸ It was similarly not feasible for Officer Walker Prado to issue a warning considering the rapid development of a gun being loaded, chambered, and lowered toward the direction of officers. A warning by him—and the inherent hesitation in firing it would require— may have resulted in those officers’ deaths. We cannot ask an officer to live with the ensuing guilt of failing to prevent another’s death when faced with a threat as imminent and deadly as it was here.

e. It is entirely irrelevant whether Medel subjectively believed the men at his door were or were not police officers.

66. The *Padilla* court described perfectly why it is wholly irrelevant whether Medel subjectively believed the men at his door were legitimate police officers:

Plaintiffs contend that Dotson likely did not know that it was law enforcement officers at his door. Perhaps that is true, perhaps not. Either way, Dotson's understanding of the events is not material for purposes of the qualified immunity analysis. The relevant inquiry is not “the arrestee's subjective perception of the intrusion, but [] whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them.” The “focus is on how a reasonable officer on the scene would have assessed the manifest indicators of [the suspect's] intentions—that is, [the suspect's] actions.” Given the specific facts presented, the

⁹⁵ *Padilla*, 2025 WL 1414287, at *2.

⁹⁶ *Id.* at *5.

⁹⁷ *Id.* (citing *Est. of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008)).

⁹⁸ *Id.* (citing *Est. of Valverde ex rel. Padilla v. Dodge*, 967 F.3d 1049, 1064 (10th Cir. 2020)).

Court concludes the Defendant officers could reasonably believe that Dotson had hostile intentions.⁹⁹

67. Medel had been screaming and making noise in the middle of the night in an apartment complex, and should have expected that police officers would likely show up soon for a noise complaint or otherwise. There was a clear and loud announcement of “**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**” The man’s conduct reflected that he heard the announcement and reacted to it with speed and firepower. Just as in *Padilla*, “[g]iven the specific facts presented...the Defendant officer[] could reasonably believe [Medel] had hostile intentions” toward the newly arrived police.

f. Second Prong: Officer Walker Prado did not violate clearly established law.

68. The second prong of the qualified immunity question, “whether the officer violated clearly established law—is a doozy.”¹⁰⁰ The 42 U.S.C. § 1983 plaintiff bears the burden of proof, “[a]nd that burden is heavy: A right is clearly established only if relevant precedent has placed the constitutional questions beyond debate.”¹⁰¹ In *Morrow*, the Fifth Circuit exhaustively laid out the “four applicable commandments” that a plaintiff must satisfy to establish that the constitutional question is beyond debate.¹⁰²

69. **First**, the relevant constitutional question must be framed with specificity and granularity.¹⁰³ The Supreme Court has “repeatedly told courts not to define clearly established law at [that] high level of generality.”¹⁰⁴ “Rather, the dispositive question is whether the violative

⁹⁹ *Padilla*, 2025 WL 1414287, at *5 (cleaned up).

¹⁰⁰ *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019).

¹⁰¹ *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)).

nature of *particular* conduct is clearly established.”¹⁰⁵ **Second**, clearly established law comes only from holdings, not dicta.¹⁰⁶ This is because “officers are not charged with memorizing every jot and tittle [the courts] write to explain [their orders].”¹⁰⁷

70. **Third**, “overcoming qualified immunity is especially difficult in excessive-force cases.”¹⁰⁸ This is because this is an area of the law in which “the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue.”¹⁰⁹ That means that the law must be “so clearly established that—in the blink of an eye, in the middle of a high-speed chase—every reasonable officer would know it immediately.”¹¹⁰ **Finally**, the last commandment is that courts “must think twice before denying qualified immunity.” “Because of the importance of qualified immunity to society as a whole, the Supreme Court often corrects lower courts when they wrongly subject officers to liability.”¹¹¹

71. Here, Medel cannot meet his burden to provide case law that placed it “beyond debate” that it was clearly established law that Officer Walker Prado’s force violated his clearly established rights when he made his split-second decision to use deadly force under the facts presented. There simply is no case where the Fifth Circuit would dare to suggest that persons have the right to point guns at police officers without consequence.¹¹² Officer Walker Prado is accordingly entitled to qualified immunity under the second prong of the test.

¹⁰⁵ *Id.* (citing *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)).

¹⁰⁶ *Sorenson v. Ferrie*, 134 F.3d 325, 329 n.7 (5th Cir. 1998).

¹⁰⁷ *Morrow*, 917 F.3d at 874.

¹⁰⁸ *Id.* at 876.

¹⁰⁹ *Id.* (citing *Kisela v. Hughes*, 584 U.S. 100, 104 (2018)).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *See e.g. Hodge v. Engleman*, 636 F. Supp. 3d 727, 737 (N.D. Tex. 2022), *aff’d*, 90 F.4th 840 (5th Cir. 2024) (noting that the Plaintiff failed to find “any case where the Fifth Circuit has found

IV. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant **Gabriel Walker Prado** respectfully request that this Court grant summary judgment on the grounds that he is entitled to qualified immunity on all of Plaintiff Medel's claims, and for all other relief to which he may be justly entitled in law or equity.

Respectfully submitted,

WRIGHT & GREENHILL, P.C.
4700 Mueller Blvd., Suite 200
Austin, Texas 78723
(512) 476-4600
(512) 476-5382 – Fax

By: /s/ Blair J. Leake
Blair J. Leake
State Bar No. 24081630
bleake@w-g.com
Stephen B. Barron
State Bar No. 24109619
sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT
GABRIEL WALKER PRADO**

CERTIFICATE OF SERVICE

a violation of a clearly established right where officers used deadly force against an armed suspect who pointed a weapon at one or more officers.”).

I hereby certify that on the 28th day of May, 2024, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake
Blair J. Leake

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

AVELINO MEDEL II,
Plaintiff,

v.

**GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN**
Defendants.

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CIVIL ACTION NO. 1:24-CV-00990-RP

**DEFENDANT CITY OF AUSTIN'S DESIGNATION OF
TESTIFYING EXPERT WITNESSES**

Defendant City of Austin hereby identifies and designates the following testifying expert witnesses as follows:

I. TESTIFYING EXPERT WITNESSES

A. Retained Experts

1. Albert Rodriguez
4501 McCormick Mtn. Dr.
Austin, Texas 78734
(512) 656-4354
 - i. Statements of all opinions the witness will express and the basis and reasons for them is found in Mr. Rodriguez's report, which has been provided to counsel and marked **Exhibit No. 1**. Additionally, the expert is expected to offer testimony regarding law enforcement policies, practices, customs, and training both generally and as it pertains to the specific facts and issues in this case, including but not limited to responding to disturbances, engaging subjects who are in possession of a firearm, and the decision to use deadly force generally. His testimony will also be based on his extensive law enforcement training and experience; his review of the documents and data related to the subject incident; depositions and/or discovery from this case; any document listed in his expert report(s) and any supplements or amendments to the same.
 - ii. The facts and data considered by the witness in forming them can be found in Mr. Rodriguez's report including but not limited to the section entitled "Research and Assessment." Defendant expects the witness to review more documents and data

as they become available and for him to supplement his report accordingly.

- iii. Any exhibits that will be used to summarize or support his testimony include but are not limited to those contained or referenced within Mr. Rodriguez's aforementioned report, as well as any video, screenshot, document, or other evidence that has been produced by any party through discovery. Defendant reserves the right to supplement this section promptly if or when any new exhibits or demonstratives are created that are responsive to this section.
- iv. The witness's qualifications, including a list of all publications authored in previous 10 years, are contained in Mr. Rodriguez's curriculum vitae, which has been provided to counsel and marked as **Exhibit No. 2**. Moreover, the same and/or additional information may be contained in his aforementioned report, including but not limited to the "Introduction" and "Summary of Qualifications" sections.
- v. A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition is contained in the document provided to counsel and marked as **Exhibit No 3**.
- vi. Mr. Rodriguez will be paid at a rate of \$200 per hour plus expenses and fees for report writing and consulting. Fees for depositions and trial testimony are at a rate of \$2,800.00 for the first 4 hours and \$300 per hour thereafter, plus travel time and expenses. A statement of the compensation to be paid for the study and testimony in the case is contained in Mr. Rodriguez's aforementioned report, including but not limited to the last page of the report.

2. **Douglas B. Cooper, PhD, ABPP-CN**

South Texas Neuropsychology
16014 Via Shavano
San Antonio, TX 78249
(210) 614-3011

- (i) Statements of all opinions the witness will express and the basis and reasons for them are found in Dr. Cooper's report, which will be attached to Defendant Gabriel Walker Prado's designation of testifying experts and provided to all counsel of record on June 3, 2025 and which is incorporated herein by reference. Additionally, Dr. Cooper is expected to testify regarding the fields of clinical psychology, neuropsychology, mental illness, cognitive impairment, and neuroscience both generally and as they pertain to the specific facts and issues in this case. His testimony will also be based on his extensive education, training, and experience in clinical psychology and neuropsychological sciences and all other related and/or referenced fields; his review of the documents and data related to the subject incident; medical records; depositions and/or discovery from this case; any documents listed in his expert report(s) and any supplements or amendments to the same; any applicable material relied upon by Plaintiff's experts; relevant medical, clinical, psychological, neuropsychological, and/or forensic pathology literature; and any applicable opinions, testimony, or reports created by Plaintiff's experts.

- (ii) The facts and data considered by the witness in forming them can be found in Dr. Cooper's report. All documents and data referenced have been provided already during discovery by one party or another or will be provided to all counsel of record.
- (iii) Any exhibits that will be used to summarize or support his testimony include but are not limited to those contained or referenced within Dr. Cooper's aforementioned report, as well as any video, screenshot, document, or other evidence that has been produced by any party through discovery. Defendants reserve the right to supplement this section promptly if or when any new exhibits are created that are responsive to this section.
- (iv) The witness's qualifications, including a list of all publications authored in previous 10 years, are contained in Dr. Cooper's curriculum vitae which is attached to Defendant Gabriel Walker Prado's designation of testifying experts and is incorporated herein by reference.
- (v) A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial and/or by deposition is attached to Defendant Gabriel Walker Prado's designation of testifying experts and is incorporated herein by reference.
- (vi) Dr. Cooper's Fee Schedule is attached to Defendant Gabriel Walker Prado's designation of testifying experts and is incorporated herein by reference.

3. Christopher B. Ticknor, MD

1202 E. Sonterra Blvd, Suite 202
San Antonio, Texas 78258
(210) 692-7775

- (i) Statements of all opinions the witness will express and the basis and reasons for them are found in Dr. Ticknor's report, which will be attached to Defendant Gabriel Walker Prado's designation of testifying experts and provided to all counsel of record on June 3, 2025 and which is incorporated herein by reference. Additionally, the expert is expected to offer testimony regarding the field of medicine and psychiatry, as well as forensic psychiatry, both generally and as it pertains to the specific facts and issues in this case. His testimony will also be based on his extensive education, training, and experience in medicine, psychiatry, mental health and mental illnesses, evaluation, treatment of physical and emotional injuries such as concussions and PTSD, emotional disorders such as depression, anxiety, trauma, cognitive impairment, and all other related and/or referenced fields; his review of the documents and data related to the subject incident; medical records; depositions and/or discovery from this case; any documents listed in his expert report(s) and any supplements or amendments to the same; any applicable material relied upon by Plaintiff's experts; relevant medical, clinical, psychiatric, neuropsychiatry, and/or forensic pathology literature; and any applicable opinions, testimony, or reports created by Plaintiff's experts.
- (ii) The facts and data considered by the witness in forming them can be found in Dr. Ticknor's report. All documents and data referenced have been provided already during discovery by one party or another or will be provided to all counsel of record.
- (iii) The exhibits that will be used to summarize or support his testimony include but are not limited to those contained or referenced within Dr. Cooper's aforementioned report, as

well as any video, screenshot, document, or other evidence that has been produced by any party through discovery. Defendants reserve the right to supplement this section promptly if or when any new exhibits are created that are responsive to this section.

- (iv) The witness's qualifications, including a list of all publications authored in previous 10 years, are contained in Dr. Ticknor's curriculum vitae which is attached to Defendant Gabriel Walker Prado's designation of testifying experts and is incorporated herein by reference.
- (v) A list of all other cases in which, during the previous 7 years, the witness testified as an expert at trial or by deposition is attached to Defendant Gabriel Walker Prado's designation of testifying experts and is incorporated herein by reference.
- (vi) Dr. Ticknor's Fee Schedule is attached to Defendant Gabriel Walker Prado's designation of testifying experts and is incorporated herein by reference.

A. Non-retained Experts

1. Defendant may call as non-retained experts any and all of Plaintiff's treating physicians, mental health providers and counselors who are expected to testify consistently with their medical records and counseling records and their deposition testimony, if any.
2. Attorneys' Fees
Deborah Thomas, City Attorney
Sara R Schaefer, Acting Division Chief, Litigation
City of Austin Law Department
P. O. Box 1088
Austin, Texas 78767-1088
3. Cross-designations, reservations, and stipulations.

Defendant cross-designates and incorporates by reference herein any and all experts designated by every other party to this lawsuit at any time, and incorporates by reference herein the Rule 26 information provided for each such expert witness, respectively. In doing so, however, Defendant does not necessarily adopt or ratify his opinions nor validate or approve of their qualifications as experts. Additionally, Defendant's cross-designation of experts is not meant to waive Defendant's right to object to any such experts' testimonies for any reason.

Defendant further reserves the right to: (1) elicit fact or opinion testimony from any witness designated or called to testify by any party to this litigation at trial or in deposition; (2) designate and call additional expert witnesses as allowed by the Court; and/or (3) call expert witnesses and to offer testimony or other evidence in rebuttal to that offered by any expert witness called by any other party at trial or in deposition; and (4) call undesignated rebuttal expert witnesses, whose testimony cannot reasonably be foreseen until the presentation of the evidence against Defendant.

Defendant reserves the right to withdraw the designation of any retained or non-retained expert witness for any reason, and to aver positively that any such previously designated expert will not be called to testify as a witness at trial, and/or to re-designate experts as consulting-only

experts who cannot be called to testify by opposing pro se parties or counsel.

Defendant further reserves the right to supplement and/or amend these designations as proves advisable, and/or as new information, evidence, and/or witnesses are discovered in this matter, to the extent permitted by the applicable procedural and local rules

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY
SARA R SCHAEFER, ACTING CHIEF,
LITIGATION

/s/ H. Gray Laird III
H. Gray Laird III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 3rd day of June, 2025.

/s/ H. Gray Laird
H. GRAY LAIRD

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-RP

**DEFENDANT GABRIEL WALKER PRADO'S
FIRST SUPPLEMENTAL DESIGNATION OF TESTIFYING EXPERTS**

Pursuant to the Court's Scheduling Order (Dkt. 14) and FED. R. CIV. P. 26(a)(2)(B), Defendant Austin Police Officer **Gabriel Walker Prado** hereby designates the following testifying experts:

I. RETAINED EXPERT WITNESSES:

1. Albert Rodriguez

4501 McCormick Mtn. Dr.
Austin, Texas 78734
(512) 656-4354

- (i) Statements of all opinions the witness will express and the basis and reasons for them is found in Mr. Rodriguez's report, which has been provided to counsel and marked **Exhibit No. 1**. Additionally, the expert is expected to offer testimony regarding law enforcement policies, practices, customs, and training both generally and as it pertains to the specific facts and issues in this case, including but not limited to responding to shots-fired calls, engaging subjects who reportedly just used deadly force against another and is plausibly in possession of a firearm, and the decision to use deadly force generally. His testimony will also be based on his extensive law enforcement training and experience; his review of the documents and data related to the subject incident; depositions and/or discovery from this case; any document listed in his expert report(s) and any supplements or amendments to the same.

- (ii) The facts and data considered by the witness in forming them can be found in Mr. Rodriguez's report including but not limited to the section entitled "Research and Assessment." Defendant expects the witness to review more documents and data as they become available and for him to supplement his report accordingly.
- (iii) Any exhibits that will be used to summarize or support his testimony include but are not limited to those contained or referenced within Mr. Rodriguez's aforementioned report, as well as any video, screenshot, document, or other evidence that has been produced by any party through discovery. Defendant reserves the right to supplement this section promptly if or when any new exhibits or demonstratives are created that are responsive to this section.
- (iv) The witness's qualifications, including a list of all publications authored in previous 10 years, are contained in Mr. Rodriguez's curriculum vitae, which has been provided to counsel and marked as **Exhibit No. 2**. Moreover, the same and/or additional information may be contained in his aforementioned report, including but not limited to the "Introduction" and "Summary of Qualifications" sections.
- (v) A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition is contained in the document provided to counsel and pro se plaintiff and marked as **Exhibit No 3**.
- (vi) Mr. Rodriguez will be paid at a rate of \$200 per hour plus expenses and fees for report writing and consulting. Fees for depositions and trial testimony are at a rate of \$2,800.00 for the first 4 hours and \$300 per hour thereafter, plus travel time and expenses. A statement of the compensation to be paid for the study and testimony in the case is contained in Mr. Rodriguez's aforementioned report, including but not limited to the last page of the report.

2. Douglas B. Cooper, PhD, ABPP-CN

South Texas Neuropsychology
 16014 Via Shavano
 San Antonio, TX 78249
 (210) 614-3011

- (i) Statements of all opinions the witness will express and the basis and reasons for them are found in Dr. Cooper's report, which has been provided to counsel and marked **Exhibit No. 4**. Additionally, Dr. Cooper is expected to testify regarding the fields of clinical psychology, neuropsychology, mental illness, cognitive impairment, and neuroscience both generally and as they pertain to the specific facts and issues in this case. His testimony will also be based on his extensive education, training, and experience in clinical psychology and neuropsychological sciences and all other related and/or referenced fields; his review of the documents and data related to the subject incident; medical records; depositions and/or discovery from this case; any documents listed in his expert report(s) and any supplements or amendments to the same; any applicable

material relied upon by Plaintiff's experts; relevant medical, clinical, psychological, neuropsychological, and/or forensic pathology literature; and any applicable opinions, testimony, or reports created by Plaintiff's experts. Dr. Cooper will also testify about the results of his anticipated Independent Medical Examination of Plaintiff.

- (ii) The facts and data considered by the witness in forming them can be found in Dr. Cooper's report. All documents and data referenced have been provided already during discovery by one party or another. Defendant expects the witness to review more documents and data as they become available and for him to supplement his report accordingly, including but not limited to the transcription from the requested deposition of Plaintiff and the raw test results obtained by Plaintiff's retained experts.
- (iii) Any exhibits that will be used to summarize or support his testimony include but are not limited to those contained or referenced within Dr. Cooper's aforementioned report, as well as any video, screenshot, document, or other evidence that has been produced by any party through discovery. Defendant reserves the right to supplement this section promptly if or when any new exhibits are created that are responsive to this section.
- (iv) The witness's qualifications, including a list of all publications authored in previous 10 years, are contained in Dr. Cooper's curriculum vitae which is attached as **Exhibit No. 5** and has been provided to all counsel of record.
- (v) A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial and/or by deposition is attached as **Exhibit No. 6** and has been provided to all counsel of record.
- (vi) Dr. Cooper will be paid at a rate of \$525 per hour plus expenses and fees for report writing and consulting. Fees for depositions are \$3,000 flat fee for the first hour, plus \$650 per each additional hour. Fees for trial testimony are \$6,000 flat fee per day plus travel time and expenses. Dr. Cooper's Fee Schedule is attached as **Exhibit No. 7** and has been provided to all counsel of record.

3. Christopher B. Ticknor, MD

1202 E. Sonterra Blvd, Suite 202
San Antonio, Texas 78258
(210) 692-7775

- (i) Statements of all opinions the witness will express and the basis and reasons for them are found in Dr. Ticknor's report, which has been provided to counsel and marked **Exhibit No. 8**. Additionally, the expert is expected to offer testimony regarding the field of medicine and psychiatry, as well as forensic psychiatry, both generally and as it pertains to the specific facts and issues in this case. His testimony will also be based on his extensive education, training, and experience in medicine, psychiatry, mental health and mental illnesses, evaluation, treatment

of physical and emotional injuries such as concussions and PTSD, emotional disorders such as depression, anxiety, trauma, cognitive impairment, and all other related and/or referenced fields; his review of the documents and data related to the subject incident; medical records; depositions and/or discovery from this case; any documents listed in his expert report(s) and any supplements or amendments to the same; any applicable material relied upon by Plaintiff's experts; relevant medical, clinical, psychiatric, neuropsychiatry, and/or forensic pathology literature; and any applicable opinions, testimony, or reports created by Plaintiff's experts. Dr. Ticknor will also testify about the results of his anticipated Independent Medical Examination on Plaintiff.

- (ii) The facts and data considered by the witness in forming them can be found in Dr. Ticknor's report. All documents and data referenced have been provided already during discovery by one party or another. Defendant expects the witness to review more documents and data as they become available and for him to supplement his report accordingly, including the transcript from the requested deposition of Plaintiff.
- (iii) The exhibits that will be used to summarize or support his testimony include but are not limited to those contained or referenced within Dr. Cooper's aforementioned report, as well as any video, screenshot, document, or other evidence that has been produced by any party through discovery. Defendant reserves the right to supplement this section promptly if or when any new exhibits are created that are responsive to this section.
- (iv) The witness's qualifications, including a list of all publications authored in previous 10 years, are contained in Dr. Ticknor's curriculum vitae which is attached as **Exhibit No. 9** has been provided to all counsel of record.
- (v) A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition is attached as **Exhibit No. 10** and has been provided to all counsel of record.
- (vi) Dr. Ticknor will be paid at a rate of \$800 per hour plus expenses and fees for report writing and consulting. Fees for depositions and trial testimony are at a rate of up to \$7,700.00 per day plus travel time and expenses. Dr. Ticknor's Fee Schedule is attached as **Exhibit No. 11** and has been provided to all counsel of record.

II. NON-RETAINED EXPERT WITNESSES:

The following individuals are hereby designated as potential testifying experts in this matter. These individuals were not retained or specially employed as expert witnesses, and thus have produced no reports other than those provided in their ordinary course of business and previously or subsequently produced in this matter. They are hereby designated as individuals with expert knowledge, training and experience with respect their respective areas of expertise who

may be called upon to testify in Court and/or through their written records, as to their personal observations as well as their professional opinions and conclusions.

Defendant herein designates the following non-retained as experts in the areas they are qualified:

- 1. Austin Police Department and its employees and custodian of records; and City of Austin and its employees, corporate representatives, and custodian of records:**

Defendant Officer who was involved with the incident:

A. Ofc. Gabriel Walker Prado, AP9876

c/o Blair J. Leake
 Stephen B. Barron
 WRIGHT & GREENHILL, P.C.
 4700 Mueller Blvd., Suite 200
 Austin, Texas 78723
 (512) 476-4600

Defendant is expected to offer testimony regarding his background, his own training and experience as a law enforcement officer, the facts and circumstances at issue in this lawsuit, and that at all relevant times he acted as a reasonable officer would based on his training, experience, policies, procedures, and prevailing standards of law enforcement based on the facts known to him. He is expected to apply his law enforcement training and experience, including but not limited to training such as deadly force training, shoot-don't-shoot training, preparatory violence cues training, and firearms training, and compare the training and concepts to his own conduct during this incident to determine if it conformed with the acceptable police practices taught to him and gleaned through his own experience.

He is expected to testify that he was trained to only use deadly force when he observes an imminent threat of death or serious bodily injury to himself or others, and that he followed such training during the incident because he observed Walked Prado acting in an aggressive, irrational fashion, and then observed him respond to police arrival by retrieving a gun, chambering a round, stalking toward the three officers standing behind a hollow core door, and then begin to lower his gun toward the door.

He is expected to testify that his training taught him to recognize cues and signs of probably violence, as well as signs of imminent serious deadly threats, and that enough cues were present in this case to lead a reasonable officer to believe Medel's conduct posed a heightened threat level that made violence more imminently likely. Such cues include but are not limited to repeatedly yelling and screaming within inches of an elderly man's face, physically menacing the elderly man, pacing back and forth, and then irrationally responding to the arrival of police by retrieving a gun, chambering a round, stalking toward the three officers standing behind a hollow core door, and then begin to lower his gun toward the door.

He is expected to testify that police training includes teaching officers to send a volley of rounds at an existing deadly threat until the threat has ended, and that his four-shout volley conformed with such practices because he observed Medel arm retrieve a gun, chamber a round, stalk toward the three officers standing behind a hollow core door, begin to lower his gun toward the door, and then still hold onto the gun when he dropped to the ground hidden behind a couch.

He is also expected to testify that he has been trained to provide a warning before using deadly force, but only if feasible. He is expected to testify that law enforcement training standards would not have required a warning during this incident because the threat of harm appeared to be imminent, and a hesitation could have risked the assailant shooting the other officers while he waited for the assailant to comply. Here, that includes but is not limited to the fact that the exterior doors and walls only provided concealment and would not stop bullets passing through them; Medel had acted in an unhinged and irrational manner up to that point, and it would be reasonable to conclude he would not be an ideal candidate for listening to reason during a negotiation with police; he was already showing conduct suggesting he wanted to shoot police he had never met, so it would not make sense for him to listen to a different police officer he had never met; Medel appeared filled so full of rage that he might be incapable of stopping himself mid-attack; and it had only taken two seconds for Medel to arm himself, chamber a round, and begin pointing his gun downward toward the door, and thus Medel had the capability of finishing leveling his gun and shooting through the door in an instant.

Defendant further incorporates by reference herein as part of this designation his IA statement, his discovery responses, his unsworn declaration filed in support of his motion for summary judgment, and his deposition transcript. All documents and data referenced have already been provided to all counsel during discovery by one party or another.

**Austin Police Department – Special Investigations Unit (SIU)
Participated in or assisted with the SIU investigation of this incident:**

B. Det. Raul Carrillo, AP5327

Lead Detective for APD SIU regarding the subject incident.

Detective Carrillo is expected to testify based on his education, training, and experience in law enforcement, including but not limited to his experience working as an SIU Investigator and/or Detective for the Austin Police Department.

Detective Carrillo is believed to have coordinated the collection of evidence and to have reviewed all relevant videos, witness statements, and other pertinent evidence with the assistance of SIU detectives, crime scene specialists, and other officers. More specifically, the documents and date he reviewed are believed to have included, but not be limited to, the body worn camera footage from Officer Walker Prado and the three other officers on the scene; after-incident body worn camera footage from other officers that contain statements by Medel, his father, and/or the four officers on the scene; formal SIU interviews of the other three officers; interviews of Medel and his father; interviews of the initial 911 caller; Medel's background history; Officer Walker Prado's firearm, magazine, and bullets; Mr. Medel's firearm, magazine, and bullets; aerial photographs of the apartment complex; photographs taken by officers of the scene; 911 audio

recording; APD call notes; forensic evidence related to the path of the bullets fired; Medel's after-incident medical records; the DA's case closure memorandum; incident detail report; APD GO report; and more.

Detective Carrillo is expected to testify that he used his education, training, and experience in law enforcement, as well as his review of the above referenced documents and data, to conduct and/or oversee APD's SIU criminal investigation of Officer Walker Prado's conduct to determine if it constituted a crime under the Texas Penal Code or otherwise. He is expected to testify that his collective review of the evidence leads him to believe that Officer Walker Prado acted reasonably when he used deadly force against Medel because a law enforcement officer observing Medel's conduct at issue (as captured on video and otherwise documented by the evidence collected) could plausibly believe Medel was preparing to imminently use deadly force against the officers standing outside of his door. Such conduct included the presumably disruptive or violent conduct that generated a 911 call and hotshot disturbance dispatch of officers to the scene; Medel's belligerent language and aggressive conduct toward the other male subject seen and/or heard beforehand; Medel's collective response to the knock and announcement of police arrival by retrieving a firearm, carrying it in the high-ready position, approaching the door, and then lowering it toward what could be a possible shooting position; and the discovery of Medel's loaded firearm with a round in the chamber at the scene. He is further expected to testify that he concluded that Officer Walker's use of deadly force did not constitute a crime under the Texas Penal Code, including because the facts above indicate that Officer Walker Prado had sufficient reason to believe that deadly force was immediately necessary to protect third persons from imminent and unlawful use of deadly force by Medel. *See e.g.* TEX. PEN. CODE §§ 9.33, 9.51(c) and (e).

**Austin Police Department – Internal Affairs (IA)
Participated in or assisted with the IA investigation of this incident:**

C. Sgt. Ryan Metcalf, AP5947

Assigned Lead Investigator for APD IA investigation of the subject incident.

Sergeant Metcalf is expected to testify based on his education, training, and experience in law enforcement, including but not limited to his experience working as an IA Sergeant and/or Investigator for the Austin Police Department.

Sergeant Metcalf is believed to have coordinated the collection of evidence and to have reviewed all relevant videos, witness statements, and other pertinent evidence with the assistance of IA Investigators, crime scene specialists, and other officers. More specifically, the documents and date he reviewed are believed to have included, but not limited to, the body worn camera footage from Officer Walker Prado and the three other officers on the scene; the IA interview of Officer Walker Prado; after-incident body worn camera footage from other officers that contain statements by Medel, his father, and/or the four officers on the scene; formal SIU and/or IA interviews of the other three officers; interviews of Medel and his father; interviews of the initial 911 caller; Medel's background history; Officer Walker Prado's firearm, magazine, and bullets; Mr. Medel's firearm, magazine, and bullets; aerial photographs of the apartment complex; photographs taken by officers of the scene; 911 audio recording; APD call notes; forensic evidence

related to the path of the bullets fired; Medel's after-incident medical records; the DA's case closure memorandum; incident detail report; APD GO report; and more.

Sergeant Metcalf is expected to testify that he used his education, training, and experience in law enforcement, as well as his review of the above referenced documents and data, to conduct and/or oversee APD's IA investigation of Officer Walker Prado's conduct to determine if it constituted a violation of APD policy. He is expected to testify that his collective review of the evidence leads him to believe that Officer Walker Prado acted reasonably when he used deadly force against Medel because a law enforcement officer observing Medel's conduct at issue (as captured on video and otherwise documented by the evidence collected) could plausibly believe Medel was preparing to imminently use deadly force against the officers standing outside of his door. Such conduct included the presumably disruptive or violent conduct that generated a 911 call and hotshot disturbance dispatch of officers to the scene; Medel's belligerent language and aggressive conduct toward the other male subject seen and/or heard beforehand, including as reported by Officer Walker Prado in his IA interview; Medel's collective response to the knock and announcement of police arrival by retrieving a firearm, carrying it in the high-ready position, approaching the door, and then lowering it toward what could be a possible shooting position; and the discovery of Medel's loaded firearm with a round in the chamber at the scene. He is further expected to testify that he concluded that Officer Walker's conduct did not constitute an APD policy violation, including because the facts above indicate that Officer Walker Prado had sufficient reason to believe that deadly force was immediately necessary protect others from what he reasonably believed would be an imminent threat of death or serious bodily injury to the other three officers on the scene, because no lesser type of force constituted a reasonable alternative, and because it was plausible that issuing a warning before using deadly force was not feasible due to the perceived imminence of Medel's anticipated deadly force usage. *See* APD General Orders §§ 200.5, 202.2.

Austin Police Department

715 E. 8th Street
Austin, Texas 78701
(512) 974-5000

c/o H. Gray Laird
Assistant City Attorney
P.O. Box 1546
Austin, Texas 78767
(512) 974-1342

Defendant expects Detective Carillo and Sergeant Metcalf designated *supra* as non-retained expert witnesses to further testify regarding subject matters including but not limited to their respective training and experience as law enforcement officers; police conduct in general; the training and certifications required to become a police officer; police policies and procedures generally; and police training and experience responding to hotshot disturbance calls, engaging subjects who are armed with a deadly weapon, and usage of force, including deadly force. Defendant further expects them to testify that at all relevant times Defendant Officer Walker Prado

acted reasonably and in accordance with proper standards of law enforcement training, policies, and standards.

Detective Carillo and Sergeant Metcalf are not within the control of Defendant Walker Prado and have not been retained as experts by Defendant. Defendant incorporates by reference the relevant police records created by said respective non-retained experts, in whole or in part, regarding this subject incident as further constituting the mental impressions and facts known by them. Defendant designates said experts without necessarily adopting or ratifying any or all of their opinions or conclusions related to the subject incident.

2. Medical Providers

Defendant designates all medical doctors, physical therapists, and mental health practitioners who examined and/or treated Plaintiff related to the injuries he sustained, or allegedly sustained, as a result of the subject incident.

Defendant expects such witnesses will base their testimony on their education, training, and experience in the medical field and/or mental health field, as well as their examination of Plaintiff and his medical records and imaging. Defendant expects these non-retained experts will generally opine on the evaluation and treatment of Plaintiff and the alleged injuries he suffered on or about April 6, 2024, the causal connection between those alleged injuries and the subject incident, any pre-existing conditions, subsequent injuries, or medical conditions, and medical knowledge generally.

The doctors, physical therapists, and mental health practitioners designated herein are not within the control of Defendant Walker Prado and have not been retained as experts by Defendant. Defendant incorporates by reference the relevant medical providers' and mental health practitioners' respective medical records as constituting (1) the identities of said doctors, physical therapists, and mental health practitioners, (2) the mental impressions and facts known by any of the following witnesses, as well as any other related documents or statements. Defendant designates said experts without necessarily adopting or ratifying any of their opinions or conclusions related to the subject incident.

A. Matthew Tyrrell Burrus, M.D.

Austin Area Orthopedics

3707 S. 2nd St., Ste. 100

Austin, Texas 78704

(512) 634-7024

B. St. David's South Austin Medical Center

901 West Ben White Blvd.

Austin, Texas 78704

(512) 816-7138

C. Austin-Travis County Emergency Medical Services

15 Waller Street, 2nd Floor
Austin, TX 78702
(512) 972-7200

D. USA Emergency Center – South

8721 Manchaca Road
Austin, Texas 78748
(512) 371-0911

E. SATX Emergency Physicians PLLC d/b/a Ally Medical Emergency Room

P.O. Box 843478
Dallas, Texas 75284
(512) 371-0911

F. Epic Pain Management, PLLC

Raheel Bengali, MD
Sarah B
Dr. Kanishka Monis
Mustafa Monis PA-C
James Houston PA-C
Luis Trevino PA-C
8522 Broadway, Ste. 216
San Antonio, Texas 78217
(210) 874-5260

G. Northwest Hills Surgical Hospital of Austin

6818 Austin Center Blvd.
Austin, Texas 78731
(512) 346-1994

H. Austin Area Orthopedics, PLLC d/b/a Orthopedic Associates of Central Texas

P.O. Box 1415
Hutto, Texas 78634
(512) 634-7024

I. Pro-Care Medical Center

1015 W. 39th & ½ St.
Austin, Teas 78756
(512) 371-7478

J. Walgreens Co.

P.O. Box 653042
Dallas, Texas 75265
(217) 554-8590

K. Joseph Hagen, PA

805 E. 32nd St., Ste. 101
Austin, Texas 78705
(210) 874-5260

L. Results Physiotherapy

Caylee Boozer, PT
Cullen Richardson, PT
Victoria Martin, PTA
3267 Bee Caves Rd., Ste. 126
Austin, Texas 78746
(512) 202-8634

M. Express Pain & Urgent Care

2020 Babcock, Ste. 24
San Antonio, Texas 78229
(210) 874-5260

N. ASP Cares

1210 Cottonweed Creek Trail, Ste. 210
Cedar Park, Texas 78612
(512) 649-5425

O. Robert Marks, M.D.

Diagnostic Pain Center
12176 N Mopac Expressway
Austin, TX 78758
(512) 981-7246

P. Longhorn Imaging Center

4316 James Casey St., Bldg. F, Ste. 100
Austin, Texas 78745
(512) 444-8900

Q. Elevate HC Texas

Elevate Health
Elevate Neurology
Elis Medical Corporation d/b/a MaxHealth
Erin Silvertooth, MD, FAPA, FACP
Debbie Valadez
Maria Rodriguez, MPsy. LPC
712 N. Washington Ave., Ste. 200
Dallas, Texas 75246
(855) 435-3828

3. Attorneys' Fees

Blair J. Leake
Stephen B. Barron
WRIGHT & GREENHILL, P.C.
4700 Mueller Blvd., Suite 200
Austin, Texas 78723
(512) 476-4600

Defendant would expect that Mr. Leake and Mr. Barron might offer testimony about attorney's fees in the event the Plaintiff is determined to be the prevailing party. To date, Plaintiff has not disclosed the amount of fees that have been incurred in this matter. Because the Plaintiff has not articulated the amount of fees incurred or the manner in which attorney fees and damages are calculated, counsels' opinions are not complete. Those opinions will be based upon the review of records provided by Plaintiff's counsel about the fees and counsels' education, training and expertise. A summary of counsel's qualifications is available at the firm's website <http://wrightgreenhill.com>.

4. Cross-designations, reservations, and stipulations.

Defendant cross-designates and incorporates by reference herein any and all experts designated by every other party to this lawsuit at any time, and incorporates by reference herein the Rule 26 information provided for each such expert witness, respectively. In doing so, however, Defendant does not necessarily adopt or ratify his opinions nor validate or approve of their qualifications as experts. Additionally, Defendant's cross-designation of experts is **not** meant to waive Defendant's right to object to any such experts' testimonies for any reason.

Defendant further reserves the right to: (1) elicit fact or opinion testimony from any witness designated or called to testify by any party to this litigation at trial or in deposition; (2) designate and call additional expert witnesses as allowed by the Court; and/or (3) call expert witnesses and to offer testimony or other evidence in rebuttal to that offered by any expert witness called by any other party at trial or in deposition; and (4) call undesignated rebuttal expert witnesses, whose testimony cannot reasonably be foreseen until the presentation of the evidence against Defendant.

Defendant reserves the right to withdraw the designation of any retained or non-retained expert witness for any reason, and to aver positively that any such previously designated expert will not be called to testify as a witness at trial, and/or to re-designate experts as consulting-only experts who cannot be called to testify by opposing pro se parties or counsel.

Defendant further reserves the right to supplement and/or amend these designations as proves advisable, and/or as new information, evidence, and/or witnesses are discovered in this matter, to the extent permitted by the applicable procedural and local rules.

Respectfully submitted,

WRIGHT & GREENHILL, P.C.

4700 Mueller Blvd., Suite 200

Austin, Texas 78723

(512) 476-4600

(512) 476-5382 – Fax

By: /s/ Blair J. Leake

Blair J. Leake

State Bar No. 24081630

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Stephen B. Barron

State Bar No. 24109619

sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT
GABRIEL WALKER PRADO**

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake

Blair J. Leake

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

Defendants

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CAUSE OF ACTION NO.
1:24-cv-00990

**UNOPPOSED MOTION TO EXTEND SCHEDULING ORDER DEADLINE TO FILE
ANY RULE 702 MOTION AS TO ALBERT RODRIGUEZ**

Plaintiff Avelino Medel, II respectfully files this unopposed motion to extend the deadline to file any Rule 702 motion as to one of Defendants' experts, Albert Rodriguez, based on the operative scheduling order until June 25, 2025. Defendants are not opposed.

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

On May 28, 2025, Defendant Walker Prado simultaneously designated Albert Rodriguez as an expert and submitted his report as an exhibit to his motion for summary judgment on May 28, 2025. *See* Doc. 26; 27-13; Doc. 28-3. Defendant City of Austin subsequently cross-designated Mr. Rodriguez as an expert on June 3, 2025. Doc. 30.

Under the current Scheduling Order, any Rule 702 motion must be filed within 11 days of disclosure of the expert's report or their deposition, whichever is later. Doc. 14, p. 2.

Plaintiff needs additional time to potentially file a Rule 702 motion as to Mr. Rodriguez's report. Plaintiff is evaluating whether to move to strike all or part of Mr. Rodriguez's report, or if

instead he should invest in deposing Mr. Rodriguez before considering a motion to strike. Plaintiff's counsel has limited time to make this evaluation, much less write any such motion, as counsel has been and will be occupied preparing Plaintiff's response to the merits of Defendants' motions for summary judgment; conducting discovery in this case such as the June 5, 2025 deposition of the City of Austin; and handling unrelated matters such as an oral argument in the matter of *Morris v. United States*, No. 24-40576 (5th Cir.) which took place on June 4; depositions in the matter of *Gonzales v. Stephen*, No. D-1-GN-23-008043 (353rd Judicial District Court of Travis County, Texas) scheduled for June 10 and June 11; depositions in the matter of *Alvarez v. Fitts*, No. D-1-GN-24-003440 (98th Judicial District Court of Travis County, Texas) on June 12; depositions in the matter of *Tijerina v. Rodriguez*, No. 1:24-cv-01183 (W.D. Tex.) on June 16 and June 17; and depositions in the matter of *Gomez v. Smith*, No. D-1-GN-24-005067 (250th Judicial District of Travis County, Texas) on June 16 and June 18. Plaintiff intends to separately move to extend his response deadlines to the Defendants' motions for summary judgment in this case.

Accordingly, Plaintiff respectfully requests the Court extend Plaintiff's deadline to file any Rule 702 motion as to Mr. Rodriguez's report until June 25, 2025.

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
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By /s/ Jeff Edwards
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Texas Bar No. 24123424
Tel. (737) 281-9100

By /s/ Jason Feltoon
Jason Feltoon
State Bar No. 24123424
Jason@feltoon.law

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for all parties have conferred and Defendants are unopposed to the relief sought in this motion.

/s/ David James
David James

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-RP

**DEFENDANT GABRIEL WALKER PRADO'S UNOPPOSED MOTION FOR LEAVE
TO FILE FIRST AMENDED MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant Gabriel Walker Prado who files this Unopposed Motion for Leave to file his First Amended Motion for Summary Judgment and in support thereof, would respectfully show unto the Court as follows:

I. Relevant Procedural Background

1. On May 28, 2025, Defendant Walker Prado filed a Motion for Leave to exceed the page limits of his Motion for Summary Judgment (Dkt. 26), and a Motion for Leave to file Summary Judgment Exhibits Nos. 6, 10, and 11 under seal (Dkt. 27).
2. On May 29, 2025, the Court granted both Motions for Leave via Text Orders.
3. On June 3, 2025, a Deputy Clerk of the Court filed Defendant Walker Prado's Motion for Summary Judgment into the record, which is dated as filed on May 29, 2025 (Dkt. 29).
4. The undersigned subsequently noticed certain clerical errors in the final draft that was filed, quickly drafted and circulated a corrected draft, and then conferenced with all counsel of record

on May 30, 2025 to ask if they would be opposed to filing a corrected version of the motion for summary judgment. All counsel confirmed they are not opposed.

5. Defendant Walker Prado now files this Unopposed Motion for Leave to file his First Amended Motion for Summary Judgment.

II. Request for Leave

6. Defendant Walker Prado respectfully requests leave from this Court to file his First Amended Motion for Summary Judgment for the sole purpose of correcting certain clerical errors only. No substantive changes to the facts or arguments were made in this Amended Motion. Attached as **Exhibit No. 2** is a redlined version of Defendant's First Amended Motion for Summary Judgment outlining all revisions made to Defendant's original motion.¹ This redlined version was circulated to all counsel of record during conferencing.

7. A clean copy of Defendant Walker Prado's First Amended Motion for Summary Judgment is attached as **Exhibit No. 1**, which is the version Officer Walker Prado respectfully seeks to submit to replace the current version on file (Dkt. 29).²

8. Counsel apologizes for any inconvenience or extra work this request might create but feels obligated to seek such relief in furtherance of professionalism, and to ease this Court and all parties' respective experiences when reading and analysing the motion. Officer Walker Prado waives any change in deadlines the filing of an amended motion might normally trigger but is otherwise unopposed to an extension to file a response brief if Plaintiff moves for the same.

9. After conferencing, all counsel are unopposed to the filing of this First Amended Motion for Summary Judgment for the purpose of correcting clerical errors.

¹ **Ex. 2**, Def. Walker Prado's First Am. Mot. Summ. J. with redline revisions.

² **Ex. 1**, Clean copy of Def. Walker Prado's First Am. Mot. Summ. J.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake
Blair J. Leake

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

AVELINO MEDEL II,
Plaintiff,

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the
CITY OF AUSTIN
Defendants.

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Case No. 1:24-cv-00990-RP

**OFFICER WALKER PRADO'S
FIRST AMENDED MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Austin Police Officer, **Gabriel Walker Prado** (hereinafter “Officer Walker Prado”), Defendant in the above entitled and numbered cause, respectfully files this Motion for Summary Judgment and dismissal on the grounds that he is entitled to Qualified Immunity and dismissal on all of Plaintiff Avelino Medel’s (hereinafter “Medel”) claims:

I. SUMMARY OF THE ARGUMENT

1. Officer Gabriel Walker Prado and three other APD officers responded to a late-night physical disturbance 911 call at an apartment building. Looking through the apartment's window, he observed an extremely agitated and aggressive younger man repeatedly screaming at and physically intimidating an elderly man. The screaming and physical intimidation was so extreme that Walker Prado concluded something had to be wrong with the young man, and that he was not in a rational-minded state. The elderly man was visibly scared. Walker Prado signaled for the three other officers on scene to knock on the front door to engage the man to prevent what appeared to be an imminent assault of the elderly man. APD Officer Reinhart knocked on the front door with his police baton and loudly announced, "***AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!***"

2. The agitated man responded to the arrival of police in one of the most threatening ways imaginable—***grabbing a handgun off his counter, inserting a magazine, chambering a round, and aggressively walking toward the door where three unknowing police officers waited on the other side***. Residential doors do not stop bullets, and the vulnerable officers on the other side had no idea the agitated man was suddenly armed and advancing toward them.

3. Officer Walker Prado understandably interpreted the agitated man's acts of arming himself and charging toward the door as threatening—as anyone would. The agitated man initially put the gun in the high ready position, but then ***he began lowering his gun downward toward the door***. Officer Walker Prado had a split-second decision to make: (1) negotiate with the man and hope he does not immediately pull the trigger, or (2) shoot him to make sure does not kill anyone. Officer Walker Prado chose the latter option, yelling "he's got a gun! Gun, gun, gun, gun, gun!" and

discharging his own firearm through the window four times at the agitated, armed, and gun-pointing man.

4. Officer Reinhart's loud announcement of "**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**" ended at 02:09:03 on the body worn camera time stamp. Officer Walker-Prado began firing a single volley of rounds at time stamp 02:09:05. In *roughly two seconds*, the agitated man had turned a normal disturbance call into an imminent deadly threat—creating a split-second Hobson's Choice if Officer Walker Prado wanted to protect the vulnerable and unknowing officers behind the hollow core door.

5. Officer Walker Prado's actions did not violate the Constitution because a reasonable officer in his position would view as an imminent deadly threat *the armed and agitated man's response to police arrival of grabbing a gun, loading it, chambering a round, aggressively charging toward them, and then lowering his gun toward them*. Using deadly force to stop an imminent deadly threat is neither excessive nor unreasonable as a matter of law.

6. Plaintiff also will necessarily fail to carry his burden to overcome the second prong of qualified immunity. There is simply no binding precedent in existence that would have put Officer Walker Prado on notice that using deadly force against an agitated, aggressive man who in two seconds suddenly armed himself and aggressively charged toward newly arrived police—*and then began levelling his gun in their direction*—would violate clearly established law. Officer Walker Prado is therefore entitled to the defense of qualified immunity as a matter of law.

II. SUMMARY JUDGMENT FACTS & EVIDENCE¹

¹ Summary judgment evidence need not be authenticated or presented in admissible form to be competent under Rule 56. *See Flores v. United Rd. Servs. Midwest, Inc.*, No. 5:19-CV-1066-

A. Prior to the hours-long loud fight that generated a 911 call, Medel consumed enough alcohol to produce a 0.24 blood alcohol content—three times the legal intoxication limit— and was otherwise intoxicated.

7. Leading up this incident, Medel had consumed alcohol—and more—as demonstrated in the sealed exhibits filed in support of this motion.² He omitted much of this information when he told investigators he had merely consumed four shots of vodka earlier in the night.³ The DA’s office later noted that his blood alcohol content immediately after the incident was determined to be 0.24⁴—three times the legal intoxication limit in Texas.⁵

8. The subject 911 call likewise stated the men involved in the disturbance sounded intoxicated.⁶ Officer Reinhart recalled that he heard Medel yelling, sounded like he was slurring his speech “through the door and through the wall,” and had consequently concluded Medel was potentially intoxicated.⁷ He also explained that Medel’s yelling sounded loud, belligerent, and as if the individual was “a person who is overcome by their rage and can’t control it.”⁸ As discussed in more detail *infra*, Officer Walker Prado interpreted the same or similar information to mean broadly that something was wrong with Medel, that he was very obviously not acting rationally, and that the threat level of what he might do was higher as a result.

B. Neighbors called 911 after Medel aggressively screamed and yelled at his father for several hours late into the night.

DAE, 2021 WL 9908546, at *5 (W.D. Tex. July 22, 2021) (citing *inter alia* *Lee v. Offshore Logistical & Transp.*, L.L.C., 859 F.3d 353, 355 (5th Cir. 2017)).

² See **Ex. 10**, *Toxicology Records*, **pgs. 4-5**; see also **Ex. 6**, *Pl. Ans. to Interrogatories*, **No. 11**.

³ **Ex. 7**, *APD SIU General Offense Report*, **pg. 16**.

⁴ See e.g., **Ex. 9 – CRU Case Closure Memo**, **pg. 1**.

⁵ “Intoxicated” under Texas law is defined as “not having normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, [or] a combination of two or more of those substances,” *or* “having an alcohol concentration of 0.08 or more.” See TEX. PENAL CODE § 49.01(2).

⁶ See e.g., **Ex. 14**, *1st 911 Call*, **02:10 – 02:25**.

⁷ **Ex. 12**, *Reinhart SIU Interview*, **pgs. 20, 32-33**.

⁸ *Id* at 32-34.

9. On Saturday, April 6, 2024, at approximately 1:55 a.m., an Austin Police Department 911 operator received a call from Medel's upstairs neighbors about loud noises of a physical disturbance, and the caller stated the noises she and her roommate were hearing made them really scared for the people involved.⁹ The woman later stated that Medel had been yelling and slamming doors in the apartment for the past two hours before they finally called 911.¹⁰

C. Officer Walker Prado arrived at the correct apartment first and observed a younger male exhibiting extreme aggression toward an elderly male, including screaming at him, getting in his face, cursing at him, and physically menacing him. The old man appeared afraid of the younger man.

10. At the time, Officer Gabriel Walker Prado was a newer officer originally from Puerto Rico. At approximately 1:56 a.m., Austin Police Officer Walker Prado joined Officers Arlene Lozano, Adam Reinhart, and Ryan Daniel in responding to the reported physical disturbance at 3050 Tamarron Boulevard, the Cliffs at Barton Creek, at apartment number 8106. The officers were informed that it was a "*disturbance hotshot*" call, meaning a high urgency call where injury to person or property should be expected.¹¹

11. Dispatch informed the officers it was a male-on-male disturbance in building number eight. Officer Walker Prado was the first officer to locate and arrive at the correct apartment, and he positioned himself to the right of the sliding glass door of the apartment number 8106.¹² He observed a younger male yelling at an older male, and he positioned himself so that he could observe what was happening inside the apartment before he engaged the subjects. Based on his training and experience, it is useful to do so in order to ascertain what is happening and who is the

⁹ Ex. 14, *1st 911 Call*, 00:00 – 00:34.

¹⁰ See Ex. 13, *SIU Presentation*, pg. 10; see also generally Ex. 15, *SIU Rikita Ghimire Interview*.

¹¹ See e.g., Ex. 16, *SIU Investigative Summary*; see also Ex. 4, *Walker Prado IA Interview*, pgs. 6-7; see also Ex. 3, *Walker Prado Decl.*, pgs. 1-2.

¹² See e.g., Ex. 1, *Walker Prado BWC*, 02:05-25.

aggressor, because victims in domestic violence incidents often decline to cooperate out of fear of the abuser. He positioned himself to where his body was hidden behind a pillar with his head peeking out so as not to be seen. As a result, his chest-mounted body camera captured footage across the sliding glass door, while his head was turned to the right facing directly into the kitchen.¹³

12. Officer Walker Prado did not know the relationship between the younger man and the elderly male, did not know who was the lawful resident, and did not know whether an assault had already occurred. The two males were standing in the apartment's kitchen. He saw and heard the "younger man repeatedly yell and scream at the elderly man," the younger man "pacing back and forth in an extremely agitated manner," and "get in the elderly man's face [] only inches away, in what looked like attempts to physically intimidate the elderly man." He also saw that the younger man looked "seething angry, showing his teeth, flaring his elbows, broadening his chest at [the elderly man], and making what sounded like growling noises." Based on his law enforcement training and experience, these constituted cues that violence was more likely to be imminent." He recalled that "[t]he obvious visible anger, agitation, and erratic behavior of the younger man toward the elderly man was so extreme that I concluded something must be wrong with the younger man...that he was not thinking or acting rationally or reasonably, and that the threat level of the situation was higher as a result of his extreme agitated state."¹⁴

13. Officer Walker Prado relied on his training and experience to observe and conclude that "[t]he elderly man did not move from his position the entire time ... [and] ... he looked like he was in distress and his body language indicated to me he was scared of the younger man." He also

¹³ See e.g., **Ex. 4**, *Walker Prado IA Interview*, **pgs. 1-2**.

¹⁴ *Id.* at **pg. 2**.

observed that the elderly man's "back was effectively pinned against the counter, he was leaning backwards away from the younger man, and his arms were out to the side."¹⁵

14. Officer Walker Prado testified that he believed the elderly man to be the victim on scene.¹⁶ Aggressive yelling from inside the apartment can be heard on Officer Walker Prado's body worn camera recording starting at time stamp 2:07:48 a.m. At 2:08:56 a.m., Medel's voice is captured on Officer Walker Prado's body worn camera aggressively yelling, "*shut the fuck up!*" with more yelling following that. At 02:08:57, Medel "get[s] in the elderly man's face again, and then loudly yells" again "shut the fuck up!"¹⁷

15. "It was at that point that [Officer Walker Prado] believed the agitated man was about to physically attack the elderly man. [He] immediately signaled to the other three officers standing at the front door to knock because [he] believe[d] [they] needed to engage the subject to prevent the agitated man from imminently assaulting the elderly man."¹⁸

D. Officer Reinhart used his baton to knock on the door with two other officers standing next to him, and loudly announced, "AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!"

16. Officer Reinhardt knocked loudly on the door to apartment number 8106 by striking the door roughly seven times with his police baton and loudly announcing, "***AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!***" The announcement can be heard clearly on Officer Walker Prado's body worn camera footage, even though he was around the corner from the knocking.¹⁹ Officer Prado reasoned that since he could hear Medel talking inside that Medel would have been able to hear him outside, and further that Medel obviously heard the announcement of

¹⁵ *Id.*

¹⁶ **Ex. 5, Walker Prado Dep., pg. 146, lns. 12-16.**

¹⁷ **Ex. 3, Walker Prado Decl., pgs. 2-3; see also Ex. 1, Walker Prado BWC, 02:08:55-69.**

¹⁸ **Ex. 3, Walker Prado Decl., pgs. 2-3; see also Ex. 1, Walker Prado BWC, 02:08:55- 02:09:05.**

¹⁹ **Ex. 1, Walker Prado BWC, 02:08:56 – 02:09:03.**

police arriving because he visibly responded to the knock and announcement.²⁰ He also reasonably concluded that anyone who has been yelling loudly in an apartment complex late at night would expect that police officers will be showing up at the door soon as a result.²¹

17. Officer Reinhardt later described his volume on the police presence announcement as “pretty darn loud,” and that when announcing that he was a police officer he “put [his] face maybe six inches away from the door, kind where the door cracked to try to get my voice to emanate a little bit more through the door.”²²

E. The heretofore unhinged man continued his unhinged behavior when he learned police had arrived: he grabbed a gun off the counter, loaded it, chambered a round, charged toward the door holding the gun upright, and then *began lowering the gun toward the door and the three officers standing behind it.*

18. Officer Walker Prado observed that “the agitated man looked at the door” immediately after the announcement of “***AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!***” The last word of the announcement of police being at the door finished at time stamp 02:09:03. ***The remainder of the activity in this section occurred in roughly two seconds***—until 02:09:05.

19. The kitchen counter was extremely cluttered, and thus it was hard to make out what objects were located on the counter from Officer Walker Prado’s vantage point—and thus he had no idea a handgun was on the counter.²³ Up to this point, there had been no reason to believe this was an armed confrontation, and Officer Walker Prado had not even drawn his gun.

²⁰ **Ex. 5, Walker Prado Dep., pg. 43, lns. 15-20, pg. 44, lns. 1-10.**

²¹ ***Id.* at pg. 30, lns. 13-25, pg. 31, lns. 1-2.**

²² **Ex. 12, Reinhart SIU Interview, pg. 38.**

²³ **See Ex. 17, Screenshot of Walker Prado BWC; see also Ex. 3, Walker Prado Decl., pg. 3.**

20. After looking at the door, the agitated man suddenly grabbed a “silver object” off the counter that was L-shaped. It took a moment for Officer Walker Prado to realize that the agitated man had just grabbed a handgun, and the situation had suddenly turned exponentially more serious.²⁴

21. He then observed the agitated man load a magazine into the well, chamber a round into the gun, muzzle sweep the door to bring his gun up into the high ready position, and then aggressively walk toward the door the other three officers stood behind with no idea that the agitated man was suddenly armed and advancing toward them.²⁵

22. The fact that Medel chambered a round into the gun—making it ready to fire—is corroborated by the fact that Officer Reinhart later picked up the weapon, cleared it, and found a round in the chamber.²⁶ Though the chest-mounted camera is often obfuscated by a nearby wall, Medel can briefly be seen walking from the kitchen area toward the door and three officers.²⁷

23. Officer Walker Prado expected the man to respond by asking who was at the door or looking through the peephole. Based on his training and experience, the agitated man’s act of instead retrieving a gun, chambering a round, and stalking toward the door was yet another irrational, unreasonable response that further convinced Officer Walker Prado something was wrong with the man and the threat level was significantly higher than usual.²⁸ Officer Walker Prado responded by drawing his own gun given the sudden and unexpected armed confrontation that had just unfolded.²⁹

²⁴ See **Ex. 4**, *Walker Prado IA Interview*, **pg. 19**, **lns. 835-846**.

²⁵ See **Ex. 3**, *Walker Prado Decl.*, **pg. 3**, **¶ 10**.

²⁶ See **Ex. 2**, *Reinhart BWC*, **02:16:15 – 02:16:50** (picking up the gun, clearing it, and saying “one round in the chamber”); see also **Ex. 13**, *SIU Presentation*, **pg. 23** (“1 round in the chamber”).

²⁷ See **Ex. 1**, *Walker Prado BWC*, **02:09:03 – 05**.

²⁸ See **Ex. 3**, *Walker Prado Decl.*, **pg. 3**, **¶ 11**.

²⁹ **Ex. 1**, *Walker Prado BWC*, **02:09:03-05**.

24. The agitated man's gun at this point was being held in the "high ready" position, either pointed directly upwards, or even slightly backwards behind the man's head, as seen on the video footage.³⁰ Shockingly, the agitated man then began to lower his gun from the roughly 90-to-110-degree position downward in front of him while holding it with a two-hand shooting grip—in the direction of the door the three unknowing officers stood behind.³¹ The agitated man had successfully lowered his gun to roughly a 45-degree position before Officer Walker Prado discharged his own gun and stopped him from fully levelling the gun and shooting at the officers behind it. This entire flurry of activity happened in roughly two seconds—between time stamp 02:09:03 and 02:09:05.

F. Officer Walker Prado fired one four-shot volley of rounds at the now-armed, charging, and gun-lowering man in a two-second fusillade.

25. Officer Walker Prado had to think through numerous data points and make multiple decisions within that two-second span:

I had just seen the other three officers standing behind the front door seconds earlier. Based on my training and experience, exterior doors and exterior walls do not stop bullets...the other three officers were vulnerable to gunfire through the door, and they had no idea the agitated man was armed, quickly walking toward the door, and now lowering the gun toward them...I knew the officers very likely did not have time to move away because only I knew the agitated man was now armed and moving toward them. I truly believed that if I did not shoot the man that he was about to start firing his own gun through the door at the officers standing behind it...I did not believe it was feasible to negotiate with the man or warn him I was going to use deadly force, because those options would not definitely stop the attack I believed was actively about to happen. I also knew that the sliding glass door between us meant that other force options, such as a taser or OC spray, would be completely useless. I decided to act.³²

³⁰ *Id.* at 02:09:03-04.

³¹ *Id.* at 02:09:03-05.

³² **Ex. 3, Walker Prado Decl., pgs. 3-4, ¶¶ 12-15.**

26. Officer Walker Prado “made [his ultimate] decision to shoot based on everything that had happened up to that point.”³³ Officer Walker Prado yelled, “he’s got a gun! Gun, gun, gun, gun, gun!” and simultaneously stepped to his left, aimed at the man’s center mass, and began firing one volley of four rounds to neutralize the threat that had just appeared unexpectedly in the prior two seconds. “[T]he agitated man dropped behind the couch” still holding his gun, which required Officer Walker Prado to perform a “mid-volley” sight realignment to fire his last shot through the couch at where he thought the armed and agitated man’s center mass would be. This re-alignment of his sights to shoot at a now-moved-and-hidden target took a moment, which is why the video depicts a longer time period between shots three and four of the volley compared to the other three shots. Right before he fired his final shot, the man reached out with his hand “toward the door with what [Walker Prado reasonably] believed was his gun in his hand.”³⁴ The entire four-shot volley was fired in roughly two seconds—with the first shot being fired at 02:09:05 and the final shot being fired at 02:09:07.³⁵

27. He did not fire a second volley of shots because he believed the officers at the door now had the time and cause to move away from the door the agitated man had been lowering his gun toward. He proceeded to instruct the agitated man to stop moving so that the officers could evacuate the elderly victim and begin rendering first aid.³⁶

G. The Travis County District Attorney’s Office has already reviewed this matter, agreed that Medel was pointing his gun in the direction of the officers, and declined to prosecute Officer Walker Prado in the ‘Interest of Justice.’

³³ *Id.* at pg. 4, ¶ 17.

³⁴ *Id.* at pg. 4, ¶ 15; see also Ex. 1, *Walker Prado BWC*, 02:09:05 – 02:09:07.

³⁵ Ex. 1, *Walker Prado BWC*, 02:09:05 – 07.

³⁶ Ex. 3, *Walker Prado Decl.*, pg. 4, ¶ 16.

28. This incident was subsequently reviewed by the Travis County District Attorney’s Office—arguably the most aggressive district attorney’s office in the country when it comes to prosecuting police officers. Travis County’s most experienced civil rights division prosecutor, ADA Dexter Gilford, drafted a summary of his observations, which are incorporated herein by reference. He ultimately agreed that the video footage showed that after Officer Reinhart announced, “Austin Police Department, open the door!” Medel in turn “began to lower his weapon in the direction of the door where” the three officers were standing when Officer Walker Prado discharged his firearm to stop him. The DA’s office formally closed its case and concluded that this incident did not warrant criminal charges “in the interest of justice.”³⁷ This lawsuit follows.

III. LEGAL STANDARD

A. Summary Judgment Standard.

29. Pursuant to Federal Rule of Civil Procedure 56, summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.³⁸ What facts are material is determined by substantive law.³⁹ The mere existence of some factual dispute cannot defeat an otherwise properly-supported motion for summary judgment. There is no genuine dispute for trial when the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.⁴⁰

B. Qualified Immunity Standard.

30. Qualified immunity cases present two questions. First, did the officer violate a constitutional right? Second, was the right at issue clearly established at the time?⁴¹ The qualified

³⁷ **Ex. 9**, *CRU Case Closure Memo*.

³⁸ FED. R. CIV. P. 56.

³⁹ *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986).

⁴⁰ *Scott v. Harris*, 550 U.S. 372, 380 (2007).

⁴¹ *Dawes v. City of Dallas*, No. 22-10876, 2024 WL 2268529, at *1 (5th Cir. May 20, 2024).

immunity analysis is an entirely objective standard.⁴² “Once an official pleads the defense, the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official’s allegedly wrongful conduct violated clearly established law.”⁴³ “In so doing, the ‘court must ‘ask whether the law so clearly and unambiguously prohibited [the police officer’s] conduct that *every* reasonable [police officer] would understand that what he is doing violates [the law].’”⁴⁴

31. At the summary judgment stage, a Court must assign greater weight “to the video recording taken” at the scene and may discount a plaintiff’s version of the facts that are clearly contradicted by that video evidence.⁴⁵ “It is the plaintiff’s burden to find a case in his favor that does not define the law at a ‘high level of generality.’”⁴⁶ “[O]fficer negligence is not a basis to deny qualified immunity.”⁴⁷ Qualified immunity “represents the norm, and courts should deny a defendant immunity only in rare circumstances.”⁴⁸

IV. ARGUMENTS & AUTHORITIES

A. Plaintiff’s claims for excessive force sound solely under the Fourth Amendment.

32. As a matter of housekeeping, Medel’s claims under the Fourteenth Amendment must be dismissed.⁴⁹ The Fourteenth Amendment ensures a person’s right to procedural and substantive due process. Under binding Supreme Court and Fifth Circuit precedent, claims “involving

⁴² *Poole v. City of Shreveport*, 691 F.3d 624, 630 (5th Cir. 2012).

⁴³ *Baker v. Coburn*, 68 F.4th 240, 244 (5th Cir. 2023), as revised (May 19, 2023).

⁴⁴ *Argueta v. Jaradi*, 86 F.4th 1084, 1088 (5th Cir. 2023), *cert. denied*, 145 S. Ct. 435 (2024) (emphasis in original) (citation omitted).

⁴⁵ *Betts v. Brennan*, 22 F.4th 577, 582 (5th Cir. 2022).

⁴⁶ *Vann v. City of Southaven*, 884 F.3d 307, 310 (5th Cir. 2018) (per curiam) (internal quotation marks and citation omitted).

⁴⁷ *Mason v. Faul*, 929 F.3d 762, 764 (5th Cir. 2019).

⁴⁸ *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018) (internal quotation marks and citations omitted).

⁴⁹ See Pl. Orig. Compl. pgs. 24 – 25, Dkt. 1.

excessive force and false arrest based on incidents arising pre-trial are properly analyzed under the Fourth Amendment's reasonable search and seizure standards, not under substantive due process."⁵⁰ Since Medel has cognizable claims under the Fourth Amendment for excessive force, it is the Fourth Amendment that provides his relief and "not the more generalized notion of 'substantive due process'" of the Fourteenth Amendment.⁵¹ Officer Walker Prado respectfully requests that this Court dismiss all Fourteenth Amendment claims against him.

B. Officer Walker Prado is entitled to qualified immunity on Medel's excessive force claim because (1) his force did not violate the Constitution and (2) his force was not a violation of clearly established law.

33. The force Officer Walker Prado used **(1)** did not violate the Fourth Amendment, and **(2)** a comprehensive review of the Fifth Circuit's precedent reveals that Officer Walker Prado did not violate Medel's clearly established rights.⁵²

a. First prong: Officer Walker Prado did not use force excessive to the need based on what a reasonable officer in the same circumstances would perceive.

i. The *Graham* factors.

34. "All claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard."⁵³ "Determining whether an officer's use of force was objectively reasonable requires careful attention to the facts and circumstances of each particular case, including (1) the severity of the crime at issue, (2) whether

⁵⁰ *Wright v. City of Houston*, No. 4:22-CV-2225, 2023 WL 319956, at *3 (S.D. Tex. Jan. 19, 2023), *report and recommendation adopted*, No. 4:22-CV-02225, 2023 WL 1994417 (S.D. Tex. Feb. 14, 2023) (citing *Albright v. Oliver*, 510 U.S. 266, 273 (1994)); *see also Cuadra v. Houston Indep. Sch. Dist.*, 626 F.3d 808, 814 (5th Cir. 2010).

⁵¹ *Id.*

⁵² *Graham v. Connor*, 490 U.S. 386 (1989).

⁵³ *Deshotels v. Marshall*, 454 Fed. Appx. 262, 267 (5th Cir. 2011) (citing *Bazan ex rel. Bazan v. Hidalgo Cnty.*, 246 F.3d 481, 487 (5th Cir. 2001)).

the suspect poses an immediate threat to the safety of the officers or others, and (3) whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.”⁵⁴ These elements are referred to as the *Graham* factors after the Supreme Court’s seminal decision in *Graham v. Connor*.

35. *Graham* teaches that the “reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”⁵⁵

ii. The “threat-of-harm” factor is the primary *Graham* factor analyzed in a deadly force case, and it undeniably weighs in favor of Officer Walker Prado’s decision to use deadly force.

36. “While all [Graham] factors are relevant, the ‘threat-of-harm factor typically predominates the analysis when deadly force has been deployed.’”⁵⁶ “An officer’s use of deadly force is not unreasonable when the officer has reason to believe that the suspect poses a threat of serious harm to the officer or to others.”⁵⁷ The decision to use deadly force must be judged from the perspective of a reasonable officer on the scene, rather than with the perfect 20/20 vision of hindsight.⁵⁸ In other words, this case should not be analyzed as if Officer Walker Prado had the benefit of pause and rewind buttons in the safety of a lawyer’s office.

⁵⁴ *Id.* (numerals added) (citing *Graham*, 490 U.S. at 396).

⁵⁵ *Graham*, 490 U.S. at 396 – 97.

⁵⁶ *Crane v. City of Arlington, Texas*, No. 21-10644, 2022 WL 4592035, at *5 (5th Cir. Sept. 30, 2022) (internal citation omitted).

⁵⁷ *Argueta*, 86 F.4th at 1088 (5th Cir. 2023) (citing *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2023)).

⁵⁸ *See id.*

37. The all-important “threat-of-harm” factor weighs heavily in favor of Officer Walker Prado. He was called to the scene via APD’s highest priority level of call—a hotshot call—where it is believed a person has been injured and/or the suspect and victim are still on the scene.⁵⁹ Dispatch advised it was a physical disturbance, and thus violence should be expected. He arrived on scene to find a younger man repeatedly screaming at, cursing at, and physically menacing an elderly man. The elderly man looked visibly afraid of the younger man, who kept getting within inches of the elderly man’s face, and had effectively pinned him against a kitchen counter. The agitated man’s rage and aggression was so extreme and visibly unhinged that Officer Walker Prado concluded there must be something wrong with the agitated man. His extreme agitation and aggression led him to the conclusion the agitated man was not acting rationally, and the threat level was consequently higher than normal. The urgent physical disturbance nature of the call, as well as the heightened threat level due to the man’s extreme rage, ongoing irrational conduct, and/or mental instability form part of the totality of circumstances for the heightened “threat of harm” the officers faced.

38. The agitated man was still unarmed, however, and deadly force was not yet warranted. Tragically, that all changed in an *instant*. What followed constituted a buffet of *Manis* acts that would make any reasonable officer believe deadly force was warranted.⁶⁰

39. Officer Reinhart knocked on the door with his baton and loudly announced, “**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**” The final word of his announcement rang out at time stamp 2:09:03. Over the next *two seconds*—from 2:09:03 to 2:09:05 when Officer Walker

⁵⁹ **Ex. 3**, *Walker Prado Decl.*, ¶ 3. Hotshot calls can also involve damage to property, but in this case dispatch had made it known that it was a possible physical disturbance call.

⁶⁰ See e.g., *Reyes v. Bridgwater*, 362 F. App’x 403, 408 (5th Cir. 2010) (noting that an immediate threat requires a *Manis* act—where a latent threat materializes into a risk of harm).

Prado fired his volley of rounds—a flurry of threatening conduct occurred that turned a physical disturbance call into a potential capital murder scene.

40. Rather than ask who is at the door, calmly look through the peephole—or pause and consider that his unhinged screams in the middle of the night may have generated 911 noise complaints in an apartment complex—the agitated man responded to police announcing their arrival at his door in the most unhinged, threatening manner possible. He aggressively grabbed a handgun off the counter, muzzle swept their position, loaded the gun, chambered a round, charged toward the door, and then ***began lowering the previously upright weapon downward toward the door.***⁶¹ The three officers standing on the other side of the door had no idea any of this was happening—and thus no idea that their lives were now at the mercy of an unstable-and-suddenly-armed-and-charging man’s trigger finger.

41. The only officer who witnessed the two-second flurry of threat-escalating conduct was Officer Walker Prado. In those ***two seconds***, Officer Walker Prado was forced to (1) process that the silver object the agitated man had just grabbed off the counter was actually a gun;⁶² (2) process that three officers were behind the door; (3) process that there had not been time or cause for the officers to move away from the door; (4) process that the agitated man had just dangerously muzzle swept the door with what might be an already-loaded gun; (5) process that the agitated man was now actively loading a magazine into and chambering a bullet into the gun; (6) process that the

⁶¹ **Ex. 1, Walker Prado BWC, 02:09:04–05.** The video evidence shows that the gun never reached its final 0-degree trajectory of being fully levelled, but the footage indisputably shows that the agitated man initially had the gun pointed straight up in the air (or even slightly back behind his head) before he began lowering it downward in front of his body. The gun had lowered from a roughly 90 to 110-degree position to a roughly a 45-degree position when Officer Walker Prado discharged his weapon to stop the agitated man from lowering the gun any further toward the unknowing officers.

⁶² **Ex. 4, Walker Prado LA Transcript, pgs. 19 – 20.**

door is merely “concealment” and thus vulnerable to bullets; (7) process that the agitated man was now charging toward the door; (8) process whether he can use any manner of non-deadly force; (9) process that he needs to draw his own gun;⁶³ (10) process that he needs to turn off the safety; (11) process whether he can or should issue a warning or command, what specifically he should say, and what negative consequences might result from doing so; (12) process and determine how many shots would be appropriate; and (13) process that he needs to aim and fire at center mass—and then do so. The extremely limited two-second time window to act constituted the archetypal “split-second” *Graham* decision, but in reality what was happening during those two seconds involved mentally synthesizing a breakneck *flurry* of rapidly-evolving data points and making numerous independent decisions—***all within only two seconds, and with life or death on the line.***

42. The last of many decisions he was forced to make—shoot-or-don’t-shoot—proved to be a Hobson’s Choice once the agitated man began lowering his gun downward toward the door and the oblivious officers behind it. Officer Walker Prado was forced to act. The threat of harm was simply too deadly and too immediate. The corresponding *Graham* factor therefore weighs entirely in favor of Officer Walker Prado’s decision to utilize deadly force.

iii. The *Manis* acts in this case included the agitated man arming himself with a gun in response to the arrival of police, loading it, chambering a round, charging toward police, and lowering the gun downward toward the unknowing three officers behind the door.

43. Simply possessing a gun is usually not enough to warrant deadly force. There must be a *Manis* act—such as a furtive or threatening gesture—that transforms the situation into an imminent deadly threat in the eyes of a reasonable police officer. *Manis* acts abound in this case.

⁶³ Ex. 1, *Walker Prado BWC*, 02:09:04.

44. First, retrieving a gun specifically as a response to the arrival of police constitutes a *Manis* act. “Whether a suspect is armed is often the key factor in determining if a threat to an officer justifies the use of deadly force.”⁶⁴ There is a difference between a suspect already possessing a gun versus a suspect drunkenly grabbing a gun from the kitchen counter *specifically because the suspect just learned police had arrived*. Any reasonable officer who observed such an act would plausibly believe that the man intended to use that gun against the newly arrived police officers. Retrieving a gun as a direct response to police arrival is undeniably a sufficient *Manis* act, as reflected by all of the cases that hold that merely *reaching* for a gun—or what *might* be a gun but was *not*—in the presence of police merited deadly force (including *Manis* itself).⁶⁵ It indisputably follows that if reaching for a gun upon police arrival is a *Manis* act, then reaching for and *actually retrieving* that gun upon the arrival of police would be an even stronger *Manis* act.

45. Loading the gun—and then ***especially chambering a round***—constituted even stronger and more menacing *Manis* acts, especially since both acts were performed as direct responses to the arrival of police. Officer Walker Prado visually observed the agitated man chamber a round into his gun. Officer Reinhart confirmed Medel had loaded a bullet into the chamber when he cleared the weapon afterwards. “While the mere presence of a gun may not be enough to engender the belief in an officer that someone is dangerous, ***on hearing the sound of racking a weapon, making it ‘available for ready use,’ ‘an officer is ‘not required to wait and hope for the best’***”

⁶⁴ *Poole*, 13 F.4th at 425.

⁶⁵ See e.g., *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (affirming qualified immunity for officer who used deadly force against suspect who reached under his seat for what officer believed might be a gun); see also e.g. *Argueta*, 86 F.4th at 1088 (affirming qualified immunity for officer who used deadly force against a suspect who concealed his right hand from view in a manner that looked like he was reaching for a gun on his right hip); see also e.g., *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (holding that deadly force was warranted when police arrived and a suspect reached into a chest-high boot for what could have been a gun but was later determined not to be.).

before using deadly force.⁶⁶ Other courts have likewise noted the inherently threatening nature of an officer knocking on a door and in response hearing or seeing “*a firearm slide being racked...indicating that someone within the house was feeding a round of ammunition into the firing chamber of a gun.*”⁶⁷ This Court previously reached the same conclusion in *Lozano*, when the sound of a round being chambered made APD Officer Roger Boudreau believe “he was ‘about to be shot and killed through the door.’”

In this case, Officer Boudreau reasonably (and correctly) believed the suspect was armed, had *threatened him with the sound of a bullet being chambered*, and was proceeding out the door with his gun toward Officer Boudreau. There is no doubt, considering the foregoing law, that Officer Boudreau had reason to believe Plaintiff posed an immediate and serious threat to his life at that moment ... *There is no rule of law which requires police officers to wait for armed suspects to fire the first shot in order for them to reasonably use deadly force in response*; in fact, such a rule would have disastrous implications for the safety of police officers. Indeed, the Fifth Circuit has specifically stated the “Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists.” The suggestion that any such rule should be the law is “more reflective of the ‘peace of a judge's chambers’ than of a dangerous and threatening situation on the street.”⁶⁸

46. The agitated man’s armed charge toward the officers alone likewise constituted a sufficient *Manis* act, especially given his unstable conduct up to that point. In *Lozano*, this Court noted as part of the threatening conduct that the man advanced toward the officer with a gun in his hand.⁶⁹ In *Cass*, the Fifth Circuit affirmed qualified immunity when a detective used deadly force against

⁶⁶ *Shullaw v. McMullen*, No. 3:23-CV-13317-MCR-ZCB, 2025 WL 976283, at *7 (N.D. Fla. Mar. 31, 2025) (citing *Powell v. Snook*, 25 F.4th 912, 922 (11th Cir.), *cert. denied*, 143 S. Ct. 110 (2022) (quoting *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010))).

⁶⁷ *Padilla v. City of Farmington, New Mexico*, No. 1:23-CV-00790-MLG-KK, 2025 WL 1414287, at *2 (D.N.M. May 15, 2025) (emphasis added).

⁶⁸ *Lozano v. City of Austin*, No. A-09-CA-200-SS, 2010 WL 3069811, at *7 (W.D. Tex. Aug. 4, 2010) (emphasis added) (citing *inter alia Ramirez v. Knoulton*, 542 F.3d 124, 130 (5th Cir. 2008)).

⁶⁹ *Lozano*, 2010 WL 3069811, at *7 (noting as part of the deadly threat conduct that the man advanced toward the officer with a gun in hand).

a man who was “approaching him and drawing his handgun.”⁷⁰ In *Rice*, the final threatening act was when an armed and suicidal man “began walking toward the kitchen” where the officers had re-positioned themselves.⁷¹

47. As the *Manis* coup de grâce, Medel’s act of lowering his gun downward in the direction of police officers is arguably the penultimate of possible *Manis* acts—second only to committing attempted or actual capital murder by pulling the trigger. The Fifth Circuit has recognized that, in contrast to other weapons, “[a] gun can kill instantaneously [from a] distance.”⁷² The existence of a door or exterior wall between a suspect and potential victims will not stop bullets, nor does it extinguish an imminent deadly threat according to both law enforcement experts and the Supreme Court of the United States.⁷³ It is indisputable from the video footage that a reasonable officer would have concluded an imminent deadly threat existed if he observed an extremely aggressive, agitated man respond to the arrival of police by retrieving and chambering a round into a gun, aggressively walking toward the door, and then actively begin to lower his gun from an upright position downward in front of him toward the door.

48. Precedents involving pointing guns at police are surprisingly sparse because such incidents so rarely generate a § 1983 lawsuit because they are inherently doomed to fail.⁷⁴ Any argument

⁷⁰ *Cass v. City of Abilene*, 814 F.3d 721, 731 (5th Cir. 2016).

⁷¹ *Rice v. ReliaStar Life Ins. Co.*, 770 F.3d 1122, 1127 (5th Cir. 2014).

⁷² *Reyes*, 362 F. App’x at 407.

⁷³ See **Ex. 11**, *Rodriguez Report*, **pg. 28**; see also **Ex. 3**, *Walker Prado Decl.*, ¶ **12**; see also e.g., *Michigan v. Bryant*, 562 U.S. 344, 373 (2011) (the Supreme Court recognizing that **when a gun is involved physical separation is not sufficient to end an ongoing deadly threat because “Covington was shot through the back door of Bryant’s house...if an out-of-sight sniper pauses between shots, no one would say the emergency ceases during the pause.”**) (emphasis added); see also e.g., *United States v. Thompson*, No. 3:11-CR-272-D (01), 2012 WL 1161609, at *2 (N.D. Tex. Apr. 9, 2012) (“There was also the potential that someone inside the apartment would shoot through the door.”).

⁷⁴ See *Hodge v. Engleman*, 636 F. Supp. 3d 727, 737 (N.D. Tex. 2022), *aff’d*, 90 F.4th 840 (5th Cir. 2024) (noting that the Plaintiff failed to find “any case where the Fifth Circuit has found a

that a reasonable officer making a split-second assessment could *not* possibly view the agitated man's act of loading and lowering his gun from upright downward in front of him as an act of aiming at the officers "does not pass the straight-face test."⁷⁵

49. This Court may choose from a buffet of *Manis* acts in this case. There can be no doubt, however, that a reasonable officer would view the agitated man's collective conduct as an imminent deadly threat to the officers he was charging toward with a newly-loaded gun. Any suggestion that the intoxicated, rage-filled Medel was instead merely a calm and righteous second-amendment practitioner is an insult to safety-conscious gun owners everywhere.

iv. Even if this Court disagrees that a reasonable officer would perceive beginning to lower the gun as equal to pointing it toward officers, Medel's conduct was still sufficient to merit deadly force pursuant to *Knoulton*.

50. Officer Walker Prado maintains that a reasonable officer—in the context of a split-second assessment without the benefit of a pause and rewind button—could view the agitated man's lowering of his gun downward in front of him as equal to aiming it at the officers. Stopping Medel from finishing his act of fully lowering the gun toward the officers should not count against Officer Walker Prado. Even if this Court disagrees, his conduct would still be sufficient to warrant deadly force.

51. In *Knoulton*, the magistrate judge initially refused to apply qualified immunity because the subject "did not raise his weapon, discharge the weapon, or even point it at the officers," and otherwise performed no definitive "threatening gestures."⁷⁶ The Fifth Circuit disagreed, concluding that the magistrate judge made the mistake of "employ[ing] 20/20 hindsight," and

violation of a clearly established right where officers used deadly force against an armed suspect who pointed a weapon at one or more officers.).

⁷⁵ See *Kisela v. Hughes*, 584 U.S. 100, 108 (2018).

⁷⁶ *Ramirez v. Knoulton*, 542 F.3d 124, 129 (5th Cir. 2008)

“fail[ed] to take into account the reasonable beliefs of officers standings yards away from a defiant, disturbed, and armed man.”⁷⁷ One of the armed subject’s final acts was to bring “his hands together in what [the Fifth Circuit panel] believe could reasonably be interpreted as a threatening gesture, as if to grip the handgun with both hands in preparation to aim it at the officers.”⁷⁸ Officer Walker Prado likewise reasonably perceived that Medel was a disturbed man armed with a gun, and he likewise knew the three other officers behind the door were standing mere feet away from him. He also perceived that the agitated man had suddenly loaded, chambered a round, and advanced toward the other officers’ position all as a response to learning that police had arrived. Plaintiff then, with the *Knoulton*-referenced “two-handed grip,” suddenly began lowering the previously upright gun while facing the door the officers stood behind. In *any* context, *any* human being watching an angry man grab a nearby gun, load it, chamber a round, advance toward them, and then begin to lower the gun downward in their direction would fear they are about to be shot. It defies logic to suggest that a police officer witnessing the same should feel any different. It was altogether reasonable for Officer Walker Prado to perceive that the unknowing officers standing behind the door were in imminent serious danger.

v. The mentally disturbed and/or intoxicated state of Medel was knowable to a reasonable officer on the scene, and are important parts of the totality of the circumstances.

52. The qualified immunity analysis does not consider the specific subjective considerations of a defendant officer. It considers “only the facts that were *knowable* to the defendant officers” and how a reasonable officer in that same situation would interpret them.⁷⁹ In this case, Officer Reinhart heard that Medel’s speech was slurred and concluded he was intoxicated. Officer Walker

⁷⁷ *Id.* at 130.

⁷⁸ *Id.* at 131.

⁷⁹ *White v. Pauly*, 580 U.S. 73, 76–77 (2017) (emphasis added).

Prado likewise heard Medel’s speech, as reflected by the video footage and every statement he has given. The specific drugs or alcohol ingested would not be “knowable,” but an observable state of intoxication would be. Officers are trained that an intoxicated subject—especially one who is armed with a deadly weapon—creates a heightened threat potential.⁸⁰

53. Officer Walker Prado also visually observed Medel’s extreme conduct—screaming in the face of an elderly man, effectively pinning him against the counter, pacing back and forth, showing his teeth in anger, flaring his elbows, and otherwise repeatedly physically menacing the elderly man—and concluded something was wrong with him. These facts would be knowable to a reasonable officer on the scene, and a reasonable officer would correctly conclude the man was either intoxicated or mentally unstable. Officers are trained that an emotionally disturbed subject—especially one who is armed with a deadly weapon—creates a heightened threat potential.⁸¹

54. Officer Walker Prado knew something was wrong with Medel, and that he was not acting rationally nor reasonably. A reasonable officer would synthesize the same knowable information and conclude the same—whether that be because of a perceived state of intoxication or a perceived emotionally disturbed state—and likewise believe the threat level of the situation was higher as a result. These knowable facts and corresponding heightened threat level⁸² are important parts of the totality of the circumstances faced by Officer Walker Prado.

b. The other two *Graham* factors cannot overcome the threat-of-harm factor, but nevertheless collectively weigh in Officer Walker Prado’s favor.

⁸⁰ **Ex. 11, Rodriguez Report, pg. 24.**

⁸¹ **Ex. 11, Rodriguez Report, pgs. 25-26.**

⁸² See e.g., *Mace ex rel. Revill v. City of Palestine, Texas*, 213 F. Supp. 2d 691, 696 (E.D. Tex. 2002), *aff’d sub nom. Mace v. City of Palestine*, 333 F.3d 621 (5th Cir. 2003) (“the uncontested facts show that Chief Henderson was confronted with an *intoxicated, disturbed individual* wielding a sword within ten to twenty feet of him and his other officers”).

55. The other two *Graham* factors are essentially trumped by the second threat-of-harm factor once it has been established that a reasonable officer would perceive an imminent deadly threat. The first factor deals with the nature of the crime. Pointing a gun in the direction of police officers would at the very least constitute Deadly Conduct, if not Aggravated Assault with a Deadly Weapon.⁸³ However, “it would be insignificant whether [the suspect] was to be arrested for a minor crime or was not even a criminal suspect if it reasonably appeared that he was about to shoot a gun at an officer from close range.”⁸⁴ The reasons prompting the APD officers’ dispatch are immaterial to the question of reasonableness in responding to the imminent deadly threat created by Medel’s actions.

56. Similarly, the final *Graham* inquiry, which addresses whether Medel actively resisted or attempted to evade arrest, is likewise wholly irrelevant once it has been established that Medel's conduct posed a severe risk of imminent deadly harm to others. The incident had not progressed to the point of arrest when the deadly threat to the officers was created by the agitated man’s conduct. Nevertheless, “anyone who appears to be ready to shoot an officer certainly appears to be ready to resist arrest.”⁸⁵ The two lesser factors as a whole weigh in favor of Officer Walker Prado’s decision to resort to deadly force to protect the vulnerable and unknowing persons standing behind the door.

c. Officer Walker Prado’s final shot in his four-round volley was likewise constitutionally permissible.

⁸³ See e.g., TEX. PENAL CODE ANN. § 22.05 (West) (“A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury” and “[r]ecklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another.”).

⁸⁴ *Padilla*, 2025 WL 1414287, at *8.

⁸⁵ *Est. of Valverde by & through Padilla v. Dodge*, 967 F.3d 1049, 1061 (10th Cir. 2020).

57. Officer Walker Prado explained in his deposition and in his declaration that he fired a single volley of four rounds. The relatively longer time span observed on video between the third and fourth round was a result of having to adjust his aim once the agitated man dropped to the ground behind a couch while still holding his gun. The difference in time span does not change the fact that the entire fusillade was fired in roughly two seconds.

58. A reasonable officer would still perceive the agitated man to be a threat on the ground because he had just exhibited a flurry of conduct making it seem like he was about to shoot newly-arrived police officers—and because he was seen still holding the gun. “[I]f the officer believes the suspect has a gun, the calculation changes—even if there was never, in fact, a gun.”⁸⁶ Thus, even if Medel conveniently claims he had dropped the gun, a reasonable officer in the heat of the moment could reasonably conclude otherwise. An officer should assume an armed and dangerous man who has moved out of sight is still armed and dangerous unless or until it is confirmed he is not.

59. The Supreme Court has emphasized that “*if police officers are justified in firing at a suspect in order to end a severe threat to public safety the officers need not stop shooting until the threat has ended.*”⁸⁷ That includes when officers continue to fire after the assailant has fallen to the ground.

It may well be true that Conley continued to fire as Berube fell to or lay on the ground. But it is clear from the very brief time that elapsed that she made a split-second judgment in responding to an imminent threat and fired a fusillade in an emergency situation. Conley's actions cannot be found unreasonable because she

⁸⁶ *Allen v. Hays*, 65 F.4th 736, 744 (5th Cir. 2023).

⁸⁷ *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (emphasis added); *see also Roy v. Inhabitants of City of Lewiston*, 42 F.3d 691, 695 (1st Cir. 1994) (noting that “the Supreme Court's standard of reasonableness is comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.”).

may have failed to perfectly calibrate the amount of force required to protect herself.⁸⁸

60. Officer Walker Prado’s belief that the agitated man now hidden behind a couch was still a threat was only heightened when suddenly the man reached out again toward the door from behind the couch—which Officer Walker Prado reasonably believed in the moment was him reaching toward the door with his gun for a second time. Officer Walker Prado then fired the fourth and final round of his volley. The Fifth Circuit “has often found ‘an officer’s use of deadly force to be reasonable when a suspect moves out of the officer’s line of sight such that the officer could reasonably believe the suspect was reaching for [or still holding] a weapon,’” as here.⁸⁹

d. Persuasive cases outside the Fifth Circuit are illustrative of why officers sometimes are forced into inherently threatening situations involving residents who arm themselves in response to the arrival of police.

61. As discussed *infra*, there is no factually analogous clearly established law within the Fifth Circuit, but this fact pattern generally is not unprecedented nationwide. In a nation where guns are more numerous than registered motor vehicles, scenarios have unfolded where police officers have reasonably perceived threats when a resident makes the decision to arm themselves before engaging police officers at their door. The persuasive cases *infra* are illustrative of why Officer Walker Prado’s decision to utilize deadly force was constitutionally permissible under the totality of the split-second circumstances he faced.

⁸⁸ *Berube v. Conley*, 506 F.3d 79, 85 (1st Cir. 2007); *see also Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211, 1230 (9th Cir. 2014), *rev’d in part, cert. dismissed in part sub nom. City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600 (2015) (finding it reasonable that the officer’s final shot was fired after the assailant had fallen because “**it is clear from the very brief time that elapsed that [Reynolds] made a split-second judgment in responding to an imminent threat and fired a fusillade in an emergency situation.**”); *see also Est. of Rodgers ex rel. Rodgers v. Smith*, 188 F. App’x 175, 183 (4th Cir. 2006) (holding the officers were reasonable when they fired a second volley of shots after the man fell to the ground because they were “**acting to ensure the neutralization of a deadly threat.**”).

⁸⁹ *Allen v. Hays*, 65 F.4th at 744 (citing *Manis v. Lawson*, 585 at 844).

62. In *Young*, an officer was knocking on a door looking for a man he had just pursued on a motorcycle, but he never announced that he was a police officer. He encountered what proved to be a *different* man opening his front door holding a gun, and then the man began retreating backwards in what was ostensibly a suspicious manner. The officer “reasonably perceived [the retreat as] an attempt by [the subject] to take cover so [the subject] could fire” at him. The Court noted that “the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”⁹⁰ “[T]he events, from the time the door opened until the time shots were fired, took place rapidly within two to three seconds.”⁹¹ The court found no issue with the officer’s use of force without issuing a warning beforehand, noting that “[f]or all [the officer] knew, the hesitation involved in giving a warning could readily cause such warning to be his last... We will not second-guess the split-second judgment of a trained police officer merely because that judgment turns out to be mistaken, particularly where inaction could have resulted in death or serious bodily injury to the officer and others.”⁹² The Court concluded that:

By any measure, this is a tragic case... But Andrew Scott made a fateful decision that night: he chose to answer his door with a gun in his hand. That changed everything. That is the one thing that – more than anything else – led to this tragedy.⁹³

63. Decided four years later, the *Howe* court reached a similar result. Officers were called to the scene regarding a domestic disturbance. The officers believed the resident was the perpetrator of the domestic disturbance, and thus dangerous. The officers knew he possessed firearms in the

⁹⁰ *Young v. Borders*, No. 5:13-CV-113-OC-22PRL, 2014 WL 11444072, at *16 (M.D. Fla. Sept. 18, 2014), *aff’d*, 620 F. App’x 889 (11th Cir. 2015) (citing *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007)).

⁹¹ *Id.*

⁹² *Id.* at 17 (citing *McLenagan v. Karnes*, 27 F.3d 1002 (4th Cir. 1994)).

⁹³ *Id.* at 21.

home. When the officers knocked on the door—*without* announcing they were police—the suspect opened the door holding a gun. Only one and a half seconds passed between opening the door and the officers’ utilization of deadly force against him—without a warning beforehand—after he made a move that appeared to look like he was retreating to cover to prepare to shoot them. The court held that it was “reasonable for the officers to have believed their lives were in danger,” and was “unwilling to hold that the officers were unreasonable in not waiting to see if plaintiff would raise the gun in their direction.”⁹⁴

64. The case at bar includes far, far more threatening facts than either *Young* or *Howe*, as well as more reasonable conduct by the officers involved. Medel did not retreat backwards away from officers—he advanced quickly towards them holding a gun he had just chambered a round into. Medel did not answer the door with a gun down by his side—he chambered a round, put it in the high-ready position, and then began to lower the gun toward where the officers stood as if to shoot them through it. Perhaps most crucially—unlike in *Young* and *Howe*—the APD officers here loudly knocked and announced, “**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**” loud enough for Medel to clearly hear—or at least loud enough that a reasonable officer could believe Medel heard. Medel’s collective threatening response to the arrival of police far outstripped anything in *Young* or *Howe*, and Officer Walker Prado is therefore even more deserving of the same protections of qualified immunity.

65. In the 2025 *Padilla* decision, officers were likewise dispatched to a possible domestic violence situation, an officer knocked and announced “Farmington Police” multiple times, and they were soon greeted with “the sound of a firearm being racked ... indicating someone within

⁹⁴ *Howe v. City of Enter.*, No. 1:15CV113-JA-SRW, 2018 WL 8545947, at *24 (M.D. Ala. Sept. 17, 2018), *report and recommendation adopted sub nom. Howe v. City of Enter., Al.*, No. 1:15CV113-ECM, 2019 WL 8723922 (M.D. Ala. Mar. 12, 2019).

the house was feeding a round of ammunition into the firing chamber of the gun.”⁹⁵ An armed man emerged and “placed both hands on his firearm and raised it in the direction” of the officers. “Just two seconds elapsed from the moment [the man] opened his front door to the time the Defendant officers shot him.”⁹⁶ The officers did not issue a warning that they would utilize deadly force, but the Court found no issue with the lack of a warning because “officers [are] not required to ‘await the ‘glint of steel’ before taking self-protective action.”⁹⁷ The court also noted that “[n]o citizen can fairly expect to draw a gun on police without risking tragic consequences, [a]nd no court can expect any human being to remain passive in the face of an active threat on his or her life.”⁹⁸ It was similarly not feasible for Officer Walker Prado to issue a warning considering the rapid development of a gun being loaded, chambered, and lowered toward the direction of officers. A warning by him—and the inherent hesitation in firing it would require—may have resulted in those officers’ deaths. We cannot ask an officer to live with the ensuing guilt of failing to prevent another’s death when faced with a threat as imminent and deadly as it was here.

e. It is entirely irrelevant whether Medel subjectively believed the men at his door were or were not police officers.

66. The *Padilla* court described perfectly why it is wholly irrelevant whether Medel subjectively believed the men at his door were legitimate police officers:

Plaintiffs contend that Dotson likely did not know that it was law enforcement officers at his door. Perhaps that is true, perhaps not. Either way, Dotson's understanding of the events is not material for purposes of the qualified immunity analysis. The relevant inquiry is not “the arrestee's subjective perception of the intrusion, but [] whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them.” The “focus is on how a reasonable officer on the scene would have assessed the manifest indicators of [the suspect's] intentions—that is, [the suspect's] actions.” Given the specific facts presented, the

⁹⁵ *Padilla*, 2025 WL 1414287, at *2.

⁹⁶ *Id.* at *5.

⁹⁷ *Id.* (citing *Est. of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008)).

⁹⁸ *Id.* (citing *Est. of Valverde ex rel. Padilla v. Dodge*, 967 F.3d 1049, 1064 (10th Cir. 2020)).

Court concludes the Defendant officers could reasonably believe that Dotson had hostile intentions.⁹⁹

67. Medel had been screaming and making noise in the middle of the night in an apartment complex, and should have expected that police officers would likely show up soon for a noise complaint or otherwise. There was a clear and loud announcement of “**AUSTIN POLICE DEPARTMENT, OPEN THE DOOR!**” The man’s conduct reflected that he heard the announcement and reacted to it with speed and firepower. Just as in *Padilla*, “[g]iven the specific facts presented...the Defendant officer[] could reasonably believe [Medel] had hostile intentions” toward the newly arrived police.

f. Second Prong: Officer Walker Prado did not violate clearly established law.

68. The second prong of the qualified immunity question, “whether the officer violated clearly established law—is a doozy.”¹⁰⁰ The 42 U.S.C. § 1983 plaintiff bears the burden of proof, “[a]nd that burden is heavy: A right is clearly established only if relevant precedent has placed the constitutional questions beyond debate.”¹⁰¹ In *Morrow*, the Fifth Circuit exhaustively laid out the “four applicable commandments” that a plaintiff must satisfy to establish that the constitutional question is beyond debate.¹⁰²

69. **First**, the relevant constitutional question must be framed with specificity and granularity.¹⁰³ The Supreme Court has “repeatedly told courts not to define clearly established law at [that] high level of generality.”¹⁰⁴ “Rather, the dispositive question is whether the violative

⁹⁹ *Padilla*, 2025 WL 1414287, at *5 (cleaned up).

¹⁰⁰ *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019).

¹⁰¹ *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)).

nature of *particular* conduct is clearly established.”¹⁰⁵ **Second**, clearly established law comes only from holdings, not dicta.¹⁰⁶ This is because “officers are not charged with memorizing every jot and tittle [the courts] write to explain [their orders].”¹⁰⁷

70. **Third**, “overcoming qualified immunity is especially difficult in excessive-force cases.”¹⁰⁸ This is because this is an area of the law in which “the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue.”¹⁰⁹ That means that the law must be “so clearly established that—in the blink of an eye, in the middle of a high-speed chase—every reasonable officer would know it immediately.”¹¹⁰ **Finally**, the last commandment is that courts “must think twice before denying qualified immunity.” “Because of the importance of qualified immunity to society as a whole, the Supreme Court often corrects lower courts when they wrongly subject officers to liability.”¹¹¹

71. Here, Medel cannot meet his burden to provide case law that placed it “beyond debate” that it was clearly established law that Officer Walker Prado’s force violated his clearly established rights when he made his split-second decision to use deadly force under the facts presented. There simply is no case where the Fifth Circuit would dare to suggest that persons have the right to point guns at police officers without consequence.¹¹² Officer Walker Prado is accordingly entitled to qualified immunity under the second prong of the test.

¹⁰⁵ *Id.* (citing *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)).

¹⁰⁶ *Sorenson v. Ferrie*, 134 F.3d 325, 329 n.7 (5th Cir. 1998).

¹⁰⁷ *Morrow*, 917 F.3d at 874.

¹⁰⁸ *Id.* at 876.

¹⁰⁹ *Id.* (citing *Kisela v. Hughes*, 584 U.S. 100, 104 (2018)).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *See e.g. Hodge v. Engleman*, 636 F. Supp. 3d 727, 737 (N.D. Tex. 2022), *aff’d*, 90 F.4th 840 (5th Cir. 2024) (noting that the Plaintiff failed to find “any case where the Fifth Circuit has found

IV. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant **Gabriel Walker Prado** respectfully request that this Court grant summary judgment on the grounds that he is entitled to qualified immunity on all of Plaintiff Medel's claims, and for all other relief to which he may be justly entitled in law or equity.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
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a violation of a clearly established right where officers used deadly force against an armed suspect who pointed a weapon at one or more officers.”).

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2024, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake
Blair J. Leake

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

Defendants

§ § § § § § § § § §

CAUSE OF ACTION NO.
1:24-cv-00990

**UNOPPOSED MOTION TO EXTEND TIME TO RESPOND TO DEFENDANT
PRADO'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Avelino Medel, II respectfully files this unopposed motion to extend the deadline for his responses to the Defendant Gabriel Walker Prado's pending motion for summary judgment until June 25, 2025.

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

On May 28, 2025, Defendants separately moved for summary judgment in this police shooting case. Doc. 25; Doc. 27-1. Defendant Prado subsequently made minor amendments to his motion on June 4, 2025. Doc. 33-1.

Under the current Scheduling Order and Local Rules, Plaintiff's response to Prado's motion is due June 18, 2025. W.D. TEX. L.R. CV-7(b), (e).

Plaintiff will need additional time to prepare his response to Prado's motion for three reasons.

First, Prado's eleven-page fact section raises a number of factual assertions that are not limited to the video evidence, so assembling the record and specifically citing it will take additional time. Plaintiff is further evaluating whether he needs to object to some of the evidence attached to Prado's motion, and briefing any of those objections will take additional time.

Second, Prado's motion engages in a lengthy legal analysis which will take time and legal research to address.

Finally, Plaintiff's counsel has had and will have limited time to work on Plaintiff's response. Counsel has been occupied with conducting discovery in this case—including a June 5, 2025 deposition which may be used in Plaintiff's response to Prado's motion—as well as handling unrelated matters such as an oral argument in the matter of *Morris v. United States*, No. 24-40576 (5th Cir.) which took place on June 4. In the coming weeks, counsel will be occupied with depositions in the matter of *Gonzales v. Stephen*, No. D-1-GN-23-008043 (353rd Judicial District Court of Travis County, Texas) scheduled for June 10 and June 11; depositions in the matter of *Alvarez v. Fitts*, No. D-1-GN-24-003440 (98th Judicial District Court of Travis County, Texas) on June 12; depositions in the matter of *Tijerina v. Rodriguez*, No. 1:24-cv-01183 (W.D. Tex.) on June 16 and June 17; and depositions in the matter of *Gomez v. Smith*, No. D-1-GN-24-005067 (250th Judicial District of Travis County, Texas) on June 16 and June 18.

Plaintiff intends to separate move to extend his time to respond to the City's motion.

Accordingly, Plaintiff respectfully requests an extension of time to respond to Prado's motion until June 25, 2025.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for all parties have conferred and Defendants are unopposed to the relief sought in this motion.

/s/ David James
David James

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II.

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

Defendants

§ § § § § § § § § §

CAUSE OF ACTION NO.
1:24-cv-00990

**UNOPPOSED MOTION TO EXTEND TIME TO RESPOND TO DEFENDANT CITY
OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Avelino Medel, II respectfully files this unopposed motion to extend the deadline for his responses to the Defendant City of Austin's pending motion for summary judgment until August 5, 2025.

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

On May 28, 2025, Defendants separately moved for summary judgment in this police shooting case. Doc. 25; Doc. 27-1. Defendant Prado subsequently made minor amendments to his motion on June 4, 2025. Doc. 33-1.

Under the current Scheduling Order and Local Rules, Plaintiff's response to the City's motion is due June 11, 2025. W.D. TEX. L.R. CV-7(e).

Plaintiff will need additional time to prepare his response to City's motion for three reasons.

First, discovery is ongoing against the City of Austin. Plaintiff began the City's deposition on June 5, 2025 by agreement, but the City's deposition on other agreed Rule 30(b)(6) topics remains open. The City has stated that the deposition will need to be completed in July due to the witnesses' availability and other obligations of the City's counsel, such as the trial in the matter of *Gonzales v. City of Austin*, No. 1:22-cv-655 (W.D. Tex.), set for trial beginning June 23, 2025. The City's deposition is currently set to resume on July 10, 2025, but the parties do not know if they will be able to complete all 3–4 representatives on that day.

Second, the delay in responding to the City should be short enough not to affect the total length of the schedule in this case due to its relationship with Prado's separate motion. The City's motion attempts to incorporate Prado's motion by reference, and Plaintiff has sought a much shorter extension as to Prado's motion. Doc. 25, p. 9. Thus, the Court will likely need to review Prado's motion first regardless of when the parties complete their briefing.

Third, Plaintiff's allegations in this case deal with the City of Austin's specific training deficiencies under the single-incident exception, but also widespread patterns, practices, and customs of the entire police department. Submitting and specifically citing evidence of those facts, as well as discussing the application of relevant precedents to those facts, will take significant time to fully brief.

Finally, Plaintiff's counsel has had and will have limited time to work on Plaintiff's response. Counsel has been occupied with conducting discovery in this case—including a June 5, 2025 deposition which may be used in Plaintiff's response to Prado's motion—as well as handling unrelated matters such as an oral argument in the matter of *Morris v. United States*, No. 24-40576 (5th Cir.) which took place on June 4. In the coming weeks, counsel will be occupied with depositions scheduled for June 11 and August 11 in the matter of *Gonzales v. Stephen*, No. D-1-

GN-23-008043 before the 353rd Judicial District Court of Travis County, Texas; depositions on June 12 in the matter of *Alvarez v. Fitts*, No. D-1-GN-24-003440 before the 98th Judicial District Court of Travis County, Texas; depositions on June 16 and June 17 in the matter of *Tijerina v. Rodriguez*, No. 1:24-cv-01183 before the Western District Court of Texas; depositions on June 16 and June 18 in the matter of *Gomez v. Smith*, No. D-1-GN-24-005067 before the 250th Judicial District of Travis County, Texas; a hearing on June 25 in the matter of *A.W.E. v. D.M.F.N*, No. 05-25-00076-CV before the Texas Court of Appeals of Dallas; a hearing on June 26 and a deposition on July 16 in the matter of *Benthall v. Flitcroft*, No. 24-0894 before the 274th Judicial District of Hays County; a summary judgment response which will be due on June 30, which is expected to be extended to late July, as well as depositions scheduled for June 30 and July 23 in the matter of *Wright v. Garcia*, No. 1:23-cv-864 in the Western District of Texas; a deposition on July 22 in the matter of *Scott v. Sun Behavioral Houston*, No. 202430896 before the 333rd Judicial District of Harris County, Texas; and an August 17 deadline to submit any petition for certiorari in the matter of *Estevis v. Cantu*, No. 24-40277 in the Fifth Circuit Court of Appeals.

Accordingly, Plaintiff respectfully requests an extension of time to respond to the City of Austin's motion until August 5, 2025.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for all parties have conferred and Defendants are unopposed to the relief sought in this motion.

/s/ David James
David James

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

Defendants

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S UNOPPOSED MOTION TO EXCEED PAGE LIMITS FOR  
PLAINTIFF’S RESPONSE TO DEFENDANT WALKER PRADO’S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff respectfully requests leave to exceed the default page limit and file up to forty pages in his response to Defendant Walker Prado's Motion for Summary Judgment, Doc. 34. Defendant is unopposed to the relief requested herein.

## I. FACTS AND PROCEDURAL BACKGROUND

On August 26, 2024, Plaintiff filed this 42 U.S.C. § 1983 case against the City of Austin and Austin Police Department officer Gabriel Walker Prado. Doc. 1.

On May 28, 2025, Defendant Walker Prado moved for summary judgment. Doc. 29. On June 5, 2025, Defendant Walker Prado filed his first amended motion for summary judgment. Doc. 34.

In a text only order on May 29, 2025 granting Defendant Walker Prado's motion to exceed page limit, Doc. 27, the Court directed counsel to file motions to exceed page limits in advance.

On June 11, 2025, the Court extended the time for Plaintiff to respond to Defendant Walker

Prado's motion for summary judgment to June 25, 2025. *See* June 11, 2025 Text Order.

## **II. ARGUMENT**

Plaintiff respectfully requests leave of Court to file his response not in excess of forty pages, exclusive of the required caption, signatures, and certificates, to Defendant Walker Prado's first amended motion for summary judgment, Doc. 34. Under the Western District Local Rules, a response to a non-case management motion is limited to twenty pages, exclusive of the caption, signature block, certificates, and accompanying documents. W.D. LOCAL RULE CV-7(d)(3). Although the Local Rules require the document for which leave is sought to be attached, Plaintiff's counsel is not able to finalize the response ahead of time in order to accompany this motion as directed in the Court's text-only May 29, 2025 order.

Plaintiff respectfully submits that the additional pages are necessary to lay out with specific citations to the evidence that each of Defendant Walker Prado's shots were excessive. Evaluating Defendant's qualified immunity defense at the summary judgment stage is a fact-intensive inquiry. Further, Plaintiff needs additional pages to respond to Defendant's numerous assertions concerning the facts of the case, set out the case law showing that Plaintiff's right to be free from excessive force was clearly established, distinguish the nine cases relied upon by Defendant, and set out the cases showing Defendant's use of excessive force violated clearly established law.

This motion is made for the reasons stated and not for the purpose of delay. No party will be prejudiced by this relief as Defendant Walker Prado will have an opportunity to respond.

Plaintiff has conferred with counsel for Defendant and they indicated they are unopposed to Plaintiff's motion for leave to file excess pages.

### III. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff leave to file his response to Defendant Perez's motion for summary judgment up to forty pages (plus the caption, signatures, and required certificates) and deem the response filed at the time leave was sought.

Dated: June 24, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF'S MOTION TO STRIKE**  
**DEFENDANT WALKER PRADO'S EXHIBITS 6, 9, 10, 11, 13, and 16**

Plaintiff Avelino Medel, II respectfully requests that the Court strike and exclude all toxicology information from Defendant Gabriel Walker Prado's motion for summary judgment and Exhibits 6, 9, 10, 11, 13, and 16 as irrelevant and unduly prejudicial. Further, Exhibits 9 and 11 should be also stricken as unsworn hearsay and insufficient under *Daubert*.

**I. SUMMARY OF THE ARGUMENT**

The Court should strike and decline to consider these exhibits (or the parts indicated below) for the purposes of the pending motion:

- (1) Doc. 28-2, Exhibit 6 (page 10, response to Interrogatory 11 only) – Plaintiff's Responses to Interrogatories
- (2) Doc. 27-11, Exhibit 9 – (Purportedly) Case Closure Memo from the Travis County District Attorney's Office.
- (3) Doc. 28-3, Exhibit 10 – Medel's "Toxicology Medical Records."
- (4) Doc. 28-4, Exhibit 11 – Expert Report of Albert Rodriguez.
- (5) Doc 27-15, Exhibit 13 (page 33 of 35, three bullet points under "Medical records show" only) – APD SIU Presentation.
- (6) Doc. 27-18, Exhibit 16 (sentence on toxicology only) – APD Investigative Summary.

These exhibits or the specified portions of them are inadmissible for four reasons.

First, before he shot Medel, Defendant Walker Prado had no knowledge about Medel's consumption of or intoxication from drugs or alcohol, so he could not have considered any information about those subjects in his decision to repeatedly shoot Medel without warning—much less these exhibits, which were all created long after the shooting. Accordingly, the argument in Defendant's motion and the portions of these exhibits going to toxicology or intoxication are unduly prejudicial, irrelevant to any issues in the motion for summary judgment, and therefore inadmissible for any purpose relating to the summary judgment motion.

Second, Exhibits 9 and 11 are unsworn and unauthenticated, so each is inadmissible for that independent reason.

Third, Exhibit 9 is also inadmissible hearsay within hearsay not falling within any exception to the rule against hearsay. To the extent Defendant intends this memo to be offered as an expert opinion of some person or entity under Rule 702 (although it is unclear who even wrote the document), it is not properly designated, irrelevant, unhelpful, and unreliable.

Finally, large sections of Exhibit 11 are independently inadmissible under *Daubert*, as Rodriguez delves into improper legal opinions, unreliable opinions regarding the influence of drugs and alcohol, and unhelpful opinions on credibility and mental states.

Accordingly, the Court should strike the exhibits listed above and not consider them or any information about drugs and alcohol in Walker Prado's motion. The Court should also exclude from trial the case closure memo and the parts of Rodriguez's report that deviate from *Daubert*.

## **II. FACTUAL BACKGROUND**

This is a § 1983 police shooting case. Doc. 1.

On April 6, 2024 just after 2:00 am, Defendant Officer Gabriel Walker Prado and three

other APD officers responded to a reported disturbance inside Plaintiff Avelino Medel, II's apartment unit.<sup>1</sup> Walker Prado found the right location first, briefly watched Medel and his father through a window into the unit, and told his later-arriving colleagues he could see the source of the disturbance inside the window; two males were "just yelling."<sup>2</sup> Walker Prado remained hiding by the window as another officer knocked on the solid front door, when Walker Prado saw Medel retrieve a handgun and walk toward the front door to check the peephole.<sup>3</sup> Medel is seen on camera holding his handgun up, pointed at the ceiling.<sup>4</sup> Despite this, Walker Prado immediately decided to open fire,<sup>5</sup> pausing only briefly to unholster and aim his weapon as he shouted "He's got a gun! Gun, gun, gun, gun, gun" before he fired three times through the window.<sup>6</sup> Medel collapsed to the floor, then, about two to three seconds later, Walker Prado fired a fourth and final time.<sup>7</sup> Medel was hit in the leg and, after he fell, in the back of his shoulder.<sup>8</sup>

Although Walker Prado gave a detailed statement to APD's Internal Affairs division, he never said he suspected Medel to be intoxicated or mentioned it when specifically asked what he knew.<sup>9</sup>

Defendant Walker Prado moves for summary judgment on Medel's claims, attaching

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<sup>1</sup> Doc. 27-7, Walker Prado Deposition, 37:16–18.

<sup>2</sup> Doc. 27-1, Walker Prado BWC at 02:08:02–15.

<sup>3</sup> Doc. 27-1, Walker Prado BWC at 02:09:00–2; Doc. 27-3, Reinhart BWC at 02:08:59–9:02; Doc. 28-2, Medel Interrogatory Response, p. 11.

<sup>4</sup> Doc. 27-1, Walker Prado BWC at 02:09:03–5.

<sup>5</sup> *See* Doc. 27-1, Walker Prado BWC at 02:12:55–13:01 (Medel: "...why did you shoot me?" Walker Prado: "We announced police and you came to the door with the gun."); *id.* at 02:16:26–28 (Walker Prado refers to the gun: "it was here, he grabbed it and came to the door with it. That's why I shot him.").

<sup>6</sup> Doc. 27-1, Walker Prado BWC at 02:09:03–5.

<sup>7</sup> Doc. 27-1, Walker Prado BWC at 02:09:07.

<sup>8</sup> Doc. 28-2, Medel Interrogatory Response, p. 11.

<sup>9</sup> *See generally* Doc. 27-6, Walker Prado IA Statement; *see also id.* at p. 12 (in response to a question about what information Walker Prado had going into the situation, he responded only that it was a physical disturbance between two males and did not mention intoxication).



certain exhibits. *See* Doc. 27 (public exhibits); Doc. 28 (sealed exhibits); Doc. 34 (live motion)

### III. LEGAL STANDARD

While summary judgment evidence does not need to be “in a form that would be admissible at trial in order to avoid summary judgment,” such that affidavits and depositions are acceptable, those submissions must still generally adhere to other evidentiary rules to show that they are capable of being offered in admissible form—they must, for example, be relevant, authentic, and not inadmissible hearsay. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *see, e.g., Balboa Capital Corp. v. Okoji Home Visits MHT, L.L.C.*, 111 F.4th 536, 548 (5th Cir. 2024) (affirming exclusion of documents offered for summary judgment that were not properly authenticated and documents that were inadmissible hearsay).

“Rule 702 assigns to the district judge a gatekeeping role to ensure that scientific testimony is both reliable and relevant.” *Johnson v. Arkema, Inc.*, 685 F.3d 452, 459 (5th Cir. 2012). The proponent of expert testimony must show that the expert will “assist the trier of fact to understand the evidence or to determine a fact in issue.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993); *see Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998).

### IV. ARGUMENT

The Court should strike and exclude the toxicology information from Defendant Gabriel Walker Prado’s motion, and particularly Exhibits 6, 9, 10, 11, 13, and 16, as well as strike and exclude in their entirety Exhibits 9 and 11, for the following four reasons.

#### **A. Toxicology and intoxication allegations are not relevant to Walker Prado’s qualified immunity defense and are unfairly prejudicial.**

The Court should disregard all of Walker Prado’s allegations about toxicology and intoxication, including the portions of Exhibits 6, 9, 10, 11, 13, and 16 on those topics, because Walker Prado had no idea about drugs Medel had ingested or Medel’s level of intoxication, much

less the results of blood tests, when he decided to shoot him, so his discussion and exhibits on those topics are inadmissible.

“Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant.” *Hernandez v. Mesa*, 137 S. Ct. 2003, 2007, 198 L. Ed. 2d 625 (2017); *see also Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc); Ex. 4, *Cuellar v. Hernandez*, No. 5:17-cv-76, Doc. 34 (S.D. Tex. Feb. 8, 2019) (granting motion to strike similar evidence that officer was unaware of in police deadly force case); Ex. 5, *Roque v. Harvel*, No. 1:17-cv-932-LY, Doc. 127, p. 5 (W.D. Tex. Oct. 16, 2019) (same).

There is no evidence that Walker Prado knew Medel’s degree of intoxication, and he certainly could not have known Medel’s blood toxicology test results. Walker Prado tellingly did not mention any such allegation when prompted in a friendly interview with APD’s Internal Affairs.<sup>10</sup> Accordingly, all argument in Walker Prado’s motion and the portions of Exhibit 6, 9, 10, 11, 13, and 16 concerning those topics should be stricken and disregarded as irrelevant.

Further, because they contain no probative value, the unfair prejudice from these exhibits which are used to attack Medel’s character is an independent reason to exclude the information about his toxicology results from all six exhibits. FED. R. EVID. 403.

**B. Exhibits 9 and 11 are not authenticated or sworn.**

Summary judgment evidence can include declarations, affidavits, and depositions, but otherwise the normal limits on hearsay evidence apply. *See, e.g., Balboa Capital Corp.*, 111 F.4th at 548. Walker Prado makes no attempt to establish a hearsay exception or authenticate Exhibits 9

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<sup>10</sup> *See generally* Doc. 27-6, Walker Prado IA Statement; *see also id.* at p. 12 (in response to a question about what information Walker Prado had going into the situation, he responded only that it was a physical disturbance between two males and did not mention intoxication).

and 11, the Case Closure Memo and Rodriguez’s expert report, so they should be stricken in their entirety for that independent reason.

**C. Exhibit 9, the Case Closure Memo, is hearsay within hearsay and cannot be cured.**

In addition to Exhibit 9 lacking any foundation whatsoever, its underlying content is obviously hearsay. The memo mentions an unnamed “panel” which has apparently come to a conclusion, and states it was “reviewed” by “Adam Alvarez” and “Dexter Gilliford”—ostensibly Travis County employees—but does not identify anyone who could have provided the actual facts in the memo. Doc. 27-11, p. COA 1536. There is no indication that the unnamed panel, Alvarez, or Gilliford were at the scene of this shooting, or that they have any personal knowledge about what Walker Prado and Medel did. Thus, even if the document could be authenticated, the underlying assertions appear on their face to be inadmissible hearsay. FED. R. EVID. 802.

To the extent Defendant intends to suggest to this Court that the District Attorney’s office bought his alibi and therefore he is entitled to summary judgment, that is obviously not the law. Defendant Walker Prado’s blatant argument that because a prosecutor agreed with the police, that the police are likely right is simply improper bolstering that is irrelevant—since of course a prosecutor’s charging decisions under Texas state law do not implicate, much less decide, federal constitutional rights—and calculated to unfairly prejudice Plaintiff. FED. R. EVID. 401 & 403.

To the extent this is intended to be an expert opinion, Defendant has missed the deadline to properly designate the Travis County District Attorney’s Office or anyone whose words appear on Exhibit 9 as an expert. Nor could he, since the document does not reveal what facts its author(s) relied upon, what reasoning they employed, or their qualifications, so the memo falls hopelessly short of the requirements of Rule 702. And the only apparent “opinion” of the memo, other than to seemingly accept Walker Prado’s slanted version of the facts at face value, is that the

prosecution of Walker Prado should not proceed “in the interests of justice.” Doc. 27-11. Although this legal term of art has significance to a county prosecutor’s office in Texas, it has no bearing in this civil case, is utterly unhelpful, and is an inadmissible legal conclusion. *Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir. 1997) (“There being only one applicable legal rule for each dispute or issue, it requires only one spokesman of the law, who of course is the judge.”). Thus, the exhibit is also inadmissible under Rule 702 and should be excluded.

Accordingly, Exhibit 9 is inadmissible in its entirety and should be stricken.

**D. Exhibit 11, Rodriguez’s report, violates Rule 702 as to legal conclusions, intoxication, credibility, and state of mind opinions.**

Much of Albert Rodriguez’s report, like many of his reports in similar cases, is inadmissible on its face and falls short of Rule 702’s requirements.

***1. The Court should exclude Rodriguez’s legal conclusions.***

Rodriguez’s report expressly opines on what the law is, what the law requires of officers, and whether Medel and Walker Prado violated the law. These opinions should be excluded as unhelpful because the Court, not expert witnesses, will explain the law to the jury.

Expert witnesses are not permitted to testify to bare legal conclusions. *United States v. Thomas*, 847 F.3d 193, 206 (5th Cir. 2017);<sup>11</sup> *Askanase*, 130 F.3d at 673. In other cases, courts have found Rodriguez offered inadmissible legal conclusions. *See Estevis v. City of Laredo*, No. 5:22-CV-22, 2023 WL 9312081, at \*6 (S.D. Tex. Dec. 28, 2023); Ex. 2, *Hathaway v. San Antonio*, No. 5:05-cv-175, Doc. 38, pp. 1–2 (W.D. Tex. Sep. 23, 2005); Ex. 3, *Ibarra v. Harris County*, No.

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<sup>11</sup> *See also Goodman v. Harris Cnty.*, 571 F.3d 388, 399 (5th Cir. 2009); *United States v. Izydore*, 167 F.3d 213, 218 (5th Cir. 1999); *Owen v. Kerr-McGee Corp.*, 698 F.2d 236, 240 (5th Cir. 1983); *Carr v. Montgomery County, Tex.*, No. CIV.A. H-13-2795, 2015 WL 5838862, \*8 (S.D. Tex. Oct. 7, 2015) (quoting with approval that “[e]ach courtroom comes equipped with a ‘legal expert,’ called a judge, and it is his or her province alone to instruct the jury on the relevant legal standards.”).

4:04-cv-186, Doc. 245-1, pp. 15–16 (S.D. Tex. Mar. 2, 2005); *see also Freeman v. Gore*, No. 6:04CV526-MHS, 2008 WL 11447967, at \*3–5 (E.D. Tex. June 12, 2008) (noting that Rodriguez testified to inadmissible legal conclusions at trial, precipitating a curative instruction to the jury). Rodriguez’s report in this case includes three related types of inadmissible legal conclusions.

First, Rodriguez impermissibly interprets caselaw on the Fourth Amendment and applies his interpretations to the facts. While “reasonableness” is a concept ingrained in police training and practices which Plaintiff contends is appropriately the subject of expert testimony, Rodriguez should not be permitted to expound on or even reference any caselaw, regardless of whether decisional law informs Rodriguez’s training, as that will be confusing to the jury and invade the province of the judge’s role at trial. *See, e.g., Estevis*, No. 5:22-CV-22, 2023 WL 9312081, at \*6 (“Rodriguez may not testify about specific case law or statutes”).<sup>12</sup> The Court should prohibit Rodriguez from testifying to the following:

- Extensive references to *Graham v. Connor*, 490 U.S. 386 (1989), as well as Rodriguez’s interpretation of the decision and application of the legal decision to the facts in this case.<sup>13</sup>
- “When analyzing Officer Walker Prado’s actions pursuant to law enforcement training on the United States Supreme Court decisions in *Graham v Connor*, the necessity and appropriateness of his actions is confirmed.”<sup>14</sup>
- Repeated references to *Ontiveros v. City of Rosenberg*, 564 F.3d 379 (5th Cir. 2009), including a lengthy quote from and discussion of the decision.<sup>15</sup>

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<sup>12</sup> *See also United States v. Williams*, 343 F.3d 423, 435 (5th Cir. 2003) (“Reasonableness under the Fourth Amendment or Due Process Clause is a legal conclusion.”); *Tex. Peace Officers v. City of Dallas*, 58 F.3d 635 (5th Cir. 1995) (affirming exclusion of police behavior expert’s opinion on whether police violated the Constitution).

<sup>13</sup> Doc. 28-4, Rodriguez Report, pp. 4, 15–16, 22, 36–37, 45–46, 48, ¶¶ 51, 52, 74(B), 75, 104, 122, 124, 130.

<sup>14</sup> Doc. 28-4, Rodriguez Report, p. 48, ¶ 130.

<sup>15</sup> Doc. 28-4, Rodriguez Report, pp. 4, 20, 37–38, ¶¶ 9, 68, 105.

- Quotes from, discussion of, and interpretation of the decision *Plumhoff v. Rickard*, 572 U.S. 764 (2015).<sup>16</sup>
- Reference to and application to the facts of the decision *Tennessee v. Garner*, 471 U.S. 1 (1985).<sup>17</sup>

Second, relatedly, Rodriguez applies other legal concepts that are not related to the Fourth Amendment question in this case, so they are not only impermissible legal conclusions, but also unhelpful, unreliable, and confusing due to their irrelevance. The Court should bar the following from Rodriguez's report:

- Repeated references to, quotes from, and discussion of the application of the Texas Penal Code to this case.<sup>18</sup>
- References to, quotes from, and discussion of the application of the Texas Code of Criminal Procedure to this case.<sup>19</sup>
- Assertions that "Officer Walker Prado was performing legitimate discretionary law enforcement functions in connection with Medel's life-threatening actions."<sup>20</sup>
- "Officer Walker Prado's response to the reported physical disturbance was within the course and scope of his law enforcement authority"<sup>21</sup>
- "Officer Walker Prado's actions were performed within the scope of his law enforcement authority and responsibility. Responding to potentially violent calls, protecting human life, and attempting to stop a deadly threat, are, without question, within the course and scope of a law enforcement officer's duties and responsibilities."<sup>22</sup>

These impermissible legal conclusions are also unreliable because they conflate unrelated legal concepts. Experts are not permitted to opine on statutes. *See, e.g., Tsao v. Ferring Pharm., Inc.*, No. 4:16-CV-01724, 2018 WL 3649714, at \*13 (S.D. Tex. Apr. 19, 2018) (excluding as unreliable

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<sup>16</sup> Doc. 28-4, Rodriguez Report, pp. 4, 43–44, ¶¶ 9, 118, 119.

<sup>17</sup> Doc. 28-4, Rodriguez Report, pp. 4, 39–40, ¶¶ 9, 109.

<sup>18</sup> Doc. 28-4, Rodriguez Report, p. 4, 22, 24, ¶¶ 9, 74(A), 75, 80.

<sup>19</sup> Doc. 28-4, Rodriguez Report, p. 4, 21–22, ¶¶ 9, 73.

<sup>20</sup> Doc. 28-4, Rodriguez Report, p. 24, ¶ 79.

<sup>21</sup> Doc. 28-4, Rodriguez Report, p. 21, ¶ 73.

<sup>22</sup> Doc. 28-4, Rodriguez Report, p. 23, ¶ 76.

and as legal conclusion expert opinions about whether the Food Drug and Cosmetic Act, or FDA regulations, were violated).<sup>23</sup> And Rodriguez’s discussion of these statutes, interlaced with the use of force analysis, is also unreliable and confusing. The Texas Code of Criminal Procedure is a general authorizing statute for peace officers, but has little bearing on this case. The Texas Penal Code provides defenses to criminal liability in Texas state courts, but does not determine whether or not a use of force violates the United States Constitution. Discretionary law enforcement function may be a defense to liability under the Texas Tort Claims Act and a prerequisite to qualified immunity, but is, again, unrelated to any fact question for the jury in this case. Thus, Rodriguez is not just offering unhelpful legal conclusions—he is also unreliably applying those inadmissible legal concepts.

Finally, Rodriguez also discusses what he contends are legal rights as well as crimes that, he alleges, Walker Prado suspected Plaintiff Medel was about to commit. The Court should exclude each of the following:

- “Officer Walker Prado believed Medel was going to assault the older man”<sup>24</sup>
- Walker Prado “signaled the officers so they could announce police presence to prevent the assault on the older man”<sup>25</sup>
- Walker Prado “believed Medel was in the process of committing aggravated assault with a deadly weapon”<sup>26</sup>

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<sup>23</sup> See also *Stewart v. Hankins*, No. 4:15-CV-586, 2016 WL 7971299, at \*3 (E.D. Tex. Oct. 26, 2016) (excluding as legal conclusion expert opinion that a driver violated the Texas Transportation Code); *Gil Ramirez Group, LLC v. Houston Indep. Sch. Dist.*, No. 4:10-CV-04872, 2016 WL 4775688, at \*2 (S.D. Tex. Sept. 13, 2016) (excluding as legal conclusions expert opinions that federal racketeering statutes were violated); *Tavernini v. Bank of Am., N.A.*, No. 4:12CV420, 2013 WL 12045198, at \*1 (E.D. Tex. June 18, 2013) (excluding as legal conclusions expert opinions on whether various statutes had been violated); *Soufimanesh v. U.S. Bank, N.A.*, No. 4:12-CV-295, 2013 WL 12140950, at \*2 (E.D. Tex. Apr. 3, 2013) (same); *Sapp v. MHI P'ship, Ltd.*, 199 F. Supp. 2d 578, 589 (N.D. Tex. 2002) (same).

<sup>24</sup> Doc. 28-4, Rodriguez report, p. 10, ¶ 39(6).

<sup>25</sup> Doc. 28-4, Rodriguez report, p. 10, ¶ 39(10).

<sup>26</sup> Doc. 28-4, Rodriguez report, p. 11, ¶ 40(2).

- “The materials and recording reviewed showed Officer Walker Prado was summoned to respond to a situation in which he believed an assault was imminent to Senior.”<sup>27</sup>
- “There is nothing that dictates a step-by-step protocol when attempting to stop an assault.”<sup>28</sup>
- “Officer Walker Prado believed the verbal altercation was escalating and Medel was going to assault Senior. Any reasonable law enforcement officer armed with the information Officer Walker Prado possessed at the time, and having observed Medel aggressively yelling and using profanity toward Senior, could have believed an assault was imminent and taken the same or similar actions, as did Officer Walker Prado. Officer Walker Prado’s actions were taken to avoid Senior being assaulted.”<sup>29</sup>
- “Officer Walker Prado asking Officers Lozano, Reinhart, and Daniel to announce their police presence was appropriate and necessary to avoid what Officer Walker Prado believed to be an imminent physical assault on Senior.”<sup>30</sup>
- “It is true that Texas citizens have the right to possess firearms within their residence. However, it is important to recognize that Officer Walker Prado did not know who the apartment belonged to, the back story of the aggression and argument taking place between Medel and Senior, whether an assault had already occurred against Senior, or who was permitted to be in the apartment. He was also unaware whether a criminal offense had occurred involving a firearm but did believe Medel was going to assault Senior.”<sup>31</sup>
- “Medel appeared to be escalating his aggression, and it was believed that an assault on Senior by Medel was imminent”<sup>32</sup>
- Rodriguez’s assertion that Medel violated the law by taking a medication.<sup>33</sup>
- Rodriguez’s repeated assertions about “the limit of legal intoxication” for alcohol (apparently referring to the limit to drive, even though nobody was driving in this scenario, and indeed the Medels were not in public).<sup>34</sup>

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<sup>27</sup> Doc. 28-4, Rodriguez report, p. 22, ¶ 76.

<sup>28</sup> Doc. 28-4, Rodriguez report, p. 23, ¶ 77.

<sup>29</sup> Doc. 28-4, Rodriguez report, pp. 28–29, ¶ 91.

<sup>30</sup> Doc. 28-4, Rodriguez report, p. 28, ¶ 92.

<sup>31</sup> Doc. 28-4, Rodriguez report, p. 36, ¶ 103.

<sup>32</sup> Doc. 28-4, Rodriguez report, p. 41, ¶ 112(10).

<sup>33</sup> Doc. 28-4, Rodriguez report, p. 25, ¶ 82.

<sup>34</sup> Doc. 28-4, Rodriguez report, pp. 24–25, ¶¶ 81–82.



Opinions about whether a statute has been violated are inadmissible legal conclusions as discussed above. *See supra* p. 9, n.23 and accompanying text. All of Rodriguez’s discussions of assault and other allegations about Medel violating or about to violate the law fall into this category. Similarly, Rodriguez’s discussion about what legal rights Medel had, or what crimes Walker Prado believes Medel was about to commit, are inadmissible both as legal conclusions and because this discussion of *Medel’s* rights is, at best, confusing. To the extent the jury will be asked to consider how Medel’s right to bear arms affects his Fourth Amendment right not to be shot for no good reason by the police, Rodriguez’s fumbled discussion—which incorrectly suggests Medel does not enjoy a Second Amendment right until after Medel proves (to an officer he is not even aware of) that he is in his own home and innocent of all crimes—is unreliable and not the proper vehicle to inform the jury of these legal issues.

Accordingly, just as a sister district court did in *Estevis*, this Court should bar Rodriguez from referring to, discussing, applying, or otherwise opining on any legal decisions, statutes, principles, rights, or obligations, as each of those subjects is an unhelpful legal conclusion.

***2. The Court should strike Rodriguez’s testimony about marijuana, prescription drugs, and alcohol.***

Rodriguez also seeks to offer inadmissible testimony regarding marijuana, alcohol, and prescription drug use, including asserting that Medel is “incredulous” and that he “felt some effects” of these substances. These impermissible opinions should be excluded.

Despite asserting that he does “not assign a subjective state of mind to any individual unless they have testified to that state of mind,”<sup>35</sup> Rodriguez unabashedly attacks Medel’s credibility, suggests that his memory is incorrect, and suggests that drugs and alcohol “definitely had a major

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<sup>35</sup> Doc. 28-4, Rodriguez Report, p. 17, ¶ 56.

effect” on Medel.<sup>36</sup> Even though all of the apartment occupants interviewed by SIU, including the 911 callers, did not hear the announcement of police, Rodriguez outrageously suggests that Medel specifically not hearing the announcement is further evidence of intoxication (or, conversely, perhaps Rodriguez is suggesting that Medel’s intoxication is evidence he *did* hear it, but then forgot or misunderstood it).<sup>37</sup> Rodriguez is not a doctor or medically trained,<sup>38</sup> but draws inferences from Medel’s medical testing records and repeats them multiple times throughout his report.<sup>39</sup> All of Rodriguez’s discussion of alcohol and drugs is inadmissible for five reasons.

First, as to Rodriguez’s assertion that Medel’s recollection or perception may have been affected, this is a naked credibility attack. The question of whether a witness has “a tendency to be reliable as a witness in distinguishing the truth from non-truth, realities from fantasies ... is beyond the competence of any witness.” *United States v. Wertis*, 505 F.2d 683, 685 (5th Cir. 1974).<sup>40</sup> Rodriguez has had his naked credibility opinions stricken before, and these opinions should be stricken for the same reason. *See Amin-Akbari v. City of Austin, Tex.*, 52 F. Supp. 3d 830, 846 (W.D. Tex. 2014). Further, Rodriguez has *no* qualifications germane to this assessment, as he has no medical training,<sup>41</sup> much less the ability to determine past symptoms based solely upon toxicological tests, so for this reason alone all of his testimony on this issue should be excluded. *See Carlson v. Bioremedi Therapeutic Sys., Inc.*, 822 F.3d 194, 200 (5th Cir. 2016) (“In the absence of expertise in an ancillary field, ... a non-physician is not qualified to give medical testimony.”). Rodriguez himself has previously had his opinions on “psychology issues” limited by at least two

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<sup>36</sup> Doc. 28-4, Rodriguez Report, p. 25, ¶ 82.

<sup>37</sup> Doc. 28-4, Rodriguez Report, pp. 25, 29, ¶¶ 81(3), 93.

<sup>38</sup> Ex. 1, Rodriguez Deposition from *Estevis*, at 79:20–80:3.

<sup>39</sup> Doc. 28-4, Rodriguez Report, pp. 12, 24–26, 29, 47, ¶¶ 41, 80–83, 85, 93, 127.

<sup>40</sup> *See also supra*, p. 16, n.**Error! Bookmark not defined.** and accompanying text.

<sup>41</sup> Ex. 1, Rodriguez Deposition from *Estevis*, at 79:20–80:3.

different courts. *See Perez v. City of Austin*, No. A-07-CA-044 AWA, 2008 WL 2557492, at \*3 (W.D. Tex. June 19, 2008); *Green v. City of Mission*, No. 7:18-CV-49, 2019 WL 3217033, at \*4 (S.D. Tex. July 17, 2019), *aff'd sub nom. Green v. Lara*, 811 Fed. Appx. 888 (5th Cir. 2020). But even if Rodriguez did have subject-matter expertise in these drugs, their effects, and determining those effects from the limited toxicological evidence here, even “psychiatric opinions as to a witness’ reliability in distinguishing truth from fantasy is inadmissible for impeachment purposes, for it invades the jury’s province to make credibility determinations.” *United States v. Jackson*, 576 F.2d 46, 49 (5th Cir. 1978); *see also Matthews v. Kroger Texas, LP*, No. 4:13-CV-090-Y, 2015 WL 11022774, at \*2 (N.D. Tex. Aug. 21, 2015). Thus, Rodriguez has no qualifications to speculate about what drugs or alcohol might do to a person’s memory or perception, much less the competence to opine that drugs or alcohol specifically did or could affect Medel’s credibility.

Second, Rodriguez’s opinions about the effects of drugs and alcohol are unsupported and thus unreliable, as he bases them almost entirely on medical tests of Medel’s blood system after the shooting.<sup>42</sup> *See, e.g., White v. Life Ins. Co. of N. Am.*, 892 F.3d 762, 769 (5th Cir. 2018) (noting that although pilot’s blood was positive for illegal drugs, those tests alone did not permit “an estimation of [his] level of impairment”); *Fontenot v. Rakin*, No. 1:14-CV-3154, 2017 WL 710955, at \*4 (W.D. La. Feb. 21, 2017) (excluding evidence of multiple illegal drugs because the tests did not themselves prove intoxication); *Somers v. State*, 368 S.W.3d 528, 531 (Tex. Crim. App. 2012) (noting that blood test results for the metabolites of cocaine cannot tell when a person ingested the substance); Ex. 6, *Gonzales v. City of Austin*, No. 1:22-cv-655-RP, Doc. 344, pp. 20–21 (W.D. Tex. May 14, 2025) (excluding expert’s opinion about the effect of methamphetamine use because positive blood test did not reliably show that the methamphetamine changed the subject’s

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<sup>42</sup> Doc. 28-4, Rodriguez Report, pp. 12, 24–25, ¶¶ 41, 80, 81(5).

behavior). As Rodriguez has no information about the typical effects of drugs and alcohol on Medel, or even the amounts of other drugs in Medel's system, the tests do not provide a reliable basis for Rodriguez's suggestion that Medel was so affected that his recollection or credibility was impaired.

Third, Rodriguez's opinions on drugs and alcohol are unhelpful because they are irrelevant to the Fourth Amendment reasonableness test, as discussed above. *See supra* pp. 4–5. Permitting the jury to consider this evidence that cannot be considered for the reasonableness analysis would be unfairly prejudicial to the Plaintiff.

Fourth, Rodriguez's opinions are not an appropriate vehicle to admit this otherwise inadmissible information. This testing information would generally be excluded from evidence at trial, as it is more prejudicial than probative. *See Fontenot v. Rakin*, No. 1:14-CV-3154, 2017 WL 710955 (W.D. La. Feb. 21, 2017) (granting motion in limine regarding toxicology testing that showed presence of illegal drugs); *Wilson v. Union Pac. R.R.*, 56 F.3d 1226, 1231 (10th Cir. 1995) (trial court properly excluded evidence of prior conviction for drug possession, because it was not highly relevant to the issue of veracity while likely to be highly prejudicial and arouse jury sentiment against a party); *see also, e.g., Travis*, No. CV 04-281-D-M3, 2005 WL 8155520, at \*4. As discussed above, an expert may not serve merely as a vehicle for otherwise inadmissible facts. *See Factory Mut. Ins. Co. v. Alon USA L.P.*, 705 F.3d 518, 524 (5th Cir. 2013) ("Courts ... must serve a gate-keeping function with respect to Rule 703 opinions to ensure 'the expert isn't being used as a vehicle for circumventing the rules of evidence.'"). In a different police shooting case, Rodriguez sought to opine that the victim was under the influence of cocaine based on a blood test. *Estevis*, No. 5:22-cv-22, 2023 WL 9312081, \*8. The United States District Court for the Southern District of Texas, then-Magistrate Judge Kazen, excluded Rodriguez's testimony on that

issue because any probative value was outweighed by the danger of unfair prejudice. *Id.* Rodriguez should be similarly barred here.

Finally, Rodriguez’s opinions on drugs and alcohol are not and cannot be stated to a reasonable degree of scientific certainty due to his aforementioned lack of qualifications. Where an expert merely selectively testifies about what is possible, such “testimony amounts to speculation and is of no assistance to the jury.” *Brown v. Parker-Hannifin Corp.*, 919 F.2d 308, 312 (5th Cir. 1990) (affirming exclusion of expert who testified about two possible causes of a piping failure without “determin[ing] which of the many possible causes of the failure was most probable”); *see also Tsao v. Ferring Pharm., Inc.*, No. 4:16-CV-01724, 2018 WL 1468265, at \*13 (S.D. Tex. Mar. 26, 2018) (excluding expert whose opinions were limited to what “may have” happened as “speculative” and “*ipse dixit*”). Expert testimony may not be “pure speculation.” *Guillory v. Domtar Indus. Inc.*, 95 F.3d 1320, 1331 (5th Cir. 1996). An expert’s “subjective belief or unsupported speculation” is not admissible. *Daubert*, 509 U.S. at 589–90. As Rodriguez’s bald speculation is not helpful to the jury, its unfairly prejudicial nature is all the more reason to exclude his opinions about alcohol and other drugs.

Accordingly, the Court should bar Rodriguez from testifying about drugs and alcohol.

### ***3. The Court should strike Rodriguez’s testimony about mental states.***

The Court should also prohibit Rodriguez from opining on Officer Walker Prado, Medel, Sr., and Medel’s mental states.

As discussed above, an expert is in no “better position than the jury to draw conclusions about a defendant’s state of mind.” *Sanchez v. Gomez*, No. 17-CV-133-PRM, 2020 WL 3316990, at \*11 (W.D. Tex. June 17, 2020) (quoting *Marlin v. Moody Nat’l Bank, N.A.*, 248 F. App’x 534, 541 (5th Cir. 2007)); *Latex Constr. Co. v. Nexus Gas Transmission, LLC*, No. 4:20-CV-01788,

2021 WL 3883626, at \*2 (S.D. Tex. July 8, 2021) (excluding expert based on same principle). The Fifth Circuit has disregarded expert's assertions about a party's knowledge, emphasizing that "expert testimony cannot create a question of fact as to what [the party] actually knew." *Gobert v. Caldwell*, 463 F.3d 339, 348 n.29 (5th Cir. 2006).<sup>43</sup> Rodriguez himself has had opinions stricken for doing nothing more than calling out supposed discrepancies of plaintiff's statements. *Amin-Akbari*, 52 F. Supp. 3d at 846–47. Rodriguez's opinions depart from these principles as discussed above concerning the effects of drugs and alcohol on Medel, but also as to Officer Walker Prado's alleged perceptions and beliefs, in these and similar passages throughout his report:

- Medel's description of taking a prescription drug is "incredulous [sic]."<sup>44</sup>
- "It is more appropriate to consider whether Medel comprehended and/or recalled the police presence announcement because of his intoxication."<sup>45</sup>
- "Officer Walker Prado believed the verbal altercation was escalating"<sup>46</sup>
- "Officer Walker Prado was summoned to respond to a situation in which he believed an assault was imminent to Senior"<sup>47</sup>
- "Officer Walker Prado's actions in attempting to stop Medel from using deadly force, while utilizing permissible force to stop the threat of serious bodily injury and death"<sup>48</sup>
- "Officer Walker Prado was responsible, as a law enforcement officer, to attempt to stop Medel's life-threatening actions. Officer Walker Prado was required to use his judgment and discretion in determining how to respond and ultimately stop Medel's life-threatening actions"<sup>49</sup>

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<sup>43</sup> See also *Vazquez v. Aguilera*, No. 5:19-CV-117, 2022 WL 2292888, at \*7 (S.D. Tex. Mar. 25, 2022) (excluding expert opinion about a party's intent); *Robinson v. Ethicon, Inc.*, No. CV H-20-3760, 2021 WL 5762720, at \*5 (S.D. Tex. Dec. 3, 2021) (excluding expert opinions on a party's state of mind); *Alanis v. City of Brownsville*, No. 1:16-CV-00190, 2019 WL 8501638, at \*2 (S.D. Tex. Feb. 5, 2019) (same).

<sup>44</sup> Doc. 28-4, Rodriguez Report, p. 25, ¶ 82.

<sup>45</sup> Doc. 28-4, Rodriguez Report, p. 29, ¶ 93.

<sup>46</sup> Doc. 28-4, Rodriguez Report, p. 5, ¶ 18.

<sup>47</sup> Doc. 28-4, Rodriguez Report, p. 22, ¶ 76.

<sup>48</sup> Doc. 28-4, Rodriguez Report, p. 23, ¶ 76.

<sup>49</sup> Doc. 28-4, Rodriguez Report, p. 23, ¶ 79.

- “Officer Walker Prado [made the] conclusion that something was wrong with Medel, and he was not acting rationally or reasonably, and thus his decision to treat him as a potentially more dangerous and/or erratic actor”<sup>50</sup>
- “Officer Walker Prado observed the extreme aggression being exhibited by Medel toward the elderly man, and Walker Prado believed “something was wrong with” Medel as a result.”<sup>51</sup>
- “Officer Walker Prado’s belief that something was wrong with Medel became even stronger once Medel reacted to the announcement of police presence by obtaining a gun and aggressively walking toward the door and officers behind it. Officer Walker Prado believed such an action was not a rational act that a person with a normal state of mind would take. As a result, Officer Walker Prado believed Medel might perform subsequent irrational acts, such as shooting police officers who had just knocked on his door.”<sup>52</sup>
- “Officer Walker Prado believed the verbal altercation was escalating and Medel was going to assault Senior.”<sup>53</sup>
- “Officer Walker Prado believed [there was about] to be an imminent physical assault on Senior”<sup>54</sup>
- “Officer Walker Prado’s actions were taken to avoid Senior being assaulted.”<sup>55</sup>
- “Officer Walker Prado [believed] that Medel had heard the police presence announcement.”<sup>56</sup>
- “Officer Walker Prado reasonably believed Medel presented an imminent threat of serious bodily injury or death to Officers Reinhard, Lozano, and Daniel.”<sup>57</sup>
- “Officer Walker Prado had already concluded that something was wrong with Medel based on his aggression and agitation, and that he was not acting rationally or reasonably.”<sup>58</sup>
- “Officer Walker Prado ... was aware of the following but not limited to [sic] facts: ...  
6) Medel was yelling and acting aggressively toward Senior,  
7) It was perceived Senior was scared as Medel yelled at him, ...

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<sup>50</sup> Doc. 28-4, Rodriguez Report, p. 24, ¶ 81.

<sup>51</sup> Doc. 28-4, Rodriguez Report, p. 26, ¶ 85.

<sup>52</sup> Doc. 28-4, Rodriguez Report, p. 26, ¶ 86.

<sup>53</sup> Doc. 28-4, Rodriguez Report, p. 28, ¶ 91.

<sup>54</sup> Doc. 28-4, Rodriguez Report, p. 28, ¶ 92.

<sup>55</sup> Doc. 28-4, Rodriguez Report, p. 29, ¶ 92.

<sup>56</sup> Doc. 28-4, Rodriguez Report, p. 29, ¶ 93.

<sup>57</sup> Doc. 28-4, Rodriguez Report, p. 39, ¶ 107.

<sup>58</sup> Doc. 28-4, Rodriguez Report, p. 41, ¶ 111.

10) Medel appeared to be escalating his aggression, and it was believed that an assault on Senior by Medel was imminent, ...

11) Medel appeared angry and hostile, ...

12) Walker Prado had concluded there was something wrong with Medel, and that he was not acting reasonably or rationally.”<sup>59</sup>

- “Officer Walker Prado believed time was of the essence and taking immediate action in the dangerous situation he faced was immediately necessary.”<sup>60</sup>
- “Officer Walker Prado lost sight of Medel’s hand after he fell to the floor, but believed he still had the gun in his possession. ... [Walker Prado] discharged a fourth shot because he saw Medel reaching toward where the officers were standing, and he could not tell if he was reaching with his gun or not.”<sup>61</sup>
- “Officer Walker Prado believed that Medel was still in possession of the handgun which presented an imminent threat of serious bodily injury or death. ... [T]here is nothing inappropriate and/or outside the parameters of accepted law enforcement practices when an officer shoots until the threat is neutralized, which is what Officer Walker Prado did here by firing until the hand (believed to possibly still be holding the handgun) was reaching toward the door where officers stood [sic].”<sup>62</sup>
- “Officer Walker Prado believed Medel posed an immediate threat of serious bodily injury or harm.”<sup>63</sup>
- “Officer Walker Prado made a split-second decision to act to stop what he justifiably perceived as a deadly, imminent threat to the officers standing outside of Medel’s door. More specifically, Officer Walker Prado observed through a window that Medel was exhibiting extreme agitation and aggression toward an elderly man inside the apartment, to such an extent that Officer Walker-Prado had concluded something was wrong with Medel and he was not acting rationally or reasonably.”<sup>64</sup>

Each of these “opinions” is, at best, a restatement of what Walker Prado has testified about his less than two minutes of observing Medel and what was going through Walker Prado’s mind. Apparently, Rodriguez intends to serve as a witness who will argue to the jury that Walker Prado’s testimony is honest, or perhaps he will contain himself to simply repeating Walker Prado’s

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<sup>59</sup> Doc. 28-4, Rodriguez Report, p. 41, ¶ 112.

<sup>60</sup> Doc. 28-4, Rodriguez Report, p. 43, ¶ 115.

<sup>61</sup> Doc. 28-4, Rodriguez Report, p. 43, ¶ 116.

<sup>62</sup> Doc. 28-4, Rodriguez Report, p. 44, ¶ 119.

<sup>63</sup> Doc. 28-4, Rodriguez Report, p. 46, ¶ 125.

<sup>64</sup> Doc. 28-4, Rodriguez Report, p. 47, ¶ 127.



assertions over and over. But either way, Rodriguez lacks any specific facts or expertise to support Walker Prado's observations. Rodriguez does not add anything to Walker Prado's recounting other than the aforementioned inadmissible speculation about the effect of drugs and alcohol on Medel. Thus, these aspects of Rodriguez's report only serve to improperly bolster Walker Prado's claimed perceptions and beliefs, but without actually evaluating any facts that Walker Prado had—instead simply taking his alleged impressions at face value. While Rodriguez is surely more experienced than Walker Prado, he does not know any better than a lay juror what Walker Prado actually saw, so he is not competent to endorse Walker Prado's perceptions or interpretations from what he supposed perceived. Yet that is exactly what Rodriguez does for the bulk of his report. “[T]he trial judge ought to insist that a proffered expert bring to the jury more than the lawyers can offer in argument.” *Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992). The Court should bar these as unhelpful credibility and mental state opinions.

## **V. CONCLUSION**

For the foregoing reasons, the Court should strike and decline to consider for Defendant Walker Prado's motion for summary judgment his Exhibits 9 and 11 as well as all toxicology and intoxication assertions in the motion and its exhibits—particularly from Exhibits 6, 10, 13, and 16. The Court should further exclude from trial Exhibit 9 and the aforementioned sections and topics from Rodriguez's report, Exhibit 11, and bar him from testifying to the same at trial.

Dated: June 25, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

By my signature below, I certify that I conferred with Defendants about the relief requested in this motion, and counsel indicated Defendants will oppose this motion.

By /s/ David James  
DAVID JAMES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

### *Defendants*

CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S FIRST AMENDED UNOPPOSED MOTION TO EXCEED PAGE LIMITS  
FOR PLAINTIFF’S RESPONSE TO DEFENDANT WALKER PRADO’S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff respectfully files this first amended motion requesting leave to exceed the default page limit and file up to forty pages in his response to Defendant Walker Prado's Motion for Summary Judgment, Doc. 34. Defendant is unopposed to the relief requested herein.

## I. FACTS AND PROCEDURAL BACKGROUND

On August 26, 2024, Plaintiff filed this 42 U.S.C. § 1983 case against the City of Austin and Austin Police Department officer Gabriel Walker Prado. Doc. 1.

On May 28, 2025, Defendant Walker Prado moved for summary judgment. Doc. 29. On June 5, 2025, Defendant Walker Prado filed his first amended motion for summary judgment. Doc. 34.

In a text only order on May 29, 2025 granting Defendant Walker Prado's motion to exceed page limit, Doc. 27, the Court directed counsel to file motions to exceed page limits in advance.

On June 11, 2025, the Court extended the time for Plaintiff to respond to Defendant Walker

Prado's motion for summary judgment to June 25, 2025. *See* June 11, 2025 Text Order.

On June 24, 2025, Plaintiff moved the court for leave to file excess pages in advance of filing his motion for summary judgment in accordance with the Court's May 29, 2025 order, but the response was not available at that time.

## **II. ARGUMENT**

Plaintiff respectfully requests leave of Court to file his response not in excess of forty pages, exclusive of the required caption, signatures, and certificates, to Defendant Walker Prado's first amended motion for summary judgment, Doc. 34. Under the Western District Local Rules, a response to a non-case management motion is limited to twenty pages, exclusive of the caption, signature block, certificates, and accompanying documents. W.D. LOCAL RULE CV-7(d)(3).

Plaintiff respectfully submits that the additional pages are necessary to lay out with specific citations to the evidence that each of Defendant Walker Prado's shots were excessive. Evaluating Defendant's qualified immunity defense at the summary judgment stage is a fact-intensive inquiry. Further, Plaintiff needs additional pages to respond to Defendant's numerous assertions concerning the facts of the case, set out the case law showing that Plaintiff's right to be free from excessive force was clearly established, distinguish the nine cases relied upon by Defendant, and set out the cases showing Defendant's use of excessive force violated clearly established law.

The response should be deemed filed at the time leave is sought as it is attached to this motion so Defendant will have access to the response should they wish to reply.

This motion is made for the reasons stated and not for the purpose of delay. No party will be prejudiced by this relief as Defendant Walker Prado will have an opportunity to respond.

Plaintiff has conferred with counsel for Defendant and they indicated they are unopposed to Plaintiff's motion for leave to file excess pages.

### III. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff leave to file his response to Defendant Walker Prado's motion for summary judgment up to forty pages (plus the caption, signatures, and required certificates) and deem the response filed at the time leave was sought.

Dated: June 25, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II.

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

### *Defendants*



CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S UNOPPOSED MOTION FOR LEAVE TO SUPPLEMENT EXHIBIT TO  
PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT WALKER PRADO’S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff respectfully requests leave to supplement his summary judgment evidence, as inadvertent delays in obtaining a copy of a translator's certificate made that certificate unavailable until the day after the June 25, 2025 deadline. *See* Doc. 39; Doc. 40. Defendants are unopposed.

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On August 26, 2024, Plaintiff filed this 42 U.S.C. § 1983 case against the City of Austin and Austin Police Department officer Gabriel Walker Prado. Doc. 1.

On May 28, 2025, Defendant Walker Prado moved for summary judgment. Doc. 29. On June 5, 2025, Defendant Walker Prado filed his first amended motion for summary judgment. Doc. 34.

The Court extended Plaintiff's time to respond by June 25, 2025. Doc. 35; June 11, 2025 Text Only Order.

Subject to an unopposed motion to exceed page limits, Plaintiff timely submitted his response during the evening on June 25, 2025, including Exhibit 8 which is two affidavits signed

by Plaintiff's father, Avelino Medel, Sr. Although the meaning of each affidavit is the same, one affidavit is in English while the attested portion of the second affidavit is in Spanish. *See* Doc. 39-10. Counsel had Mr. Medel, Sr. execute both because, while he appears to have understood both, he is fluent in Spanish whereas he appears much slower to understand English.

Plaintiff's counsel obtained the signed affidavits during the evening on June 24, 2025 and ordered a certified translation that night from a vendor they had used before and who had earlier in the week confirmed they could complete a certified translation within one day. Unfortunately, although the certification was signed on June 25, 2025, Plaintiff's counsel was not able to obtain a copy until 8:30 am on June 26, 2025, as counsel and the translator's staff were inadvertently not able to get through directly to the translator on June 25, 2025.

Plaintiff's counsel then provided the certified version to Defendants' counsel before 9:00 am on June 26, 2025 to confer on this motion.

## II. STANDARD OF REVIEW

In this context, where Plaintiff is only supplementing to address the form of summary judgment evidence, the Court has discretion to permit a party to cure any defects in the admissibility of summary judgment evidence under FED. R. CIV. P. 56(e)(1). *See, e.g., United States v. Lawrence*, 276 F.3d 193, 196 (5th Cir. 2001) (affirming district court that overruled objections where supplemental evidence cured any defects).<sup>1</sup>

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<sup>1</sup> *See also Shaidnagle v. Adams Cty., Miss.*, No. 5:13-CV-112-DCB-JCG, 2015 WL 72161, at \*9 (S.D. Miss. Jan. 6, 2015) (overruling objections in light of later submitted supplemental evidence); *Waterman v. McKinney Indep. Sch. Dist.*, No. 4:13-CV-170, 2014 WL 2611185, at \*6 (E.D. Tex. June 11, 2014) (same); *Styron v. State Farm Fire & Cas. Co.*, No. 10-1729, 2011 WL 6749038, at \*3 (W.D. La. Dec. 22, 2011), *aff'd*, 479 F. App'x 604 (5th Cir. 2012) (same); *McKay v. Dallas Indep. Sch. Dist.*, No. CIV.A3:06CV2325-O, 2009 WL 508532, at \*1 (N.D. Tex. Feb. 25, 2009) (granting leave to cure declarations); *Johnson v. Med. Ctr. of Louisiana at New Orleans*, No. CIV.A. 01-0191, 2002 WL 31886829, at \*1 (E.D. La. Dec. 26, 2002), *aff'd sub nom. Johnson v. Louisiana ex rel. Louisiana Bd. of Sup'rs for Louisiana State Univ. Agr. & Mech. Coll.*, 79 F.



Alternatively, under Rule 6, “When an act may or must be done within a specified time, the court may, for good cause, extend the time: ... on motion made after the time has expired if the party failed to act because of excusable neglect.” FED. R. CIV. P. 6(b)(1)(B). Excusable neglect is an equitable determination committed to the Court’s sound discretion. “The plaintiff should not be punished for his attorney's mistake absent a clear record of delay, willful contempt or contumacious conduct.” *Blois v. Friday*, 612 F.2d 938, 940 (5th Cir. 1980).

### III. ARGUMENT

Counsel regrets the inadvertent delays and miscommunication with the translator’s service, and respectfully requests leave to supplement. Further, the certified affidavit merely confirms that Mr. Medel, Sr. signed two substantively identical affidavits in different languages; it does not alter the underlying content. Plaintiff should be permitted under Rule 56(e) to confirm the admissibility of the Spanish language version of the affidavit that was already properly submitted in English. *See* FED. R. EVID. 604.

Due to the brevity of the requested extension, the fact that the supplemental exhibit is substantively identical to the timely filed exhibit, the fact that the supplement was served on Defendants before the next business day, and the lack of opposition, permitting the supplement will not prejudice Defendants. In any event, they retain an opportunity to reply.

Further, as the Defendants have yet to file any reply, the short extension should not unduly interfere with the Court’s consideration of the motion or the Court’s schedule.

Finally, Plaintiff’s counsel's efforts to promptly overcome their unexpected

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App’x 684 (5th Cir. 2003) (overruling objections in light of later-submitted supplemental evidence); *Kesterson v. R.R. Donnelley & Sons Co.*, No. CIV. 3:01-CV-1625-H, 2002 WL 923921, at \*7 (N.D. Tex. May 6, 2002) (same); *Brady v. Blue Cross & Blue Shield of Texas, Inc.*, 767 F. Supp. 131, 136 (N.D. Tex. 1991) (granting leave to supplement summary judgment evidence to cure deficiencies).

miscommunication with the translator's service shows that the short delay here arose only from excusable neglect.

Defendants are not opposed to the relief requested herein.

#### IV. CONCLUSION

For the foregoing reasons, the Court should grant leave to supplement Plaintiff's response to Defendant Walker Prado's summary judgment motion with the attached exhibit. *See* Doc. 39; Doc. 40.

Dated: June 26, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via electronic mail.

By /s/ Jeff Edwards  
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

By my signature below, I certify that I conferred with counsel for Defendants via email and they indicated they do not oppose the relief requested in this motion.

By /s/ David James  
DAVID JAMES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT WALKER PRADO’S  
FIRST AMENDED MOTION FOR SUMMARY JUDGMENT**

As Defendant Austin Police Department Officer Gabriel Walker Prado used excessive and deadly force against Plaintiff Avelino Medel II (“Medel”) without warning and when Medel was not an imminent risk of serious harm to anyone, the Court should deny Walker Prado’s first amended motion for summary judgment, Doc. 34.

**I. SUMMARY OF THE RESPONSE**

The Court should deny Defendant Walker Prado’s motion for two reasons.

First, when the facts are viewed in Medel’s favor, Walker Prado’s use of deadly force was unconstitutionally excessive because Medel was simply exercising his protected Second Amendment right to bear arms in his own home when responding to aggressive pounding on his door at 2 a.m. Specifically, Walker Prado knew that (a) Medel did not and could not know police were at his door, (b) Medel had committed no crime more serious than a noise violation, which officers were, at most, investigating as a possible simple assault without injury, (c) Medel never pointed his gun at the door or any officers, (d) Medel could not have shot police, so he was not an imminent threat to any officers, (e) Walker Prado had time to issue a warning before shooting Medel, and (f) as Medel had collapsed from the first three shots, he posed no threat when Walker

Prado shot him in the back.

Second, Walker Prado violated clearly established law when he repeatedly shot Medel with no warning, despite knowing he posed no immediate threat to anyone such that Walker Prado had time to identify himself and order Medel to put the gun down. Under the facts viewed in Plaintiff's favor, Walker Prado shot Medel without warning merely for retrieving a gun before checking who was outside his home, violating *Griffin v. Newell* and *Cole v. Carson II* (en banc). Further, he continued shooting after Medel was subdued by the first three shots, violating *Mason v. Lafayette City-Parish Consol. Gov't*.

## **II. FACTS IN THE LIGHT MOST FAVORABLE TO THE NON-MOVANT**

On April 6, 2024 Austin Police Department (APD) Officer Gabriel Walker Prado ("Walker Prado"), while acting under color of law,<sup>1</sup> shot and injured Plaintiff Avelino Medel II, a pharmacy technician, as Medel exercised his Second Amendment right to bear arms in his own home by arming himself after hearing loud banging on his door shortly after 2 a.m. The facts in the light most favorable to Medel are as follows:

### ***A. Walker Prado shot Medel when Medel had not pointed a firearm at anyone.***

In the early morning hours of April 6, 2024, one of Medel's upstairs neighbors called 911 to report loud yelling, which the caller agreed may be a physical disturbance because they heard heavy breathing.<sup>2</sup> APD Officers Arlene Lozano, Ryan Daniel, and Adam Reinhart were assigned to the call. Defendant APD Officer Gabriel Walker Prado, a "brand new" officer fresh out of the

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<sup>1</sup> See Doc. 8, p. 1, ¶ 2 (admitting the allegations in Plaintiff's original complaint paragraph 2 other than those regarding service); Doc. 1, p. 1, ¶ 2 (alleging Walker Prado acted under color of law).

<sup>2</sup> Doc. 27-16, COA 2712, "1<sup>st</sup> 911 Call.wav" (filed traditionally) at 00:14-00:29; *id.* at 01:17-01:24.

APD academy,<sup>3</sup> also assigned himself to the call as he was nearby.<sup>4</sup> APD dispatch reported to the four officers that there had been no prior incidents at Medel's address.<sup>5</sup>

Walker Prado arrived first to Medel's apartment at 2:07 a.m. and stood in the dark, out of sight of Medel, peering around the corner of an exterior wall and into Medel's apartment through the sliding glass door.<sup>6</sup> Fifteen seconds later, Officers Lozano and Daniel arrived at Medel's apartment, glanced into Medel's apartment briefly as they walked by the sliding door, and positioned themselves around the corner and next to Medel's front door.<sup>7</sup> As they arrived, Walker Prado walked away from Medel's sliding glass door and radioed only that he saw "two males" in the kitchen of Medel's apartment "just yelling."<sup>8</sup> These two males were Plaintiff Medel and his father, Avelino Medel, Sr.<sup>9</sup> Consistent with Walker Prado's report that there was "just yelling" between Medel and his father, neither Officer Lozano nor Officer Daniel saw any physical violence or any other crime in Medel's apartment before Walker Prado shot Medel.<sup>10</sup> Officer Reinhart

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<sup>3</sup> Ex. 1, Walker Prado Deposition, 19:20-23; *see also* Doc. 27-6, COA 1342-1369, "Walker Prado IA Interview" at p. 4, ln 147-149 (Walker Prado had no prior police experience before APD).

<sup>4</sup> Doc. 27-6, COA 1342-1369, Walker Prado IA Interview at p. 6, ln 248-250.

<sup>5</sup> *See* Ex. 2, Lozano Deposition, 33:18-34:1.

<sup>6</sup> Ex. 3, Walker Prado Body-Worn Camera ("BWC"), COA 1115 (filed traditionally) at 02:07:40. References to timestamps of body-worn camera videos throughout are to the timestamp in the upper righthand corner of the video. *See also* Doc. 27-4, Declaration of Walker Prado ("Walker Prado Dec.") at p. 2, ¶ 6 (noting Walker Prado positioned himself out of sight of Plaintiff and his father inside the apartment).

<sup>7</sup> Ex. 3, Walker Prado BWC at 02:07:04-02:07:55; *see also* Ex. 4, Lozano BWC, COA 1112 (filed traditionally) at 02:07:53-02:08:10; Ex. 2, Lozano Deposition, 36:18-37:20 and 38:3-14; Ex. 5, Daniel BWC, COA 1114 (filed traditionally) at 02:07:53-02:08:09; Ex. 6, Daniel Deposition, 25:13 -25:24 (volunteering that he only "glanced in for maybe a second or two as I was walking past"). The transcript of the deposition of Officer Ryan Daniel inadvertently refers to Officer Daniel as "Daniel Ryan."

<sup>8</sup> Ex. 3, Walker Prado BWC at 02:08:02-02:08:15.

<sup>9</sup> Ex. 7, Declaration of Avelino Medel, II ("Medel Dec."), p.1, ¶¶ 2-3; Ex. 8, Affidavit of Avelino Medel ("Father's Affidavit"), p. 1, ¶ 1.

<sup>10</sup> Ex. 2, Lozano Deposition, 36:25-37:20; *id.* at 43:23-44:5; Ex. 6, Daniel Deposition, 34:7-17.

arrived fifteen seconds later from a direction where he never saw inside the apartment before the shooting.<sup>11</sup>

Meanwhile, Medel and his father were in the middle of a loud conversation about Medel's concerns that his father's friends owed Medel, Sr. money they were not paying him.<sup>12</sup> Though Medel used profanity during the conversation with his father, Medel did not threaten his father, physically or verbally, during the conversation.<sup>13</sup> Indeed, none of the officers heard any threats of violence, nor did any of their body-worn cameras capture Medel threatening violence or acting violently towards his father.<sup>14</sup>

Officers Lozano, Daniel, and Reinhart positioned themselves to the side of Medel's front door consistent with APD training.<sup>15</sup> Next, Walker Prado briefly looked back into Medel's apartment then stepped back into the breezeway towards the three other APD officers.<sup>16</sup> Walker Prado could see Daniel, Lozano, and Reinhart positioned to the far side of Medel's door when he reported to them that one of the people in the apartment appeared "elderly," the other looked younger, and both appeared Asian,<sup>17</sup> though this was a mistaken perception. Walker Prado then spied into Medel's apartment for another ten seconds before turning away again to signal the other officers to knock on Medel's door.<sup>18</sup>

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<sup>11</sup> Ex. 3, Walker Prado BWC at 02:08:29; Ex. 9, Reinhart BWC, COA 1113 (filed traditionally) at 02:08:18-31; Ex. 10, Reinhart Deposition, 48:12-49:1.

<sup>12</sup> Ex. 7, Medel Dec, p. 1, ¶¶ 2, 3.

<sup>13</sup> *Id.* at pp. 1-2, ¶¶ 4-12; Ex. 8, Father's Affidavit, pp. 1-2, ¶¶ 2-10.

<sup>14</sup> Ex. 10, Reinhart Deposition, 49:5-10 and 14-15 (only specific statement Reinhart recalled hearing was "F\*ck you"); Ex. 9, Reinhart BWC at 02:08:33-02:09:03; Ex. 4 Lozano BWC at 02:07:54-02:09:00; *see also* Ex. 6, Daniel Deposition, 34:7-17 (no knowledge of any crime); Ex. 5, Daniel BWC at 02:07:57-02:09:00; Ex. 1, Walker Prado Deposition, 178:10-23.

<sup>15</sup> Ex. 2, Lozano Deposition, 38:15-39:12; *id.* at 39:19-40:4; Ex. 6, Daniel Deposition, 28:24-29:12; *id.* at 30:5-12; Ex. 10, Reinhart Deposition, 50:11-16; *id.* at 51:10-18.

<sup>16</sup> Ex. 3, Walker Prado BWC at 02:08:31 – 02:08:39.

<sup>17</sup> *Id.* at 02:08:39-02:08:47.

<sup>18</sup> Ex. 3, Walker Prado BWC at 02:08:47-02:08:57.

Officer Reinhart stepped to the left of Medel's door while Officers Lozano and Daniel remained to the right side.<sup>19</sup> No APD officer remained directly in front of the door.<sup>20</sup> Officer Reinhart stretched his arm out and banged his baton loudly on Medel's door seven times and immediately called out only once, "Austin Police Department. Open the door."<sup>21</sup> During Reinhart's banging, Walker Prado leaned back around the corner and again peered into Medel's apartment.<sup>22</sup>

Inside the apartment, Medel heard loud banging on his door and was surprised and scared by the unexpected, loud sound in the middle of the night.<sup>23</sup> Medel could not see any of the officers through his sliding door or at the front of his apartment as it had no front windows.<sup>24</sup> Medel did not hear Office Reinhart say, "Austin Police Department" and did not know who was at his door.<sup>25</sup> When asked later, two of Medel's neighbors likewise reported that though they clearly heard Officer Reinhart loudly bang on Medel's door, they did not hear his announcement of "police."<sup>26</sup> Regardless, the only way for Medel to verify who was banging on his front door at 2 a.m. was to approach his door until he was essentially flush with it and look through the peephole.<sup>27</sup>

Medel was of course concerned that the unknown person suddenly banging on his door at 2 a.m. might be dangerous.<sup>28</sup> Medel retrieved his handgun on his way to look through the peephole.<sup>29</sup> He positioned it in a "high ready" position with the handgun held up near his right

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<sup>19</sup> Ex. 9, Reinhart BWC at 02:08:47-02:08:55.

<sup>20</sup> Ex. 5, Daniel BWC at 02:08:59.

<sup>21</sup> Ex. 9, Reinhart BWC 02:08:59-02:09:02.

<sup>22</sup> Ex. 3, Walker Prado BWC at 02:08:59-02:09:02.

<sup>23</sup> Ex. 7, Medel Dec. at p. 2, ¶ 13; *see also* Ex. 8, Father's Affidavit, p. 2, ¶ 12.

<sup>24</sup> Ex. 7, Medel Dec. at p. 3, ¶ 24; *see also id.* at ¶ 29.

<sup>25</sup> *Id.* at p. 2, ¶ 14.

<sup>26</sup> Ex. 11, Rikita Ghimire Witness Interview Summary, COA 1690; Doc. 27-17 "SIU Rikita Ghimire Interview.mp4" (filed traditionally) at 06:35:15-06:35:40; Doc. 27-15 "SIU Presentation" at COA 2742, p. 12 (summarizing interview with Allison Saiko).

<sup>27</sup> Ex. 7, Medel Dec. at p. 3, ¶ 24; Ex. 8, Father's Affidavit at p. 2, ¶ 23.

<sup>28</sup> Ex. 7, Medel Dec. at p. 2, ¶ 15.

<sup>29</sup> *Id.* at pp. 2-3, ¶¶ 15, 21, 23; Ex. 8, Father's Affidavit at p. 2, ¶ 17.



shoulder with the muzzle pointed up and his elbows bent and close to his body.<sup>30</sup> His finger was off the trigger.<sup>31</sup> Medel walked at a normal pace toward his front door to check the peephole.<sup>32</sup>

As Medel approached his door with a gun pointed up, Walker Prado decided to fire at Medel. (Walker Prado later twice admitted, just minutes after the shooting, that he shot Medel simply because he came to the door with a gun.<sup>33</sup>) Walker Prado began yelling “He’s got a gun! Gun, gun, gun, gun, gun” at timestamp 02:09:03 on his camera and, within a second (by 02:09:04) stepped out from behind the corner aiming his own weapon at Medel.<sup>34</sup> Walker Prado’s body-worn camera shows that when Walker Prado stepped out to aim and fire at Medel at 02:09:04, the muzzle of Medel’s gun was still pointing directly up, Medel’s elbows were bent with his forearms close to his torso, and Medel was still holding the handgun at his shoulder in a “high ready” position:

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<sup>30</sup> Ex. 7, Medel Dec. at p. 3, ¶ 26; *see also* Ex. 12, Still Image from Walker Prado’s Body-Worn Camera (showing when Medel is first seen in body-worn camera video holding a gun).

<sup>31</sup> Ex. 7, Medel Dec. at p. 2, ¶ 17.

<sup>32</sup> *Id.* at p. 3, ¶ 25; Ex. 8, Father’s Affidavit at p. 2, ¶¶ 15-16.

<sup>33</sup> Ex. 3, Walker Prado BWC at 02:12:55-02:13:01 (Medel: “...why did you shoot me?” Walker Prado: “We announced police and you came to the door with the gun.”); *id.* at 02:16:26-28 (Walker Prado refers to the gun: “it was here, he grabbed it and came to the door with it. That’s why I shot him.”); *see also* Doc. 27-4, Walker Prado Dec. at pp. 3-4, ¶¶ 12, 15 (describing having seen everything he thought justified his shooting before “decid[ing] to act” and warning his fellow officers while stepping out from corner).

<sup>34</sup> Ex. 3, Walker Prado at 02:09:03 – 02:09:04.



*Exhibit 12A - Still Image from Walker Prado's Body-Worn Camera when he aimed at Medel*



*Exhibit 12B – Closer view of Medel in previous still image*

Medel, who had no idea anyone was at his sliding door, suddenly heard yelling from the side of his apartment (though he could not hear what Walker Prado was yelling) and looked away

from the front door to the sliding door where he saw only his own reflection.<sup>35</sup> Only *after* Walker Prado decided to shoot at 02:09:03 and stepped out to aim did Medel look away from the front door and change the position of the gun, at 02:09:05 on Walker Prado's camera.<sup>36</sup> Although the handgun does move to Medel's chin, he obviously was not extending his arms to point and shoot the gun—instead Medel's elbows remain locked and close to his chest, with his left elbow folding more tightly.<sup>37</sup> Looking out the window and closing his elbow is the exact opposite of what Medel would have done had he instead been bringing the gun to bear on the front door.

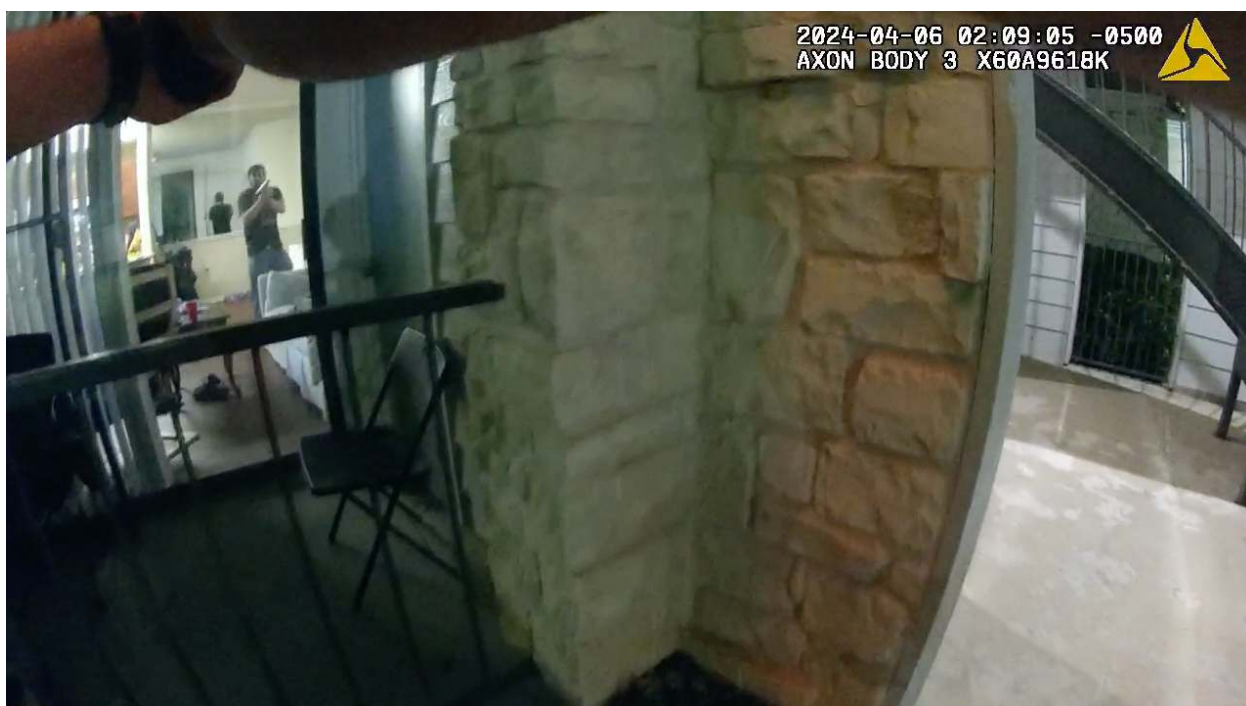


*Exhibit 13A - Last frame of Walker Prado's body-worn camera before his bullet shattered the glass of Medel's sliding glass door*

<sup>35</sup> Ex. 7, Medel Dec. at p. 3, ¶¶ 28, 29.

<sup>36</sup> Ex. 3, Walker Prado BWC at 02:09:03 – 02:09:05.

<sup>37</sup> Ex. 13, Still images of last frame of Walker Prado's body-worn camera before his bullet shattered the glass of Medel's sliding glass door.



*Exhibit 13B – Closer view of Medel in previous still image*

Thus, the facts in the light most favorable to Medel are that Walker Prado, as he twice admitted mere minutes after the shooting,<sup>38</sup> perceived only that Medel brought his gun to the door while it was pointed up (as his own video shows at 02:09:03-02:09:04), and that is the only reason he fired. Yet even if the Court considers his argument that Walker Prado perceived and reacted to the small movement of Medel's gun between 02:09:04 - 05 before shooting Medel, this small movement and the final position of Medel's gun remains a "high ready" position, more consistent with Medel going to check his peephole than pointing the gun.<sup>39</sup> Indeed, Walker Prado himself mimicked Medel's actual position when asked to show what it would look like to check the peephole:<sup>40</sup>

<sup>38</sup> See *supra* fn. 33.

<sup>39</sup> See Ex. 13, Still images from last frame of Walker Prado's BWC before bullet shattered Medel's sliding glass door; Ex. 14, Expert Report of Jeffrey Noble, pp. 86-87, ¶ 80.

<sup>40</sup> Ex. 15, Excerpt from Video of Walker Prado Deposition at 01:20-01:34; see also Ex. 16, Still



*Exhibit 16 - Still image of deposition of Walker Prado demonstrating how he claims Medel would have held the gun if he were checking to see who was at his door.*

Even in this final position at timestamp 02:09:05, Medel was still not pointing his gun at the door (behind which Walker Prado knew stood no officers); indeed, he was not even looking at the door.

It is undisputed that Walker Prado did not warn Medel before he fired his gun at Medel, even though he had seen, and indeed been trained to know, no officers were in danger even if Medel was pointing his weapon at the front door (which he was not).<sup>41</sup> Indeed, Officer Reinhart not only was not in front of the door, but he made it to Walker Prado's side before Walker Prado finished firing at Medel.<sup>42</sup> And, of course, Walker Prado had time to yell "He's got a gun! Gun, gun, gun, gun, gun,"<sup>43</sup> which warned only the other APD officers while providing no warning to

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Image from Walker Prado Deposition.

<sup>41</sup> Ex. 1, Walker Prado Deposition, 59:11-14; Ex. 3, Walker Prado BWC at 02:08:59.

<sup>42</sup> Ex. 3, Walker Prado BWC at 02:09:05.

<sup>43</sup> Ex. 3, Walker Prado BWC at 02:09:03-02:09:05.

Medel that police wanted him to put his gun away.<sup>44</sup> This warning took only two seconds to deliver.<sup>45</sup> Though Walker Prado could have given a different, similarly short warning like “Drop the gun, or I’ll shoot” instead that would have warned both his fellow officers and Medel that he was planning to shoot, he chose not to.<sup>46</sup>

Walker Prado initially fired three rounds, one of which hit Medel in the thigh.<sup>47</sup> Medel immediately collapsed to the ground.<sup>48</sup> Two to three seconds passed after Walker Prado’s third shot before he fired his fourth and final shot.<sup>49</sup> By the time Walker Prado fired his final shot into Medel’s shoulder blade, Medel was not moving his arms or hands, did not reach with a gun in his hand, and was effectively subdued by Walker Prado’s initial volley of shots.<sup>50</sup> Yet Walker Prado still gave Medel no warning before this fourth and final shot.<sup>51</sup> A reasonable officer in Walker Prado’s position who had shot at a man and saw him collapse would believe the man was subdued such that the final shot was not necessary.<sup>52</sup> As Medel was not moving, Walker Prado had time to give Medel a warning before his fourth and final shot.

***B. Since shooting Medel, Walker Prado’s story has changed.***

Even setting aside the admissible evidence of Medel’s version of events, a reasonable jury could independently find that Walker Prado’s description of the events of April 6, 2024 and what he alleges he saw or knew has changed in at least four material aspects, casting doubt on the

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<sup>44</sup> Ex. 1, Walker Prado Deposition, 156:9-14; *id.* at 11:10-12 and 14-17.

<sup>45</sup> Ex. 3, Walker Prado BWC at 02:09:03-02:09:05.

<sup>46</sup> Ex. 1, Walker Prado Deposition, 161:7-12, 14-17, 19; Ex. 14, Expert Report of Jeffrey Noble at p. 78, ¶ 61.

<sup>47</sup> Ex. 3, Walker Prado BWC at 02:09:05 – 02:09:06; Ex. 7, Medel Dec. at p. 3, ¶ 31.

<sup>48</sup> Ex. 3, Walker Prado BWC at 02:09:05 – 02:09:06; Ex. 7, Medel Dec. at p. 3, ¶ 31.

<sup>49</sup> Ex. 3, Walker Prado BWC at 02:09:06 – 02:09:09.

<sup>50</sup> Ex. 7, Medel Dec. at p. 3, ¶ 33; Ex. 3, Walker Prado BWC at 02:09:06-02:09:09.

<sup>51</sup> Ex. 3, Walker Prado BWC at 02:09:06 - 02:09:09.

<sup>52</sup> See Ex. 14, Expert Report of Jeffrey Noble at p. 87, ¶ 82.



veracity and accuracy of his descriptions of Medel, his father, what Walker Prado saw or knew, and why Walker Prado claims he shot Medel.

First, the description of what Walker Prado saw upon arriving at Medel's apartment changed within hours of the shooting. On April 6, 2024, an APD Internal Affairs investigator led Walker Prado through an interview approximately eight hours after he shot Medel, after he had reviewed his body-worn camera and discussed his shooting with an attorney.<sup>53</sup> For the first time, during that Internal Affairs interview, Walker Prado stated that one of the first things he saw upon arriving at Medel's apartment was that Medel had "pinned" his father against the counter,<sup>54</sup> though this directly contradicts Walker Prado's contemporaneous description of Medel and his father shortly after he arrived as "just yelling."<sup>55</sup>

Second, while Walker Prado now claims that he saw Medel, Sr. "was visibly scared"<sup>56</sup> and "looked like he was in distress,"<sup>57</sup> these descriptions contradict Walker Prado's statements on April 6, 2024. During the Internal Affairs interview on the same day of the shooting, Walker Prado stated that he "wouldn't know" if Medel, Sr. was in distress during the conversation "because [he] couldn't see his face."<sup>58</sup> The only indication of any potential distress that Walker Prado noticed in Medel, Sr.'s body language was simply that he stayed stationary during the ten- to fifteen-second

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<sup>53</sup> See Ex. 3, Walker Prado BWC at 03:07:21-03:07:35 (Walker Prado's attorney arrives to the scene to have discussion with Walker Prado); Ex. 17, Memorandum re: Administrative Inquiry Notice, COA 1323-1326 at p. 4; Doc. 27-6, Walker Prado IA Interview at p. 1, ln. 2 (noting the time); *id.* at p. 2, ln. 43-56 (Walker Prado acknowledges he reviewed the items listed on the Notice of Administrative Inquiry).

<sup>54</sup> Doc. 27-6, Walker Prado IA Interview at p. 12, ln. 527-529; *see also id.* at p. 13 ln. 575-576 (describing verifying Medel's apartment number after allegedly seeing Plaintiff pin his father against the counter); *id.* at p. 16, ln. 678-679 and ln. 692-693 (again noting "early on" shortly after arriving that Plaintiff's father was allegedly "pinned.").

<sup>55</sup> Ex. 3, Walker Prado BWC at 02:08:02-02:08:15.

<sup>56</sup> See Doc. 34, First Amended Motion for Summary Judgment at p. 2, ¶ 1.

<sup>57</sup> Doc. 27-4, Walker Prado Dec. at p. 2, ¶ 8.

<sup>58</sup> Doc. 27-6, Walker Prado IA Interview at p. 16, ln 681-688.

snippets of conversation with his son that Walker Prado observed.<sup>59</sup> Walker Prado expressly disavowed that “[a]ny other signs” of Medel, Sr.’s possible or alleged “stress, no I don’t have.”<sup>60</sup> Walker Prado also explicitly described Medel, Sr. as “not moving” on April 6, 2024, but now claims that Medel, Sr. was noticeably leaning away from his son.<sup>61</sup>

Third, though Walker Prado now claims in his motion that he knew or suspected that Medel was intoxicated,<sup>62</sup> Walker Prado never suggested this was a factor in his decision making at any point on April 6, 2024, despite numerous opportunities to do so. Specifically, though Walker Prado twice stepped away from Medel’s sliding door to describe Medel’s behavior (“just yelling”) and appearance (“younger” and “Asian”) to APD dispatch and his fellow officers, at no point did Walker Prado mention to the other officers or radio that he thought Medel might be intoxicated, though this was an obvious and arguably important time to communicate such a concern if he actually had it.<sup>63</sup> Even when Internal Affairs interviewed Walker Prado eight hours after the incident and asked if he had provided all of the information “that may or may not be important” in his decision to shoot Medel, Walker Prado never raised that he thought Medel might be intoxicated or that this possibility affected his subsequent decision to shoot Medel.<sup>64</sup> In light of this evidence,

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<sup>59</sup> *Id.* at p. 16, ln. 692-693 and ln. 709-710.

<sup>60</sup> *Id.* at pp. 16-17, ln. 714-715.

<sup>61</sup> Compare Doc. 27-6, Walker Prado IA Interview at p. ln. 692-693 and 710 *with* Doc. 27-4, Walker Prado Dec. at p. 2, ¶ 8.

<sup>62</sup> Doc. 34, First Amended Motion for Summary Judgment at pp. 4, 22-24, ¶¶ 7-8, 49, 52-54.

<sup>63</sup> Ex. 3, Walker Prado BWC at 02:08:07-02:08:12; *id.* at 02:08:39-02:08:47. Indeed, when Officer Reinhart apparently detected a concern, he made a point to note it to Officers Lozano and Daniel who were nearby, though Walker Prado was out of earshot for this conversation and Officer Reinhart did not make the announcement over the radio. *See*, Ex. 9, Reinhart BWC at 02:08:48-02:08:49. In forming this belief, Officer Reinhart was closer to and could hear Medel’s voice louder than Walker Prado, as demonstrated by the louder volume of Medel’s and his father’s voices on Reinhart’s body-worn camera than Walker Prado’s.

<sup>64</sup> Doc. 27-6, Walker Prado IA Interview at p. 27, ln. 1206-1209; *see also id.* at p. 12, ln. 510-513 (in response to a question about what information Walker Prado had going into the situation, he responded only that it was a physical disturbance between two males and did not mention



a reasonable jury could easily find that Walker Prado was not aware Medel had been drinking and did not believe or even suspect Medel was intoxicated.

Fourth, Walker Prado's self-described motion for shooting has changed repeatedly. When Medel asked Walker Prado why he shot Medel just minutes after the shooting, Walker Prado explained "because you came to the door with a gun."<sup>65</sup> Likewise, just minutes later Officer Reinhart asked where Medel's gun was, so Walker Prado volunteered "it was here" gesturing to the kitchen counter, then "he grabbed it and came to the door with it. That's why I shot him."<sup>66</sup> Yet by the time he spoke to Internal Affairs eight hours later after consulting with his attorney and watching his body-worn camera footage, Walker Prado claimed Medel was aiming the gun.<sup>67</sup>

By his deposition six months after the shooting, Walker Prado claimed Medel not only aimed but extended his arms towards the door with the gun before Walker Prado shot him. Walker Prado's own body-worn camera and the still frames embedded above show that Medel did not straighten his elbows or extend his arms away from his body to aim at his front door before Walker Prado shot him.<sup>68</sup> Yet when he was asked during his deposition to "show me, before you shot him, how [Plaintiff] was moving the gun," Walker Prado said Medel "was approximately about right here" when Walker Prado shot him while holding his arms out:<sup>69</sup>

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intoxication).

<sup>65</sup> Ex. 3, Walker Prado BWC at 02:12:55-02:13:01.

<sup>66</sup> *Id.* at 02:16:23-02:16:29.

<sup>67</sup> Doc. 27-6, Walker Prado IA Interview at p. 21, ln. 900-902.

<sup>68</sup> *See* Ex. 15, Excerpt from Video of Walker Prado Deposition, 00:00-00:38; *see also* Ex. 18, Still Image of Walker Prado Deposition.

<sup>69</sup> Ex 1, Walker Prado Deposition, 25:9-17.



*Ex. 18 - Walker Prado demonstrating how he claims he saw Medel holding the gun when he decided he needed to fire his weapon*

***C. Police officers know that criminals impersonate officers, Texans own guns, and that a Texan responding to unknown banging in the middle of the night may come to the door armed.***

As the recent deaths of Minnesota Representative Melissa Hortman and her husband Colin and the near deaths of Senator John Hoffman and his wife Yvette demonstrate, criminals intent on accessing dwellings to cause harm can and do impersonate peace officers to great and tragic effect.<sup>70</sup> Nor are the recent events in Minnesota an anomaly. Law enforcement officers know that criminals impersonate police officers for all kinds of nefarious reasons, including to gain access to occupied dwellings.<sup>71</sup> Barely two months before Walker Prado shot Medel, APD finally identified

<sup>70</sup> See, Ex. 19, Affidavit of Terry Getsch in *United States of America v. Vance Luther Boelter*, Case No. 25-mf-376 in the United States District Court for the District of Minnesota at pp. 2-10, ¶¶ 4, 6, 3-12, 16-17, 19, 22-28.

<sup>71</sup> Ex. 14, Expert Report of Jeffrey Noble at p. 77, ¶ 59(d); see also Ex. 20, Deposition of Chief Robin Henderson (filed under seal), 101:1-8. Chief Henderson was testifying on behalf of the City of Austin and was also the Austin Chief of Police at the time Walker Prado shot Medel. *Id.* at 7:25-8:3 and 40:22-41:1.

and arrested a man who had been impersonating an officer for more than three years.<sup>72</sup> Walker Prado and two of the other officers present at Medel’s home on April 6, 2024 had all heard about this police impersonator.<sup>73</sup> Just recently, APD arrested yet another man for impersonating an officer by pulling over a car using fake police lights, Tasing innocent people, and shooting at a car with a BB gun.<sup>74</sup>

The public cannot blindly trust that everyone who claims to be a peace officer is one—and law enforcement officers know this. All four officers at Medel’s home on April 6, 2024, including Walker Prado, readily agreed when asked that anyone, including criminals, can claim to be “police” when knocking on doors.<sup>75</sup> Indeed, former Austin Police Chief Robin Henderson, the police chief at the time, agreed that it is “true that criminals may yell ‘police’ when they’re trying to break into an occupied residence,” that this is “a known risk” to APD, that APD has encountered these criminals, and that APD has tried to prosecute these criminals.<sup>76</sup> In fact, this risk is so well known, APD trains its officers—including Walker Prado—that criminals may claim to be police when trying to break into a residence and that this possibility affects how people inside a dwelling respond to APD officers knocking and announcing.<sup>77</sup>

Moreover, law enforcement officers, particularly in Texas, know that many citizens are gun owners, consistent with their Second Amendment rights.<sup>78</sup> The United States Supreme Court

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<sup>72</sup> Ex. 21, Arrest Warrant in *State of Texas v. Sean Michael MacDonald*, No. D-1-DC-24-300268 (describing impersonation of an officer from July 10, 2020 to December 31, 2023).

<sup>73</sup> Ex. 1, Walker Prado Deposition, 29:20-30:1; Ex 10, Reinhart Deposition, 51:25-52:5; Ex. 2, Lozano Deposition, 41:7-12.

<sup>74</sup> Ex. 22, Arrest Affidavit for Jason M. Parnell, Cause No. C-1-CR-25-204260.

<sup>75</sup> Ex. 1, Walker Prado Deposition, 170:11-14; Ex. 2, Lozano Deposition, 40:20-22; Ex. 6, Daniel Deposition, 30:22-24; Ex. 10, Reinhart Deposition, 51:22-24.

<sup>76</sup> Ex. 20, Henderson Deposition, 101:1-8.

<sup>77</sup> *Id.* at 101:9-19.

<sup>78</sup> See Ex. 14, Expert Report of Jeffrey Noble, pp. 77-78, ¶ 59(e).

itself has recognized that “handguns,” like the one possessed by Medel, “are the most popular weapon chosen by Americans for self-defense in the home.” *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008). Years before Walker Prado shot Medel, the Texas Legislature reinforced the importance of Texans being able to not only have but use handguns in their own homes if necessary by enacting Texas Penal Code § 9.32 and § 9.42, creating affirmative defenses for the use of deadly force in the defense of their persons or homes. TEX. PENAL CODE §§ 9.32, 9.42. The officers at Medel’s home on April 6, 2024, including Walker Prado, knew of and were trained on these laws.<sup>79</sup>

Police thus know that lawfully-armed<sup>80</sup> gun owners will arm themselves before investigating an unexpected banging or noise at the door late at night by looking through a window or peephole.<sup>81</sup> Accordingly, APD officers—including Walker Prado—are trained that it is lawful and even foreseeable for a person in their own home in Austin, Texas to retrieve a gun and get it ready to fire before checking to see who is at their door.<sup>82</sup> Indeed, every officer who responded to Medel’s home on April 6, 2024 other than Walker Prado agreed that arming oneself before approaching to see who is at the door is a reasonable response to an unexpected middle-of-the-night knock and within the rights of a lawfully-armed citizen under the Second Amendment.<sup>83</sup> In fact, Officer Lozano not only agreed with this general proposition but noted that when she was personally confronted by an unknown noise outside her own home at 4 a.m., she too started to

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<sup>79</sup> Ex. 1, Walker Prado Deposition, 151:16-22; Ex. 6, Daniel Deposition, 21:22-24; Ex. 10, Reinhart Deposition 37:15-38:6.

<sup>80</sup> For purposes of this motion and the questions asked of Officers Reinhart and Daniel, “lawfully-armed” simply means that the gun owner is not a felon, is not suspected of domestic violence, and otherwise has not done or said anything that would suggest to responding officers that his Second Amendment right to own a gun had been removed.

<sup>81</sup> Ex. 14, Expert Report of Jeffrey Noble, pp. 77-78, ¶ 59(e)

<sup>82</sup> Ex. 20, Henderson Deposition, 75:19-23 and 75:25-76:4.

<sup>83</sup> Ex. 2, Lozano Deposition, 29:15-21, 23; Ex. 6, Daniel Deposition, 20:12-25 and 21:3-5; Ex. 10, Reinhart Deposition, 36:19-37:3 and 37:5-14.

retrieve her own handgun until her video doorbell loaded and she confirmed it was not a criminal at her door.<sup>84</sup> Officer Lozano confirmed that if she had not gotten her video doorbell to work, she would have continued to get her gun ready.<sup>85</sup>

### III. STANDARDS OF REVIEW

#### A. *Summary Judgment*

Summary judgment is appropriate only when there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). “A judge’s function at summary judgment is not to weigh the evidence and determine the truth of the matter but to determine if there is a genuine issue for trial.” *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (reversing Fifth Circuit order affirming grant of summary judgment in excessive force case). Accordingly, in deciding a motion for summary judgment, the Court “must draw all reasonable inferences in the non-movant’s favor and view the evidence in the light most favorable to the non-movant.” *Winfrey v. Rogers*, 901 F.3d 483, 493 (5th Cir. 2018); *see also Brown v. Callahan*, 623 F.3d 249, 254 (5th Cir. 2010) (“all inferences” are drawn in favor of the party negating a qualified immunity defense). When video recordings taken at the scene are available, a court reviewing a motion for summary judgment should reject the non-movant’s version of facts only when the record “blatantly contradict[s]” the non-movant’s version “so that no reasonable jury could believe it.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

#### B. *Excessive Force & Qualified Immunity*

To prevail under 42 U.S.C. § 1983, a plaintiff must show “a violation of a right secured by the Constitution or laws of the United States and demonstrate that the alleged deprivation was

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<sup>84</sup> Ex. 2, Lozano Deposition, 30:9-31:14.

<sup>85</sup> *Id.* at 31:18-21, 31:23-32:4, and 32:6-9.

committed by a person acting under color of state law.” *Mason v. Lafayette City-Parish Consol. Gov’t.*, 806 F.3d 268, 275 (5th Cir. 2015). To succeed on an excessive force claim under § 1983, a plaintiff must show (1) an injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.” *Tarver v. City of Edna*, 410 F.3d 745, 751 (5th Cir. 2005). Where an officer raises qualified immunity as a defense the Court further evaluates the plaintiff’s claim under a two-prong test: (1) has the plaintiff “shown sufficient facts to make out a violation” of their constitutional right and (2) was the right at issue “clearly established” at the time of the defendant’s conduct. *Mason*, 806 F.3d at 275.

Courts must “expressly” assess “whether [the officer’s] use of his firearm was justified throughout the encounter.” *Mason*, 806 F.3d at 277. “[A]n exercise of force that is reasonable at one moment can become unreasonable in the next if the justification for the use of force has ceased.” *Roque v. Harvel*, 993 F.3d 325, 333 (5th Cir. 2021) (citing *Lytle v. Bexar Cnty., Tex.*, 560 F.3d 404, 413 (5th Cir. 2009)). When an officer uses his firearm, an initial shot can be reasonable, but subsequent shots, fired in quick succession, can be unreasonable. *See Roque*, 993 F.3d at 330 & 334 (in three-shot volley, second and third shots—fired two and four seconds after the first shot—were unreasonable); *see also Mason*, 806 F.3d at 277. “At some point ... even in the most difficult circumstances, the reasonableness rope ends.” *Roque*, 993 F.3d at 329.

#### IV. ARGUMENT AND AUTHORITIES

##### ***A. Walker Prado’s facts and exhibits defy Rule 56 in three different ways.***

In defending his use of excessive force, Walker Prado invites the Court into three different reversible errors. The Court should decline each invitation.

First, Walker Prado erroneously demands the Court accept his story over Medel’s and disregard Medel’s evidence over his preferred evidence, despite binding precedent to the contrary.

*Tolan*, 572 U.S. at 660 (overturning summary judgment in favor of officers where Fifth Circuit credited officers' evidence over plaintiff's to resolve disputed material facts); *Pena v. City of Rio Grande City, Texas*, 816 Fed. Appx. 966, 971, 974 (5th Cir. 2020) (reversing summary judgment in favor of officers where court ignored contradictions in officers' evidence and impermissibly resolved disputed fact issues in their favor); *Baker v. Coburn*, 68 F.4th 240, 251 (5th Cir. 2023) (same).

Yet at no point during the conversation between Medel and his father on April 6, 2024 did Medel threaten or intimidate his father.<sup>86</sup> Plaintiff Medel and his father dispute all of the details Walker Prado now asserts to try to bolster his contrary version of events: Medel did not adopt any kind of fighting stance; did not strike, grab, or push his father; did not show or bare his teeth at his father; did not growl at his father; did not flare his elbows; did not broaden his chest or stick his chest out; did not pin his father against the counter; did not prevent his father from moving away from the kitchen counter while they spoke; did not come within a foot of his father's face while speaking to him; and did not move his body in any manner to scare his father.<sup>87</sup> Medel, Sr. did not lean away from his son during their conversation.<sup>88</sup> Medel, Sr. did not feel frightened, intimidated, or distressed during the conversation and did not move his body or face in any manner that indicated he was.<sup>89</sup> The officers' body-worn camera videos do not show otherwise.

Rather than accept that what he heard and saw on April 6, 2024 was a loud, spirited but non-physical discussion between family members and make his case from these facts, Walker Prado's motion hinges entirely upon a disputed version of the events not caught on any body-worn

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<sup>86</sup> Ex. 7, Medel Dec. at p. 1, ¶ 4 ; Ex. 8, Father's Affidavit at p. 1, ¶ 2.

<sup>87</sup> Ex. 7, Medel Dec. at pp. 1-2, ¶¶ 5-11; Ex. 8, Father's Affidavit at pp. 1-2, ¶¶ 3-9.

<sup>88</sup> Ex. 7, Medel Dec. at p. 2, ¶ 10; Ex. 8, Father's Affidavit at p. 1, ¶ 8.

<sup>89</sup> Ex. 8, Father's Affidavit at p. 2, ¶ 10; *see also* Ex. 7, Medel Dec. at p. 2, ¶ 12.



camera in which he paints the picture of Medel as an “agitated,” “aggressive,” “erratic,” “unhinged” and “mentally disturbed” man acting so “extreme” that he was allegedly imminently about to assault an elderly man. Yet by insisting that the Court adopt a version of events where Medel was agitated, threatening to his father, knew without a doubt that police were at his door, and intent on committing mass murder of police officers who had abandoned their training and were standing in front of Plaintiff’s door, Walker Prado asks the Court to credit his word not only over Medel’s and his father’s but also over his own body-worn camera footage, his APD training, and the testimony of his fellow officers on the scene and the APD Chief of Police. This is strikingly similar to the fact disputes that prompted reversal in *Tolan*, where the officer disagreed with that plaintiff about how agitated that victim and his parent were before force was used, as well as *Pena*, where the parties disputed whether an argument between family members was a physical altercation. *Tolan*, 572 U.S. at 660; *Pena*, 816 Fed. App’x. at 971. The Court must instead evaluate whether Walker Prado used excessive force in violation of Medel’s constitutional rights using the facts laid out by Plaintiff above, not the tale spun in Walker Prado’s motion.

Second, Walker Prado also asks the Court to ignore his own credibility issues. “[S]ummary judgment is not appropriate” where “questions about the credibility of key witnesses loom large and the evidence could permit the trier-of-fact to treat their testimony with skeptical scrutiny.” *Deville v. Marcantel*, 567 F.3d 156, 165 (5th Cir. 2009) (quotation omitted). Walker Prado’s changing story over time and contradictions between his version of events and his own body-worn camera, *see supra* pp. 11-14, preclude summary judgment based on Walker Prado’s version of events.

Finally, in asking the Court to consider facts that were *knowable* to Walker Prado but not actually *known* (or which Plaintiff’s evidence suggests were not known), Walker Prado asks this



Court to reject a bedrock pillar of excessive force law and disregard binding, on-point Supreme Court precedent. It is well-settled that only facts actually *known* to officers when they use force are relevant to the excessive force analysis. *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015) (reasonableness of force is evaluated from the “perspective and with the knowledge of the defendant officer”). In *Hernandez v. Mesa*, the Supreme Court considered and rejected an argument similar to the one Walker Prado makes where a border patrol agent shot a child whose nationality and ties to the U.S. he was “uncertain” about but who turned out to have no ties. 582 U.S. 548, 554-55 (2017). The Supreme Court found the Fifth Circuit erred in granting qualified immunity to the officer based on the child’s lack of ties to the United States when that was a fact the officer did not learn for certain until after the incident ended as “[f]acts an officer learns after an incident ends...are not relevant.” *Id.* at 554. The fact that Officer Reinhart, who was a more experienced officer than “brand new” Walker Prado, suspected Medel might be intoxicated does not mean that Walker Prado can be credited with this knowledge where evidence suggests he did not actually suspect Medel was intoxicated. *See supra* p. 13. The suggestion that information one officer knows can be imputed onto other officers for purposes of the qualified immunity analysis has already been soundly rejected by the Fifth Circuit. *See Cole v. Carson II*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (“Despite the many ‘red flags’...known to other [officers], only those known to [these officers] are relevant to the qualified immunity analysis.”).

***B. Disputed material facts preclude the Court’s granting of summary judgment.***

Summary judgment is particularly inappropriate here where numerous material facts about what Medel did, what Walker Prado saw, and how a reasonable officer in Walker Prado’s position would have acted on April 6, 2024 preclude summary judgment. These include:

1. While talking to his father, Medel raised his voice, but did nothing else to show he was irrational, threatening, or intimidating towards his father. *See Ex. 7*, Medel Dec. at pp.

- 1-2, ¶¶ 3-12; Ex. 8, Father's Affidavit at pp. 1-2, ¶¶ 1-9; *contra* Doc. 27-4, Walker Prado Declaration at p. 2, ¶ 7 (accusing Medel of "growling," getting within inches of his father's face, baring his teeth, flaring his elbows, or broadening his chest).
2. Medel's father did not show any signs of distress, fear, or intimidation. *See* Ex. 7, Medel Dec. at p. 2, ¶¶ 9, 10, 12; Ex. 8, Father's Affidavit at pp. 1-2, ¶¶ 8, 10, 11; *contra* Doc. 27-4, Walker Prado Declaration at p. 2, ¶ 8 (alleging Medel, Sr. appeared to be in distress, pinned against the counter, and leaning away from his son).
  3. Walker Prado did not recognize any signs that Medel might be intoxicated before he shot him, despite his current insistence otherwise. *See* Doc. 27-6, Walker Prado IA Interview at p. 27, ln. 1206-1209; *see also id.* at p. 12, ln. 510-513
  4. Due to the above facts, Walker Prado had probable cause to arrest or ticket Medel for only a municipal noise violation and had, at most, reason to investigate a simple assault with no visible injuries. *See* Ex. 1, Walker Prado Deposition, 177:1-9; *see also*, Ex. 6, Daniel Deposition, 34:7-17.
  5. Medel, just like the other three witnesses who were indoors, did not hear the announcement of "police," and Walker Prado would have known that walls obviously dampen sounds from outside so that the announcement may not have been heard. *See* Ex. 7, Medel Dec. at p. 2, ¶ 14; Ex. 8, Father's Affidavit at p. 2, ¶ 13; Ex. 11, Rikita Ghimire Witness Interview Summary, COA 1690; Doc. 27-15 "SIU Presentation" at COA 2742, p. 12; Ex. 14, Expert Report of Jeffrey Noble, p. 77, ¶ 59(a)-(c).
  6. Walker Prado knew it is reasonable and foreseeable for an innocent person in their own home to check whether a person knocking on their door at 2:00 am is police before relaxing their guard due to the widespread threat of police impersonation. Ex. 14, Expert Report of Jeffrey Noble, pp. 77-78, ¶ 59(e); *see also* Ex. 2, Lozano Deposition, 29:15-21, 23; Ex. 6, Daniel Deposition, 20:12-25 and 21:3-5; Ex. 10, Reinhart Deposition, 36:19-37:3 and 37:5-14; Ex. 20, Henderson Deposition, 101:9-19.
  7. Walker Prado knew it is reasonable and foreseeable for an innocent person to retrieve a personal firearm when checking who is knocking at their door at 2:00 am. *See id.*
  8. Medel safely held his firearm in the high ready position until he was shot. *See* Ex. 7, Medel Dec. at pp. 2-3, ¶¶ 18-20, 26; *see also supra* discussion p. 9; *contra* Doc. 27-4, Walker Prado Declaration at p. 3, ¶¶ 10-11 (alleging Medel "muzzle swept" the front door, then lowered the gun at the front door).
  9. Medel walked at a normal pace walk toward the door of his apartment after he picked up his handgun, contrary to Walker Prado's insistence that he "aggressively" walked and "charged" the door. *Compare* Ex. 7, Medel Dec., at p. 2, ¶¶ 21, 25; Ex. 8, Father's Affidavit at p. 2, ¶15 *with* Doc. 27-4, Walker Prado Declaration at p. 3, ¶ 10.
  10. Walker Prado, who decided to shoot before stepping from around the corner, did not see Medel's gun move slightly to under his chin before Walker Prado decided to shoot Medel without warning. *See supra* discussion p. 6.

11. Walker Prado did not see Medel's elbows open and the gun extend as he claimed and demonstrated during his deposition before he shot Medel. *Compare* Ex. 13, Still images from last frame of Walker Prado's BWC before bullet shattered Medel's sliding glass door *with* Ex. 18, Still Image of Walker Prado Deposition.
12. Walker Prado knew his fellow officers were not directly in front of the door because he saw them and knew they had been trained to stand to the side as they did, so they were not at risk from the hypothetical threat of Medel shooting blindly through his front door. Ex. 3, Walker Prado BWC at 02:08:59; Ex. 2, Lozano Deposition, 38:15-39:12; *id.* at 39:19-40:4; Ex. 6, Daniel Deposition, 28:24-29:12; *id.* at 30:5-12; Ex. 10, Reinhart Deposition, 50:11-16; *id.* at 51:10-18 *contra* Doc. 27-4, Walker Prado Declaration at p. 3, ¶ 12.
13. Walker Prado, who had time to warn his fellow officers that Medel had a gun and did successfully warn his fellow officers, had time to give a warning to Medel before shooting at him the first three times, contrary to his insistence otherwise. Ex. 3, Walker Prado BWC, 02:09:02-02:09:05; Ex. 14, Expert Report of Jeffrey Noble at p. 78, ¶ 61; *contra* Doc. 27-4, Walker Prado Declaration at pp. 3-4, ¶ 14.
14. After Walker Prado had already shot Medel three times, causing him to collapse to the ground near his couch, Medel did not reach out to aim the gun at the door—he was visibly not moving and thus incapacitated. Ex. 3, Walker Prado BWC at 02:09:05-02:09:09; Ex. 7, Medel Dec. at p. 3, ¶ 33; *contra* 27-4, Walker Prado Declaration at p. 4, ¶¶ 15-16.
15. Walker Prado had time to issue a warning to Medel before he shot him the final time. Ex. 3, Walker Prado BWC at 02:09:05-02:09:09.

***C. Walker Prado used excessive and deadly force when he shot Medel.***

Resolving these disputes in Plaintiff's favor and turning to Walker Prado's use of excessive force, there is no dispute that Medel was injured "directly and only" from the shots fired by Walker Prado on April 6, 2024.<sup>90</sup> Walker Prado shot Medel twice—once in the thigh and once in the shoulder—while none of the other four armed people at the apartment fired at all.<sup>91</sup> When the facts are properly viewed in the light most favorable to Medel, Walker Prado's force was clearly excessive to any need and objectively unreasonable.

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<sup>90</sup> *See gen.* Doc. 34, First Amended Motion for Summary Judgment (Walker Prado does not argue Medel was not injured by him).

<sup>91</sup> Ex. 7, Medel Dec. at pp. 3-4, ¶¶ 31, 34.

In evaluating whether a use of force was objectively unreasonable, Courts weigh the factors set forth in *Graham v. Connor*: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. 490 U.S. 386, 396 (1989). Even at the summary judgment stage, “[e]xcessive force claims are necessarily fact-intensive; whether the force used is ‘excessive’ or ‘unreasonable’ depends on the facts and circumstances of each particular case.” *Deville*, 567 F.3d at 167. “It is irrelevant ‘whether the force was justified based on the [defendant's] claimed interpretation of the situation at the time.’” *Pena*, 816 Fed. Appx. at 970; *see also Roque*, 993 F.3d at 334. The objective facts available to the officers—from the situation right in front of them—are the only ones that matter for the Court’s analysis. *Pena*, 816 Fed. Appx. at 970; *see also Autin v. City of Baytown*, 174 F. App’x 183, 185 (5th Cir. 2005).

Here, when the disputed facts are viewed in the light most favorable to the Plaintiff Medel, all of the *Graham* factors cut against Walker Prado’s use of deadly force against Medel.

1. *Medel did not pose an immediate threat of serious physical injury to anyone.*

Medel posed no immediate threat by merely walking to his door to investigate knocking at 2 a.m. while understandably keeping his personal handgun at the ready until he determined who was outside. Nothing about that behavior suggested Medel intended to engage in an unlawful act, much less start shooting at police or blindly shoot through his own apartment’s front door.

The Court must consider all *Graham* factors, but when officers use deadly force, the second *Graham* factor—immediacy of the threat or lack thereof—is generally assigned the most weight. *Crane v. City of Arlington, Tex.*, 50 F.4th 453, 463 (5th Cir. 2022) (citations omitted); *see Barnes v. Felix*, 145 S. Ct. 1353, 1358 (2025) (“the situation at the precise time of the shooting will often be what matters most”). Here the facts in the light most favorable to Plaintiff show that he was not

an immediate threat of serious bodily injury to anyone for three reasons.

First, the context of Medel’s behavior demonstrates a normal response of a gun owner to knocking on the door to their home late at night. At worst, Medel engaged in a loud, profane, but non-threatening conversation with his father; was interrupted by unexpected, late-night pounding on his door; understandably responded to the alarming interruption by someone he could neither immediately see nor confirm were police by arming himself; and held his gun in a “high ready” pointing away from the door (behind which stood no officers) as he approached the door to look through the peephole at a normal walking pace. This conduct is lawful, understandable, and eminently foreseeable in Texas—it does not reflect any *Manis* act from which Walker Prado could reasonably infer a threat. *See Cole v. Carson II*, 935 F.3d 444, 453 (5th Cir. 2019) (en banc) (shooting a gun-toting, suicidal teenager without warning who knew police were looking for him but did not realize he was moving towards concealed police officers as he pointed a gun away from them constituted an obvious case of excessive force); *Griffin v. Newell*, 981 F.2d 1256, 1992 WL 386807, \*2-\*3 (5th Cir. 1992) (unpub) (denying summary judgment where under plaintiff’s version of facts—police shot a man with a handgun in the yard of his own home when he disobeyed commands to put his hands up but was trying to put the gun on the ground at the time he was shot—officers had used excessive force in violation of clearly established law).<sup>92</sup>

Second, the lack of any immediate threat by Medel and the excessiveness of Walker Prado’s force is further highlighted by the fact that Walker Prado could have issued a warning yet chose not to. Just recently, the Fifth Circuit re-confirmed that officers like Walker Prado have had “fair notice” for years that they cannot use deadly force against a person without giving them a

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<sup>92</sup> Under 5th Circuit Rule 47.5.3, as an unpublished opinion issued before January 1, 1996, *Griffin* is precedential.

warning before they shoot when giving a warning is feasible. *Bakutis v. Dean*, 129 F.4th 299, 306 (5th Cir. 2025) (discussing the state of the law in 2019, five years before Walker Prado shot Plaintiff). As set forth above, the summary judgment facts show that Walker Prado, who had time to give his fellow officers a warning (“He’s got a gun! Gun, gun, gun, gun, gun”), could have instead issued a warning like “Police, Drop the Gun” that would have effectively warned both Medel as well as Officers Reinhart, Lozano, and Daniel. Likewise, where Medel was not lowering or pointing his weapon at the door and no officers were even behind the door, Medel was no threat at all and there was plenty of time for Walker Prado to warn Medel before firing. The fact that Walker Prado never gave a warning strips him of the ability to now infer that Medel’s continued walking to the door is somehow threatening—Medel was, indeed, complying with the police’s request to open the door.

Finally, any imagined threat further evaporated when Walker Prado’s first shots incapacitated Medel and he collapsed. Walker Prado did not see Medel move, much less raise or point the gun from the ground, before Walker Prado fired his final shot. Under binding Fifth Circuit precedent, Walker Prado had time to recognize that no threat existed because Medel was incapacitated after Walker Prado’s first three shots, so his fourth and final shot into Medel’s shoulder was excessive. *See Roque*, 993 F.3d at 334; *Mason*, 806 F.3d at 277.

The Court should reject Walker Prado’s arguments to the contrary. Walker Prado purports to identify four *Manis* acts, but each requires the Court to commit reversible error by impermissibly accepting his version of events and rejecting Medel’s evidence outright. These four alleged actions, as described by Walker Prado in the light most favorable to himself are: (1) “retrieving a gun specifically as a response to the arrival of police,” (2) “loading the gun—and then especially chambering a round . . . as direct responses to the arrival of police,” (3) the “armed charge toward

the officers . . . especially given [Plaintiff’s alleged] unstable conduct up to that point,” and (4) “lowering his gun downward in the direction of police officers.” Doc. 34, pp.19-21, ¶¶ 44-47.

As to the first alleged threatening act, Walker Prado himself emphasizes that key to the Court’s evaluation is whether Medel armed himself “because [he] learned police had arrived.” *Id.* at p. 19, ¶ 44. Consistent with this emphasis on actual knowledge that one is interacting with police, in each of the three cases Walker Prado relied upon, those plaintiffs/decedents actually knew they were interacting with police officers, yet did not drop their weapons, still made furtive movements, and otherwise disobeyed officers’ commands not to reach. *See id.* (citing *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009)) (man ignored five commands from law enforcement officers not to reach and lunged under his seat as if he had obtained a weapon before officers opened fire); *Argueta v. Jaradi*, 86 F.4th 1084, 1087, 1092 (5th Cir. 2023) (man made a furtive gesture akin to reaching to a waistband while running from officers whom he knew were police); *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (man retreated from police wearing marked uniforms after they ordered him outside, refused repeated commands to show them his hands, and then reached into a boot).

Yet here, the material facts are that Walker Prado knew (a) Medel armed himself in response to loud, unexpected banging on his door in the middle of the night;<sup>93</sup> (b) the single announcement was not clear enough to assume the inhabitants could hear it, and in fact they did not;<sup>94</sup> (c) even if Walker Prado erroneously assumed Medel heard “police,” criminals with ill intent

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<sup>93</sup> Ex. 7, Medel Dec. at p. 2, ¶¶ 13-15.

<sup>94</sup> *Id.* at p. 2, ¶ 14 Ex. 8, Father’s Affidavit at p. 2, ¶ 13; Ex. 11, Rikita Ghimire Witness Interview Summary, COA 1690; Doc. 27-17 “SIU Rikita Ghimire Interview.mp4” (filed traditionally) at 06:35:15-06:35:40; Doc. 27-15 “SIU Presentation” at COA 2742, p. 12 (summarizing interview with Allison Saiko).

frequently make that claim;<sup>95</sup> (d) Medel had no way to confirm who was at his door without approaching it and looking through the peephole;<sup>96</sup> and (e) as Walker Prado's fellow officers, his chief of police, and Plaintiff's expert all agree, arming oneself is a reasonable or even expected response of a Texan to an unexpected middle-of-the-night interruption just like this.<sup>97</sup> While of course Medel did arm himself in response to the knocking at his door, "[m]erely having a gun in one's hand does not mean *per se* that one is dangerous." *Graves v. Zachary*, 277 Fed. Appx. 344, 348 (5th Cir. 2008); *see also Smith v. City of El Paso, Tex.*, 2011 WL 13180179 (W.D. Tex. Oct. 13, 2011) (Briones, S.J.) *appeal dismissed* by 477 Fed. Appx. 240 (5th Cir. 2012) (noting that the "Court could conclude as a matter of law that [an] officer's actions were excessive and unreasonable" if an officer had fired his gun at a man solely for bringing a gun and flashlight to his door and sweeping left-to-right to see who was there late at night, notwithstanding that the gun swept by the officer). Thus, nothing about Medel's act of retrieving his handgun shows more than a lawful, foreseeable response, not a threat.

Walker Prado's second alleged *Manis* act similarly fails because making the gun ready to fire is not a threat within the context of the facts Walker Prado had—that Medel did not know who was at his door, was reasonably concerned it was someone dangerous, and so foreseeably made his gun ready to use in the event that he needed it.<sup>98</sup> Setting aside that none of the cases cited by Walker Prado are published, in-circuit cases, none stand for his proposition that simply chambering a round of a handgun is so imminently threatening that law enforcement can shoot someone for it

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<sup>95</sup> Ex. 14, Expert Report of Jeffrey Noble at p. 77, ¶ 59(e).

<sup>96</sup> Ex. 7, Medel Dec. at p. 3, ¶ 24; Ex. 8, Father's Affidavit at p. 2, ¶ 23.

<sup>97</sup> Ex. 14, Expert Report of Jeffrey Noble, pp. 77-78, ¶ 59(e); Ex. 20, Henderson Deposition, 75:19-23 and 75:25-76:4; Ex. 2, Lozano Deposition, 29:15-21, 23; Ex. 6, Daniel Deposition, 20:12-25 and 21:3-5; Ex. 10, Reinhart Deposition, 36:19-37:3 and 37:5-14.

<sup>98</sup> Ex. 7, Medel Dec. at p. 2, ¶¶ 13-15.



as he suggests. In fact, in none of Walker Prado's cited precedents did officers shoot at a gun owner solely for doing so. In contrast to Walker Prado, the officers in *Shullaw* heard that plaintiff rack his shotgun yet still managed not to shoot him even when he opened the door with the gun in his hand and instead gave him a warning and time to comply with commands to put down his weapon. *Shullaw v. McMullen*, No. 3:23-cv-13317-MCR-ZCB, 2025 WL 976283, \*2 (N.D. Fla., Mar. 31, 2025). In *Padilla*, there was no evidence that decedent was unaware police were the ones at his door when he approached and audibly racked his shotgun, yet officers still did not shoot upon hearing these sounds but waited until the man not only opened the door with a gun in one hand but moved both hands to the gun, raised it parallel to the ground, and pointed at officers whom he could see before they fired on him. *Padilla v. City of Farmington, New Mexico*, No. 1:23-cv-00790-MLG-KK, 2025 WL 1414287, \*2-\*3 (D.N.M. May 15, 2025). If Walker Prado had given Medel the time and warnings the officers in *Shullaw* and *Padilla* did before they fired, no one would have been shot on April 6, 2024.

Walker Prado's reliance on *Lozano v. City of Austin* is also inapposite for three key reasons. First, the officer in *Lozano* was responding to a domestic violence call and had been knocking on the door for some time, wearing his full uniform, so reasonably expected the occupant had looked through the door to see that it was police. A-09-CA-200-SS, 2010 WL 3069811, \*3 (Aug. 4, 2010) (Sparks, J.). Second, in that context, when the officer heard that plaintiff slide the rack of their shotgun, the officer reasonably assumed they were being threatened *because* he was a police officer. *Id.* Finally, that officer did not fire at that plaintiff until he had opened the door, shotgun in hand—at which point the officer fired because he had no cover. *Id.* at \*8. All three of these facts are critically different here, since Walker Prado knew Medel had not yet looked through the

peephole to confirm police presence,<sup>99</sup> Medel did not loudly chamber a round such as to deliberately communicate a threat to a police officer like in *Lozano*—instead, Medel had no idea officers were present, much less observing him with a readied weapon,<sup>100</sup> and Medel did not open the door or otherwise have the ability to target anyone since Walker Prado was in cover and the other officers remained concealed.<sup>101</sup> Importantly, the APD officer in *Lozano* waited for the imminent threat of the door opening before firing, whereas Walker Prado literally jumped the gun and decided to shoot as soon as he saw Medel was armed. *Id.* at \*3.

As to Medel’s third alleged threatening act according to Walker Prado, Walker Prado again impermissibly falls back on his own version of events rather than the summary judgment facts and describes Medel as “charging” the door after already having demonstrated “unstable conduct” before that point as justifying deadly force. Here, Medel had not done anything other than converse loudly with his father while using profanity before Reinhart knocked and he was moving at a normal walking speed when Walker Prado shot him.<sup>102</sup>

Once again, these disputed material facts distinguish Walker Prado’s precedents. Unlike *Lozano*, where the officer reasonably inferred the person had already confirmed he was a police officer, nothing distinguished Medel’s normal walking approach to his own front door from the entirely foreseeable conduct of a lawful gun owner responding to late night knocking. Likewise, the decedent in *Rice* unequivocally knew he was interacting with law enforcement whom he could see inside his house, had already fired the gun once with them inside, and ignored their repeated

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<sup>99</sup> Ex. 3, Walker Prado BWC at 02:08:59-02:09:03.

<sup>100</sup> Ex. 7, Medel Dec. at p. 2, ¶ 15.

<sup>101</sup> Ex. 3, Walker Prado BWC at 02:08:59-02:09:03; Ex. 9, Reinhart BWC at 02:08:56 (showing position of other officers).

<sup>102</sup> Ex. 7, Medel Dec. at pp. 1, 3, ¶¶ 2, 3, 21, 25, 27; Ex. 8, Father’s Affidavit at pp. 1-2, ¶¶ 1, 15, 16.

commands to put his gun down before they shot him as he approached them. *Rice v. ReliaStar Life Ins. Co.*, 770 F.3d 1122, 1127 (5th Cir. 2014). Medel, by contrast, never saw the police, never opened fire, and never disobeyed commands. Finally, as Walker Prado himself seemingly acknowledges, the immediacy of the deadly threat posed by the decedent in *Cass* was not only that the decedent was approaching the officer but that he was also raising his gun to aim at an officer he could see who was mere feet away inside the same store, not unknown and unseen behind walls as in this case. *Cass v. City of Abilene*, 814 F.3d 721, 726 (5th Cir. 2016); Doc. 34, p. 21, ¶ 46 (acknowledging the threat was not only because the decedent was “approaching” but also “drawing” his gun).

Walker Prado’s fourth *Manis* act—that he saw Medel lowering his gun—is, like the ones before it, based on his request that the Court impermissibly resolve material fact disputes against Plaintiff. A reasonable jury could find the opposite both because Medel never lowered it to aim it—the video shows a split second where Medel looks out the window and shifts the gun to near his chin, while his elbows remain locked, entirely opposite to the motion of pointing at the front door<sup>103</sup>—and also because Walker Prado himself admitted he decided to fire *before* that minute change in Medel’s position.<sup>104</sup> Medel’s actual position at the moment the shot was fired is still what Walker Prado himself demonstrated as a high ready position, not a shooting position.<sup>105</sup> Walker Prado does not have the privilege to walk back his own explanation just minutes after he opened fire that he did so solely because Medel brought a gun to the door.

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<sup>103</sup> Ex. 13, Still images from last frame of Walker Prado’s BWC before bullet shattered Medel’s sliding glass door.

<sup>104</sup> Doc. 27-4, Walker Prado Dec. at pp. 3-4, ¶¶ 12, 15 ; *see also* Ex. 3, Walker Prado BWC at 02:12:55-02:13:01 and *id.* at 02:16:26-28 (describing reasons Walker Prado shot Medel).

<sup>105</sup> *Compare* Ex. 13, Still images from last frame of Walker Prado’s BWC before bullet shattered Medel’s sliding glass door *with* Ex. 16, Still Image of Walker Prado Deposition.

In this light, *Ramirez v. Knoulton*, relied upon by Walker Prado, is readily distinguishable. Unlike Medel, the *Knoulton* plaintiff knew he was interacting with police officers who were investigating him for sexual assault with a child, fled from those officers, expressed suicidal intent to officers, disobeyed repeated commands to keep his hands visible, stepped out of a car with a gun in his hand, and rather than obey subsequent commands to drop the weapon, moved his hands together as if to lift the gun to aim it at officers whom he could actually see mere yards away. 542 F.3d 124, 127 (5th Cir. 2008). That plaintiff not only acted in a manner that was immediately threatening, he ticked the box on all three *Graham* factors, unlike Medel, who had no idea it was police on the other side of his door, could not see any officers, was not suicidal or acting erratically, and did not disobey any commands, much less repeated commands.

Walker Prado's interpretation of the evidence cannot spin a threat from what is, at the summary judgment stage, Medel's completely innocuous and reasonable gun ownership, particularly in light of Walker Prado's failure to warn and his final shot into an incapacitated Medel's back. Under *Cole*, *Griffin*, *Roque*, and *Mason*, there was no immediate threat for the purposes of summary judgment and the motion must be denied.

2. Medel's alleged offense was, at worst, a misdemeanor that did not justify the use of deadly force.

Returning to the first *Graham* factor—the suspected offense Medel had committed—Medel did not “muzzle sweep” his gun, point his gun at any officers or the door, or stretch out his arms in order to aim his gun at any officers. Accordingly, the severity of the crime at issue is not, as Walker Prado now suggests, attempted capital murder or aggravated assault on known peace officers.

Walker Prado's own explanation to Medel and to other officers immediately after the incident was that he shot Medel simply because he “grabbed” the gun and “came to the door with

it” which is no crime at all, particularly where Medel did not and could not know who was at the door of his home in the middle of the night without first approaching the door and looking out.<sup>106</sup> See TEX. PENAL CODE §46.02(a)(3), (a-6)(2)(A), (a-7)(2)(A)<sup>107</sup> (explicitly excluding carrying a handgun on the person’s own premises or property from the offense of unlawful carrying of weapons). Though the officers were initially dispatched for “physical disturbance,” Walker Prado himself admitted that he saw no blood, no injuries, and no evidence that any sort of physical altercation had actually occurred before signaling to Officer Reinhart to knock.<sup>108</sup> Instead, the only offense any of the responding officers actually had sufficient probable cause to arrest or ticket Medel for before Walker Prado started shooting was a violation of the City of Austin’s municipal noise ordinance making it a Class C misdemeanor to make noises audible to adjacent residences between 10:30 p.m. and 7:00 a.m. CITY OF AUSTIN MUNICIPAL CODE § 9-2-3(A)(2). At most, they had reason to investigate a possible simple assault with no visible injuries.<sup>109</sup>

Neither Medel’s action of bearing a lawfully owned handgun in his own home, while moving to see who is at the door, nor a ticket-able noise offense or simple assault with no injuries gave Walker Prado probable cause to believe Medel posed an immediate threat of serious physical harm to anyone. The Second Amendment affords Medel the right not only to possess but to “bear arms” or to “wear, bear, or carry upon [his] person” a gun “for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Heller*, 554 U.S. at 584 (citation omitted). Here, Medel’s action of arming himself to be ready for possible conflict

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<sup>106</sup> See also, Ex. 6, Daniel Deposition, 34:1-2 (agreeing Medel is allowed to carry a weapon to his door).

<sup>107</sup> Held unconstitutional on other grounds by *Firearms Policy Coalition, Inc. v. McGraw*, 623 F.Supp.3d 740, 744 (N.D. Tex. 2022).

<sup>108</sup> Ex. 1, Walker Prado Deposition, 177:1-9; see also, Ex. 6, Daniel Deposition, 34:7-17.

<sup>109</sup> *Id.*

with an unknown person at his door, but not actually taking any action to point, aim, or fire did not constitute a criminal offense that justified deadly force but an exercise of his Second Amendment right. *See id.*; TEX. PENAL CODE § 46.02(a)(3), (a-6)(2)(A), (a-7)(2)(A).

3. *Medel was not resisting or fleeing.*

The final *Graham* factor likewise cuts against Walker Prado's use of force. It is undisputed that Medel was not attempting to flee, nor was he resisting any commands. The only command even given by any APD officer before Walker Prado shot him was to "come to the door."<sup>110</sup> Though Walker Prado should have realized Medel never heard this command over the loud knocking, he knew Medel was simply complying with the implied request to come to the door by the knocking he did hear, so Walker Prado knew Medel was doing everything asked of him.

**D. Walker Prado violated Medel's clearly established rights when he shot Plaintiff.**

The Court should reject Walker Prado's assertion of qualified immunity for two reasons.

First, several binding Fifth Circuit precedents gave Walker Prado fair notice that his use of deadly force on someone who was not an imminent threat of serious bodily injury violated clearly established law, even if the person was holding a gun. Thirty years before Walker Prado shot Medel, the Fifth Circuit in *Griffin v. Newell* upheld a denial of summary judgment to an officer who used deadly force against a man holding a gun in his own front yard. 981 F.2d 1256, 1992 WL 386807 (5th Cir. 1992) (unpub). Though *Griffin* was originally designated as unpublished, as an unpublished opinion issued before January 1, 1996, it is binding precedent.<sup>111</sup> The *Griffin* court noted that the parties' versions of the events were contradictory, but, taking the facts in the light

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<sup>110</sup> Ex. 9, Reinhart BWC at 02:08:58-02:09:03.

<sup>111</sup> FIFTH CIR. R. 47.5.3; *see also Johnson v. Halstead*, 916 F.3d 410, 417 (5th Cir. 2019) (relying on pre-1996 unpublished but precedential opinion in support of proposition that law was clearly established to deny qualified immunity in discrimination case).

most favorable to the plaintiffs, the decedent in *Griffin* was confronted by officers in his own front yard while still holding or wearing a holstered gun shortly after firing two shots into the air. *Id.* at \*2. The officers commanded him to “stop, hands up, drop the bag” and then shot him a single second later as he disobeyed this command but moved to put the holster and gun on the ground. *Id.* While the officers alleged they identified themselves to the decedent, gave four warnings, and did not shoot until after the decedent pointed the gun at them, the court refused to grant the appeal based on the officer’s facts, finding that if the facts were as the plaintiffs alleged, “there is little question” they “would constitute constitutionally excessive force.” *Id.* at \*3.

Like the *Griffin* decedent, Medel was in his own home, holding a gun, and moving in a manner that a reasonable officer would not consider immediately threatening: while the *Griffin* decedent was tried to put his gun on the ground instead of putting his hands up, Medel walked at a normal pace to see who was at his door in the middle of the night while holding his handgun pointed up and away from the door and, at worst, moving the gun a few inches from the high ready over his shoulder to a ready position near his chin area.

Likewise, the Fifth Circuit’s en banc decision in *Cole v. Carson II* gave Walker Prado fair notice that his use of force against Medel was excessive and violated clearly established law. In *Cole*, a suicidal person illegally in possession of a handgun knew police were searching for him as he had already come across them once, refused to comply with their commands to stop, and continued to walk with his illegal handgun placed against his own head. *See Cole v. Carson I*, 802 F.3d 752, 755 (5th Cir. 2015) (summarizing facts found by district court earlier). When officers encountered him again, he knew police were looking for him but did not know the officers were behind him as he backed towards them while looking in the other direction. *Cole II*, 935 F.3d at 448-49. Though the suspect was closing the space between himself and the officers, he did not

point the weapon at the officers, yet they fired on him without first warning him or giving him an opportunity to comply. *Id.* at 449. As in *Griffin*, the *Cole* officers hotly disputed the plaintiff’s version of events, insisting that the suspect had started turning towards them when they fired. *Id.* at 455.

The en banc panel of the Fifth Circuit affirmed that the genuine issues of fact identified by the district court—including what the officers knew before shooting and what the suspect did before he was shot—were all material. *Id.* at 453. Yet viewing the facts in the light most favorable to that plaintiff led to the conclusion that not only had the officers used excessive force, but it was an “obvious case” that the force they used was excessive. *Id.* at 453.

Like the *Cole* suspect, Medel was not pointing his gun at officers and did not even know officers were present when Walker Prado shot him. Moreover, Medel posed far less of a threat than the suspect in *Cole*, as was lawfully in possession of his handgun, was not acting in a suicidal or erratic manner before Walker Prado encountered him, did not know police were involved at all, and had not been given any earlier commands that he had refused to comply with. Where it was “obvious” officers could not shoot the illegally armed suspect in 2010, it was both obvious and Walker Prado was on notice that his shooting of Medel fourteen years later was excessive and violated clearly established law.<sup>112</sup>

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<sup>112</sup> Additionally, while nothing more is needed, a consensus of out-of-circuit authority affirms that Walker Prado’s use of deadly force against Plaintiff was excessive and in violation of clearly established law. *See, Knibbs v. Momphard*, 30 F.4th 200, 214, 223-24 (4th Cir. 2022) (officer who approached house near midnight, announced himself once, and then shot man who retrieved and loaded shotgun and held it with the barrel pointing up to protect himself as he could not verify the officer’s identity used excessive force in violation of clearly established law); *Pauly v. White*, 874 F.3d 1197, 1203-05 (10th Cir. 2017) *cert denied* 585 U.S. 1010 (2018) (officers who approached home of violent crime victims after 11 p.m. and didn’t adequately identify themselves used excessive force when they shot home owner who reasonably armed himself against perceived home invaders); *Curnow by and through Curnow v. Ridgecrest Police*, 952 F.2d 321, 323, 325 (9th Cir. 1991) (officers who broke into man’s house unexpectedly and unannounced in the



Second, it is likewise well established that an officer's use of deadly force is excessive and in violation of clearly established law where an officer has time and opportunity to give a warning before resorting to deadly force and the officer forgoes that warning and shoots first. Here again, *Cole* warned Walker Prado that his use of deadly force without warning when it was feasible to warn Medel before firing was excessive and in violation of clearly established law. 935 F.3d at 453 (citing *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985)).

While the *Cole* court noted that this proposition was sufficiently "obvious," the court also found that *Baker v. Putnal* clearly established that the *Cole* officers' conduct of shooting without warning when a warning was feasible was unlawful. 935 F.3d at 453. The same is true here. In *Baker*, officers responded to a report of gunfire and chaos on a beach at spring break before they came across the decedent in his truck and shot him without warning as he turned towards the officers. *Baker v. Putnal*, 75 F.3d 190, 198 (5th Cir. 1996). Though a gun was located in the truck, whether the decedent had pointed the gun at officers was disputed, as was whether the officers gave the man any directions or warnings before opening fire. *Id.* Finding disputed material facts

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evening, shot him, and then shot him again when he picked up a gun in response to being shot in his own home used excessive force in violation of clearly established law); *Dickerson v. McClellan*, 101 F.3d 1151, 1163-64, 1165 (6th Cir. 1996) (reversing grant of summary judgment on qualified immunity on excessive force claim where officers responded to a home at 1 a.m. in response to call of drunk prowler and "shots fired" but disputed material facts in light most favorable to that plaintiff showed they shot a man inside his own home holding gun down by his side without warning); *see also McKenney v. Mangino*, 873 F.3d 75, 79-80, 84 (1st Cir. 2017) (officers who shot suicidal man ambling around his garage, house and driveway with a gun held in his hand without close-in-time warning used excessive force in violation of clearly established law); *Weinmann v. McClone*, 787 F.3d 444, 448, 451 (7th Cir. 2015) (officer who entered home unannounced and within seconds shot man holding a gun in his own home without warning "plainly" used excessive force in violation of clearly established law where it was disputed where the gun was pointing); *Partridge v. City of Benton, Arkansas*, 70 F.4th 489, 491-93 (8th Cir. 2023) (denying qualified immunity to officer who shot and killed suicidal teenager while he was moving a gun in his hand where it was disputed whether the gun was moving to point down or to point in the direction of officers).

that affected the analysis of whether the officers' force was excessive and in violation of clearly established law, the court reversed the grant of summary judgment to the officers. *Id.*

Here, Walker Prado had the time and opportunity to issue a warning to Medel—and took the time to issue one only to his fellow officers—yet shot Plaintiff without giving him any commands or warnings that he would use deadly force if Plaintiff did not drop his gun, notwithstanding the fact that the gun was not pointed at any APD officers or even the door.

Third and finally, Walker Prado's fourth shot independently violated the clearly established law as articulated in *Roque*, 993 F.3d at 330 and *Mason*, 806 F.3d at 273-74.

In *Roque*, a police officer fired three shots from his assault rifle at a suicidal suspect who was holding a realistic looking BB-gun and waving it around, shouting "kill me" to the police. After the first shot—which the district court found was objectively reasonable—the suspect dropped the BB-gun, and stumbled away from it. 993 F.3d at 330. But the officer kept shooting, firing two more shots, over a period of four total seconds, with the final shot striking and killing the suspect. *Id.* The officer claimed he kept shooting because he did not see that suspect drop the gun, *id.* at 334—much like Walker Prado (now) claims he believed Medel was still engaged in pointing his handgun at the door, contrary to Medel's version of events and the video showing he had fully collapsed.<sup>113</sup> The Fifth Circuit affirmed the district court's order denying summary judgment to that officer on the fatal (third) shot, just four seconds after the BB gun fell. *Id.* at 334. Just as a conflict between a reasonable interpretation of the evidence in that case and that officer's subjective understanding of the situation was sufficient to deny qualified immunity, so too must a jury assess whether Walker Prado's shot to Medel's back was objectively unreasonable. *Id.* at 334.

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<sup>113</sup> Ex. 7, Medel Dec. at p. 3, ¶¶ 31, 33; Ex. 3, Walker Prado BWC at 02:09:06 – 02:09:09.

In *Mason*, the officer also fired two volleys of shots—the first volley as the suspect dropped his hands toward his waistband (where there was a gun), but the second (fatal) volley after the suspect had been hit five times, and collapsed on the ground. 806 F.3d at 273-74. A jury could have concluded the second volley was objectively unreasonable because no reasonable officer could still have “probable cause to believe that [the deceased] posed a threat of serious physical harm at the time the [fatal] shot[] w[as] fired.” *Id.* at 277 (citing *Garner*, 471 U.S. at 11). Likewise, here, a jury could conclude that Medel being collapsed to the ground ended any perceived threat, so that Walker Prado’s fourth shot violated clearly established law.

Because the clearly established law shows Walker Prado is not entitled to qualified immunity, the Court should deny his motion.<sup>114</sup>

## V. CONCLUSION

For the foregoing reasons, the Court should deny Walker Prado’s motion for summary judgment.

Date: June 25, 2025.

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<sup>114</sup> As to Walker Prado’s request for the Court to dismiss Medel’s standalone Fourteenth Amendment claims, there are no such claims to dismiss. Plaintiff’s complaint is clear that Walker Prado violated his “clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.” Doc. 1, p. 25, ¶ 58. Plaintiff’s complaint does not contain the words “due process,” and it references the Fourteenth Amendment only in acknowledging that it incorporates the Fourth Amendment against state actors. *See id.* at pp. 24-25, ¶¶ 58, 65; *see also Bosarge v. Mississippi Bureau of Narcotics*, 796 F.3d 435, 441 (5th Cir. 2015) (noting that even where the Fourth Amendment provides the rule of decision, the “Fourteenth Amendment is relevant because it applies the Fourth Amendment to the states.”). Plaintiff has properly brought a Fourth Amendment claim against a state municipality’s police officer, thus the Fourteenth Amendment is a predicate to his claim—but he has not brought a standalone Fourteenth Amendment claim for the Court to dismiss.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**UNOPPOSED MOTION FOR LEAVE FOR EXTENTION OF TIME TO FILE  
DEFENDANT WALKER PRADO'S REPLY BRIEF  
IN SUPPORT OF SUMMARY JUDGMENT**

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gabriel Walker Prado, Defendant in the above-entitled and numbered cause, and submits this unopposed motion for leave for extension of time to file his Reply Brief in Support of Summary Judgment (Dkt. 34), and in support thereof would respectfully show this Court as follows:

**I. Relevant Procedural Background**

1. Defendant Walker Prado's Motion for Summary Judgment was filed by the clerk on June 5, 2025 (Dkt. 34). Plaintiff's Response to Defendant Walker Prado's Motion for Summary Judgment was filed the by the clerk on July 1, 2025 (Dkt. 42). Defendant Walker Prado's deadline to file his Reply Brief is currently tomorrow, Tuesday, July 8, 2025.

**II. Request for Leave**

2. Defendant requests leave from this Court for a 2-week extension of time to submit his Reply Brief would extend his deadline to **Tuesday, July 22, 2025**. Counsel believes that extra

time is needed in order to conduct Plaintiff's deposition in this case which is currently scheduled for Wednesday, July 9, 2025, but also due to the complexity of the case at bar, to properly brief and address arguments raised by Plaintiff's counsel in his 41-page Response brief. The Defense does not seek this extension for the purposes of delay, but so that justice may be done.

3. The undersigned has conferred with Plaintiff's counsel regarding this motion. Counsel for Plaintiff is unopposed to the requested extension.

## PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Defendant Gabriel Walker Prado respectfully requests that this Court grant this unopposed motion and allow Defendant to file his Reply Brief on or before **July 22, 2025**, and for all other relief to which he may be entitled in law or in equity.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**

4700 Mueller Blvd., Suite 200

Austin, Texas 78723

(512) 476-4600

(512) 476-5382 – Fax

By: /s/ Blair J. Leake

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Stephen B. Barron

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sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF CONFERENCE**

On July 3rd and 7th, 2025, the undersigned conferred with Plaintiff's counsel regarding the requested extension. Plaintiff's counsel is unopposed to Defendant's Motion.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of July, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**UNOPPOSED MOTION FOR LEAVE FOR EXTENTION OF TIME TO FILE  
DEFENDANT WALKER PRADO'S RESPONSE TO PLAINTIFF'S MOTION TO  
STRIKE SUMMARY JUDGMENT EXHIBITS 6, 9, 10, 11, 13, and 16**

---

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gabriel Walker Prado, Defendant in the above-entitled and numbered cause, and submits this unopposed motion for leave for extension of time to file his response in opposition to Plaintiff's Motion to Strike Defendant Walker Prado's Summary Judgment Exhibits 6, 9, 10, 11, 13, and 16 (Dkt. 38), and in support thereof would respectfully show this Court as follows:

**I. Relevant Procedural Background**

1. Defendant Walker Prado's Motion for Summary Judgment was filed by the clerk on June 5, 2025 (Dkt. 34). Plaintiff's Motion to Strike Defendant Walker Prado's Summary Judgment Exhibits was filed on June 25, 2025 (Dkt. 38). Defendant Walker Prado's deadline to file his response is currently Wednesday, July 9, 2025.

**II. Request for Leave**

2. Defendant requests leave from this Court for a 2-week extension of time to submit his response in opposition to Plaintiff's motion would extend his deadline to **Wednesday, July 23,**



**2025.** Counsel believes that extra time is needed in order to conduct Plaintiff's deposition in this case which is currently scheduled for Wednesday, July 9, 2025, but also due to the complexity of the case at bar, to properly brief and address arguments raised by Plaintiff's counsel. The Defense does not seek this extension for the purposes of delay, but so that justice may be done.

3. The undersigned has conferenced with Plaintiff's counsel regarding this motion. Counsel for Plaintiff is unopposed to the requested extension.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the Defendant Gabriel Walker Prado respectfully requests that this Court grant this unopposed motion and allow Defendant to file his Response on or before **July 23, 2025**, and for all other relief to which he may be entitled in law or in equity.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**  
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Austin, Texas 78723  
(512) 476-4600  
(512) 476-5382 – Fax

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[sbarron@w-g.com](mailto:sbarron@w-g.com)

**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF CONFERENCE**

On July 3rd and 7th, 2025, the undersigned conferred with Plaintiff's counsel regarding the requested extension. Plaintiff's counsel is unopposed to Defendant's Motion.

\_\_\_\_\_/s/ Blair J. Leake  
Blair J. Leake

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of July, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_/s/ Blair J. Leake  
Blair J. Leake

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**SECOND UNOPPOSED MOTION FOR LEAVE FOR EXTENTION OF TIME  
TO FILE DEFENDANT WALKER PRADO'S REPLY BRIEF  
IN SUPPORT OF SUMMARY JUDGMENT**

---

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gabriel Walker Prado, Defendant in the above-entitled and numbered cause, and submits this second unopposed motion for leave for extension of time to file his Reply brief in support of Summary Judgment (Dkt. 34), and in support thereof would respectfully show this Court as follows:

**I. Relevant Procedural Background**

1. Defendant Walker Prado's Motion for Summary Judgment was filed by the clerk on June 5, 2025 (Dkt. 34). Plaintiff's Response to Defendant Walker Prado's Motion for Summary Judgment was filed the by the clerk on July 1, 2025 (Dkt. 42).

2. On July 8, 2025, Defendant filed his first unopposed motion for leave for extension of time to file his Reply brief (Dkt. 43), which was granted via Text Order on July 9, 2025. Accordingly, Defendant's deadline to file his Reply brief is on or before, Tuesday, July 22, 2025.

**II. Request for Leave**

3. Defendant requests leave from this Court for an additional extension of time to submit his Reply brief, which would extend his deadline to **Wednesday, July 30, 2025**. The additional time is needed because the undersigned has been out of town to attend a family member's funeral, but also due to multiple other pressings deadlines, including preparing a dispositive motion due on July 24th in *Quiroz v. Pineda, et al.*, No. 1:21-cv-443-ADA. Counsel also believes the extra time is needed to properly brief and address the arguments raised by Plaintiff's counsel in his 41-page Response brief. The Defense does not seek this extension for the purposes of delay, but so that justice may be done.

4. The undersigned has conferred with Plaintiff's counsel regarding this motion. Counsel for Plaintiff is unopposed to the requested extension.

## **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court grant this second unopposed motion and allow Defendant to file his Reply brief in support of Summary Judgment on or before **July 30, 2025**, and for all other relief to which he may be entitled in law or in equity.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**

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By: /s/ Blair J. Leake

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**ATTORNEYS FOR DEFENDANT**

**GABRIEL WALKER PRADO**

**CERTIFICATE OF CONFERENCE**

On July 16, 2025, the undersigned conferred with Plaintiff's counsel regarding the requested extension. Plaintiff's counsel is unopposed to Defendant's Motion.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**SECOND UNOPPOSED MOTION FOR LEAVE FOR EXTENTION OF TIME TO FILE  
DEFENDANT WALKER PRADO'S RESPONSE TO PLAINTIFF'S MOTION TO  
STRIKE SUMMARY JUDGMENT EXHIBITS 6, 9, 10, 11, 13, and 16**

---

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gabriel Walker Prado, Defendant in the above-entitled and numbered cause, and submits this second unopposed motion for leave for extension of time to file his Response in opposition to Plaintiff's Motion to Strike Defendant Walker Prado's Summary Judgment Exhibits 6, 9, 10, 11, 13, and 16 (Dkt. 38), and in support thereof would respectfully show this Court as follows:

**I. Relevant Procedural Background**

1. Defendant Walker Prado's Motion for Summary Judgment was filed by the clerk on June 5, 2025 (Dkt. 34). Plaintiff's Motion to Strike Defendant Walker Prado's Summary Judgment Exhibits was filed on June 25, 2025 (Dkt. 38).

2. On July 8, 2025, Defendant filed his first unopposed motion for leave for extension of time to file his Response (Dkt. 44), which was granted via Text Order on July 9, 2025. Accordingly, Defendant's deadline to file his response is on or before Wednesday, July 23, 2025.

## II. Request for Leave

3. Defendant requests leave from this Court for an additional extension of time to submit his Response in opposition to Plaintiff's motion, which would extend his deadline to **Wednesday, July 30, 2025**. The additional time is needed as the undersigned has been out of town to attend a funeral, but also due to multiple other pressings deadlines, including preparing a dispositive motion due on July 24th in *Quiroz v. Pineda, et al.*, No. 1:21-cv-443-ADA. Counsel believes the extra time is needed due to the complexity of the case at bar, and to properly brief and address the arguments raised by Plaintiff's counsel in his motion. The Defense does not seek this extension for the purposes of delay, but so that justice may be done.

4. The undersigned has conferenced with Plaintiff's counsel regarding this motion. Counsel for Plaintiff is unopposed to the requested extension.

## PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court grant this second unopposed motion and allow Defendant to file his Response to Plaintiff's Motion to Strike on or before **July 30, 2025**, and for all other relief to which he may be entitled in law or in equity.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**  
4700 Mueller Blvd., Suite 200  
Austin, Texas 78723  
(512) 476-4600  
(512) 476-5382 – Fax

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Stephen B. Barron  
State Bar No. 24109619

[sbarron@w-g.com](mailto:sbarron@w-g.com)

**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF CONFERENCE**

On July 16, 2025, the undersigned conferred with Plaintiff's counsel regarding the requested extension. Plaintiff's counsel is unopposed to Defendant's Motion.

/s/ Blair J. Leake  
Blair J. Leake

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake  
Blair J. Leake



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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**EMERGENCY THIRD OPPOSED MOTION FOR LEAVE FOR EXTENTION OF TIME  
TO FILE DEFENDANT WALKER PRADO'S REPLY BRIEF  
IN SUPPORT OF SUMMARY JUDGMENT**

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gabriel Walker Prado, Defendant in the above-entitled and numbered cause, and submits this third opposed motion for leave for extension of time to file his Reply brief in support of Summary Judgment (Dkt. 34), and in support thereof would respectfully show this Court as follows:

**I. Relevant Procedural Background**

1. Defendant Walker Prado's Motion for Summary Judgment was filed by the clerk on June 5, 2025 (Dkt. 34). Plaintiff's Response to Defendant Walker Prado's Motion for Summary Judgment was filed the by the clerk on July 1, 2025 (Dkt. 42).
2. On July 8, 2025, Defendant filed his first unopposed motion for leave for extension of time to file his Reply brief (Dkt. 43), which was granted via Text Order on July 9, 2025.

3. On July 17, Defendant filed his second unopposed motion for leave for extension of time to file his Reply brief (Dkt. 46), which was formally granted via Text Order on July 29, 2025, and set the new deadline to file as July 30, 2025.

## II. Request for Leave

4. Defendant requests leave from this Court for an additional extension of time to submit his Reply brief, which would extend his deadline to **Wednesday, August 6, 2025** for multiple reasons set forth below. Defendant files this motion pursuant to Rule 6(b)(1)(A), which authorizes the Court to grant this motion pursuant to the “good cause” demonstrated *infra*.<sup>1</sup> “An application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.”<sup>2</sup> Defense counsel has not partaken in any bad faith, nor will a seven-day extension arguably prejudice Plaintiff in any meaningful way. This is especially true given the much longer extension expected to be sought soon for Plaintiff’s Response brief to the City of Austin’s motion for summary judgment. The subject standard is meant to be “incredibly lenient,” and a court may grant a request made pursuant to Rule 6(b)(1)(a) “*for any reason*.”<sup>3</sup> The Court may also at its own discretion grant an extension *sua sponte* given the time short time frame of the request and briefing schedule laid out in the local rules.<sup>4</sup>

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<sup>1</sup> See FED. R. CIV. P. 6(b)(1)(A).

<sup>2</sup> Reed Migraine Centers of Texas, PLLC v. Chapman, No. 3:14-CV-1204-N, 2020 WL 869888, at \*1 (N.D. Tex. Feb. 21, 2020) (citing 4B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1165 (4th ed. 2008)).

<sup>3</sup> *De villier v. State of Texas*, No. 3:20-CV-00223, 2023 WL 2744398, at \*2 (S.D. Tex. Mar. 31, 2023) (emphasis original) (citing *L.A. Pub. Ins. Adjusters, Inc. v. Nelson*, 17 F.4th 521, 524 (5th Cir. 2021)).

<sup>4</sup> *Id*; see also FED. R. CIV. P. 6(b)(1)(A).

5. **First**, unexpected and time-consuming childcare issues have arisen this week that have made it effectively impossible for the undersigned to timely complete all of the tasks at hand. Over a ten-day time span, such tasks include the need to draft two separate § 1983 12(b)(6) motions, one § 1983 Answer, one plea to the jurisdiction in state court, one § 1983 motion for summary judgment, and in the case at bar a Reply brief in support of a motion summary judgment and a Response brief to Plaintiff's motion to strike/Daubert motion. The unexpected childcare issues combined with the unusually hectic workload and the issues described *infra* have only compounded the difficulties.

6. **Second**, the undersigned's paralegal who assists with all motions, including drafting, revising, compiling exhibits, and filing them, is on her well-deserved honeymoon. Securing the availability of other staff who are familiar with PACER and capable of assembling and filing the complex filings this Reply will require<sup>5</sup> during the time frame required has proven thus far unsuccessful.<sup>6</sup> Defense counsel's firm will regain the ability to perform the necessary complex filings—if still necessary—next week upon her return, which is when the undersigned humbly asks that this Court to extend the deadline to now fall upon.

7. **Third**, the undersigned has repeatedly asked Plaintiff's counsel via email for dates to take Plaintiff's deposition, initially with no response or success. The first request was sent via email on April 9, 2025. Plaintiff failed or refused to provide a date for Plaintiff's deposition until finally responding on July 1, 2025, by providing July 9, 2025 as the earliest possible date—which was unfortunately after the motion for summary judgment at issue had already been filed. Defense

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<sup>5</sup> Due to Plaintiff's decision to designate his entire deposition transcript as Attorney Eyes Only, as discussed *infra*.

<sup>6</sup> Defense counsel does intend to hopefully file said transcript under seal in support of his response to Plaintiff's Motion to Strike, which arguably does not pose a problem under *Exeter*, assuming substitute staff availability can be secured during the time frame needed.

counsel accepted, took Plaintiff's deposition on short notice, and intends to file the transcript of it as an exhibit in support of Defendant's Reply in Support of Motion for Summary Judgment. This is especially important because Plaintiff filed a declaration for Plaintiff Medel as an exhibit to his MSJ Response brief despite having previously failed or refused to provide deposition opportunities for Plaintiff even after repeated requests. This creates an obvious equity and fairness problem for the defense.

8. Importantly here, Plaintiff's counsel designated Plaintiff's entire deposition transcript as "Attorney Eyes Only" and has represented he will not have time to revisit that designation until after the current Reply deadline. This creates a situation where the filing will be more complex and require additional motions for leave—including filing under seal, and possibly filing a redacted version of the Reply—which will prove either difficult or impossible due to the aforementioned valued staff member being on a honeymoon vacation, and a lack of other staff who are able to handle the task during the time period in question. If instead this Court agrees to extend the deadline by one week then either (i) Plaintiff's counsel will have time to revisit the designations and obviate the need to file anything under seal, thus satisfying the Fifth Circuit requirements of *Exeter* (which requires evidence at the dispositive stage to not be filed under seal absent compelling reasons),<sup>7</sup> or (ii) the undersigned will have the time and resources needed to draft and perform the complex PACER actions of filing his MSJ Reply brief under seal, redacted, or both, and can seek to cure the *Exeter* deficiencies at a later date.

9. **Lastly**, counsel also believes the extra time is needed to properly brief and address the arguments raised by Plaintiff's counsel in his 41-page Response brief, which likewise has an especially voluminous number and breadth of exhibits filed in support of it. The Defense does not

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<sup>7</sup> See *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 413 (5th Cir. 2021)



**CERTIFICATE OF CONFERENCE**

On July 29, 2025, the undersigned conferred with Plaintiff's counsel twice regarding the requested extension. Plaintiff's counsel represented that he cannot confirm whether Plaintiff is unopposed to this request and thus has been marked as opposed. Counsel for the City of Austin is unopposed to this request.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of July 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**OFFICER WALKER PRADO'S RESPONSE TO MOTION TO STRIKE  
MSJ EXHIBITS**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant, Austin Police Officer Gabriel Walker Prado, who files this Response in Opposition to Plaintiff Avelino Medel's (hereinafter "Medel") Motion to Strike Defendant Walker Prado's Exhibits 6, 9, 10, 11, 13, and 16 and would respectfully show as follows:

## I. SUMMARY OF THE ARGUMENT

1. Plaintiff's motion to strike seeks primarily to remove a shameful aspect of Plaintiff's conduct from this Court's consideration. In a subsequent deposition, Plaintiff new admissions regarding intoxication combined with the video evidence demonstrates that a reasonable officer would have observed *Plaintiff—who had just exhibited audible signs of hyper-aggression—respond to a knock and announcement of “Austin Police Department” by drunkenly grabbing a gun off a literal pile of trash, loading it, racking the slide, and stalking toward the door<sup>1</sup> and the police officers standing behind it, and concluded it was a potential imminent deadly threat.* Evidence corroborating his extreme intoxication, and the correspondingly higher threat level he posed, should not be whitewashed from this proceeding.

2. Plaintiff also seeks to carve out evidence that the Travis County District Attorney's Office—the most aggressive prosecutor's office against police in the entire nation—reviewed this case's evidence and formally determined that Officer Walker Prado should not be prosecuted. Plaintiff's objections fail pursuant to 2010 revisions to the summary judgment rules, binding precedent interpreting them, and the rule of orderliness.

3. Plaintiff also moved to exclude Captain Rodriguez's testimony regarding any case law or statutes. Plaintiff's requested exclusion should be denied as moot. Captain Rodriguez was never designated to offer legal opinions and included a disclaimer to that effect in his report.

4. Lastly, Plaintiff seeks to exclude “state of mind” evidence. In reality, such content is the recounting the facts his use of force opinions are based upon—a methodological necessity for an expert's report under *Daubert* and the Federal Rules of Procedure. Moreover, a § 1983 case inherently always includes an analysis of what a reasonable officer in the officer defendant's

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<sup>1</sup> See e.g. **Ex. 2**, Deposition Transcript of Plaintiff Avelino Medel II, pg. 34, lns. 23-25; pg. 82, lns. 5-11; pg. 101, lns. 4-8.



position observed and would reasonably deduce—and responding accordingly—based on training, experience, and the observable facts.

## II. LEGAL STANDARD

5. Expert testimony is admissible under Rule 702 as an aid to the trier of fact, so that it might help the trier of fact understand the evidence or to determine a fact at issue.<sup>2</sup> The *Daubert* factors are not always easily applied to non-scientific testimony, and Courts have “considerable leeway in deciding...whether particular [non-scientific] expert testimony is reliable.”<sup>3</sup> The non-scientific test of reliability is necessarily a flexible one. The factors identified in *Daubert* “may or may not be pertinent in assessing reliability, depending on the nature of the issue, the expert’s particular expertise, and the subject of his testimony.”<sup>4</sup> The advisory comments to Rule 702 dictate that “*the rejection of expert testimony is the exception rather than the rule*,”<sup>5</sup> *Daubert* did not completely overhaul federal evidence law, and “the trial court’s role as gatekeeper is not intended to serve as a replacement for the adversary system.”<sup>6</sup> *Daubert* recognized that “vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.”<sup>7</sup>

## III. ARGUMENTS & AUTHORITIES

### A. Evidence of Plaintiff’s extreme intoxication corroborates what Officer Walker Prado observed and concluded to be a heightened threat level—a man acting in a hyper-aggressive, erratic manner.

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<sup>2</sup> See FED. R. EVID. 702; see also *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 243 – 44 (5th Cir. 2002); see also *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 (1993).

<sup>3</sup> *Kumho Tire Company, Ltd. v. Carmichael*, 526 U.S. 137, 150 (1999).

<sup>4</sup> *Id.* at 149.

<sup>5</sup> See FED. R. EVID. 702, Adv. Comm. Notes (2000) (emphasis added).

<sup>6</sup> See *United States v. 14.38 Acres of Land More or Less, Situated in Leflore County, Mississippi*, 80 F.3d 1074, 1078 (5th Cir. 1996).

<sup>7</sup> *Daubert*, 509 U.S. 579 at 596.

6. The Fifth Circuit has held that later-obtained intoxication evidence is admissible in § 1983 cases. In *Alpha*, the Fifth Circuit upheld admission of evidence showing that a “bag containing methamphetamine was found with [the decedent] subsequent to the shooting, and an autopsy revealed that [the decedent] had ingested methamphetamine.”<sup>8</sup> The Fifth Circuit rejected the argument that this evidence was irrelevant due to being found after the shooting, because “evidence that [the decedent] both possessed and was under the influence of methamphetamine at the time of his death was highly relevant as it tended to corroborate [the officer’s] testimony about his own perception of events.”<sup>9</sup> Other precedents have reached the same conclusion.<sup>10</sup>

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<sup>8</sup> *Alpha v. Hooper*, 440 F.3d 670, 671 (5<sup>th</sup> Cir. 2006).

<sup>9</sup> *Id.* at 671-72.

<sup>10</sup> See e.g. *Rodriguez v. Zepeda*, 176 F. App’x 631, 631-32 (5<sup>th</sup> Cir. 2006) (holding that medical and physical intoxication evidence was “directly relevant” to “explaining [the plaintiff’s] alleged odd behavior.”); see also e.g. *Saladino v. Winkler*, 609 F.2d 1211, 1214 (7<sup>th</sup> Cir. 1979)(plaintiff’s intoxication was admissible in officer-involved shooting case because it “tends to make more probable that the plaintiff acted as the defendant contended he did or that plaintiff otherwise conducted himself in such a manner as to place the defendant reasonably in fear of his life.”); *Turner v. White*, 980 F.2d 1180, 1182-83 (8<sup>th</sup> Cir. 1992)(holding intoxication evidence admissible because “this evidence was relevant to the question of [the decedent’s] actions and reactions when the officers shouted at [him] to get out of the car,” and the “circumstances of the situation that confronted [the officer].”); *Samples v. City of Atlanta*, 916 F.2d 1548, n. 2 (11<sup>th</sup> Cir. 1990)( held intoxication evidence admissible in an officer-involved shooting case as “relevant...to determining whether the officer acted reasonably,” and “the effects that glue sniffing have on behavior also tended to support the officer’s description of [the decedent’s] actions.”); *Turner v. Cty. of Kern*, 2014 WL 560834, at \*2-3 (E.D. Cal. Feb. 13, 2014)(“Evidence that there was a significant amount of methamphetamine and/or alcohol in Turner’s system is relevant and admissible.”); *Harris v. Clark*, 2009 WL 1683233 at \*2 (E.D. Wis. June 16, 2009) (“Whether Plaintiff was under the influence of drugs or alcohol at that time [of the arrest] is highly relevant to assessing the totality of the circumstances surrounding [the officer’s] use of force.”); *Davis v. Duran*, 276 F.R.D. 227, 232 (N.D. Ill. 2011)(holding intoxication evidence relevant to whether the plaintiff conducted himself in a manner that put the officer reasonably in fear of serious danger); *Smith v. Hunt*, 2011 WL 9737 at \*2 (N.D. Ill. Jan. 3, 2011) aff’d, 707 F.3d 803 (7<sup>th</sup> Cir. 2013) (holding use of heroin five-to-seven hours before the incident admissible); *Edwards v. Thomas*, 31 F.Supp.2d 1069, 1073 (N.D.Ill.1999)(holding that “positive drug screen for cocaine opiates confirming his drug use is relevant and admissible,” and that the plaintiff having hidden contraband by consuming 49 bags of heroin could be significant as a motive “in determining whether he was ‘vigorously and actively’ resisting arrest”); *Cotton v. City of Eureka*, 2010 WL 5154945, at \*7 (N.D. Cal. Dec. 14, 2010)(holding

Officer Walker observed Plaintiff's hyper-aggressive conduct and speech—including the screaming and cursing the Court can hear for itself on video—and determined Plaintiff “was not thinking or acting rationally nor reasonably, and that the threat level of the situation was higher as result of his extreme agitated state.”<sup>11</sup> As noted in Captain Rodriguez's report, Plaintiff's “intoxication and drug consumption corroborates Officer Walker Prado's ... decision to treat him as a potentially more dangerous and/or erratic actor.”<sup>12</sup> The qualified immunity analysis considers what is “*knowable*” to a reasonable officer in the same position,<sup>13</sup> and another officer present at the scene heard the same hyper-aggressive, slurred speech and instantly concluded Medel was intoxicated.<sup>14</sup> Plaintiff's new intoxication admissions made throughout his deposition,<sup>15</sup> as well as the extreme intoxication evidence Plaintiff seeks to strike, proves and corroborates that both officers—and more importantly a reasonable officer in the same circumstances—were correct to treat Plaintiff as a subject in an erratic, irrational state *because he was*. Plaintiff should not be allowed to whitewash that evidence from this proceeding.

**B. Summary judgment evidence does not need to be authenticated or presented in an admissible format.**

7. The Fifth Circuit's position on this matter is clear:

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that “evidence that the Decedent was under the influence of LSD may be probative of his behavior at the time of the incident.”); *Lopez v. Aitken*, 2011 WL 672798 (S.D.Cal. Feb. 18, 2011) (“Post-mortem toxicology report” reflecting methamphetamines use “relevant and admissible because it...substantiates Defendants' assertions that [the decedent] was acting irrationally and unpredictably at the time of the incident, and their claims that Mr. Lopez resisted arrest.”).

<sup>11</sup> See Dkt. 27.4, Declaration of Officer Gabriel Walker Prado, ¶¶ 7 – 11.

<sup>12</sup> Dkt. 28.4, *Rodriguez Report*, ¶ 81.

<sup>13</sup> See *White v. Pauly*, 580 U.S. 73, 76-77 (2017) (emphasis added).

<sup>14</sup> See Dkt. 27.14, Reinhart SIU Transcript, pgs. 20, 32-33.

<sup>15</sup> **Ex. 2**, Deposition Transcript of Plaintiff Avelino Medel II, pg. 17, lns. 4-5, 16; pg. 19, lns. 1-6; pg. 20, lns. 2-3, 12-25; pg. 21, lns. 1-7; pg. 24, lns. 13-19; pg. 30, lns. 10-16; pg. 34, lns. 23-25; pg. 73, lns. 3-12; pg. 88, lns. 2-9; pg. 110, lns. 2-7.

At the summary judgment stage, evidence need not be authenticated or otherwise presented in an admissible form. After a 2010 revision to Rule 56, “materials cited to support or dispute a fact need only be *capable* of being ‘presented in a form that would be admissible in evidence.’” This flexibility allows the court to consider the evidence that would likely be admitted at trial—as summary judgment is trying to determine if the evidence admitted at trial would allow a jury to find in favor of the nonmovant—without imposing on parties the time and expense it takes to authenticate everything in the record.<sup>16</sup>

Plaintiff’s cited cases to the contrary either predate the 2010 revisions or are void based on the rule of orderliness.<sup>17</sup> Even if this Court believes the District Attorney’s formal determination finding no cause to prosecute Officer Walker Prado—issued by arguably the most aggressive District Attorney’s Office in the nation when it comes to prosecuting police officers—is otherwise inadmissible, Captain Rodriguez as a use of force expert is permitted to rely upon that memorandum because it would be customary for a use of force expert to inquire into and rely upon the *use of force findings* by the governmental office that has the ultimate duty to analyze whether a person used force in a prohibited manner.<sup>18</sup> Plaintiff’s objections to authentication and admissibility at the summary judgment stage should be discarded accordingly.

**C. Captain Rodriguez will not be testifying as a legal expert, but he is permitted to testify as to police training—including police training based upon clearly established law for police conduct.**

8. Captain Albert Rodriguez is eminently qualified to evaluate the subject incident.<sup>19</sup> After evaluation, he concluded that Officer Walker Prado’s decision to use deadly force was appropriate pursuant to law enforcement training regarding the use of force:

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<sup>16</sup> *Maurer v. Indep. Town*, 870 F.3d 380, 384 (5th Cir. 2017) (internal citations omitted) (emphasis original).

<sup>17</sup> See e.g. *Vaughan v. Anderson Reg’l Med. Ctr.*, 849 F.3d 588, 591 (5th Cir. 2017).

<sup>18</sup> See Fed. R. Evid. 703 (“If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.”); see also Dkt. 28.4, *Rodriguez Report*, ¶ 42.

<sup>19</sup> See generally **Ex. 1**, *Rodriguez CV*, **pg. 1** (Professional Experience); see also generally Dkt. 28.4, *Rodriguez Report*.

Pursuant to contemporary law enforcement officer training, Officer Walker Prado's actions were necessary, proportional to the threat, and appropriate. When viewing the facts through the eyes of a well-trained law enforcement officer on the scene, not benefited by information only available through hindsight, Officer Walker Prado did not violate Medel's rights, *from a law enforcement training perspective*.<sup>20</sup>

The Fifth Circuit has emphasized “officers are charged with knowing the results of our cases—at least when they are so numerous and pellucid as to put the relevant question ‘beyond debate.’”<sup>21</sup> If our legal system explicitly places a legal duty on officers to learn and train using case precedents, why would a police expert not be permitted to *explain in a report* which precedents govern police conduct in a certain scenario, and whether the officer conformed to the dictates of training based on the applicable precedents? To do otherwise would risk a fatal methodology error and *Daubert* exposure on its own. Plaintiff's requested relief should be made in motion in limine for trial, not a *Daubert* motion to strike summary judgment evidence. That is true for most of Plaintiff's requested relief in the motion at bar.

9. “The general content of law enforcement training regarding use of force is, in large part, based upon decisions of the United States courts interpreting the Fourth Amendment.”<sup>22</sup> Captain Rodriguez goes on to clarify that:

I study and use as a resource when providing instruction to officers, federal court decisions of the United States Supreme Court informed by, and consistent with, accepted research regarding law enforcement protocol. ***While I do not propose to offer any opinion on the law or case law***, because my duties involve training law enforcement officers, I often read court decisions pertaining to law enforcement action, and I also use judicial decisions to assist me in providing training to law enforcement officers. Therefore, ***I can provide expert testimony on the standards utilized in training police officers, as to both tactical considerations, as well as the training parameters officers are taught governs their conduct.***<sup>23</sup>

<sup>20</sup> Dkt. 28.4, *Rodriguez Report*, ¶ 125 (emphasis added).

<sup>21</sup> See *Morrow v. Meachum*, 917 F.3d 870, 875–76 (5th Cir. 2019).

<sup>22</sup> Dkt. 28.4, *Rodriguez Report*, at ¶ 50.

<sup>23</sup> *Id.*

10. Plaintiff acknowledges that “reasonableness is a concept ingrained in police training and practices” which Plaintiff contends is appropriately the subject of expert testimony...”<sup>24</sup> However, Plaintiff seeks to strike Captain Rodriguez’s testimony because Rodriguez’s references to case law allegedly amount to “legal conclusions.”<sup>25</sup> This requested relief is illusory. Unlike in *Estevis*, Captain Rodriguez has made it clear in his report that he does not “propose to offer any opinion on the law or case law.” What, then, is the issue?

11. Plaintiff’s fears expressed on pages eight and nine of his Motion are fictive. This Court can accordingly deny the rest of Medel’s arguments as moot for the reasons set forth in *Estevis*, which correctly held that Captain Rodriguez “may opine about the training provided to officers, but he must do so without discussing case law or quoting verbiage from case law.”<sup>26</sup> Captain Rodriguez obviously learned the lessons taught by *Estevis* and has included the appropriate disclaimers in his report to that effect.<sup>27</sup> There was likewise nary a suggestion in Officer Walker Prado’s expert designations that Captain Rodriguez was being designated as a legal expert.<sup>28</sup> Accordingly, Plaintiff’s Motion to Exclude Captain Rodriguez’s testimony regarding case law is asking for illusory relief and should be denied as moot, and as more appropriate as a motion in limine.

**D. This Court recently held that a well-trained police expert is qualified to render expert opinions regarding criminal statutes, and that such an expert may testify as to legal matters when those matters involve questions of fact, as is the case here.**

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<sup>24</sup> Pl. Mot. to Strike, pg. 8, Dkt. 38.

<sup>25</sup> *Id.* at 9.

<sup>26</sup> *Estevis v. City of Laredo*, No. 5:22-CV-22, 2023 WL 9312081, at \*5 (S.D. Tex. Dec. 28, 2023).

<sup>27</sup> Dkt. 28.4, *Rodriguez Report*, at ¶ 50 (“I do not propose to offer any opinion on the law or case law.”).

<sup>28</sup> See generally Defendant Gabriel Walker Prado’s Partial Designation of Testifying Experts, Dkt. 26.

12. In *Cisneros*, this Court recently held that a police expert was properly qualified to testify regarding “evaluating traffic and motor vehicle-related *criminal infractions*.”<sup>29</sup> This is in contrast to Plaintiff’s attempts to whitewash all references to the Texas Penal Code, other statutes, and legal duties for officers from Captain’s Rodriguez’s report and evidence.<sup>30</sup> This Court noted that “the Fifth Circuit has observed that experts ‘may testify as to legal matters when those matters involve questions of fact’ ... [a]nd an expert ‘witness may illuminate ancillary issues of law not within the province of the jury.’”<sup>31</sup> This Court ultimately concluded that an expert’s application of the Texas Transportation Code to the motorist’s conduct could assist the jury in understanding whether the “Trump Train” drivers’ actions would have likely “threatened or intimidated Plaintiffs.”<sup>32</sup> Applied here, for example, applying the Texas Penal Code to Plaintiff’s actions or the nature of the type of dispatch call could be similarly helpful for the jury to understand what conduct a reasonable officer in the same or similar circumstances would perceive as criminal or threatening. Likewise, he is permitted to make the same analysis officers must make in the field daily: applying the Texas Penal Code to the situation faced to determine whether detention, arrest, or a certain amount of force is warranted, and the legal duties placed upon officers that a reasonable officer in that situation would know and understand.

**E. Captain Rodriguez permissibly incorporated factual observations and deductions a reasonable officer would draw based on police training, experience, and the observable facts.**

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<sup>29</sup> *Davis v. Cisneros*, No. 1:21-CV-565-RP, 2024 WL 3799461, at \*3 (W.D. Tex. Aug. 12, 2024); *see also Archer v. Northside Indep. Sch. Dist.*, No. CV 5:17-1202, 2018 WL 7582498, at \*3 (W.D. Tex. Dec. 10, 2018), *aff’d sub nom. A.A. v. Northside Indep Sch. Dist.*, 951 F.3d 678 (5th Cir. 2020) (cleaned up) (citing *Goodman v. Harris Cty.*, 571 F.3d 388, 399 (5th Cir. 2009); *see also Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir. 1997)).

<sup>30</sup> Pl. Mot. to Strike, pg. 9 - 11, Dkt. 38.

<sup>31</sup> *Davis v. Cisneros*, No. 1:21-CV-565-RP, 2024 WL 3799461, at \*3 (citing *inter alia Askanase v. Fatjo*, 130 F.3d 657, 672 (5th Cir. 1997)).

<sup>32</sup> *Id.*



13. Plaintiff surprisingly characterizes as “mental state[]” evidence what in reality is Captain Rodriguez’s recitation of observable facts he based his opinions on, and the deductions a reasonable officer would draw from the same. In *Estevis*, the Southern District addressed the same arguments by holding that “[a]lthough Rodriguez may not make conclusory assertions regarding a person’s state of mind, he may properly testify as to information in the record which reflects a witnesses or party’s state of mind.”<sup>33</sup> Here, Plaintiff’s state-of-mind objections are meritless, because these statements are “based on information in the record reviewed by Rodriguez, and as such, they are admissible.”<sup>34</sup>

14. Plaintiff never argues that any of Captain Rodriguez’s opinions discuss someone’s mental state in a way that is *unsupported by the record*. Instead, Plaintiff acknowledges that he recounts the factual testimony about the incident he bases his opinions upon—which is methodologically required in an expert’s report by *Daubert* and the Federal Rules of Civil Procedure. It is not inadmissible speculation for an expert witness to recount the statements or sworn testimony of a party. It is fact.

15. Analyzing the facts facing an officer—and how training and experience dictate what deductions the officer should draw, and the appropriate police response that should be taken—is fundamental to the analysis of excessive force cases. If an officer sees a man yell “I hate you!” and cock his fist in the air, is it not reasonable for a well-trained officer to deduce that the man’s state of mind is “anger” and deduce that he is intending to punch the person in front of him? These deductions will inform the officer’s response and amount of force used. If an officer sees other officers knock and announce “police!” at a door, and then sees a hyper-aggressive-acting man respond by grabbing a gun, loading it, racking it, and walking toward the police, is it not a

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<sup>33</sup> *Estevis*, 2023 WL 9312081, at \*6.

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



reasonable deduction for a well-trained officer to similarly deduce the man is still in an aggressive state of mind and his intent is to harm the newly arrived officers? Plaintiff's objections seek to remove from this case altogether the necessary split-second deductions police officers are inherently required to make about subjects on a daily basis.

16. As in *Estevis*, these final objections are meritless and are best saved for cross examination. Captain Rodriguez's opinions are grounded in his experience with officer training. He is thus permitted to draw the conclusions he did, as they are based on his observations of the facts and supported by his extensive specialized experience.<sup>35</sup>

#### IV. PRAYER

17. WHEREFORE, PREMISES CONSIDERED, Defendant Officer Gabriel Walker Prado respectfully requests that Plaintiff's Motion to Strike Defendant Walker Prado's Exhibits 6, 9, 10, 11, 13, and 16 be in all things denied, and for all further relief to which he may be justly entitled in law or in equity.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**  
4700 Mueller Blvd., Suite 200  
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(512) 476-4600  
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By:           /s/ Blair J. Leake            
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<sup>35</sup> See *Bishop v. City of Denton*, No. 4:14-CV-608, 2015 WL 8293452, at \*3 (E.D. Tex. Dec. 8, 2015) (citing *Kumho Tire. Co., Ltd. v. Carmichael*, 526 U.S. 137, 156 (1999)) (“[N]o one denies that an expert might draw a conclusion from a set of observations based on extensive and specialized experience.”).

[sbarron@w-g.com](mailto:sbarron@w-g.com)

**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of July, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake

Blair J. Leake

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**OFFICER WALKER PRADO’S  
REPLY IN SUPPORT OF FIRST AMENDED MOTION  
FOR SUMMARY JUDGMENT**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Austin Police Officer, **Gabriel Walker Prado** (hereinafter “Officer Walker Prado”), Defendant in the above entitled and numbered cause, respectfully files this Reply in Support of Motion for Summary Judgment and dismissal on the grounds that he is entitled to Qualified Immunity, and dismissal on all of Plaintiff Avelino Medel’s (hereinafter “Medel”) claims:

**I. ARGUMENTS & AUTHORITIES**

**A. Officer Walker Prado files this Reply subject to his Motion for Leave.**

1. Officer Gabriel Walker Prado files this Reply subject to his motion for leave filed on July 29, 2025. Officer Walker Prado intends to file an amended draft of this Reply brief on or before August 6, 2025, as requested in his Motion for Leave, but files this minimalist draft now out of an abundance of caution. If this Court is considering denying the motion for leave, then the undersigned would humbly and respectfully request a hearing on the matter.

**B. Plaintiff's deposition was taken after Officer Walker Prado's motion for summary judgment was filed, and the defense formally moves herein for leave of Court to utilize Plaintiff's newly obtained deposition transcript in support of this Reply brief.**

2. After months of repeated requests to no avail, the undersigned very recently was finally given his first opportunity to take the deposition of Plaintiff. Unfortunately, the earliest date provided by Plaintiff's counsel was *after* the motion for summary judgment had been filed. Officer Walker Prado herein moves for leave from this Court to consider such evidence in support of his Reply for good cause shown.

3. Defense counsel requested the opportunity to depose Plaintiff and his father for the first time via email to Plaintiff's counsel on April 9, 2025 but received no response. The defense followed up with repeated emailed requests for the deposition dates, but Plaintiff continually failed or refused to provide any opportunities to depose Plaintiff or his father as the months went by. While still actively withholding opportunities to obtain sworn testimony from Plaintiff and his father, Plaintiff filed sworn declarations from both Plaintiff and his father in support of Plaintiff's Response brief in opposition to Officer Walker Prado's deposition.<sup>1</sup> This was hopefully an honest

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<sup>1</sup> See Dkt. 42.7, Declaration of Avelino Medel II, filed 6-26-25; *see also* Dkt. 42.8, Declaration of Avelino Medel, Sr., filed 6-26-25.

oversight, but either way it created an inequitable situation where Plaintiff utilized testimony of a party and major fact witness while the defense did not have the opportunity to cross-examine either individual despite repeated requests to do so.

4. Finally, Plaintiff's counsel responded on July 1, 2025 and proposed a deposition date for Plaintiff Medel on July 9, 2025, after the motion for summary judgment and response to the motion for summary judgment had already been filed. The undersigned accepted, took the deposition, and now moves to use the sworn testimony obtained during it for this Reply. This Court recently held that ***"[p]arties are permitted to submit evidence and arguments in a reply brief 'to rebut new argument raised by the opposing party in a response.'"***<sup>2</sup> The defense should thus be permitted to provide the newly obtained sworn deposition testimony of Plaintiff to rebut the never-before-provided sworn statement of Plaintiff filed in support of his Response brief.

5. Officer Walker Prado does not oppose providing Plaintiff an opportunity to address Plaintiff's new deposition testimony in a sur-reply.<sup>3</sup> Courts are often willing to allow new evidence at the Reply stage "[b]ecause full and complete briefing is useful to the adjudication of th[e] case," as is true here.<sup>4</sup> The undersigned has conferenced with Plaintiff counsel's about the intent to use Plaintiff's deposition transcript in support of his Reply brief, but did not receive a definitive response regarding whether Plaintiff is opposed to the use of the deposition transcript at issue.

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<sup>2</sup> *Anonymous Media Research Holdings, LLC v. Roku, Inc.*, No. 1:23-CV-1143-DII, 2024 WL 4182592, at \*2–3 (W.D. Tex. July 10, 2024) (cleaned up) (emphasis added); *see also Icharts LLC v. Tableau Software, LLC*, No. 1:23-CV-1225-DII, 2024 WL 2305214, at \*3 (W.D. Tex. May 21, 2024).

<sup>3</sup> *See Simmons v. T-Mobile USA, Inc.*, No. CIV A H-06-1820, 2006 WL 3447684, at \*1 (S.D. Tex. Nov. 22, 2006) (citing *Vais Arms, Inc. v. Vais*, 383 F.3d 287, 292 (5th Cir.2004)) (noting that the Fifth Circuit allows district courts to consider a reply brief's new evidence so long as the non-movant is given an adequate opportunity to respond).

<sup>4</sup> *See e.g. id*; *see also Mission Toxicology, LLC v. Unitedhealthcare Ins. Co.*, 499 F. Supp. 3d 350, 359 (W.D. Tex. 2020) (noting that granting the right to file a sur-reply is a viable alternative to excluding new issues raised in a Reply brief).

Plaintiff also designated the entire deposition transcript as Attorney Eyes Only. Ideally, additional conferencing will occur, and a more definite answer will be provided on both issues prior to the expected amendment of this Reply brief on August 6, 2025. The current status of the deposition transcript as “Attorney Eyes Only” requires the undersigned to partake in vague, “artful” drafting herein when referencing its contents, which is not ideal or equitable in terms of providing Officer Walker Prado the opportunity to fully brief his case, nor does it comply with the requirements the Fifth Circuit spelled out in *Exeter*.<sup>5</sup> Defendant incorporates by reference herein the entirety of Plaintiff Medel’s deposition transcript as summary judgment evidence.<sup>6</sup>

**C. Plaintiff’s deposition transcript leaves no doubt as to whether Officer Walker Prado’s split-second deduction that something was wrong with Plaintiff is factually corroborated.**

6. After watching and listening to Plaintiff yell at his father for some time, Officer Walker Prado deduced that “[t]he obvious visible anger, agitation, and erratic behavior of the younger man toward the elderly man was so extreme that I concluded something must be wrong with the younger man...that he was not thinking or acting rationally or reasonably, and that the threat level of the situation was higher as a result of his extreme agitated state.”<sup>7</sup> During his deposition, Plaintiff made numerous admissions that make it clear that Officer Walker Prado was correct in treating Plaintiff as an individual who was in altered, erratic, and irrational state—because he was.<sup>8</sup> “This

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<sup>5</sup> See *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 413 (5th Cir. 2021) (requiring that exhibits not be filed under seal at the dispositive stage of litigation).

<sup>6</sup> See Officer Walker Prado’s Response to Plaintiff’s Motion to Exclude, **Ex. 2**, Deposition Transcript of Plaintiff Avelino Medel II, pg. 17, lns. 4-5, 16; pg. 19, lns. 1-6; pg. 20, lns. 2-3, 12-25; pg. 21, lns. 1-7; pg. 24, lns. 13-19; pg. 30, lns. 10-16; pg. 34, lns. 23-25; pg. 73, lns. 3-12; pg. 88, lns. 2-9; pg. 110, lns. 2-7.

<sup>7</sup> *Id.* at **pg. 2**.

<sup>8</sup> See Officer Walker Prado’s Response to Plaintiff’s Motion to Exclude, **Ex. 2**, Deposition Transcript of Plaintiff Avelino Medel II, pg. 17, lns. 4-5, 16; pg. 19, lns. 1-6; pg. 20, lns. 2-3, 12-25; pg. 21, lns. 1-7; pg. 24, lns. 13-19; pg. 30, lns. 10-16; pg. 34, lns. 23-25; pg. 73, lns. 3-12; pg. 88, lns. 2-9; pg. 110, lns. 2-7.

is in line with what officers are taught to recognize, including extreme agitation, excitability, and aggression. An officer in the same or similar circumstances would observe such behavior and likewise treat the suspect as potentially more dangerous, either as someone who is potentially intoxicated or under the influence of drugs, potentially an EDP, or both.”<sup>9</sup>

**D. Plaintiff’s deposition indicates that it was much more than the merely “loud conversation” he led this Court to believe.**

7. Plaintiff attempts to portray the 45-minute argument that led to a scared 911 call<sup>10</sup> regarding intoxicated yelling, banging doors, labored breathing, and possible threats as just Plaintiff “speaking with [his] father.”<sup>11</sup> The video evidence on its own reflects otherwise, including audible screams from Plaintiff directed at his father of “shut the fuck up!” heard by Officer Walker Prado and captured on body worn camera.<sup>12</sup> Despite subsequently telling police officers he and his father were never arguing leading up to the OIS, Plaintiff testified otherwise during his deposition.<sup>13</sup> He also testified for the first time that the 911 callers’ claims that there were repeated door slamming and *labored breathing* coming from his apartment were accurate.<sup>14</sup> Clearly, the confrontation with his father was far more than a merely “loud conversation,” and was heated and arguably *physical* enough to cause one or more of them to exhibit “labored breathing” so profoundly loud that it could be heard in the apartment above. This is important context to understand the tenor of the scene Officer Walker Prado encountered—and the behavior he

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<sup>9</sup> See Dkt. 28.4, Rodriguez Expert Report, ¶ 85.

<sup>10</sup> See Dkt. 27.16, Ex. 14, 911 call.

<sup>11</sup> Dkt. 42.7, Declaration of Avelino Medel II, ¶ 2.

<sup>12</sup> Ex. 3, Walker Prado Decl., pgs. 2-3; see also Ex. 1, Walker Prado BWC, 02:08:55-69.

<sup>13</sup> See Officer Walker Prado’s Response to Plaintiff’s Motion to Exclude, Ex. 2, Deposition Transcript of Plaintiff Avelino Medel II, pg. 144, lns. 1-8.

<sup>14</sup> *Id* at pg. 88, lns 2-9.

observed—before Plaintiff moments later armed himself and stalked toward the door as a perceived response to the arrival of police.

**E. Plaintiff expanded upon his *Manis* acts in his newly obtained deposition.**

8. Plaintiff Medel’s Declaration portrays him merely “obtaining [his] personal pistol.”<sup>15</sup> In reality, Plaintiff’s conduct was far more aggressive and contained far more threatening *Manis* acts than that of a man calmly and *safely* exercising his Second Amendment right. The gun itself was stored in an incredibly unsafe and inappropriate manner.<sup>16</sup> He faced no threat of immediate entry.<sup>17</sup> The state he was in when he impulsively grabbed his gun was likewise incredibly unsafe and inappropriate.<sup>18</sup> Medel proceeded to not just retrieve it—he loaded it, chambered a round with no safety mechanism, pointed it in an unsafe direction, and near the end admittedly had lowered it to a degree—each action of which on its own constituted a sufficiently threatening *Manis* act.<sup>19</sup>

**F. Plaintiff’s deposition proves that Officer Walker Prado had reason to believe Plaintiff was still a threat when the final shot was fired.**

9. Plaintiff’s sworn declaration is notably silent as to whether or not he maintained possession of his gun after he dropped to the ground right before the last shot of Officer Walker’s Prado’s lone fusillade was discharged. The Supreme Court has emphasized that “*if police officers are*

<sup>15</sup> Dkt. 42.7, Declaration of Avelino Medel II, ¶ 15.

<sup>16</sup> See Officer Walker Prado’s Response to Plaintiff’s Motion to Exclude, **Ex. 2**, Deposition Transcript of Plaintiff Avelino Medel II, pg. 82, lns. 5-11.

<sup>17</sup> *Id* at pf. 111, lns. 15-17.

<sup>18</sup> *Id* at pg. 34, lns. 23-25; pg. 110, lns. 2-7.

<sup>19</sup> *Id* at pg. 101, lns. 4-8, pg. 104, lns. 6-7; pg. 109, lns. 8-10, 17-23; See also *e.g.*, *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (affirming qualified immunity for officer who used deadly force against suspect who reached under his seat for what officer believed might be a gun); see also *e.g.* *Argueta*, 86 F.4th at 1088 (affirming qualified immunity for officer who used deadly force against a suspect who concealed his right hand from view in a manner that looked like he was reaching for a gun on his right hip); see also *e.g.*, *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (holding that deadly force was warranted when police arrived and a suspect reached into a chest-high boot for what could have been a gun but was later determined not to be.).



*justified in firing at a suspect in order to end a severe threat to public safety the officers need not stop shooting until the threat has ended.*”<sup>20</sup> An officer should assume an armed and dangerous man who has moved out of sight is still armed and dangerous unless or until it is confirmed he is not. Plaintiff’s deposition confirmed that Officer Walker Prado was correct to assume the threat Plaintiff posed did not end when he dropped behind the couch out of sight.<sup>21</sup> It likewise entirely negates and contradicts Plaintiff’s argument that Medel shot him in the back, as Officer Walker Prado would have had no way of knowing which direction Plaintiff was facing when his final shot discharged.<sup>22</sup>

**G. Plaintiff’s argument that he had merely committed a misdemeanor at most ignores the threatening nature of his multitude of threatening *Manis* acts.**

10. Plaintiff argues that at most he committed a misdemeanor, which under a reductive application of *Graham* would not merit deadly force. However, “it would be insignificant whether [the suspect] was to be arrested for a minor crime or was not even a criminal suspect if it reasonably appeared that he was about to shoot a gun at an officer from close range.”<sup>23</sup> The reasons prompting the APD officers’ dispatch, or the crimes technically committed (because more life-threatening possible crimes had been foiled) are immaterial to the question of reasonableness in responding to the imminent deadly threat created by Medel’s actions.

**H. Plaintiff’s cited cases are not factually similar enough to constitute clearly established law pursuant to *Mullenix* and *Morrow*.**

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<sup>20</sup> *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (emphasis added); *see also Roy v. Inhabitants of City of Lewiston*, 42 F.3d 691, 695 (1st Cir. 1994) (noting that “the Supreme Court’s standard of reasonableness is comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.”).

<sup>21</sup> *See* Officer Walker Prado’s Response to Plaintiff’s Motion to Exclude, **Ex. 2**, Deposition Transcript of Plaintiff Avelino Medel II, pg. 112, lns. 15-22.

<sup>22</sup> *See* Pl. Resp. to Mot. For Sum. Judg., Dkt. 42, pg. 33.

<sup>23</sup> *Padilla*, 2025 WL 1414287, at \*8.

11. The *Griffin* opinion appears to involve an assailant who made a clear showing of surrendering his gun.<sup>24</sup> There has never been an allegation or any evidence to suggest Plaintiff made any attempt to surrender his firearm before Officer Walker Prado discharged his weapon. The Griffin Plaintiff appears to have already been holding a weapon when police arrived. Here, Plaintiff was observed *responding to police arrival* by reaching for a gun, loading it, chambering a round, and advancing toward police. It is the equivalent of reaching for a gun when police arrive—an affirmative act that constitutes the threat. It would be different if Medel had already been holding his gun when police knocked and first announced their presences. That is not what occurred, and thus these two cases are not factually similar.

12. In *Cole*, the decedent’s conduct suggested he was about to kill *himself*,<sup>25</sup> which is vastly different compared to Medel’s retrieving, loading, chambering, and walking with his gun *toward officers as a response to their arrival*. There is also no “hot dispute” here about the fact that Medel was walking toward officers, because he clearly was as shown on film. Plaintiff’s out-of-circuit case law shows similarly fatal factual deficiencies on their face, such as failing to even identify themselves as police in *Pauly* and *Curnow* and *Weinmann*, and they otherwise collectively fail to constitute a robust consensus pursuant to *Morrow*.<sup>26</sup>

13. *Baker* was a 12(b)(6) motion that predated *Scott* and body camera footage and thus was required to be based only upon Plaintiff’s Complaint. The district court thus had to simply accept as true that “***Plaintiffs deny that...Baker, Jr. had committed any acts of aggression toward defendant Putnal.***”<sup>27</sup> This Court instead has the benefit of body camera footage and Plaintiff’s

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<sup>24</sup> Pl. Resp. to Def. Mot. For Summ. Judg., Dkt. 42, pgs. 35-36.

<sup>25</sup> See *Cole v. Carson I*, 802 F.3d 752, 755 (5th Cir. 2015).

<sup>26</sup> See *Morrow v. Meachum*, 917 F.3d 870, 880 (5th Cir. 2019).

<sup>27</sup> *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996) (emphasis added).

own admissions of numerous threatening *Manis* acts in response to the arrival of police,<sup>28</sup> each of which has been deemed by the Fifth Circuit and other courts to be “act[s] of aggression” that were *entirely absent* in *Baker* for the purposes of its 12(b)(6) motion.

14. In *Roque*, “the video shows Jason immediately double over [and] **drop the gun**” and very specifically shows “the black gun hitting the white sidewalk in broad daylight.”<sup>29</sup> In contrast, Plaintiff very notably *never* alleged he dropped his gun before the final shot was discharged—which is to his credit, presumably because that would not be true. Unlike in *Roque*, the video evidence certainly does not show Medel’s gun dropping to the ground, and Plaintiff’s own sworn admission demonstrates that—unlike in *Roque*—Officer Walker Prado could not see Plaintiff once he dropped behind the couch and thus could only assume (rightfully) that he still was holding his firearm. Officer Walker Prado likewise did not shoot anyone *four seconds after a gun dropped as his entire lone volley was fired in roughly two seconds*.<sup>30</sup> *Roque*, therefore, is equally factually inapplicable.

15. Plaintiff’s final cited case of *Mason* is also factually too dissimilar to suffice. As established *supra*, Officer Walker Prado’s entire lone volley was fired in roughly two seconds. There cannot be a meaningful break in time when on average each of the four shots were fired roughly half a second apart from one another. In contrast, in *Mason*, the Court observed “a break between the first five and last two shots.”<sup>31</sup> The only thing seen on video here in the extremely short time frame of two seconds was Plaintiff dropping out of view behind the couch while presumably still holding

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<sup>28</sup> *Scott v. Harris*, 550 U.S. 372, 380 (2007) (When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.).

<sup>29</sup> *Roque v. Harvel*, 993 F.3d 325, 330 (5th Cir. 2021)

<sup>30</sup> **Ex. 1, Walker Prado BWC, 02:09:05 – 07.**

<sup>31</sup> *Mason v. Lafayette City-Par. Consol. Gov’t*, 806 F.3d 268, 277 (5th Cir. 2015)

his gun—a fact which Plaintiff has never disputed. The *Mason* decedent, on the other hand, was in full view of the officers and there was a dispute over whether he moved threateningly so as to deserve an additional second volley of shots. One witness said he did not. No such dispute exists here, because it is undisputed that Medel fell behind the couch out of sight of Officer Walker Prado, seemingly with his gun still in hand by his own implied omission. Thus, unlike in *Mason*, his threat potential still existed. Officer Walker Prado also only fired one lone volley, not two as in *Mason*. Lastly, the *Mason* plaintiff presented medical evidence that the decedent’s injuries were so severe that he could not have moved his arm in a threatening manner as the officer had alleged. No similar evidence exists here to corroborate the fact that Medel has *never denied*—that he was still holding the gun, or at the very least was hidden behind the couch (which he has admitted) and a reasonable officer would presume that the threat continued until he could affirmatively confirm it had ended. Officer Walker Prado is entitled to the defense of qualified immunity accordingly.

#### IV. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant **Gabriel Walker Prado** respectfully request that this Court grant summary judgment on the grounds that he is entitled to qualified immunity on all of Plaintiff Medel’s claims, and for all other relief to which he may be justly entitled in law or equity.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of July, 2024, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_/s/ Blair J. Leake  
Blair J. Leake

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

### *Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990

**PLAINTIFF AND CITY OF AUSTIN’S JOINT RULE 56(d) MOTION TO EXTEND  
TIME TO RESPOND TO DEFENDANT CITY OF AUSTIN’S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff Avelino Medel, II and the City of Austin respectfully file this joint motion to extend Plaintiff's time to respond to the City's motion for summary judgment until October 6, 2025, as the City has asked to reschedule its production of documents until September 2, 2025 and testimony in its deposition for an agreed-upon time no later than September 16, 2025, which is after the close of discovery. As the City's deposition and the relevant documents are essential to demonstrate facts proving or disproving several of Plaintiff's *Monell* theories, the Court should defer consideration of the City's summary judgment motion, permit an exception to Local Rule CV-16(d) solely for this specific agreed-upon discovery, and extend Plaintiff's time to respond until October 6, 2025.

## I. LEGAL STANDARD

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

After a motion for summary judgment is filed, “[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.”

FED. R. CIV. P. 56(d).

Rule 56(d) “motions are broadly favored and should be liberally granted.” *Culwell v. City of Fort Worth*, 468 F.3d 868, 871 (5th Cir. 2006) (reversing grant of summary judgment).

## **II. PROCEDURAL HISTORY**

This is a police shooting case brought pursuant to 42 U.S.C. § 1983.

Plaintiff has diligently worked to secure the City’s testimony and production of certain documents on the topics of the deposition since April 1, 2025, when Plaintiff set the deposition for April 28, 2025, but the City was not ready to present its Rule 30(b)(6) representatives or produce documents responsive to a subpoena *duces tecum*. See Ex. 1, Stipulation, ¶¶ 1, 2, 9; Ex. 2, Deposition Notice.

On May 28, 2025, Defendants separately moved for summary judgment. Doc. 25; Doc. 27-1. Plaintiff has responded to Walker Prado’s motion. See Doc. 42.

Plaintiff began the City’s deposition on June 5, 2025, but the deposition was held open by agreement because the representative was prepared to testify only on topics 3, 4, 10, 13, and 14. See Ex. 1, Stipulation, ¶¶ 3–4; Ex. 3, Amended Deposition Notice.

Plaintiff obtained an extension of his deadline to respond to the City until August 5, 2025, based on the City’s assertion that it was not able to complete its 30(b)(6) testimony prior to July. See Doc. 36.

The City was then set, but not prepared to testify, on July 10, 2025 and then again on July 31, 2025 due to counsel for the City's extensive preparation in June for the two-week jury trial in this Court in the *Gonzales v. City of Austin, et al.* case, No. 22-CV-00655-RP. Ex. 1, Stipulation, ¶¶ 4–7; Ex. 4, Second Amended Deposition Notice; Ex. 5, Third Amended Deposition Notice.

Unfortunately, last week, the City advised that it needs at least 30 more days to compile the documents necessary to respond to the subpoena *duces tecum* attached to the deposition notice and to prepare its representative for the City's deposition. The City has now stipulated that it will produce the documents on or before September 2, 2025, and it will testify on or before September 16, 2025. Ex. 1, Stipulation, ¶¶ 10–11. Thus, the City has agreed to produce the documents and attend its deposition after the discovery deadline.

### III. ARGUMENT

Plaintiff will need additional time to conduct this specific discovery as to the City of Austin and to prepare his response to City's motion for five reasons.

First, Plaintiff needs the City's deposition, including the documents associated with the topics of that deposition. Ex. 6, Declaration of Plaintiff's Counsel. Plaintiff first noticed the deposition over three months ago, and finally began the City's deposition on June 5, 2025 by agreement, but the City's deposition on the other agreed Rule 30(b)(6) topics remains open. Ex. 1, Stipulation, ¶¶ 4–8. Plaintiff set that deposition for July 10, 2025 by agreement, but then reset it for July 31, 2025 at the City's request. *See* Ex. 4; Ex. 5. Now, the City has advised that responsive documents will not be ready for at least another month, and, since the deposition largely concerns whether prior incidents are indicative of what Plaintiff alleges to be unconstitutional City policy, practice, or training; the City will not be ready for the deposition; and Plaintiff cannot complete



the deposition if the City has not satisfied the subpoena *duces tecum*. See Ex. 1, Stipulation, ¶ 8. These issues are essential to Plaintiff's summary judgment response. *Id.* at ¶¶ 13–15.

Second, the delay in responding to the City should be short enough not to affect the total length of the schedule in this case due to its relationship with Walker Prado's separate motion. The City's motion attempts to incorporate Walker Prado's motion by reference, and Walker Prado's motion is set to be fully briefed shortly. Thus, the Court will likely need to review Walker Prado's motion first regardless of when the parties complete their briefing. Further, the Court could also choose to decide Walker Prado's motion separately and, if that decision does not moot the City's motion, consider the City of Austin's motion during the pendency of the practically inevitable appeal. See 28 U.S.C. § 1291; *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) (there is limited interlocutory appellate jurisdiction for § 1983 cases against individuals with qualified immunity).

Third, Plaintiff is not in a position to judge whether the City's requests for delay have been reasonable but presumes the City has requested the additional delay in good faith. In the unlikely event that the City nonetheless does not diligently collect responsive documents or prepare its 30(b)(6) witness in time, the City has agreed that Plaintiff can request Court intervention notwithstanding W.D. TEX. L.R. CV-16(d). See Ex. 1, Stipulation, ¶ 12. Regardless, Plaintiff relied on the City's requests for delay in good faith and the City's offers to compromise at every stage, including this stage, have been more expedient and used fewer judicial resources than briefing a contested motion to compel. The parties expect that the threat of judicial enforcement will render actual enforcement unnecessary in this instance, and so there is good cause for a limited exception to Rule CV-16(d) for this portion of the City's deposition and its response to this subpoena *duces tecum*.

Fourth, Plaintiff's allegations in this case deal with the City of Austin's specific training deficiencies under the single-incident exception, but also widespread patterns, practices, and customs of the entire police department. Submitting and specifically citing evidence of those facts, as well as discussing the application of relevant precedents to those facts, will take significant time to fully brief. As Plaintiff does not expect to have evidence to cite until shortly before the deposition, and that evidence is expected to be within voluminous materials concerning dozens of incidents, the response period of 21 days after the City's deposition is reasonable.

Finally, this extension does not unfairly prejudice Defendant Walker Prado, whose own motion for summary judgment has been separately briefed. The topics affecting his liability were covered in the June 5, 2025 deposition and that testimony is before the Court. *See* Doc. 40-1. The remaining topics are expected to go only to other incidents, policy questions, and moving force issues relevant to the City's *Monell* liability. *See, e.g.,* Ex. 5, Third Amended Deposition Notice. Walker Prado should not be burdened one way or another by the extension as to the City's summary judgment briefing. To the extent Walker Prado seeks his own delay of the close of discovery notwithstanding the schedule, those issues are unrelated. Thus, Walker Prado will not be unfairly prejudiced by this extension.

The extension of time is requested for the reasons stated, and not solely for the purposes of delay.

#### **IV. CONCLUSION**

Accordingly, Plaintiff and the City of Austin respectfully request an extension of time for Plaintiff's response to the City of Austin's motion for summary judgment as well as an extension of the Rule CV-16(d) deadline as to the City of Austin's deposition and response to the accompanying subpoena *duces tecum* until October 6, 2025.

Dated: August 1, 2025.

Respectfully submitted,

**EDWARDS LAW**

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**ATTORNEYS FOR DEFENDANT CITY OF  
AUSTIN**

**CERTIFICATE OF SERVICE**

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for the City of Austin agrees to the relief requested herein and consents to the use of their conformed signature. In an abundance of caution, I attempted to confer with counsel for Defendant Walker Prado on this issue multiple times this week and last week. Walker Prado's counsel declined to directly respond as to the time for Plaintiff's summary judgment response, but stated he is opposed to limiting the scope of the discovery extension if the parties would not agree to reopen discovery for all purposes.

/s/ David James  
David James

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**OFFICER WALKER PRADO’S OPPOSED  
MOTION TO EXTEND DISCOVERY DEADLINE**

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Gabriel Walker Prado, Defendant in the above entitled and numbered cause, respectfully files this opposed motion to extend the discovery deadline until September 16, 2025, and in support thereof would respectfully show the court as follows:

**I. LEGAL STANDARD**

1. “When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.”<sup>1</sup> “An application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.”<sup>2</sup> Defense counsel has not partaken in any bad faith, nor will the requested extension prejudice Plaintiff in any meaningful way. This is especially true given the much longer extension Plaintiff has sought

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<sup>1</sup> FED. R. CIV. P. 6(b)(1)(A).

<sup>2</sup> *Reed Migraine Centers of Texas, PLLC v. Chapman*, No. 3:14-CV-1204-N, 2020 WL 869888, at \*1 (N.D. Tex. Feb. 21, 2020) (citing 4B FED. PRAC. & PROC. CIV. § 1165 (4th ed. 2008) (Wright & Miller)).

related to his desired discovery and summary judgment response.<sup>3</sup> The subject standard is meant to be “incredibly lenient,” and a court may grant a request made pursuant to Rule 6(b)(1)(a) “*for any reason.*”<sup>4</sup>

## II. ARGUMENT

2. Officer Walker Prado has attempted to conference with Plaintiff regarding discovery on numerous fronts but has consistently received little to no response. This has been especially disappointing given the numerous extensions the defense have agreed to without issue—including in this case extending discovery deadlines, expert deadlines, responses deadlines, and motion to strike expert deadlines—and has made a career out of agreeing to as a matter of course.

3. Plaintiff listed “Avelino Medel [Sr.’s]” address contact information in his Initial Disclosures as:

***c/o Jeff Edwards  
604 W. 17<sup>th</sup> Street  
Austin, Texas 78701  
(512) 623-7727***

This address and contact information Plaintiff provided for his father is for Edwards Law, Plaintiff’s attorney’s office. No address or contact information has ever been supplemented for provided by Plaintiff in any way for Avelino Medel Sr.

4. The undersigned first emailed all counsel of record on April 9, 2025, requesting deposition dates for Plaintiff and Plaintiff’s father. Plaintiff’s counsel failed or refused to respond.

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<sup>3</sup> See Dkt. 51.

<sup>4</sup> *Devillier v. State of Texas*, No. 3:20-CV-00223, 2023 WL 2744398, at \*2 (S.D. Tex. Mar. 31, 2023) (emphasis original) (citing *L.A. Pub. Ins. Adjusters, Inc. v. Nelson*, 17 F.4th 521, 524 (5th Cir. 2021)).

5. Defense counsel Stephen Barron followed up with an email request for Plaintiff's father's deposition dates on April 15, 2025. Plaintiff's counsel Lisa Sneed responded on April 18, 2025 "[w]e will do our best to arrange for Mr. Medel Sr.'s deposition as well as our clients."

6. The undersigned emailed all counsel of record again on June 4, 2025, attempting to conference again regarding deposition dates for Plaintiff and his father, raw test data request for production, and an independent medical examination of Plaintiff. Plaintiff's counsel David James responded on June 9, 2025, promising to provide dates for Plaintiff.

7. On June 26, 2025, Plaintiff filed his response to Officer Walker Prado's motion for summary judgment, which included declarations of Plaintiff and his father in support of the same.<sup>5</sup> No deposition dates had been provided for either individual up to this point despite repeated requests. No supplemental address or contact information was ever provided for Avelino Medel Sr.

8. The undersigned called Plaintiff's counsel the same day on June 26, and Plaintiff's counsel promised to provide deposition dates for Plaintiff. The undersigned chose the first possible date ultimately provided, July 9, 2025, and deposed Plaintiff on that date.

9. The undersigned emailed again on July 25, 2025, asking for deposition dates for Plaintiff's father. No email response was ever received. The undersigned followed up with a phone call to conference about a deposition date for Plaintiff's father, but Plaintiff's counsel David James was unable to commit to whether or not Plaintiff would agree to do so.

10. The lack of conferencing cooperation in this case has been frustrating, disappointing, and frankly out of character. The defense has diligently tried to conference to arrange discovery, and has pounced on discovery opportunities when conferencing requests have actually been responded

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<sup>5</sup> See Dkts. 42, 42.7, 42.8.

to. It is a waste of this Court's time and resources to have parties file unilateral deposition notices and subpoenas and the expected motions to quash that would result.

11. The requisite "good cause" has been shown to allow for the discovery request asked for by the defense be for all purposes, so that the discovery herein can either be agreed to scheduled—or the less favored and more onerous unilateral route if Plaintiff and his counsel leave no other choice. This request is made before the discovery period currently in effect has ended.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court grant this opposed motion and extend the discovery deadline for all purposes to September 16, 2025, and for all other relief to which he may be entitled in law or in equity.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**  
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**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**



**CERTIFICATE OF CONFERENCE**

I hereby certify that the undersigned conferred with Plaintiff's counsel over the phone regarding the requested extension. Plaintiff's counsel said he was unable to provide an answer about whether he could agree to be unopposed to this request. Defendant City of Austin is unopposed to this request.

\_\_\_\_\_/s/ Blair J. Leake  
Blair J. Leake

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of August, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_/s/ Blair J. Leake  
Blair J. Leake

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**RESPONSE TO DEFENDANT PRADO’S EMERGENCY THIRD MOTION TO  
EXTEND TIME TO FILE REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT**

The Court should deny Walker Prado’s third request to extend time to file his reply brief, which has now become a motion for leave to file an *amended* reply on or before August 6, 2025.

**I. SUMMARY OF THE ARGUMENT**

Plaintiff reluctantly opposes Defendant Walker Prado’s request to amend his reply brief because the stated purpose of the amendment is simply for the summary judgment *movant* to offer yet more slanted commentary on disputed (as well as, Plaintiff contends, inadmissible) evidence, rather than to articulate reasons that could possibly merit summary judgment. Thus, Plaintiff will need to move to strike the amended filing (as well as portions of the current reply), so cannot agree to the submission of yet another improper brief which will only complicate and delay this case.

**II. FACTS AND PROCEDURAL HISTORY**

This is a § 1983 police shooting case. Doc. 1.

On December 6, 2024, the Court entered a scheduling order that set the deadline for dispositive motions as May 28, 2025. Doc. 14.

On May 28, 2025, Defendant Walker Prado filed his motion for summary judgment subject to a motion for leave to file excess pages. Doc. 27, Doc. 27-1.

On June 4, 2025, he filed an unopposed motion for leave to amend his motion for summary judgment. Doc. 33. The Court granted that motion, and the clerk then filed Walker Prado's amended motion, on June 5, 2025. *See* June 5, 2025 Text Order; Doc. 34.

Plaintiff's response to Walker Prado's motion was thus originally due on June 19, 2025. *See* W.D. LOCAL RULE CV-7(d)(2).

On June 6, 2025, Plaintiff sought an unopposed extension of time for a single week to respond by June 25, 2025. Doc. 35. The Court granted that motion on June 11, 2025. *See* June 11, 2025 Text Order.

On June 25, 2025, Plaintiff timely filed his response, subject to an unopposed motion for leave to file excess pages. Doc. 39; Doc. 39-2. Plaintiff filed 22 exhibits in support of his response, one of which (the deposition of Robin Henderson) was filed under seal only because it had been received fewer than thirty days before. Docs. 39-3 through 39-24, Doc. 40.

That same day, Plaintiff also filed a Motion to Strike part of Walker Prado's motion and several of Walker Prado's summary judgment exhibits as they contained irrelevant and unfairly prejudicial information while two exhibits relied upon unsworn hearsay and were insufficient under *Daubert*. Doc. 38.

On June 26, 2025, the Court granted the motion to exceed page limits and the Clerk filed Plaintiff's response. June 26, 2025 Text Order; Doc. 42.

Walker Prado's original reply deadline was thus July 3, 2025, although Walker Prado had Plaintiff's entire response on June 25, 2025, other than a certification of the Spanish translation of one of Plaintiff's exhibits, which he received on June 27, 2025. Doc. 41; *see* W.D. LOCAL RULE CV-7(b), (e)(2).

Nonetheless, Walker Prado waited until July 8, 2025 to file his unopposed first motion to

extend time to reply, seeking an extension until July 22, 2025, which the Court granted. Doc. 43; Text Order, July 9, 2025.

Meanwhile, on July 9, 2025, Plaintiff Medel sat for his deposition at an agreed-upon time. Pursuant to the protective order, the transcript of Plaintiff's deposition would remain automatically Confidential for thirty days after initial receipt of the transcript, Doc. 21, p. 3, although in an abundance of caution, Plaintiff also designated the transcript Attorneys' Eyes Only on the record due the extensive discussion of information gleaned from Plaintiff's mental health treatment.

Walker Prado then sought an unopposed second extension of time on July 17, 2025, requesting an extension until July 30, 2025. Doc. 46. The Court granted that motion on July 29, 2025. Text Order, July 29, 2025.

On the evening of July 29, 2025, hours after receiving his second extension, Walker Prado filed his present "Emergency Third Opposed Motion for Leave for Extention[sic] of Time to File Defendant Walker Prado's Reply Brief in Support of Summary Judgment." Doc. 47. One of the stated reasons for the extension was that a paralegal was on her honeymoon, and that Walker Prado could not "[s]ecur[e] the availability of other staff who are familiar with PACER and capable of assembling and filing the complex filings this Reply will require." Doc. 47, p. 3.

Nonetheless, on the evening of July 30, 2025, Walker Prado filed his reply as well as a motion to seal as to Plaintiff's deposition. Doc. 49; Doc. 50.

On August 4, 2025, the date discovery was scheduled to close, Walker Prado moved to extend the time to complete discovery. Doc. 52.

### **III. ARGUMENT**

In this extraordinary situation, Court should deny Walker Prado leave to amend the reply. Although § 1983 briefing can be complex and excessive force claims are necessarily fact intensive,

often requiring lengthy deviations from the Court’s short default briefing deadlines, Walker Prado is instead seeking more time so that he can amend his reply with more thorough attempts to attack Plaintiff’s character and credibility. While perhaps some of these tactics will be permissible at trial, they have no value in summary judgment briefing. Walker Prado fails to meet even the permissive threshold for an extension of time for six reasons.

First, Walker Prado states that two of his four reasons for the amendment are his trials and tribulations in obtaining and filing Plaintiff’s deposition. But Plaintiff did not concede his case in his deposition—and even if Walker Prado thinks Plaintiff described facts differently than in his declaration, *see* Doc. 39-9, (although the undersigned counsel does not recall such a discrepancy) that would merely illustrate fact disputes as to Plaintiff’s credibility. Fact disputes do not support summary judgment—they countenance against it. *See, e.g., In re Deepwater Horizon*, 48 F.4th 378, 384 (5th Cir. 2022) (reversing summary judgment based on a dispute of fact arising from a conflict between one of the plaintiff’s employee’s declaration and that same employee’s deposition); *Johnson v. Odom*, 910 F.2d 1273, 1278 (5th Cir. 1990) (affirming denial of summary judgment in a § 1983 case where district court refused to consider post-affidavit deposition testimony of the plaintiff). In any event, Walker Prado did file his reply and, apparently, successfully filed Plaintiff’s deposition under seal, as his reply cites heavily to the deposition.

Second, to the extent Walker Prado’s planned “complex” amended filing seeks to add yet more evidence to support new arguments, this, too, would contravene the core purposes of not just summary judgment briefing, but a reply brief. *See Jones v. Cain*, 600 F.3d 527, 541 (5th Cir. 2010) (new arguments in reply brief were waived); *Ringer as Tr. of Sonny Howard Living Tr. v. Masters Touch Custom Homes, LLC*, No. 1:21-CV-705-RP, 2023 WL 5617804, at \*4 (W.D. Tex. Aug. 30, 2023) (same); *Hunt, Gather LLC v. Andreasik*, No. 1:23-CV-627-RP, 2023 WL 4853400, at \*3

(W.D. Tex. July 27, 2023) (same); *Parsons v. Sager*, No. 1:18-CV-1014-RP, 2019 WL 5243190, at \*2, nn.1–2 (W.D. Tex. Apr. 30, 2019) (same); *Scott v. White*, No. 1:16-CV-1287-RP, 2019 WL 122055, at \*3 (W.D. Tex. Jan. 7, 2019) (same); *Primacy Eng'g, Inc. v. SAN Eng'g*, No. 1:18-CV-129-RP, 2018 WL 3520143, at \*2, n.2 (W.D. Tex. July 20, 2018) (same); *see also Big Thirst, Inc. v. Donoho*, No. 1:22-CV-467-RP, 2024 WL 348526, at \*6 (W.D. Tex. Jan. 29, 2024) (noting the Court earlier found an argument waived because it was raised for the first time in a reply brief).

Third, Walker Prado's complaint about the length of Plaintiff's response is also self-inflicted. Walker Prado's own 34-page motion spends much of its length on completely irrelevant character assassination. Walker Prado's burden on summary judgment is minimal, while Plaintiff is arguably required by the rules to respond to every factual assertion in Walker Prado's motion—no matter how nebulous—with specific citations to the evidence demonstrating admissible evidence to dispute that fact, so it is no surprise that Plaintiff's response was about 20% longer. FED. R. CIV. P. 56(c)(1); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). But Walker Prado's decision to go outside the proper purposes of a summary judgment motion, and thus invite a lengthy response, should not serve as a reason to waste time and unnecessarily delay this case.

Fourth, Walker Prado asserts there will be no prejudice because the response to the City of Austin's motion for summary judgment has been delayed.<sup>1</sup> This is a false equivalency. The City has no right to interlocutory appeal, unlike Defendant Walker Prado. So while an extension as to

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<sup>1</sup> As counsel for Walker Prado knows, Plaintiff has not responded to the City's motion because the City has been unable to present a representative for its own 30(b)(6) deposition on the majority of requested topics—a deposition which was originally noticed on April 1, 2025. *See* Doc. 36. Plaintiff would have already filed another unopposed motion to extend time for that reason—the City was set for its deposition today, but last week stated it cannot be prepared in time—except that counsel for Walker Prado stated for the first time that he was opposed on Monday, July 28, 2025, forcing Plaintiff to prepare evidence to support a Rule 56(d) motion and explore other alternatives to salvage the procedural problems arising from the difficulties in obtaining *Monell* evidence in light of Walker Prado's opposition.

the City will not necessarily delay anything—depending on the sequence in which the Court chooses to consider and rule on the motions—every extension and amendment as to Walker Prado necessarily means any appeal will be filed later. Based on Plaintiff’s counsel’s experience, any agreed resolution of this case is unlikely until the resolution of such an appeal. Thus, apart from the unfair prejudice of Walker Prado’s request to file yet another example of impermissible use of summary judgment briefing to attempt to dispute the evidence, which will require Plaintiff to again brief that issue, there is also significant unfair prejudice from Walker Prado’s unnecessary delays.

Fifth, Walker Prado has not identified any reason that he did not already anticipate two weeks ago when he sought his second extension. Accordingly, the Court is not required to accept the assertions that these representations are the reason for the extension.

Finally, Walker Prado has had Plaintiff’s response for 35 days. By comparison, Plaintiff filed his response only 28 days after receiving Walker Prado’s first motion (not even his amended motion). The reply has only taken so long because Walker Prado is preoccupied with arguments and evidence that will not assist the Court’s narrow task to address legal issues under Rule 56. His amended reply will, according to Walker Prado’s own explanation, merely elaborate on these irrelevant arguments, rather than cure them.

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully asks that the Court find this occasion is one of the few scenarios where the request for leave to amend should be denied.

Dated: August 5, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS



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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**OPPOSED AMENDED MOTION FOR LEAVE TO CITE NEW EVIDENCE IN  
OFFICER GABRIEL WALKER PRADO'S AMENDED REPLY IN SUPPORT OF  
SUMMARY JUDGMENT**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant Gabriel Walker Prado who files this Opposed Motion for Leave to cite new evidence in his Amended Reply in support of Summary Judgment, and in support thereof, would respectfully show unto the Court as follows:

**I. Relevant Procedural Background**

1. Defendant Walker Prado's First Amended Motion for Summary Judgment was filed by the clerk on June 5, 2025 (Dkt. 34).
2. On June 25, 2025, Plaintiff filed his Motion to Strike Defendant's Summary Judgment Exhibits 6, 9, 10, 11, 13, and 16 (Dkt. 38).
3. On July 29, 2025, Defendant filed an Opposed Emergency Third motion for leave to extend his deadline to file his Reply brief until August 6, 2025 (Dkt. 47). This motion was based on numerous issues, including health-related childcare issues. The motion at bar is filed pursuant to the July 29, 2025 motion for leave to extend his deadline to file his Reply to today, August 6, 2025.

4. On July 30, 2025, Defendant filed his Response in opposition to Plaintiff's Motion Strike (Dkt. 48), followed by an Unopposed Motion for Leave to file Exhibit No. 2—Plaintiff Medel's deposition transcript—Under Seal (Dkt. 49). The Court granted Defendant's Unopposed Motion for Leave to file under seal via Text Order on July 31, 2025.

5. On July 30, 2025, out of an abundance of caution, Defendant filed—explicitly subject to his motion for leave to extend the deadline to file (Dkt. 47) until August 6, 2025—a Reply in Support of his Motion for Summary Judgment (Dkt. 50). Therein, Defendant moved for leave to utilize newly obtained evidence.

6. Defendant Walker Prado now files this Opposed Motion for Leave to cite new evidence—namely Plaintiff Medel's deposition transcript—in his Amended Reply in support of Summary Judgment. Defendant now files a separate version of what was already filed within the initial Reply brief previously filed out of an abundance of caution on July 30, 2025 (Dkt. 50).

## II. Request for Leave

### **A. Plaintiff's deposition was taken after Officer Walker Prado's motion for summary judgment was filed, and the defense formally moves again herein for leave of Court to utilize the newly obtained Plaintiff's deposition transcript as evidence in support of his Reply brief.**

7. This motion for leave was originally made as part of Officer Walker Prado's Reply in Support of his Motion for Summary Judgment (Dkt. 50). After months of repeated requests to no avail, the undersigned very recently was finally given his first opportunity to take the deposition of Plaintiff. Unfortunately, the earliest date provided by Plaintiff's counsel was *after* the motion for summary judgment had been filed. Officer Walker Prado herein moves for leave from this Court to consider such evidence in support of his Reply for good cause shown.

8. Defense counsel requested the opportunity to depose Plaintiff and his father for the first time via email to Plaintiff's counsel on April 9, 2025 but received no response. The defense

followed up with repeated emailed requests for deposition dates, but Plaintiff continually failed or refused to provide any opportunities to depose Plaintiff or his father as the months went by. Plaintiff meanwhile provided address and contact information for Plaintiff's father that was merely the address and phone number for Edward's Law. While still actively withholding opportunities to obtain sworn testimony from Plaintiff and his father, Plaintiff filed sworn declarations from both Plaintiff and his father in support of Plaintiff's Response brief in opposition to Officer Walker Prado's deposition.<sup>1</sup> This was hopefully an honest oversight, but either way it created an inequitable situation where Plaintiff utilized testimony of a party and major fact witness while denying—or at least failing to provide, even upon request—the defense the opportunity to cross-examine either individual despite repeated requests to do so.

9. Finally, Plaintiff's counsel responded on July 1, 2025 and proposed a deposition date for Plaintiff Medel on July 9, 2025, after the motion for summary judgment and response to the motion for summary judgment had already been filed. The undersigned accepted, took the deposition, and now moves to use the sworn testimony obtained during it for this Reply. This Court recently held that “[p]arties are permitted to submit evidence and arguments in a reply brief ‘to rebut new argument raised by the opposing party in a response.’”<sup>2</sup> The defense should thus be permitted to provide the newly obtained sworn deposition testimony of Plaintiff to rebut the never-before-provided sworn statement of Plaintiff filed in support of his Response brief.

10. Officer Walker Prado does not oppose providing Plaintiff an opportunity to address

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<sup>1</sup> See Decl. of Avelino Medel II, Dkt. 42-7; see also Aff. of Avelino Medel, Sr., Dkt. 42-8.

<sup>2</sup> *Anonymous Media Research Holdings, LLC v. Roku, Inc.*, No. 1:23-CV-1143-DII, 2024 WL 4182592, at \*2–3 (W.D. Tex. July 10, 2024) (cleaned up) (emphasis added); see also *Icharts LLC v. Tableau Software, LLC*, No. 1:23-CV-1225-DII, 2024 WL 2305214, at \*3 (W.D. Tex. May 21, 2024).

Plaintiff's new deposition testimony in a sur-reply.<sup>3</sup> Courts are often willing to allow new evidence at the Reply stage "[b]ecause full and complete briefing is useful to the adjudication of th[e] case," as is true here.<sup>4</sup> The undersigned has conferenced with Plaintiff counsel's about the intent to use Plaintiff's deposition transcript in support of his Reply brief, but did not receive a definitive response regarding whether Plaintiff is opposed to the use of the deposition transcript at issue. Plaintiff also designated the entire deposition transcript as Attorney Eyes Only. Ideally, additional conferencing will occur, and a more definite answer will be provided on both issues prior to the expected amendment of this Reply brief on August 6, 2025. The current status of the deposition transcript as "Attorney Eyes Only" requires the undersigned to partake in vague, "artful" drafting herein when referencing its contents, which is not ideal or equitable in terms of providing Officer Walker Prado the opportunity to fully brief his case, nor does it comply with the requirements the Fifth Circuit spelled out in *Exeter*.<sup>5</sup> Defendant incorporates by reference herein the entirety of Plaintiff Medel's deposition transcript as summary judgment evidence.<sup>6</sup>

### **III. PRAYER**

WHEREFORE PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court grants this Opposed Motion for Leave, allow him to cite to and use as

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<sup>3</sup> See *Simmons v. T-Mobile USA, Inc.*, No. CIV A H-06-1820, 2006 WL 3447684, at \*1 (S.D. Tex. Nov. 22, 2006) (citing *Vais Arms, Inc. v. Vais*, 383 F.3d 287, 292 (5th Cir.2004)) (noting that the Fifth Circuit allows district courts to consider a reply brief's new evidence so long as the non-movant is given an adequate opportunity to respond).

<sup>4</sup> See e.g., *id.*; see also *Mission Toxicology, LLC v. Unitedhealthcare Ins. Co.*, 499 F. Supp. 3d 350, 359 (W.D. Tex. 2020) (noting that granting the right to file a sur-reply is a viable alternative to excluding new issues raised in a Reply brief).

<sup>5</sup> See *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 413 (5th Cir. 2021) (requiring that exhibits not be filed under seal at the dispositive stage of litigation).

<sup>6</sup> See *Medel Dep.*, pg. 17, lns. 4-5, 16; pg. 19, lns. 1-6; pg. 20, lns. 2-3, 12-25; pg. 21, lns. 1-7; pg. 24, lns. 13-19; pg. 30, lns. 10-16; pg. 34, lns. 23-25; pg. 73, lns. 3-12; pg. 88, lns. 2-9; pg. 110, lns. 2-7, Dkt. 49-1 SEALED DOCUMENT.

evidence Plaintiff's deposition transcript in support of his Amended Reply brief, and for such other and further relief to which he may justly be entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
GABRIEL PRADO**

### **CERTIFICATE OF CONFERENCE**

I hereby certify that the undersigned has attempted to confer with Plaintiff's counsel regarding the requested relief but to date, has not received a definitive response regarding whether Plaintiff is opposed to the use of the deposition transcript at issue. Defense counsel again reached out to Plaintiff's counsel via email on August 5, 2025 about the confidentiality designation problem pursuant to *Exeter*, but Plaintiff's counsel did not respond. Thus, defense counsel has filed this motion for leave as opposed. Counsel for the City of Austin is unopposed to this motion.

/s/ Blair J. Leake

Blair J. Leake

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of August, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake

Blair J. Leake

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**OFFICER WALKER PRADO’S AMENDED REPLY IN SUPPORT OF  
FIRST AMENDED MOTION FOR SUMMARY JUDGMENT**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Austin Police Officer, **Gabriel Walker Prado** (hereinafter “Officer Walker Prado”), Defendant in the above entitled and numbered cause, respectfully files this Amended Reply in Support of his First Amended Motion for Summary Judgment (Dkt. 34), and dismissal on the grounds that he is entitled to Qualified Immunity, and dismissal on all of Plaintiff Avelino Medel’s (hereinafter “Medel”) claims:

## I. ARGUMENTS & AUTHORITIES<sup>1</sup>

### A. Plaintiff's deposition transcript confirmed important now-undisputed facts.

1. Officer Walker Prado was correct in treating Plaintiff as an individual who was in an altered, erratic, and irrational state—because he was.<sup>2</sup> Despite subsequently telling police officers he and his father had not been arguing, Plaintiff testified otherwise during his deposition.<sup>3</sup> He admitted door slamming and labored breathing would have been heard by his neighbors.<sup>4</sup> He admitted yelling “shut the fuck up!” might be viewed as an aggressive act to an onlooker—such as Officer Walker Prado.<sup>5</sup> Plaintiff faced no threat of immediate entry,<sup>6</sup> stored his gun in a grossly unsafe manner,<sup>7</sup> and retrieved it in a grossly unsafe manner.<sup>8</sup> Medel proceeded to not just retrieve it—he loaded it, chambered a round with no safety mechanism, pointed it in an unsafe direction, and lowered his gun downward to a degree—each action of which on its own constituted a sufficiently threatening *Manis* act.<sup>9</sup>

### B. Plaintiff's deposition proves that Officer Walker Prado had reason to believe Plaintiff was still a threat when the final shot was fired.

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<sup>1</sup> Officer Walker Prado files this Amended Reply subject to his motion for leave. *See* Dkt. 47.

<sup>2</sup> *See Medel Dep.*, pg. 17, lns. 4-17; pg. 19, lns. 1-6; pg. 20, lns. 2-3, 12-25; pg. 21, lns. 1-7; pg. 24, lns. 13-19; pg. 30, lns. 10-16; pg. 34, lns. 23-25; pg. 73, lns. 3-12; pg. 88, lns. 2-9; pg. 110, lns. 2-7, Dkt. 49-1 SEALED DOCUMENT.

<sup>3</sup> *See id.* at pg. 144, lns. 1-8.

<sup>4</sup> *Id.* at pg. 88, lns 2-9.

<sup>5</sup> *Id.* at 90, pg. 4-14; *cf Barnes v. Felix*, 145 S. Ct. 1353, 1358 (2025) (“Prior events may show, for example, why a reasonable officer would have perceived otherwise ambiguous conduct of a suspect as threatening.”).

<sup>6</sup> *Id.* at pg. 111, lns. 15-17.

<sup>7</sup> *Id.* at pg. 82, lns. 5-11.

<sup>8</sup> *Id.* at pg. 34, lns. 23-25; pg. 110, lns. 2-7.

<sup>9</sup> *Id.* at pg. 101, lns. 4-8, pg. 104, lns. 6-7; pg. 109, lns. 8-10, 17-23; *cf Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (suspect who reached under his seat for what officer believed might be a gun); *Argueta v. Jaradi*, 86 F.4th 1084, 1088 (5th Cir. 2023), cert. denied, 145 S. Ct. 435 (2024) (a suspect who concealed his right hand from view in a manner that looked like he was reaching for a gun on his right hip); *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (police arrived and a suspect reached into a chest-high boot for what could have been a gun but was later found not to be).

2. It is now undisputed that Plaintiff was holding his gun when he dropped down behind the couch and was shot the final time. Plaintiff's Complaint and declaration never once deny it. ***"[I]f police officers are justified in firing at a suspect in order to end a severe threat to public safety the officers need not stop shooting until the threat has ended."***<sup>10</sup> This includes even after a perceived assailant falls to the ground.<sup>11</sup> An officer should assume an armed and dangerous man who has moved out of sight is still armed and dangerous unless or until it is confirmed he is not. Even if he was not still armed, Plaintiff's deposition confirmed Officer Walker Prado would have had no way to know it because Plaintiff Medel had dropped out of Officer Walker Prado's line of sight.<sup>12</sup> It likewise negates Plaintiff's argument that Medel shot him in the back, as Officer Walker Prado would have had no way of knowing which direction Plaintiff was facing when the final round of his lone four-shots-in-two-seconds volley was discharged.<sup>13</sup>

**C. Plaintiff's argument that he merely committed a misdemeanor ignores the threatening nature of his numerous *Manis* acts.**

3. Plaintiff argues that at most he committed a misdemeanor, which under a reductive application of *Graham* would not merit deadly force. However, "it would be insignificant whether

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<sup>10</sup> *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (emphasis added); *see also Roy v. Inhabitants of City of Lewiston*, 42 F.3d 691, 695 (1st Cir. 1994) (noting that "the Supreme Court's standard of reasonableness is comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.").

<sup>11</sup> *See Berube v. Conley*, 506 F.3d 79, 85 (1st Cir. 2007); *see also Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211, 1230 (9th Cir. 2014), *rev'd in part, cert. dismissed in part sub nom. City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600 (2015) (finding it reasonable that the officer's final shot was fired after the assailant had fallen because **"it is clear from the very brief time that elapsed that [Reynolds] made a split-second judgment in responding to an imminent threat and fired a fusillade in an emergency situation."**); *see also Est. of Rodgers ex rel. Rodgers v. Smith*, 188 F. App'x 175, 183 (4th Cir. 2006) (holding the officers were reasonable when they fired a second volley of shots after the man fell to the ground because they were **"acting to ensure the neutralization of a deadly threat."**).

<sup>12</sup> *See Medel Dep.*, pg. 112, lns. 18-24, Dkt. 49-1 SEALED DOCUMENT.

<sup>13</sup> *See Pl. Resp. to Mot. Summ. J.*, Dkt. 42, pg. 33.



[the suspect] was to be arrested for a minor crime or was not even a criminal suspect if it reasonably appeared that he was about to shoot a gun at an officer from close range.”<sup>14</sup> The reasons prompting the APD officers’ dispatch, or the crimes technically committed (because more life-threatening possible crimes had been foiled) are immaterial to the question of reasonableness in responding to the imminent deadly threat created by Medel’s actions.

**D. The applicable test only considers what a reasonable officer in that position “could” perceive. Plaintiff likewise asks for an unworkable standard where a miniscule fraction of cases should change how all officers view potential violence against uniformed officers.**

4. Plaintiff’s allegation that he, his neighbors, nor his father could not hear the announcement of police is irrelevant.<sup>15</sup> The facts have been immortalized on video. For qualified immunity, “[t]he question for this court is whether [the police officer] *could* reasonably believe” a fact in question regarding a potential threat, which is a question of law for the Court to decide.<sup>16</sup> The meaning of the word “could” is of extreme importance as opposed to “would,” where the latter would require courts to determine one singularly reasonable possible inference. Two people can look at the same set of facts and draw different but *reasonable* conclusions. Here, the video evidence clearly depicts Officer Reinhart announcing that police had arrived at Plaintiff’s door, and it depicts Plaintiff

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<sup>14</sup> *Padilla v. City of Farmington, New Mexico*, No. 1:23-CV-00790-MLG-KK, 2025 WL 1414287, at \*8 (D.N.M. May 15, 2025).

<sup>15</sup> *See e.g., id.* at 5 (“Plaintiffs contend that Dotson likely did not know that it was law enforcement officers at his door. Perhaps that is true, perhaps not. Either way, Dotson’s understanding of the events is not material for purposes of the qualified immunity analysis. The relevant inquiry is not ‘the arrestee’s subjective perception of the intrusion, but [] whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them.’ The ‘focus is on how a reasonable officer on the scene would have assessed the manifest indicators of [the suspect’s] intentions—that is, [the suspect’s] actions.’ Given the specific facts presented, the Court concludes the Defendant officers could reasonably believe that Dotson had hostile intentions.”).

<sup>16</sup> *Argueta v. Jaradi*, 86 F.4th 1084, 1093 (5th Cir. 2023), *cert. denied*, 145 S. Ct. 435 (2024) (cleaned up).

reacting to their arrival by grabbing a gun, loading it, chambering a round, and walking toward the door. It cannot be argued with a straight face that a reasonable officer—in a split-second situation—“*could*” not reasonably believe that the Plaintiff’s conduct was a purposeful response to police arriving at his door.

5. It is also irrelevant whether there have been a handful of cases of police impersonation in a town of one million people. Under that logic, officers should *always* assume suspects believe police are impersonators, and should forgive and disregard perceived threats of violence against all officers accordingly. What is enough, a badge? A uniform? Confirmation from dispatch? Plaintiff asks for an absurdly unworkable standard for officers to have to assume that all suspects might not believe they are real police officers, and could threaten or commit violence or physical resistance against officers accordingly.

**E. Plaintiff’s cited cases are not factually analogous pursuant to *Mullenix* and *Morrow*.**

6. “[O]vercoming qualified immunity is especially difficult in excessive force cases. This ‘is an area of law ‘in which the result depends very much on the facts of each case,’ and thus police officers are entitled to qualified immunity *unless existing precedent ‘squarely governs’ the specific facts at issue.*”<sup>17</sup> As is the case here, “excessive force cases often turn on ‘split-second decisions’ to use lethal force. That means the law must be *so* clearly established that—in the blink of any eye, in the middle of a high-speed chase—every reasonable officer would know it immediately.”<sup>18</sup> None of the cases cited by Plaintiff herein are factually analogous, and certainly are not so clearly similar that a reasonable officer in Officer Walker Prado’s position would know it governed the facts here: a split-second decision about whether to use deadly force against an

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<sup>17</sup> *Morrow v. Meachum*, 917 F.3d 870, 876 (5th Cir. 2019) (emphasis added) (citing *inter alia* *Kisela v. Hughes*, 584 U.S. 100, 105 (2018)).

<sup>18</sup> *Id.* (cleaned up) (emphasis original).

angry, erratic man perceived to be responding to the arrival of police by arming himself, loading the gun, chambering a round, and walking toward the unknowing officers at the door—much less appearing to begin to lower his weapon toward them.

**a. *Griffin* involved a holstered gun being actively surrendered.**

7. *Griffin* involved a decedent who had “***placed the gun back in its holster*** and began walking home” before he was shot, and was shot “as he bent down to place the holster on the ground,” thereby surrendering his gun.<sup>19</sup> Plaintiff Medel was not shot while ***surrendering a holstered gun***. The *Griffin* decedent was also shot *after* verbally engaging the officer and saying, “[w]hat did I do wrong, Officer?”<sup>20</sup> That likewise did not occur here. The factual similarities end at “gun possession” generally, and do not touch on the *Manis* acts of (i) appearing to retrieve a gun ***because of the arrival of police***, (ii) loading it, (iii) chambering a round, (iv) walking toward police with the gun, nor (v) appearing to lower the gun in front of his body.

**b. *Cole* involves a suicidal man who was pointing a gun at his own head.**

8. The Fifth Circuit has already held that *Cole* “clearly established at that time” that it would be unconstitutional “to shoot ***a suicidal teenager who was armed but made no threatening or provocative gestures, posed no immediate threat of harm***, [and] ***was facing away from the officers...***”<sup>21</sup> Moreover, he was shot while he was standing “***with his gun pointed at his own head***.”<sup>22</sup> Plaintiff Medel *never* had his gun pointed at his own head, *never* believed to be suicidal, and was not facing *away* from the officers he was walking toward.<sup>23</sup> It is likewise undisputed that

<sup>19</sup> *Griffin v. Newell*, 981 F.2d 1256, 1257 (5th Cir. 1992).

<sup>20</sup> *Id.*

<sup>21</sup> *Batyukova v. Doege*, 994 F.3d 717, 729 (5th Cir. 2021) (emphasis added) (cleaned up).

<sup>22</sup> *Cole v. Carson*, 802 F.3d 752, 755 (5th Cir. 2015), *cert. granted, judgment vacated sub nom. Hunter v. Cole*, 580 U.S. 994, 137 S. Ct. 497, 196 L. Ed. 2d 397 (2016), and *opinion reinstated in part*, 905 F.3d 334 (5th Cir. 2018) (collecting facts and inferences presented to District Court).

<sup>23</sup> See *Medel Dep.*, pg. 136, lns. 19 – 23, Dkt. 49-1 SEALED DOCUMENT.

Plaintiff Medel *did* make gestures that the Fifth Circuit and other courts have held to be “threatening or provocative,” such as reaching for a gun,<sup>24</sup> loading and chambering the gun,<sup>25</sup> and moving it in a way a reasonable officer could perceive as threatening.<sup>26</sup> *Cole* is not factually analogous.

**c. Plaintiff’s out-of-circuit cases likewise fail.**

9. The Fifth Circuit and others<sup>27</sup> place an especially high burden on out-of-circuit precedents for qualified immunity. In *Morrow*, the Fifth Circuit held that “*six [different] circuits was insufficient to create a robust consensus*,” which is obviously lacking here.<sup>28</sup> Plaintiff’s out-of-circuit cases are also not factually analogous. For example, several of them constitute factual scenarios where the officers fail to identify themselves as police, as in *Pauly* and *Curnow* and *Weinmann*. It is undisputed that Officer Reinhart announced the arrival of officers at the door as “Austin Police Department,” which is precisely what made Plaintiff Medel’s perceived response to that announcement so alarming.

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<sup>24</sup> *Id.* at pg. 98, lns. 15-21; *cf Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (affirming qualified immunity for officer who used deadly force against suspect who reached under his seat for what officer believed might be a gun); *Argueta*, 86 F.4th at 1088; *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009).

<sup>25</sup> *Id.* at pg. 101, lns. 4-8; *cf Shullaw v. McMullen*, No. 3:23-CV-13317-MCR-ZCB, 2025 WL 976283, at \*7 (N.D. Fla. Mar. 31, 2025) (While the mere presence of a gun may not be enough to engender the belief in an officer that someone is dangerous, on hearing the sound of racking a weapon, making it ‘available for ready use,’ ‘an officer is ‘not required to wait and hope for the best.’”) (cleaned up); *Lozano v. City of Austin*, No. A-09-CA-200-SS, 2010 WL 3069811, at \*7 (W.D. Tex. Aug. 4, 2010) (cleaned up).

<sup>26</sup> *Id.* at pg. 108, lns. 23-25; *cf Ramirez v. Knoulton*, 542 F.3d 124, 129 (5th Cir. 2008) (overturning the district court and determining that holding hands together “in what [the Fifth Circuit] believe could reasonably be interpreted as a threatening gesture, as if to grip the handgun with both hands in preparation to aim it at the officers”).

<sup>27</sup> See e.g., *Ashford v. Raby*, 951 F.3d 798, 804 (6th Cir. 2020) (“[T]he ‘clearly established’ requirement comes down to fair notice. Reasonable officers in this circuit will pay attention to this court’s caselaw. After all, that’s the law that governs their actions. But we can’t expect officers to keep track of persuasive authority from every one of our sister circuits.”).

<sup>28</sup> *Morrow*, 917 F.3d at 879 (emphasis added).

**d. *Baker, Roque, and Mason* are not factually analogous.**

10. *Baker* was a 12(b)(6) motion decision that predated both *Scott* and body camera footage, and thus was required to be based only upon the plaintiff's Complaint. The district court had to accept as true that "***Plaintiffs deny that...Baker, Jr. had committed any acts of aggression toward defendant Putnal.***"<sup>29</sup> This Court instead has the benefit of *Scott*,<sup>30</sup> body camera footage, and Plaintiff's own admissions of numerous threatening *Manis* acts as perceived responses to the arrival of police, each of which has been deemed by the Fifth Circuit and other courts to be "act[s] of aggression" that were *entirely absent* in *Baker*.

11. In *Roque*, "***the video shows*** Jason immediately double over [and] ***drop the gun***" and very specifically shows "***the black gun hitting the white sidewalk in broad daylight.***"<sup>31</sup> In contrast, Plaintiff has never disputed that he still was holding his gun behind the couch when Officer Walker Prado's final shot struck him. Unlike in *Roque*, the video evidence certainly does not show Medel's gun dropping to the ground. Unlike in *Roque*, Officer Walker Prado could not see Plaintiff Medel once he dropped behind the couch—and could only assume he was still holding the gun and thus still a threat. Unlike in *Roque*, Officer Walker Prado likewise did not shoot anyone *four seconds after a gun dropped*.<sup>32</sup> His first shot was fired at time stamp **02:09:05**, and his final shot was fired at **02:09:07**. Thus, his *entire* four-round volley was fired in roughly two seconds—which is an exponential difference from the four-second break between shots in *Roque*. *Roque*, therefore, is factually inapplicable.

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<sup>29</sup> *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996) (emphasis added).

<sup>30</sup> *Scott v. Harris*, 550 U.S. 372, 380 (2007) (When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.).

<sup>31</sup> *Roque v. Harvel*, 993 F.3d 325, 330 (5th Cir. 2021)

<sup>32</sup> *Walker Prado BWC*, **02:09:05 – 07**, Dkt. 27-2.

12. *Mason* is also too factually dissimilar. The gun in question was “*in Mr. Mason’s waistband*,” and Plaintiff presented evidence that “*Mr. Mason never touched the gun in his waistband*.”<sup>33</sup> In contrast, it is undisputed that Medel affirmatively retrieved, loaded, and chambered a round into his gun, and was holding it in his hands walking toward the door where police had just announced their arrival. The officers’ final shots in *Mason* were fired when the decedent was allegedly lying “in a prone position, face down” in full view of the officers.<sup>34</sup> In contrast, Plaintiff Medel has admitted that Officer Walker Prado could not have seen him when the final shot was fired in the case at bar.<sup>35</sup> In *Mason*, there was also “a break between the first five and last two shots.”<sup>36</sup> In contrast, Officer Walker Prado’s entire lone volley was fired in roughly two seconds.<sup>37</sup> There cannot be a meaningful break in time in that extremely short of an interval for the entire volley.

13. Lastly, the *Bakutis* 12(b)(6) decision fails entirely—and not just because of the fatal fact that it was decided *after* this incident. The officer in *Bakutis* shot a woman named Jefferson through a window in her home. The Fifth Circuit found that “[n]othing suggests Jefferson knew police were at her home...there is no allegation that she was violent or aggressive... and [the officer] does not allege that he saw her holding a weapon.”<sup>38</sup> The Court also noted as important that he failed entirely to announce himself as an officer.<sup>39</sup> In contrast, video evidence shows that Officer Reinhart clearly announced that police had arrived, and thus there was a very explicit

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<sup>33</sup> *Mason v. Lafayette City-Par. Consol. Gov’t*, 806 F.3d 268, 273 (5th Cir. 2015).

<sup>34</sup> *Id.* (the officers claimed they could see him reaching for his gun on the ground, thus removing any dispute about whether they could see him).

<sup>35</sup> See Medel Dep., pg. 113, Ins. 18-24, Dkt. 49-1 SEALED DOCUMENT.

<sup>36</sup> *Mason v. Lafayette City-Par. Consol. Gov’t*, 806 F.3d 268, 277 (5th Cir. 2015).

<sup>37</sup> *Walker Prado BWC*, 02:09:05 – 07, Dkt. 27-2.

<sup>38</sup> *Bakutis v. Dean*, 129 F.4th 299, 306 (5th Cir. 2025).

<sup>39</sup> *Id.*

reason to believe Medel knew that fact. It is undisputed that Medel had been acting aggressively, such as when he is heard on video screaming curses at his father at 2:00 a.m.; Medel's perceived response to police arriving at his door was violent, aggressive, and potentially deadly; and he certainly was seen holding a weapon. The Fifth Circuit even noted that its decision did not foreclose an award of qualified immunity later at the summary judgment stage, such as if it was proven that "Jefferson was *holding a weapon*."<sup>40</sup> Plaintiff has thus failed to identify any binding precedent clearly establishing that Officer Walker Prado's conduct was unconstitutional, and he is entitled to the defense of qualified immunity accordingly.

#### IV. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant **Gabriel Walker Prado** respectfully request that this Court grant summary judgment on the grounds that his acts did not rise to the level of a constitutional violation, is entitled to qualified immunity on all of Plaintiff Medel's claims, dismiss all claims against him, and for all other relief to which he may be justly entitled in law or equity.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
 GABRIEL WALKER PRADO**

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<sup>40</sup> *Id* (emphasis added).

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of August, 2024, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake  
Blair J. Leake



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION TO STRIKE  
DEFENDANT WALKER PRADO’S EXHIBITS 6, 9, 10, 11, 13, and 16**

The Court should strike and decline to consider Walker Prado’s Exhibits 6, 9, 10, 11, 13, and 16, and further exclude Exhibits 9 and 11 from trial for the reasons stated in the underlying motion, Doc. 38, and the following reasons.

**I. ARGUMENT**

**A. Toxicology evidence (Exhibit 10 and parts of Exhibits 6, 13, and 16)**

Walker Prado’s alleged belief that Medel was not behaving “rationally” does not justify admission of later-acquired toxicology evidence. The toxicology evidence should be stricken for the reasons stated in Plaintiff’s motion, Doc. 38, pp. 4–5, and the following three reasons.

First, toxicology evidence is not relevant here. Walker Prado has not offered an expert to reliably opine on whether the amounts Medel consumed hours before are related to his conduct, much less whether they make Walker Prado’s recollection more likely than Medel’s. The jury would have to speculate whether Medel’s intoxication made him more likely to be aggressive as opposed to, as he attests, afraid. Accordingly, Walker Prado’s mere assertion that Medel seemed “aggressive” or “not rational” is not sufficient to bring in specific evidence of drugs, alcohol, or toxicology tests which Walker Prado had no information about.

In *Cuellar v. Hernandez*, No. 5:17-cv-76 (S.D. Tex. Feb. 8, 2019), police officers arrived at a subject's apartment due to a report that the subject had attempted suicide, was depressed, had pills for back pain, and "consumed an unknown amount of pills." Doc. 38-4, p. 5. The officers and the subject's mother both saw the subject standing inside his apartment with a gun, not saying anything. *Id.* The officers claimed that the subject pointed the gun at them, while his mother testified he merely held the gun by his side, before the police shot him. *Id.* Because those officers, like Walker Prado, "d[id] not present any summary judgment evidence to explain the significance of the findings in the toxicology report" showing a Xanax overdose, some methamphetamine, and some cocaine metabolites, the court in *Cuellar* concluded the toxicology report should be excluded as there was "no ... evidence to explain how those substances may have affected [the subject's] behavior at the time of the shooting." *Id.* at 7.

Similar to *Cuellar*, this Court recently excluded a physician expert whose testimony concerned the effects of methamphetamines, including that methamphetamines can make a person more aggressive, in a police shooting case where the officer alleged the subject pointed a gun at him but another witness disagreed. Ex. 8, *Gonzales v. City of Austin*, No. 1:22-cv-655, p. 21 (W.D. Tex. May 14, 2025). This Court explained that "the probative value of [the subject's] drug use is minimal because there is no evidence to show ... how the drugs affected his behavior." *Id.* Here, just like the officers in *Cuellar* and *Gonzales*, Walker Prado similarly offers no evidence of a link between the officer's alleged observations of Medel's behavior and the toxicology evidence.

Second, unlike this case, *Cuellar*, and *Gonzales*, both Fifth Circuit cases cited by Walker Prado involved a suspect whom the officer actually suspected was intoxicated. *See Alpha v. Hooper*, 440 F.3d 670, 671 (5th Cir. 2006) (officer observed signs of intoxication on his victim's face and knew he was connected to a "drug house"); *Rodriguez v. Zepeda*, 176 Fed. Appx. 631,

632 (5th Cir. 2006) (executing search warrant for drugs).

Finally, every single case Walker Prado cites has been superseded by both *Hernandez v. Mesa*, 582 U.S. 548, 554 (2017) (“Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant.”) and *Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (same).

Thus, Walker Prado fails to show that the toxicology evidence is even relevant, much less more probative than unfairly prejudicial, so it should be stricken.

**B. Doc. 27-11, Exhibit 9 – The (Purported) Case Closure Memo from the Travis County District Attorney’s Office.**

The (purported) case closure memo, should be stricken and excluded notwithstanding Walker Prado’s response for the reasons stated in the motion to strike and six additional reasons.

First, as Walker Prado’s own response concedes, he has the burden to show his summary judgment evidence is *capable* of being made admissible at trial. *Balboa Capital Corp. v. Okoji Home Visits MHT, L.L.C.*, 111 F.4th 536, 547 (5th Cir. 2024); FED. R. CIV. P. 56(c)(2). Walker Prado cannot offer Exhibit 9 in admissible form, as he has failed to even identify the individual(s) who wrote the document—much less the basis of their personal knowledge. The Fifth Circuit recently affirmed an order striking as hearsay improperly authenticated documents from a summary judgment record—just as Exhibit 9 should be stricken—where the offering party had done nothing to demonstrate the defect could be cured. *Balboa Capital Corp.*, 111 F.4th at 547.

Walker Prado’s circuitous assertion that the rule of orderliness bars *Balboa* is simply wrong. He cites only *Maurer* for this argument. In that case, the Fifth Circuit reversed because a contract between those parties was stricken in the district court without prior notice or objection—unlike this case, where Plaintiff is objecting—so the offering party in that case had no chance to cure the defect. *Maurer v. Indep. Town*, 870 F.3d 380, 384–85 (5th Cir. 2017). Unlike the offering

party in *Maurer*, Walker Prado is on notice and, tellingly, has nonetheless failed to attempt to cure the defects in his evidence. This case closure memo is inherently suspect as, unlike the contract in *Maurer*, it was not written by the parties, appears to be hearsay, and contains inadmissible legal conclusions. Thus, the Court should find there is no indication Exhibit 9 is *capable* of being made admissible and strike it from the summary judgment evidence. FED. R. CIV. P. 56(c)(2).

Second, Walker Prado does not address the hearsay objection to Exhibit 9. *See* Doc. 38, pp. 6–7. Summary judgment evidence can include declarations, depositions, and affidavits, but otherwise the normal rules against hearsay apply. *See* FED. R. CIV. P. 56(c)(4) (requiring declarations and affidavits to be made on personal knowledge). This is an independent reason to strike the case closure memo.

Third, Walker Prado also complains that Plaintiff should have waited for a motion in limine to assert a *Daubert* challenge, and so he does not seriously respond to the *Daubert* challenge to Exhibit 9—but the time for a *Daubert* challenge is now, according to this Court’s scheduling order. Doc. 14, p. 2. Moreover, since Walker Prado did not attempt to identify any author(s) of Exhibit 9 as an expert, *see* Doc. 26, he cannot now try to use Rule 702 to introduce the document.

Fourth, the Court should reject Walker Prado’s attempt to introduce Exhibit 9 by using Rodriguez as a backdoor. While experts can rely on hearsay, experts may not be used as a mere conduit for patently inadmissible documents. Here, Rodriguez would “in effect become the mouthpiece of witnesses whose statements or opinions the expert purports to base his opinion,” rather than actually reaching anything resembling a reliable conclusion from Exhibit 9 or the fact that Walker Prado was not indicted. *Factory Mut. Ins. Co. v. Alon USA L.P.*, 705 F.3d 518, 524 (5th Cir. 2013). “Rule 703 was not intended” to allow such an end-run around the rules. *Id.* (internal quotation marks omitted).

Fifth, Exhibit 9 poses extreme risks of misleading the jury, as a prosecutor's charging decisions under Texas law are unrelated to this case about federal constitutional rights, but are highly suggestive of official endorsement or imprimatur. And, indeed, that improper purpose is Walker Prado's only stated goal in using this exhibit. Rodriguez and every other witness should be barred from even mentioning the lack of criminal charges against Walker Prado for this reason, so it is no excuse that Rodriguez can consider hearsay.

Finally, the face of Exhibit 9 reflects that the author(s) simply accepted Walker Prado's story and discounted Medel's—making the document an inadmissible credibility opinion. *United States v. Wertis*, 505 F.2d 683, 685 (5th Cir. 1974) (no witness is competent to opine on another's credibility).<sup>1</sup>

Accordingly, the Court should strike Exhibit 9 and exclude it from trial.

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<sup>1</sup> See also *Hebert v. Rogers*, 890 F.3d 213, 225 (5th Cir. 2018) (“[t]he credibility of the witnesses and the weight of the evidence is the exclusive province of the jury”) *United States v. Garcia*, 995 F.2d 556, 561 (5th Cir. 1993) (same); *United States v. Richard*, 18 F.3d 937 (5th Cir. 1994) (“Assessing the credibility of the witnesses and weighing the evidence is the exclusive province of the jury.”); *Skidmore v. Precision Printing & Pkg., Inc.*, 188 F.3d 606, 618 (5th Cir. 1999) (“Credibility determinations, of course, fall within the jury's province.”); *Albert v. City of Petal*, No. 2:18-CV-96-KS-MTP, 2019 WL 10736149, at \*9 (S.D. Miss. Sept. 30, 2019), *aff'd*, 819 F. App'x 200 (5th Cir. 2020) (Because “[a]n expert is in no better position than the jury to evaluate credibility and states of mind ... expert witnesses are not permitted to provide commentary on the credibility of fact witnesses.”); *Hernandez v. Causey*, No. 2:17-CV-123-TBM-MTP, 2021 WL 1771876, at \*11 (S.D. Miss. May 4, 2021) (“expert witnesses are not permitted to provide commentary on the credibility of fact witnesses”); *Charalambopoulos v. Grammer*, No. 3:14-CV-2424-D, 2017 WL 930819, at \*17 (N.D. Tex. Mar. 8, 2017) (“It is clearly established that expert testimony may not usurp the jury's authority to make credibility determinations.”); *McBroom v. Payne*, No. 1:06CV1222-LG-JMR, 2011 WL 1356925, at \*3 (S.D. Miss. Apr. 11, 2011), *aff'd*, 478 F. App'x 196 (5th Cir. 2012) (“Whether a witness is to be believed by the jury or not ‘is beyond the competenc[y] of any witness.’”); *Amin-Akbari v. City of Austin, Tex.*, 52 F. Supp. 3d 830, 848 (W.D. Tex. 2014) (“It is for the jury to assess credibility, not an expert.”); *Highland Cap. Mgmt. L.P. v. Bank of Am., Nat. Ass'n*, No. 3:10-CV-1632-L, 2013 WL 4502789, at \*8 (N.D. Tex. Aug. 23, 2013), *aff'd sub nom. Highland Cap. Mgmt., L.P. v. Bank of Am., N.A.*, 574 F. App'x 486 (5th Cir. 2014) (“Expert testimony in this regard is not admissible because it invades the jury's role in weighing the evidence and making credibility determinations.”); *Fisher v. Halliburton*, No. CIV. A. H-05-1731, 2009 WL 5216949, at \*3 (S.D. Tex. Dec. 21, 2009) (“evaluations of the credibility of the ... [is] impermissible expert testimony”).

**C. Doc. 28-4, Exhibit 11 – Expert Report of Albert Rodriguez.**

Walker Prado fails to meaningfully defend the parts of Rodriguez’s opinion that Plaintiff seeks to strike and exclude. His report should be stricken, and the identified parts of his testimony should be excluded from trial, for the reasons stated in the motion and the following six reasons.

***1. Plaintiff’s motion is ripe.***

First, similar to Exhibit 9, Walker Prado’s argument that Plaintiff should have waited until the motion in limine stage to limit Rodriguez’s testimony is incorrect; the Court’s schedule (to which Walker Prado agreed) required Plaintiff to assert *Daubert* arguments even earlier. *See* Doc. 14, p. 2. Plaintiff obtained leave to extend that deadline slightly, so his motion was timely, but it was certainly not premature. *See* Doc. 36; Text Order, June 11, 2025. Moreover, the Court has enough information to rule on the issue now, and doing so will simplify both consideration of the summary judgment motion and preparation for trial.

Although the Court has the option of deferring ruling on the pending motion to exclude until the time of trial, it serves the interest of judicial efficiency to resolve this pretrial dispute at this time, as doing so will streamline the potential future trial of this case.

*Estevis v. City of Laredo*, No. 5:22-CV-22, 2023 WL 9312081, at \*2 (S.D. Tex. Dec. 28, 2023).

***2. Rodriguez’s legal conclusions are impermissible.***

Walker Prado’s efforts to introduce Rodriguez’s legal conclusions should be rejected for three reasons.

First, the Court should not credit Rodriguez’s empty promise that he will not offer legal opinions or that he is merely describing officer training by mentioning caselaw, because the Court can read Rodriguez’s specific legal conclusions—which are listed and quoted throughout Plaintiff’s motion. *See* Doc. 38, pp. 8–11. Walker Prado fails to address, much less defend, virtually all of the specific content of Rodriguez’s report that Plaintiff is moving to strike and

exclude. Indeed, Rodriguez made those same promises in the *Estevis* case, right before he offered inadmissible legal conclusion in his report and deposition, and presumably also did so in the other cases where he has needed limiting instructions before. *Compare Estevis*, No. 5:22-CV-22, 2023 WL 9312081, at \*3–6 *with* Ex. 7, Rodriguez’s Report from *Estevis*, p. 11, ¶ 35; Doc. 38, pp. 7–8.

Second, this Court’s ruling in *Davis v. Cisneros* is distinguished from this situation and did not open the flood gates for Rodriguez’s accusations that Medel engaged in criminal conduct in this case. No. 1:21-CV-565-RP, 2024 WL 3799461, at \*3 (W.D. Tex. Aug. 12, 2024). Indeed, the difference between the two experts is illustrative of Rodriguez’s deficiencies. In *Davis*, the Court permitted a law enforcement expert to opine that the defendants’ conduct violated traffic rules—based on the Texas Transportation Code and Criminal Code—in the context of a civil assault claim to explain how their aggressive driving could threaten injuries, which is one of the two ways to prove civil assault. *Davis*, No. 1:21-CV-565-RP, 2024 WL 3799461, at \*4–5 (W.D. Tex. Aug. 12, 2024). The expected rules of traffic are obviously relevant to whether a driver’s actions are threatening. But, notably, the *Davis* expert’s “testimony d[id] not opine on the ultimate issues of whether Defendants conspired or committed assault.” *Id.* In contrast, Rodriguez directly opines that Walker Prado believed “Medel was in the process of committing aggravated assault with a deadly weapon,” “Medel was going to assault” his father; and “an assault was imminent to Senior.” Doc. 28-4, Rodriguez report, pp. 10, 11, 22, ¶¶ 39(6, 10), 40(2), 76; *see also* Doc. 38, p. 11. Unlike the expert’s opinions in *Davis*, Rodriguez’s legal terminology obscures, rather than helping to explain, since a criminal assault could mean injuring someone, threatening to injure them, or engaging in offensive contact. TEX. PENAL CODE § 22.01. Rodriguez is obviously using the legal jargon as a thinly veiled effort to paint Plaintiff’s conduct in an unfairly negative light and confuse

the issues, whilst sidestepping the relevant factual discussion of Medel’s specific conduct.<sup>2</sup>

Finally, Walker Prado further argues that Rodriguez should be able to explain the application of the Texas Penal Code to describe “whether ... a certain amount of force is warranted,” Doc. 48, p. 9, but that is *exactly* the type of legal analysis that an expert is prohibited from presenting to the jury—particularly where they are citing the wrong source of authority. *See, e.g., Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir. 1997) (“There being only one applicable legal rule for each dispute or issue, it requires only one spokesman of the law, who of course is the judge. ... [I]f an expert witness were allowed to testify to legal questions, each party would find an expert who would state the law in the light most favorable to its position. Such differing opinions as to what the law is would only confuse the jury.”).

Accordingly, the Court should strike Rodriguez’s legal conclusions. Doc. 38, pp. 8–11.

### ***3. Rodriguez’s credibility attacks should be stricken and excluded.***

Walker Prado fails to defend Rodriguez’s credibility attacks. As mentioned above, experts are completely barred from making credibility opinions. *See supra* n.1. Walker Prado cites *Goodman v. Harris Cty.*, 571 F.3d 388, 399 (5th Cir. 2009), but the differences between the expert in that case and Rodriguez highlight the defects in Rodriguez’s approach for two reasons.

First, the district court which *Goodman* affirmed permitted a psychiatrist to testify after evaluating the plaintiff in that case. *Id.* at 399. Rodriguez is not a psychiatrist and he did not evaluate Medel, so *Goodman* obviously does nothing to justify Rodriguez’s blatantly inadmissible credibility and mental state opinions, as he has neither the qualifications nor the reliable basis to

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<sup>2</sup> Walker Prado also attempts to cite *Archer v. Northside Indep. Sch. Dist.*, No. CV 5:17-1202, 2018 WL 7572498, at \*2 (W.D. Tex. Dec. 10, 2018), *aff’d sub nom. A.A. v. Northside Indep. Sch. Dist.*, 951 F.3d 678 (5th Cir. 2020), but that decision’s two sentence analysis of a legal conclusion objection has no persuasive value, since it does not explain the objection or the reason for overruling it other than to cite Rule 704.



reach the types of psychiatric opinions at issue in *Goodman*. See Doc. 38, pp. 12–15.

Second, the *Goodman* psychiatrist “nowhere concluded or testified that, as a result of the deficiencies he observed, [plaintiff] fabricated any or all of his testimony.” *Goodman*, 571 F.3d at 400. In direct contrast, Rodriguez openly opines that Medel is “incredulous,” his memory is incorrect, and he was subject to “a major effect” from drugs and alcohol. Doc. 28-4, Rodriguez Report, pp. 12, 24–26, 29, 47, ¶¶ 41, 80, 81(3), 82, 83, 93, 127. All of these opinions by Rodriguez cross the line that the psychiatrist did not in *Goodman*, and they are, for the reasons explained in the motion, categorically beyond an expert’s competence. Doc. 38, pp. 12–17.<sup>3</sup>

#### ***4. Rodriguez’s mental state opinions are unhelpful.***

Rodriguez’s mental state assertions are unhelpful as they contain no analysis of any part of the record. Doc. 38, pp. 16–20. Further, many of them are also unreliable. Thus, they should be excluded for two reasons.

First, Rodriguez’s opinions stating over and over what Walker Prado alleges he believed about Medel’s intent and state of mind do not apply Rodriguez’s expertise to anything. Rodriguez simply rephrases Walker Prado’s assertions about his own mental state over a dozen times. Walker Prado’s testimony about his own thoughts is not an “observable fact” which Rodriguez can lend his expertise to explain to the jury. *Contra* Doc. 48, p. 10. The response itself makes a related error, claiming that Medel was “a hyper-aggressive-acting man,” to then conclude from this proposition that Medel had “an aggressive state of mind.” Doc. 48, p. 10. Neither that superlative nor Rodriguez’s similar mind reading are explanatory; at best, they are circular reasoning. Of course,

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<sup>3</sup> See *Sanchez v. Gomez*, No. 17-CV-133-PRM, 2020 WL 3316990, at \*11 (W.D. Tex. June 17, 2020) (quoting *Marlin v. Moody Nat’l Bank, N.A.*, 248 F. App’x 534, 541 (5th Cir. 2007)); *Latex Constr. Co. v. Nexus Gas Transmission, LLC*, No. 4:20-CV-01788, 2021 WL 3883626, at \*2 (S.D. Tex. July 8, 2021) (excluding expert based on same principle); *Amin-Akbari v. City of Austin, Tex.*, 52 F. Supp. 3d 830, 846 (W.D. Tex. 2014) (striking Rodriguez’s credibility opinions).

if you assume a person is “hyper-aggressive,” then you can interpret them to be “aggressive,” but that fails to explain the initial assumption. “Opinions based solely on [Walker Prado’s] yet-to-be-proven, and hotly contested, allegations about [Medel’s] behavior are not reliable.” Ex. 8, *Gonzales*, No. 1:22-cv-655, p. 15 (citing *Reitz v. Woods*, 85 F.4th 780, 788 (5th Cir. 2023) (affirming exclusion of expert for ‘merely parroting [a witness’s] testimony, dressing it up and sanctifying it as the opinion of an expert’)). The jury can listen to Walker Prado’s claims just as easily as Rodriguez; Rodriguez repeating them offers no benefit other than improper bolstering.

Second, Walker Prado’s response ignores Rodriguez’s baseless assertions about Medel, such as his speculation that Medel is “incredulous [sic]” and did not “comprehend[] or recall[]” that police announced their presence due to intoxication. Doc. 28-4, Rodriguez Report, pp. 25, 29, ¶¶ 82, 93. Rodriguez has no qualifications or methodology to speculate about Medel’s mental state, nor does the response try to cure this defect. Accordingly, Rodriguez’s discussion of drugs, alcohol, and Medel’s mental state should be stricken and excluded from trial. Doc. 38, pp. 12–16.

Accordingly, the Court should exclude and strike all of Rodriguez’s impermissible mental state testimony.

## II. CONCLUSION

For the foregoing reasons, the Court should strike and decline to consider for Defendant Walker Prado’s motion for summary judgment his Exhibits 9 and 11 as well as all toxicology and intoxication assertions in the motion and its exhibits—particularly from Exhibits 6, 10, 13, and 16. The Court should further exclude from trial Exhibit 9 and the sections and topics from Rodriguez’s report, Exhibit 11, listed in Plaintiff’s motion, and bar Rodriguez from testifying to the same at trial.

Dated: August 6, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**RESPONSE TO DEFENDANT WALKER PRADO'S MOTION TO EXTEND  
DISCOVERY DEADLINE**

The Court should deny Walker Prado's request to reopen discovery.

**I. SUMMARY OF THE ARGUMENT**

Walker Prado's motion to reopen discovery should be denied for three reasons.

First, the additional discovery which Defendant Walker Prado seeks to conduct after reopening discovery will be costly and invade Plaintiff's privacy.

Second, Defendant Walker Prado has not timely scheduled any of the discovery he seeks to conduct by reopening discovery.

Finally, the fact that Plaintiff's counsel will be occupied accommodating the City's late disclosure and failure to prepare to attend its own deposition weighs against further imposing on Plaintiff's counsel's already overloaded schedule; it is not an excuse for Walker Prado to pile on.

Accordingly, Walker Prado's motion should be denied.

**II. FACTS AND PROCEDURAL HISTORY**

This is a § 1983 police shooting case. Doc. 1.

On December 6, 2024, the Court entered a scheduling order that set the deadline for Plaintiff's experts on January 31, 2025, Defendants' experts on March 4, 2025, and to complete

discovery on April 28, 2025. Doc. 14, pp. 1–2.

The Court approved the parties’ agreements to extend the expert deadlines to April 6, 2025 and May 6, 2025 for Plaintiff and Defendants respectively. *See* Doc. 18; Doc. 22; Text Only Order, March 4, 2025.

Plaintiff submitted his expert disclosures on April 6, 2025. Doc. 23.

Shortly after expert disclosures, on April 9, 2025, counsel for Defendant Walker Prado responded to an April 1, 2025 email titled “Deposition Notice of the City of Austin” to ask for Plaintiff and his father’s depositions. Ex. 1, pp. 5–6. After Plaintiff’s counsel agreed to do their best to arrange depositions, Defendant Walker Prado’s counsel immediately buried the email by responding to the same email chain to ask to extend discovery, which lead to a lengthy back-and-forth about multiple deadlines. *Id.* at 1–5.

That exchange ultimately lead Defendants to request an unopposed extension of their expert deadline to June 3, 2025 and the discovery deadline to August 4, 2025. Doc. 24; Text Only Order, May 5, 2025. The parties did not revisit the issue of depositions for over a month.

On May 28, 2025, Defendant Walker Prado filed his expert designations. Doc. 26.

On June 3, 2025, Defendant City of Austin filed its expert designations. Doc. 30.

On June 4, 2025, Defendant Walker Prado amended his motion for summary judgment. Doc. 33-1; Doc. 34. That same day, Defendant Walker Prado’s counsel responded to an email titled “Daubert extension, Monell MSJ response extension” by ignoring the request for his position on Plaintiff’s requested extension of time to respond to the City. Instead, Walker Prado’s counsel raised four different issues:

- Stating Walker Prado’s counsel could unilaterally notice Plaintiff’s deposition if no dates were provided;
- Stating Walker Prado’s counsel could unilaterally notice Plaintiff’s father’s deposition if no dates were provided;

- Stating Walker Prado's counsel is "going to be sending some written discovery requests to obtain raw psych test data;" and
- Stating Walker Prado's counsel "might be requesting an independent medical examination of Plaintiff."

Ex. 2, p. 1. When Plaintiff's counsel responded to again request Walker Prado's position on the dispositive motion response extension, Walker Prado's counsel responded "I won't object to your request for a second extension of the MSJ response [to the City] on the condition that you provide deposition dates for Plaintiff Medel so that his depo takes place before August 5th." Ex. 3.

On July 7, 2025, Walker Prado emailed untimely written discovery requests to Plaintiff. Ex. 4, Walker Prado's Second Requests for Production, p. 2; *see* W.D. TEX. L.R. CV-16(d).

Defendant Walker Prado's counsel deposed Plaintiff at an agreed-upon time on July 9, 2025. Doc. 49-1, p. 2. During the middle of the deposition, Plaintiff provided his journal upon defense counsel's verbal request—a document which had not previously been requested in any written discovery. *See* Doc. 49-1, pp. 39:6–8, 142:24–143:3.

On July 25, 2025, after the City stated it would still be unprepared for its deposition, Plaintiff asked for Walker Prado's position on another extension. Instead of answering, Walker Prado's counsel only asked for dates for Plaintiff's father's deposition. Ex.5. After Plaintiff asked again, Walker Prado responded on July 29, 2025 to again ignore the requested extension on the dispositive motion deadline, instead stating for the first time: "I am unopposed to extending the discovery period for all purposes. I am opposed to limiting the scope of the discovery extension. Therefore, if you file a motion to extend the discovery period for all purposes then you may mark me as unopposed." Ex. 6.

Accordingly, on August 1, 2025, the City and Plaintiff jointly moved to extend Plaintiff's time to respond to the City's dispositive motion in light of the City needing additional time to respond to document requests and attend its deposition. *See* Doc. 51.

On August 4, 2025, the date discovery was scheduled to close, Walker Prado moved to extend the time to complete discovery until September 16, 2025. Doc. 52.<sup>1</sup>

### III. ARGUMENT

Walker Prado's request for an extension of all discovery should be denied for three reasons.

First, Defendant Walker Prado evidently seeks to engage in extremely burdensome discovery during his requested 35-day extension period. In addition to being impractical in its demands on Plaintiff's and his attorneys' time, much of the discovery is objectionable in its own right.

Most importantly, Defendant Walker Prado seeks to have his expert examine Plaintiff and review Plaintiff's psychological data, but both of these tasks should have preceded Defendants' expert designation deadline. Anything less would mean that Defendant's expert designations were deliberately incomplete.<sup>2</sup> The examination and the data sought would also be highly intrusive to Plaintiff, so that discovery is certainly burdensome and does not justify an eleventh-hour extension.

Next, Walker Prado seeks to collect five years-worth of ESI concerning guns, and *all* ESI concerning Medel's gun as well as concerning Medel's vacatur of the apartment where Defendant shot Medel.<sup>3</sup> *See* Ex. 4, Walker Prado's Second Requests for Production, p. 5. These would require

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<sup>1</sup> The parties subsequently conferred by telephone. Plaintiff's counsel proposed agreeing to arrange his father's deposition only, while Walker Prado's counsel proposed agreeing to withdraw their request for a DME. The parties have not been able to reach an agreement about the extension of time for discovery as of this filing, but will promptly alert the Court if the motion is mooted.

<sup>2</sup> A defense medical "examination must occur before the Rule 26(a)(2) deadline in cases where a party seeks a Rule 35 ME to obtain evidence that will be used by a testifying expert in forming his or her opinion and to create an expert report." *Valenzuela v. Willette*, No. 5:14-cv-62, 2015 WL 12843209 (S.D. Tex. May 15, 2015).

<sup>3</sup> Plaintiff was not able to keep up with rent after missing work due to his hospitalization arising from the shooting at issue in this case. Doc. 49-1, pp. 139:23–140:1, 142:9–18.

Plaintiff to conduct overbroad searches, making the requests unduly burdensome on their face. Indeed, the gun-related requests appear to be completely irrelevant, as Walker Prado did not even bother to identify Medel before shooting him, much less read Medel’s communications about his gun, or guns in general. *See* Doc. 39-3, pp. 19:1–5 (admitting he did not even know he was responding to Medel’s apartment); *Hernandez v. Mesa*, 582 U.S. 548, 554 (2017) (“Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant.”); *Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (same).

Second, Defendant Walker Prado has not been diligent. He never sent a formal DME request, or even mentioned a DME until after his own expert deadline, despite receiving two extensions of his expert deadline. His document requests were untimely despite the prior extension of the discovery deadline. Doc. 24; Text Only Order, May 5, 2025; Ex. 4, Walker Prado’s Second Requests for Production, p. 2; *see* W.D. TEX. L.R. CV-16(d). While Walker Prado’s counsel have asked for Plaintiff’s father’s deposition, his first three requests were email non-sequiturs, each over a month apart, responding to completely unrelated issues—and Walker Prado’s third email request came just 10 days before the close of discovery, by which time it was not feasible to comply. (In no small part due to the extra time Plaintiff’s counsel had to spend writing and negotiating a joint motion to extend their dispositive motion deadline as to the City due to Walker Prado’s assertion that he would be opposed. *See* Doc. 56.) It was Walker Prado’s choice to wait to conduct nearly all of his discovery until the eleventh hour, when Plaintiff’s counsel was occupied trying to collect his own overdue discovery from the City. This tactical indecision has worked to Walker Prado’s advantage as he was able to depose Plaintiff after Plaintiff designated experts and after Plaintiff responded to the motion for summary judgment, but Walker Prado should now accept the downsides of his choices rather than get a second bite at the apple. *See also* *Campbell v. Griffin*,



265 Fed. Appx. 269, 271 (5th Cir. 2008) (affirming denial of extension of discovery due to lack of diligence).

Finally, Defendant Walker Prado should not be permitted to capitalize on the City's failure to prepare for its own long-scheduled deposition in this case. Walker Prado's counsel apparently plans to conduct a psychological examination of Plaintiff, obtain Plaintiff's psychological data, obtain every communication Plaintiff has made referencing his gun and his former apartment, depose Plaintiff's father, and untimely supplement his expert disclosures over the course of a 35-day period when Plaintiff's counsel will (if the Court allows) finally be completing the deposition of the City which Plaintiff had properly noticed on April 1, 2025. *See* Doc. 51. Even if some of Walker Prado's discovery would have been workable had it been set properly in the beginning of the case, it is not workable in between now and September 16, 2025, as Plaintiff's counsel will be occupied with other cases, the City's late production, and the City's late deposition.

Plaintiff's counsel will already need to accommodate receiving much of the City's discovery late, conducting its deposition late, and responding to its motion for summary judgment late, during a time when other, unrelated cases are scheduled. Adding in additional time for the discovery Walker Prado wished he had timely scheduled will unfairly multiply the burden on Plaintiff.

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully asks that the Court deny Walker Prado's motion to reopen discovery.

Dated: August 11, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**ADVISORY OF NON-OPPOSITION REGARDING DEFENDANT PRADO’S  
EMERGENCY THIRD MOTION TO EXTEND TIME TO FILE REPLY BRIEF IN  
SUPPORT OF SUMMARY JUDGMENT**

After conferring further with counsel for Defendant Walker Prado, Plaintiff respectfully withdraws his opposition as to the timeliness of Defendant Walker Prado’s amended reply. *See* Doc. 47 (motion for leave to extend time); Doc. 55 (amended reply).

Plaintiff’s change in position is limited to the amended reply’s procedural timeliness. Plaintiff’s counsel expects he will seek leave to file a sur-reply addressing the substance of the amended reply, such as the non-relevance of most of the information reflected in Plaintiff’s deposition, as it was not known to Defendant Walker Prado at the time of the shooting.<sup>2</sup>

**I. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully withdraws his opposition to Defendant Walker Prado’s Emergency Third Opposed Motion for Leave for Extension of Time to File Defendant Walker Prado’s Reply Brief in Support of Summary Judgment (Doc. 47).

Dated: August 12, 2025.

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<sup>2</sup> *See Hernandez v. Mesa*, 582 U.S. 548, 554 (2017) (“Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant.”); *Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (same).

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CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**UNOPPOSED MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO  
DEFENDANT WALKER PRADO’S MOTION FOR SUMMARY JUDGMENT**

The Court should grant Plaintiff leave to file a sur-reply to address new arguments and evidence raised for the first time in Defendant Walker Prado’s reply. Defendant is unopposed.

The Court should grant Plaintiff’s motion as Defendant Walker Prado raised new evidence and arguments in reliance on that evidence for the first time in his reply. Where parties raise new arguments in a reply, courts regularly grant leave to file a sur-reply. *See, e.g., Mission Toxicology, LLC v. Unitedhealthcare Ins. Co.*, 499 F.Supp.3d 350, 359 (W.D. Tex. 2020); *Donnelly v. Nissan Motor Co.*, No. 5:19-CV-0882-JKP, 2019 WL 6340153, \*2 (W.D. Tex. Nov. 26, 2019) (where arguments were raised for the first time in the reply, court found extraordinary circumstances existed to consider sur-reply); *Rodriguez v. State Farm Lloyds*, No. 5:17-CV-161, 2018 WL 3966270, \*4 (S.D. Tex. Aug. 17, 2018) (considering sur-reply where reply raised new arguments for the first time); *Galvan v. Lee*, No. 5:18-CV-60, 2018 WL 6737688, \*1 (S.D. Tex. July 18, 2018) (same); *Salomon v. Wells Fargo Bank, N.A.*, No. EP-10-CV-106-KC, 2010 WL 2545593, \*2 (W.D. Tex. June 21, 2010) (same).

Specifically, as Medel’s deposition did not take place until after he filed his summary judgment response, Walker Prado argued for the first time in his reply, albeit incorrectly, that

Medel had conceded important factual issues in his deposition. As explained in the attached sur-reply, Medel did not concede as much as Walker Prado argues—and many of the facts Walker Prado relies upon were unknown to Walker Prado at the time, so they are not relevant and should be disregarded at the summary judgment stage.

Plaintiff Medel could not reasonably have anticipated needing to refute Walker Prado's arguments, as Medel's deposition had not yet taken place at the time he responded. A concise sur-reply is warranted to assist the Court in reviewing this new argument.

Plaintiff Medel has kept the sur-reply focused on Walker Prado's use of his deposition, and thus ignored several other arguments in the reply, consistent with the limited purposes of a sur-reply.

Accordingly, Plaintiff respectfully requests leave to file the attached sur-reply.

Dated: August 13, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system on August 13, 2025.

/s/ Jeff Edwards  
Jeff Edwards

**CERTIFICATE OF CONFERENCE**

By my signature below, I certify that I previously conferred with counsel for Defendant Walker Prado about the relief requested in this motion. As reflected in his filings with this Court, *see, e.g.*, Doc. 50, p. 3; Doc. 54, p. 4, Defendant Walker Prado is not opposed to the relief requested in this motion.

By /s/ David James  
DAVID JAMES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S SUR-REPLY IN OPPOSITION TO DEFENDANT WALKER PRADO’S  
MOTION FOR SUMMARY JUDGMENT**

The Court should deny Defendant Walker Prado’s motion for summary judgment for the reasons stated in Plaintiff’s response, Doc. 42, and the following two reasons.

**I. ARGUMENT**

**A. Walker Prado overstates Medel’s testimony and fails to eliminate the disputes of material fact.**

Walker Prado’s new arguments mischaracterize Medel’s deposition and fail to eliminate disputes of material fact for six reasons.

First, admissible evidence shows that Walker Prado could see that he was shooting Medel in the back. *Contra* Doc. 55, p. 3. While it is true that, as Medel testified, the body-worn camera does not show Medel’s back at the time of Walker Prado’s final shot, the body-worn camera is positioned on Walker Prado’s chest—well below the height of his eyes—so Walker Prado is incorrect when he claims Medel conceded *the officer* could not see him behind the couch. *Compare* Doc. 42-3, Body-worn camera, 2:09:07 *and* Doc. 54-1, Medel II Deposition, 112:18–24, *with* Doc. 55, p. 3. More to the point, Walker Prado held his firearm at a height above his body-worn camera, but below his eyes, so, if the path between Walker Prado’s firearm and Medel’s back was



unobstructed, then a reasonable jury could conclude that Walker Prado could likewise see Medel over the couch. And, in fact, the same video as well as APD's crime scene photos clearly show a white couch with *no* bullet holes through the armrest by where Medel fell. *See* Doc. 42-3, 02:14:48, 02:15:06; Doc. 27-15, p. 26; Ex. 23, Various Photos of Medel's Couch. Thus, Walker Prado is incorrect—there is admissible evidence that he could see Medel's back when he shot him.

Second, Walker Prado could see that Medel was not threatening anyone during his final shot when Medel was on the ground by the couch—and did not see Medel holding or pointing the gun. Walker Prado's allegation that no evidence directly shows where the gun was does not mean it is "undisputed" that Medel was holding the gun—it means the Court infers in favor of the nonmovant, Plaintiff. *Contra* Doc. 55, p. 3. Walker Prado claims only that he "believed" Medel was holding the gun when Medel's "arm reached out from behind the couch toward the door," Doc. 27-4, ¶ 15. In contrast, Medel attests "I stayed where I landed beside the couch and did not lift or reach with my arms or hands until after the shooting subsided." Doc. 42-7, ¶ 33. Medel's assertion directly contradicts Walker Prado's claim—it would not be possible for Walker Prado to still see a gun *unless* Medel was reaching with it. Walker Prado's counsel chose to never ask Medel where the gun was during Medel's deposition. Thus, the evidence in the light most favorable to Plaintiff is that Walker Prado did not see the gun and did not see Medel reaching towards the door with it—because Medel was not doing so. Further, as discussed above, Walker Prado *did see* the back of Medel's left shoulder (to shoot it), so he could also see that Medel was not reaching toward the door and thus was not a threat.

Third, Medel did not appear threatening or aggressive during Walker Prado's few seconds of watching him through the window. Medel did not concede that his conduct appeared aggressive in his deposition; he answered a hypothetical question about yelling in a bar by saying someone

might think it was aggressive “[i]f they don’t understand the context.” Doc. 54-1, p. 90:4–10; *contra* Doc. 55, p. 2, n.5 and accompanying text (mischaracterizing page 90). Regardless, Walker Prado’s mischaracterization of Medel’s testimony only supports, at most, a credibility argument which has no place in the summary judgment stage because Medel has attested, “At no time did I threaten, intimidate, or try to intimidate my father on April 6, 2024.” Doc. 42-7, Declaration of Medel II, ¶ 4. Likewise, Medel, Sr. attested, “My son did not do anything that was intimidating or suggested or gave the appearance that he was trying to intimidate me.” Doc. 42-8, Declaration of Medel Sr., ¶ 7. The Court should disregard Walker Prado’s attempt to misstate Medel’s deposition to the contrary. *See* Doc. 55, p. 2, n.5 and accompanying text.

Fourth, Medel specifically attested that he did not muzzle sweep the door or anyone else and that he never moved the pistol to point it at anyone or anything—and Medel did not contradict either of those assertions in his deposition. *See* Doc. 42-7, Declaration of Medel II, ¶¶ 18–20. The Court should disregard Walker Prado’s contrary argument that Medel testified he pointed the gun in an unsafe direction or otherwise did anything to be perceived as threatening with the gun. *Contra* Doc. 55, pp. 2, 7, nn.8, 9, 26 and accompanying text. Medel simply testified he had the gun in a high ready position, and that the angle of that position changed “slightly” when he stopped to look toward his window (after Walker Prado shouted “gun”)—but Medel specifically testified that he never lowered the gun towards his door. *See* Doc. 54-1, p. 104:7, 109:3–16.

Fifth, although Medel has never disputed that he retrieved a firearm and made it ready to fire in response to the knocking at his door, the key difference between this case and the *Manis* act cases Walker Prado cites is the context; Medel did not know he was responding to police at his door. *Contra* Doc. 55, pp. 2, 7, nn.9, 26 and accompanying text. Whether or not Walker Prado anticipated that Medel did not hear the words “Austin Police Department,” Walker Prado’s own

police chief testified that Walker Prado was trained that it is lawful and foreseeable that Medel would retrieve a gun and have it ready until Medel had confirmed the people outside were actually police:

Q ... the concept that it is lawful and even foreseeable for a person in their own house with a gun in Austin, Texas to get the gun, get it ready, check to see if it's police, and then put the gun away before opening the door? ... That concept is relayed to APD officers through their training.... Correct?

A Correct.

Doc. 40-1, Henderson Deposition, pp. 75:19–4 (objection omitted); *see also id.* at 101:1–19 (agreeing to the same proposition separated into five questions without objection). Nothing about Medel's deposition testimony changes the context that Walker Prado knew he was reacting to an armed person who *did not know police were present*, not a suspect who could see the uniformed officers and appeared to be readying a gun *in response to* those officers' visible presence.<sup>1</sup> Unlike all of those cases, Medel was not ignoring commands and had not seen Walker Prado or any other officer. As chief Henderson testified, Walker Prado had no facts from which to conclude Medel's conduct was threatening; Medel's conduct on the body-camera is indistinguishable from a lawful gunowner cautiously checking the source of loud, late night knocking at his front door.

Finally, even if Walker Prado had elicited contradictory testimony compared to Medel's

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<sup>1</sup> Compare *Manis v. Lawson*, 585 F.3d 839, 842 (5th Cir. 2009) (suspect had been yelling at officers from inside a vehicle and ignoring commands); *Argueta v. Jaradi*, 86 F.4th 1084, 1087 (5th Cir. 2023) (suspect pulled over in response to police traffic stop and exited vehicle, ignoring commands); *Ramirez v. Knoulton*, 542 F.3d 124, 127 (5th Cir. 2008) (suspect called police himself and fled when they arrived); and *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (in response to tactical police team's announcement, suspect barricaded behind an interior door, then after officers pushed the door open, suspect saw uniformed officers through the doorway multiple times and ignored verbal commands), with *Cole v. Carson II*, 935 F.3d 444, 453 (5th Cir. 2019) (en banc) (although undisputed subject had seen officers earlier, disputed whether he saw officers at the time of the shooting); *Bakutis v. Dean*, 129 F.4th 299, 307 (5th Cir. 2025) (disputed whether unarmed subject knew police were present outside home, although noting even if she had been armed, a warning was required if feasible).

declaration—although he did not—this would only show a fact dispute requiring denial of his motion for summary judgment. *See, e.g., In re Deepwater Horizon*, 48 F.4th 378, 384 (5th Cir. 2022) (reversing summary judgment based on a dispute of fact arising from a conflict between one of the plaintiff’s employee’s declaration and that same employee’s deposition); *Johnson v. Odom*, 910 F.2d 1273, 1278 (5th Cir. 1990) (affirming denial of summary judgment in a § 1983 case where district court refused to consider post-affidavit deposition testimony of the plaintiff). Walker Prado’s arguments from Medel’s deposition are thus meritless for that independent reason.

Accordingly, the disputes of material fact engendered by Medel’s, Medel, Sr.’s, and Walker Prado’s conflicting recollection of events require the denial of summary judgment.

**B. Medel’s testimony about his gun habits, intoxication, and toxicology is not relevant or admissible at this stage.**

As already discussed at length in the summary judgment response and pending motion to strike, *see* Doc. 38, pp. 4–5; Doc. 42, p. 22; Doc. 56, pp. 1–3, this is a police shooting case where neither Plaintiff Medel nor Defendant Walker Prado can rely on facts that were unknown to the officer at the time he used force.<sup>2</sup> Here, Walker Prado knew he was responding to a noise complaint, which a 911 caller had alleged sounded like a “physical” disturbance; otherwise, Walker Prado’s only other knowledge of Medel was gained from his observations standing outside the apartment window.<sup>3</sup> Thus, several the allegations that Walker Prado supports with cites from Medel’s deposition are not relevant, so the Court should disregard the following three categories

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<sup>2</sup> *Hernandez v. Mesa*, 582 U.S. 548, 554 (2017) (“Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant.”); *Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (same).

<sup>3</sup> *See* Doc. 27-2, Walker Prado Deposition, pp. 82:17–83:9; *see also, e.g., id.* at 19:1–5 (Walker Prado admitting he did not even know Medel lived at the apartment).

of assertions in Walker Prado's amended reply and the associated testimony from Medel's deposition:

First, the Court should disregard all of the information about Medel's toxicology tests and intoxication. *See* Doc. 55, pp. 2, nn.2, 8, and accompanying text. Walker Prado never mentioned any sign that Medel was intoxicated during his exhaustive, self-serving statement to APD,<sup>4</sup> and certainly had no idea what the results of Medel's hospital blood tests would show or why, because he had no facts suggestive of intoxication. The Court should strike this evidence and disregard it for the same reasons as the other toxicology evidence Walker Prado has submitted.<sup>5</sup> Although Walker Prado suggests that Medel being drunk supports his assertion that Medel was "irrational," this is incorrect. What matters are the three witness's assertions about what actually happened—particularly, what Walker Prado would have seen and heard of Medel's conduct. *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015) (reasonableness of force is evaluated from the "perspective and with the knowledge of the defendant officer"). Walker Prado has not offered any admissible evidence that a drunk person is more likely to threaten a family member, quickly walk toward a knock at the door, muzzle sweep their own front door, or do anything else that Walker Prado claims Medel did which Medel and his father dispute—so the fact that Medel was intoxicated is irrelevant and should be disregarded. *See* Doc. 38-4, *Cuellar v. Hernandez*, No. 5:17-cv-76, p. 7 (S.D. Tex. Feb. 8, 2019) (excluding toxicology evidence due to the lack of "any summary judgment evidence

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<sup>4</sup> *See generally* Doc. 27-6, Walker Prado IA Statement; *see also id.* at p. 12 (in response to a question about what information Walker Prado had going into the situation, he responded only that it was a physical disturbance between two males and did not mention intoxication); *see also* Doc. 27-4, Walker Prado Declaration (still not mentioning intoxication).

<sup>5</sup> Doc. 38-4, *Cuellar v. Hernandez*, No. 5:17-cv-76, (S.D. Tex. Feb. 8, 2019) (granting motion to strike similar toxicology evidence that officer was unaware of in police deadly force case); Doc. 38-5, *Roque v. Harvel*, No. 1:17-cv-932-LY, Doc. 127, p. 5 (W.D. Tex. Oct. 16, 2019) (same); *see also* Doc. 38, pp. 4–5; Doc. 56, pp. 1–3,

to explain the significance of the findings in the toxicology report”); Doc. 56-2, *Gonzales v. City of Austin*, No. 1:22-cv-655, p. 21 (W.D. Tex. May 14, 2025) (excluding toxicology evidence “because there is no evidence to show ... how the drugs affected [shooting victim’s] behavior”).

Second, the Court should disregard Walker Prado’s criticisms of how Medel was storing his personal firearm, as, again, he had no information about that before the shooting. *See* Doc. 55, p. 2, n.7 and accompanying text.

Finally, the Court should disregard the detail that there were audible slamming doors and labored breathing earlier in the night. *See* Doc. 55, p. 2, n.4 and accompanying text. Although these facts were mentioned in the 911 calls, Walker Prado did not receive that information before the shooting. *See* Doc. 27-2, Walker Prado Deposition, pp. 82:17–83:9.

Accordingly, the Court should disregard Walker Prado’s tortured misreading of Medel’s deposition, as well as his efforts to chase red herrings that cannot be considered in a police shooting case because the officer had no idea about those facts before he decided to pull the trigger.

## **II. CONCLUSION**

For the foregoing reasons, as well as those started in Plaintiff’s original response, Doc. 42, the Court should find that genuine issues of material fact require that Defendant Gabriel Walker Prado’s motion for summary judgment be denied.

Dated: August 13, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system on August 13, 2025.

/s/ Jeff Edwards  
Jeff Edwards

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

**AVELINO MEDEL II,**  
*Plaintiff,*

v.

**GABRIEL WALKER PRADO, in his  
individual capacity, and the CITY OF  
AUSTIN,**  
*Defendants.*

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**CIVIL ACTION #: 1:24-cv-00990-RP**

**DEFENDANTS' NOTICE OF APPEARANCE OF LEGAL COUNSEL**

TO THE HONORABLE JUDGE OF SAID COURT:

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

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Assistant City Attorney  
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Service of all pleadings, papers, orders, and documents required to be served in this action should be served on Monte Barton.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, INTERIM CITY ATTORNEY  
SARA SCHAEFER, ACTING LITIGATION  
DIVISION CHIEF



/s/ Monte L. Barton Jr.  
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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure this day August 14, 2025..

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**ATTORNEYS FOR DEFENDANT  
GABRIEL PRADO**

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

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**DEFENDANT WALKER PRADO’S REPLY IN SUPPORT OF  
MOTION FOR LEAVE TO EXTEND DISCOVERY DEADLINE**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant Gabriel Walker Prado who files this Reply in Support of his Motion for Leave to Extend Discovery Deadline (Dkt. 52), and in support thereof, would respectfully show unto the Court as follows:

## I. ARGUMENT

### A. Plaintiff Response seeks to make the Court forget that Plaintiff repeatedly refused to cooperate in the two-way conferencing requirement regarding discovery.

1. Plaintiff's Response brief buries his own repeated failures or refusals to confer in good faith—or at all—regarding discovery. The conferencing in question included two key depositions and raw test data Plaintiff's own expert had already created and relied upon in reaching his expert opinions. Plaintiff's exhibits show repeated diligence by the defense to schedule discovery and avoid burdening this Court with requests for judicial intervention. In contrast, Plaintiff's failure to provide deposition dates or otherwise meaningfully confer about discovery issues shows *anything but* diligence or an avoidance of forcing judicial intervention. Plaintiff's radio silence constituted *at best* an outright failure to confer, or at worst intentionally and knowingly waiting out the clock in silence.

2. This Court has consistently held that the duty to confer in good faith will be strictly enforced,<sup>1</sup> yet Plaintiff asks this Court to ignore his repeated bouts of radio silence when the defense attempted to confer regarding discovery. The Honorable Chief District Judge Orlando explained in *McCallum*:

The Local Rules' "good faith" requirement "mandates a genuine attempt to resolve the dispute through non-judicial means" and the "conferment" requirement requires ***two-way communication which is necessary to genuinely discuss any issues and avoid judicial recourse***...If the record demonstrates that either party is unwilling

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<sup>1</sup> See e.g., *Mason v. Covert Auto, Inc.*, No. 1:21-CV-01070-RP, 2022 WL 9596864, at \*2 (W.D. Tex. Sept. 8, 2022) (admonishing counsel "of their obligation to confer in good faith and attempt to resolve any issues promptly and amicably, without the need for judicial intervention."); see also *Vasquez v. Hancock Tire Am. Corp.*, 2001 WL 682239 at \*1 (W.D. Tex. Feb. 13, 2001) (chastising parties for motions resulting from failure to confer and conduct discovery as contemplated by the rules); see also *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289–90 (N.D. Tex. 1988) (seminal Northern District case holding that proper utilization of local rules requires counsel to hold meaningful discussions in an attempt to resolve discovery disputes without court intervention).

to engage in a good-faith effort to resolve the pending disputes or is unreasonable in its position...the Court may issue sanctions as is appropriate.<sup>2</sup>

Plaintiff's Response brief attempts to pick around the irrelevant edges—quibbling essentially about the title of email chains—rather than address the elephant in the room: why did Plaintiff refuse to confer when asked about deposition dates and raw test data? The email exhibits Plaintiff submitted demonstrate that the undersigned could foresee that it would be better to try to confer *again* to schedule and confer regarding discovery rather than burden this Court, but Plaintiff continued to fail or refuse to respond or confer *at all*. Now here we are.<sup>3</sup>

3. Defendant is not asking for monetary sanctions. He is merely asking for the Court to enforce the requirement to confer and cooperate, which in this case will be remedied by allowing the discovery period to remain open for *all* parties rather than just for him so that the ignored discovery events can take place. The two-way duty to confer would be rendered meaningless if one party can repeatedly remain silent and force the other to move to compel basic discovery—or avoid it altogether, which is the result he now seeks.

4. Plaintiff was also required to disclose the names and contact information of witnesses who he may offer at trials or during hearings within his initial disclosures, but he listed Avelino Medel Sr.'s address and contact information as the office of Jeff Edwards.<sup>4</sup> “Parties are required to continually supplement their initial disclosures ‘in a timely manner.’”<sup>5</sup> The defense had every right

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<sup>2</sup> *McCallum v. Camping World, Inc.*, No. SA-19-CV-01021-OLG, 2019 WL 9197839, at \*1 (W.D. Tex. Dec. 18, 2019)

<sup>3</sup> See FED. R. CIV. P. 1 (stating that the rules should be employed by courts and parties “to secure the just, speedy, and inexpensive determination of every action and proceeding.”).

<sup>4</sup> FED. R. CIV. P. 26(a)(1)(C).

<sup>5</sup> *Jindal v. U.S. Dep't of Educ.*, No. CIV.A. 14-534-SDD-RL, 2015 WL 2405950, at \*1 (M.D. La. May 18, 2015)

to go scorched-earth and move to strike Avelino Medel Sr.'s declaration entirely,<sup>6</sup> but in furtherance of professional comity the undersigned sought instead to simply schedule his deposition (again) to make Plaintiff's disclosure violations moot. It will be a dark day in the Western District of Texas if repeated communication and comity is punished in favor of radio silence and requiring of scorched-earth tactics to prove diligence—which would invert the burden of proof for this motion on its head.<sup>7</sup>

**B. In the alternative, to streamline this resolution of this dispute and facilitate a prompter decision, the defense would agree to restrict the scope of its requested extension.**

5. As Plaintiff's exhibits show, the undersigned made multiple attempts starting last spring to confer regarding deposition dates for Plaintiff and his father. Plaintiff responded to most of those attempts with silence. The defense jumped on the first *ever* opportunity provided to depose Plaintiff after months of requests—which Plaintiff now characterizes as some sort of tactical maneuver. It certainly was not.

6. The undersigned likewise attempted to confer on June 4, 2025 regarding whether Plaintiff would have any problems producing psychiatric raw test data (Dkt. 57-2). The related subject requests for production were drafted long before they were propounded. The reason for the conference attempt was because Plaintiff's counsel has objected to psychiatric raw test data requests for production in the past, so the undersigned counsel was holding back the requests until

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<sup>6</sup> See *id.*, at \*1 (M.D. La. May 18, 2015) (striking witness not disclosed until the last day of discovery, because Rule 37(c)(1) states that “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”).

<sup>7</sup> See *Devillier v. State of Texas*, No. 3:20-CV-00223, 2023 WL 2744398, at \*2 (S.D. Tex. Mar. 31, 2023) (emphasis original) (citing *L.A. Pub. Ins. Adjusters, Inc. v. Nelson*, 17 F.4th 521, 524 (5<sup>th</sup> Cir. 2021)) (holding that it is an incredibly lenient standard that may be granted “for any reason.”).

acceptable verbiage and parameters could be ironed out between the parties first. In response, Plaintiff again failed or refused to respond or confer at all. This is once again an issue created by Plaintiff's repeated radio silence. Even if the requests for production were inadvertently held back one-day-too-long before being formally propounded, however, the raw test data was created and relied upon by Plaintiff's expert, and thus was arguably already required to be produced as part of Plaintiff's expert designations and initial disclosures, or supplements thereto.<sup>8</sup> To date, no such raw test data has ever been made available to the defense.

7. The undersigned counsel would prefer that discovery remain open for all parties rather than just one, and without restrictions on scope. This is a just result tailored to remedy Plaintiff's repeated failures to confer regarding discovery. However, time is of the essence, and Plaintiff's response would require a slog through substantive objections that are not even ripe for consideration yet. Likewise, a prompt order on this motion will give the parties more time to schedule Plaintiff's father's deposition among counsel if it is granted. In the alternative to his request for a full discovery extension, the defense suggests to the Court a lesser amount of relief if it will save time and resources: an extension of the discovery period to allow for (i) taking the deposition of Avelino Medel Sr. and (ii) the production of the psychiatric raw test data Plaintiff's retained expert relied upon in forming his opinion. Such test data can be provided directly to Defendant's psychiatric expert, Douglas Cooper, Ph.D., ABBP-CN to conform with all ethical guidelines regarding the same.

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<sup>8</sup> See FED. R. CIV. P. 26(a)(2)(B)(ii) (requiring that expert reports contain facts or data relied upon); see also FED. R. CIV. P. 26(b)(4)(C)(ii) (allowing discovery of facts or data relied upon by expert witnesses); see also FED. R. CIV. P. 26(a)(1)(ii) (requiring the production or inspection of documents or ESI the party may use to support their claims); see also FED. R. CIV. P. 26(e)(1)(A) (requiring timely supplementation of initial disclosures).

## II. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court grants this Opposed Motion for Leave, extend the discovery period for all parties as requested without restrictions as to scope, and for such other and further relief to which he may justly be entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
GABRIEL PRADO**

## CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake

Blair J. Leake



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**RESPONSE TO DEFENDANT WALKER PRADO’S AMENDED MOTION FOR LEAVE  
TO CITE NEW EVIDENCE IN GABRIEL WALKER PRADO’S AMENDED REPLY IN  
SUPPORT OF SUMMARY JUDGMENT**

The Court should deny in part Defendant Walker Prado’s amended<sup>1</sup> motion for leave to cite evidence in his amended reply. Doc. 54. Although Plaintiff does not object to the timeliness of the deposition, it is not relevant to summary judgment so it should not be considered and its citation therein should not affect the Court’s analysis of Walker Prado’s unopposed motion to seal.

**I. ARGUMENT**

**A. Plaintiff Medel II’s deposition is not relevant to summary judgment.**

As argued in Plaintiff’s sur-reply, which Plaintiff incorporates by reference, the Court should not consider Plaintiff’s deposition for summary judgment for three reasons.

First, the amended reply misstates the content of the deposition. Doc. 59-1, pp. 1–4.

Second, the entire deposition is irrelevant, as it cannot eliminate fact disputes. *Id.* at 5.

Finally, the portions of the deposition concerning information which Defendant Officer

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<sup>1</sup> Defendant’s “Amended Motion” does not specify what original motion it is amending, but the motion certainly seeks different relief than his motion to extend time. *Compare* Doc. 36-1 with Doc. 54-1. As Plaintiff states in his advisory, Doc. 58, Plaintiff has withdrawn his opposition to the procedural timeliness of Defendant’s amended reply.

Gabriel Walker Prado did not know at the time of the shooting are irrelevant for that independent reason. *Id.* at 5–7. These latter portions of the deposition should be stricken as to the pending summary judgment motion. *Id.*

**B. Plaintiff Medel II’s deposition should remain sealed in part.**

Plaintiff’s deposition transcript should remain sealed as to those portions which discuss medical tests, toxicology information, mental health history, and medical treatment other than his treatment for his injuries from being shot. Plaintiff’s counsel agreed to limit the classified designation of “attorneys’ eyes only” to the portions of the transcript based on mental health records<sup>2</sup> and of “confidential” to the portions based on medical records.<sup>3</sup> The motion to seal should be granted as to those sections of the deposition for three reasons.

First, because the deposition is not relevant to summary judgment, its mere citation by Defendant is insufficient to trigger the more stringent judicial records standard mentioned in *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021). The Court should strike and disregard for the purposes of summary judgment the portions of Defendant’s amended reply that rely on Plaintiff’s deposition which were unknown to Defendant Officer Gabriel Walker Prado at the time of the police shooting in this case. The Court should disregard those portions of the deposition and Defendant’s amended reply for the same reasons explained in Plaintiff’s sur-reply. *See* Doc. 59-1, Plaintiff’s Sur-Reply, pp. 5–7. If the Court does so, then those portions will not be judicial records at all.

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<sup>2</sup> Plaintiff designated the following passages attorneys’ eyes only: Doc. 49-1, Medel II Deposition, 18:12–15, 43:8–52:25, 53:8–63:10, 63:19–65:5, 66:25–68:19, 73:13–74:13, 84:1–4.

<sup>3</sup> Plaintiff designated the following passages confidential: Doc. 49-1, Medel II Deposition, 15:9–11, 15:20–16:3, 16:24–17:3, 17:6–8, 17:13–17, 19:1–21:7, 21:12–22:1, 22:11–23:4, 23:7–24:1, 24:5–19, 24:23–25:5, 26:9–27:4, 27:18–24, 28:17–19, 28:23–24, 30:5–16, 72:13–73:12, 75:23–25, 79:18–22, 82:13–83:22, 84:5–85:25, 116:17–23, 118:11–123:2, 123:6–24, 126:24–127:8, 128:10–15, 128:21–128:23, 145:12–18.

Second, even under the judicial records standard, the classified portions of the deposition should remain sealed. The face of the deposition shows that all of the intoxication information Defendant cites in his amended reply is gleaned from questions based on information his attorney (and Plaintiff) learned from Plaintiff's medical records. Since those later-acquired medical records were not available to the officer at the time, the information gleaned from them is not relevant to the pending dispositive motions<sup>4</sup> and the public's interest in those records is minimal. In contrast, Plaintiff's private interest in keeping his personally identifiable health information private is heightened—particularly because Defendant's attorney's questioning focused on topics that are potentially embarrassing to Plaintiff. Courts routinely find that a party's interest in keeping records and testimony related to medical and mental health diagnosis and treatment private outweighs the public's interest to view those records. *See, e.g., Doe v. Beaumont Ind. Sch. Dist.*, 615 F.Supp.3d 471, 502-504 (E.D. Tex. 2022) (Truncale, J.) (discussing *Exeter* before sealing testimony and exhibits related to medical treatment); *Yassine v. Collins*, No. 1:25-cv-00786-ADA-SH, 2025 WL 1954064, \*2 (W.D. Tex. July 7, 2025) (Hightower, Mag. J.) (discussing *Exeter* before sealing an exhibit containing medical records and detailed mental health evaluations). Thus, even application of the *Exeter* test favors sealing the classified portions of the deposition.

Finally, most of the classified parts of the deposition are even less important to the public because they are not cited at all. Defendant filed the entire deposition transcript while only citing small portions thereof; the remainder of the deposition is thus not a judicial record and should remain sealed regardless of whether the Court permits Defendant's citations in his amended reply. In particular, the extensive discussion of Plaintiff's mental health treatment is not at issue in any

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<sup>4</sup> *Hernandez v. Mesa*, 582 U.S. 548, 554 (2017) ("Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant."); *Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (same).

pending motion and should remain sealed. Plaintiff's damages are not at issue in the dispositive motions, but even if they were, there is no need to publish his medical and mental health history—predating the shooting—which is marked confidential and attorneys' eyes only in the deposition.

Accordingly, the deposition should remain sealed as to the portions that Plaintiff has designated confidential and attorneys' eyes only. *See supra* nn.2–3.

## II. CONCLUSION

For the foregoing reasons, the Court should strike and decline to consider for the purposes of summary judgment Defendant Walker Prado's amended reply relying upon the portions of Plaintiff's deposition identified in Plaintiff's sur-reply. *See* Doc. 59-1, Plaintiff's Sur-Reply, pp. 5–7. The Court should decline to consider the entire deposition for the purposes of summary judgment. *See* Doc. 59-1, Plaintiff's Sur-Reply, pp. 1–5. The deposition should remain sealed in part consistent with Plaintiff's classification designations under the protective order. *See supra* nn.2–3.

Dated: August 20, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

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

**AVELINO MEDEL II,**  
*Plaintiff*

**v.**

**GABRIEL WALKER PRADO, IN  
HIS INDIVIDUAL CAPACITY;  
AND CITY OF AUSTIN,**  
*Defendants*

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**No. 1:24-CV-00990-RP**

**ORDER**

Before the Court is Defendant Gabriel Walker Prado’s motion to extend the discovery deadline, Dkt. 52, and all related briefing. After considering the filings and the relevant law, the Court grants the motion.

The parties previously agreed to extend the discovery deadline to August 4, 2025, and the District Judge granted the motion via text order. Dkt. 24. On August 4, 2025, Prado moved to further extend the discovery deadline in this case “for all purposes” to September 16, 2025. Dkt. 52, at 4. In support of his motion, Prado states that counsel for Plaintiff Avelino Medel II failed to provide dates for the deposition of Medel’s father and produce Medel’s raw test data and emphasizes that counsel for Prado made multiple requests for the deposition dates. *Id.* at 2-4. Based on these assertions, Prado contends that he has shown “good cause” for extending the discovery deadline under Federal Rule of Civil Procedure 6(b)(1)(A). *Id.* at 2-4.

Medel generally responds that the additional discovery will be costly and invade his privacy, Prado has not been diligent in discovery, and counsel for Medel’s

schedule is “already overloaded” with Defendant City of Austin’s production. Dkt. 57, at 1, 4-6. Medel also emphasizes that Prado’s requests for deposition dates were “buried” in an email chain. *Id.* at 2. In reply, Prado reiterates his request that discovery remain open “without restrictions on scope,” but states that in the alternative, he requests “an extension of the discovery period to allow for (i) taking the deposition of Avelino Medel Sr. [Medel’s father] and (ii) the production of the psychiatric raw test data Plaintiff’s retained expert relied upon in forming his opinion.” Dkt. 61, at 5.

Rule 6(b)(1)(A) states that “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time ... with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires[.]” Fed. R. Civ. P. 6(b)(1)(A). The undersigned finds that Prado has shown good cause to extend discovery for the limited purposes stated in Prado’s reply. Medel’s own exhibits show that Prado requested dates for Medel’s father’s deposition multiple times within the discovery period. *See* Dkts. 57-2, at 2; 57-5, at 2; 57-6, at 2. Prado’s counsel also notified Medel that he would be seeking the raw test data in early June 2025, which was well within the discovery period, and served the Request for Production on July 7, 2025. *See* Dkts. 57-2, at 2; 57-4, at 6. Medel’s assertions that Prado has not been diligent in discovery thus ring hollow. Further, Prado’s proposed narrowing of the discovery that may be sought during the extended window alleviates Medel’s concerns that the additional discovery will be overly

burdensome, and the timing of the City of Austin's production should not prejudice Prado's ability to seek and obtain relevant discovery. *See* Dkt. 57, at 1, 4-6.

Therefore, the Court **ORDERS** that Prado's motion to extend the discovery deadline, Dkt. 52, is **GRANTED**. The discovery deadline in this case is extended to **September 16, 2025**, for the limited purposes of (i) taking the deposition of Avelino Medel Sr. and (ii) the production of the psychiatric raw test data Medel's retained expert relied upon in forming his opinion.

SIGNED August 21, 2025.



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DUSTIN M. HOWELL  
UNITED STATES MAGISTRATE JUDGE



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S SUR-REPLY IN OPPOSITION TO DEFENDANT WALKER PRADO’S  
MOTION FOR SUMMARY JUDGMENT**

The Court should deny Defendant Walker Prado’s motion for summary judgment for the reasons stated in Plaintiff’s response, Doc. 42, and the following two reasons.

**I. ARGUMENT**

**A. Walker Prado overstates Medel’s testimony and fails to eliminate the disputes of material fact.**

Walker Prado’s new arguments mischaracterize Medel’s deposition and fail to eliminate disputes of material fact for six reasons.

First, admissible evidence shows that Walker Prado could see that he was shooting Medel in the back. *Contra* Doc. 55, p. 3. While it is true that, as Medel testified, the body-worn camera does not show Medel’s back at the time of Walker Prado’s final shot, the body-worn camera is positioned on Walker Prado’s chest—well below the height of his eyes—so Walker Prado is incorrect when he claims Medel conceded *the officer* could not see him behind the couch. *Compare* Doc. 42-3, Body-worn camera, 2:09:07 *and* Doc. 54-1, Medel II Deposition, 112:18–24, *with* Doc. 55, p. 3. More to the point, Walker Prado held his firearm at a height above his body-worn camera, but below his eyes, so, if the path between Walker Prado’s firearm and Medel’s back was

unobstructed, then a reasonable jury could conclude that Walker Prado could likewise see Medel over the couch. And, in fact, the same video as well as APD's crime scene photos clearly show a white couch with *no* bullet holes through the armrest by where Medel fell. *See* Doc. 42-3, 02:14:48, 02:15:06; Doc. 27-15, p. 26; Ex. 23, Various Photos of Medel's Couch. Thus, Walker Prado is incorrect—there is admissible evidence that he could see Medel's back when he shot him.

Second, Walker Prado could see that Medel was not threatening anyone during his final shot when Medel was on the ground by the couch—and did not see Medel holding or pointing the gun. Walker Prado's allegation that no evidence directly shows where the gun was does not mean it is "undisputed" that Medel was holding the gun—it means the Court infers in favor of the nonmovant, Plaintiff. *Contra* Doc. 55, p. 3. Walker Prado claims only that he "believed" Medel was holding the gun when Medel's "arm reached out from behind the couch toward the door," Doc. 27-4, ¶ 15. In contrast, Medel attests "I stayed where I landed beside the couch and did not lift or reach with my arms or hands until after the shooting subsided." Doc. 42-7, ¶ 33. Medel's assertion directly contradicts Walker Prado's claim—it would not be possible for Walker Prado to still see a gun *unless* Medel was reaching with it. Walker Prado's counsel chose to never ask Medel where the gun was during Medel's deposition. Thus, the evidence in the light most favorable to Plaintiff is that Walker Prado did not see the gun and did not see Medel reaching towards the door with it—because Medel was not doing so. Further, as discussed above, Walker Prado *did see* the back of Medel's left shoulder (to shoot it), so he could also see that Medel was not reaching toward the door and thus was not a threat.

Third, Medel did not appear threatening or aggressive during Walker Prado's few seconds of watching him through the window. Medel did not concede that his conduct appeared aggressive in his deposition; he answered a hypothetical question about yelling in a bar by saying someone

might think it was aggressive “[i]f they don’t understand the context.” Doc. 54-1, p. 90:4–10; *contra* Doc. 55, p. 2, n.5 and accompanying text (mischaracterizing page 90). Regardless, Walker Prado’s mischaracterization of Medel’s testimony only supports, at most, a credibility argument which has no place in the summary judgment stage because Medel has attested, “At no time did I threaten, intimidate, or try to intimidate my father on April 6, 2024.” Doc. 42-7, Declaration of Medel II, ¶ 4. Likewise, Medel, Sr. attested, “My son did not do anything that was intimidating or suggested or gave the appearance that he was trying to intimidate me.” Doc. 42-8, Declaration of Medel Sr., ¶ 7. The Court should disregard Walker Prado’s attempt to misstate Medel’s deposition to the contrary. *See* Doc. 55, p. 2, n.5 and accompanying text.

Fourth, Medel specifically attested that he did not muzzle sweep the door or anyone else and that he never moved the pistol to point it at anyone or anything—and Medel did not contradict either of those assertions in his deposition. *See* Doc. 42-7, Declaration of Medel II, ¶¶ 18–20. The Court should disregard Walker Prado’s contrary argument that Medel testified he pointed the gun in an unsafe direction or otherwise did anything to be perceived as threatening with the gun. *Contra* Doc. 55, pp. 2, 7, nn.8, 9, 26 and accompanying text. Medel simply testified he had the gun in a high ready position, and that the angle of that position changed “slightly” when he stopped to look toward his window (after Walker Prado shouted “gun”)—but Medel specifically testified that he never lowered the gun towards his door. *See* Doc. 54-1, p. 104:7, 109:3–16.

Fifth, although Medel has never disputed that he retrieved a firearm and made it ready to fire in response to the knocking at his door, the key difference between this case and the *Manis* act cases Walker Prado cites is the context; Medel did not know he was responding to police at his door. *Contra* Doc. 55, pp. 2, 7, nn.9, 26 and accompanying text. Whether or not Walker Prado anticipated that Medel did not hear the words “Austin Police Department,” Walker Prado’s own

police chief testified that Walker Prado was trained that it is lawful and foreseeable that Medel would retrieve a gun and have it ready until Medel had confirmed the people outside were actually police:

Q ... the concept that it is lawful and even foreseeable for a person in their own house with a gun in Austin, Texas to get the gun, get it ready, check to see if it's police, and then put the gun away before opening the door? ... That concept is relayed to APD officers through their training.... Correct?

A Correct.

Doc. 40-1, Henderson Deposition, pp. 75:19–4 (objection omitted); *see also id.* at 101:1–19 (agreeing to the same proposition separated into five questions without objection). Nothing about Medel's deposition testimony changes the context that Walker Prado knew he was reacting to an armed person who *did not know police were present*, not a suspect who could see the uniformed officers and appeared to be readying a gun *in response to* those officers' visible presence.<sup>1</sup> Unlike all of those cases, Medel was not ignoring commands and had not seen Walker Prado or any other officer. As chief Henderson testified, Walker Prado had no facts from which to conclude Medel's conduct was threatening; Medel's conduct on the body-camera is indistinguishable from a lawful gunowner cautiously checking the source of loud, late night knocking at his front door.

Finally, even if Walker Prado had elicited contradictory testimony compared to Medel's

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<sup>1</sup> Compare *Manis v. Lawson*, 585 F.3d 839, 842 (5th Cir. 2009) (suspect had been yelling at officers from inside a vehicle and ignoring commands); *Argueta v. Jaradi*, 86 F.4th 1084, 1087 (5th Cir. 2023) (suspect pulled over in response to police traffic stop and exited vehicle, ignoring commands); *Ramirez v. Knoulton*, 542 F.3d 124, 127 (5th Cir. 2008) (suspect called police himself and fled when they arrived); and *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (in response to tactical police team's announcement, suspect barricaded behind an interior door, then after officers pushed the door open, suspect saw uniformed officers through the doorway multiple times and ignored verbal commands), with *Cole v. Carson II*, 935 F.3d 444, 453 (5th Cir. 2019) (en banc) (although undisputed subject had seen officers earlier, disputed whether he saw officers at the time of the shooting); *Bakutis v. Dean*, 129 F.4th 299, 307 (5th Cir. 2025) (disputed whether unarmed subject knew police were present outside home, although noting even if she had been armed, a warning was required if feasible).

declaration—although he did not—this would only show a fact dispute requiring denial of his motion for summary judgment. *See, e.g., In re Deepwater Horizon*, 48 F.4th 378, 384 (5th Cir. 2022) (reversing summary judgment based on a dispute of fact arising from a conflict between one of the plaintiff’s employee’s declaration and that same employee’s deposition); *Johnson v. Odom*, 910 F.2d 1273, 1278 (5th Cir. 1990) (affirming denial of summary judgment in a § 1983 case where district court refused to consider post-affidavit deposition testimony of the plaintiff). Walker Prado’s arguments from Medel’s deposition are thus meritless for that independent reason.

Accordingly, the disputes of material fact engendered by Medel’s, Medel, Sr.’s, and Walker Prado’s conflicting recollection of events require the denial of summary judgment.

**B. Medel’s testimony about his gun habits, intoxication, and toxicology is not relevant or admissible at this stage.**

As already discussed at length in the summary judgment response and pending motion to strike, *see* Doc. 38, pp. 4–5; Doc. 42, p. 22; Doc. 56, pp. 1–3, this is a police shooting case where neither Plaintiff Medel nor Defendant Walker Prado can rely on facts that were unknown to the officer at the time he used force.<sup>2</sup> Here, Walker Prado knew he was responding to a noise complaint, which a 911 caller had alleged sounded like a “physical” disturbance; otherwise, Walker Prado’s only other knowledge of Medel was gained from his observations standing outside the apartment window.<sup>3</sup> Thus, several the allegations that Walker Prado supports with cites from Medel’s deposition are not relevant, so the Court should disregard the following three categories

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<sup>2</sup> *Hernandez v. Mesa*, 582 U.S. 548, 554 (2017) (“Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant.”); *Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (same).

<sup>3</sup> *See* Doc. 27-2, Walker Prado Deposition, pp. 82:17–83:9; *see also, e.g., id.* at 19:1–5 (Walker Prado admitting he did not even know Medel lived at the apartment).

of assertions in Walker Prado's amended reply and the associated testimony from Medel's deposition:

First, the Court should disregard all of the information about Medel's toxicology tests and intoxication. *See* Doc. 55, pp. 2, nn.2, 8, and accompanying text. Walker Prado never mentioned any sign that Medel was intoxicated during his exhaustive, self-serving statement to APD,<sup>4</sup> and certainly had no idea what the results of Medel's hospital blood tests would show or why, because he had no facts suggestive of intoxication. The Court should strike this evidence and disregard it for the same reasons as the other toxicology evidence Walker Prado has submitted.<sup>5</sup> Although Walker Prado suggests that Medel being drunk supports his assertion that Medel was "irrational," this is incorrect. What matters are the three witness's assertions about what actually happened—particularly, what Walker Prado would have seen and heard of Medel's conduct. *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015) (reasonableness of force is evaluated from the "perspective and with the knowledge of the defendant officer"). Walker Prado has not offered any admissible evidence that a drunk person is more likely to threaten a family member, quickly walk toward a knock at the door, muzzle sweep their own front door, or do anything else that Walker Prado claims Medel did which Medel and his father dispute—so the fact that Medel was intoxicated is irrelevant and should be disregarded. *See* Doc. 38-4, *Cuellar v. Hernandez*, No. 5:17-cv-76, p. 7 (S.D. Tex. Feb. 8, 2019) (excluding toxicology evidence due to the lack of "any summary judgment evidence

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<sup>4</sup> *See generally* Doc. 27-6, Walker Prado IA Statement; *see also id.* at p. 12 (in response to a question about what information Walker Prado had going into the situation, he responded only that it was a physical disturbance between two males and did not mention intoxication); *see also* Doc. 27-4, Walker Prado Declaration (still not mentioning intoxication).

<sup>5</sup> Doc. 38-4, *Cuellar v. Hernandez*, No. 5:17-cv-76, (S.D. Tex. Feb. 8, 2019) (granting motion to strike similar toxicology evidence that officer was unaware of in police deadly force case); Doc. 38-5, *Roque v. Harvel*, No. 1:17-cv-932-LY, Doc. 127, p. 5 (W.D. Tex. Oct. 16, 2019) (same); *see also* Doc. 38, pp. 4–5; Doc. 56, pp. 1–3,

to explain the significance of the findings in the toxicology report”); Doc. 56-2, *Gonzales v. City of Austin*, No. 1:22-cv-655, p. 21 (W.D. Tex. May 14, 2025) (excluding toxicology evidence “because there is no evidence to show ... how the drugs affected [shooting victim’s] behavior”).

Second, the Court should disregard Walker Prado’s criticisms of how Medel was storing his personal firearm, as, again, he had no information about that before the shooting. *See* Doc. 55, p. 2, n.7 and accompanying text.

Finally, the Court should disregard the detail that there were audible slamming doors and labored breathing earlier in the night. *See* Doc. 55, p. 2, n.4 and accompanying text. Although these facts were mentioned in the 911 calls, Walker Prado did not receive that information before the shooting. *See* Doc. 27-2, Walker Prado Deposition, pp. 82:17–83:9.

Accordingly, the Court should disregard Walker Prado’s tortured misreading of Medel’s deposition, as well as his efforts to chase red herrings that cannot be considered in a police shooting case because the officer had no idea about those facts before he decided to pull the trigger.

## **II. CONCLUSION**

For the foregoing reasons, as well as those started in Plaintiff’s original response, Doc. 42, the Court should find that genuine issues of material fact require that Defendant Gabriel Walker Prado’s motion for summary judgment be denied.

Dated: August 13, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system on August 13, 2025.

/s/ Jeff Edwards  
Jeff Edwards



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

**AVELINO MEDEL II**  
*Plaintiff*

v.

**GABRIEL WALKER PRADO, in his  
individual capacity, and the CITY OF  
AUSTIN**  
*Defendants*

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**CAUSE OF ACTION NO.  
1:24-CV-00990-RP**

**MOTION TO WITHDRAW APPEARANCE OF COUNSEL**

Pursuant to Local Rule AT-3, Gray Laird, Assistant City Attorney for the City of Austin, respectfully moves this court to withdraw his appearance as counsel for the Defendant City of Austin in this matter.

Mr. Laird is leaving City of Austin employment on September 1, 2025. Defendant City of Austin will continue to be represented by Monte Barton of the City of Austin Law Department. This withdrawal will not delay proceedings. Counsel for the other parties do not oppose this motion to withdraw.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY  
SARA SCHAEFER, ACTING LITIGATION  
DIVISION CHIEF

/s/ H. Gray Laird III  
H. GRAY LAIRD III  
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**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

**CERTIFICATE OF CONFERENCE**

This is to certify that on August 18, 2025, I conferred via email with counsel for all parties regarding this motion. They are unopposed to the motion.

/s/ H. Gray Laird III  
H. Gray Laird III

**CERTIFICATE OF SERVICE**

I certify that on August 21, 2025 I served a copy of this motion on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure via CM/ECF.

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

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**REPLY IN SUPPORT OF OPPOSED AMENDED MOTION FOR LEAVE  
TO CITE NEW EVIDENCE IN OFFICER GABRIEL WALKER PRADO'S  
AMENDED REPLY IN SUPPORT OF SUMMARY JUDGMENT**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant Gabriel Walker Prado who files this Reply in Support of Opposed Motion for Leave to Cite New Evidence (Dkt. 54) in his Amended Reply in support of Summary Judgment (Dkt. 55), and in support thereof, would respectfully show unto the Court as follows:

## **I. Relevant Procedural Background**

### **A. Plaintiff is right that his deposition is partially irrelevant, but only because (i) the video trumps it, and because (ii) the relevant inquiry is what a reasonable officer could perceive. In contrast, what Medel claims he perceived is irrelevant.**

1. Plaintiff now argues that his own deposition testimony is not relevant. In part, he is correct—but not for the reasons he argues. Firstly, the video evidence unconditionally trumps Plaintiff’s testimony to the extent there is an obvious contradiction.<sup>1</sup> For example, the video depicts: (i) the sound of Plaintiff yelling aggressively, including yelling “shut the fuck up!”; (ii) the sound of the officer’s loud announcement of “*Austin Police Department!*”; and (iii) shows Plaintiff reacting to the announcement of “*Austin Police Department!*” by grabbing a gun and walking with it at the ready toward the officers who had just announced themselves at his door.<sup>2</sup> The Fifth Circuit has held that “[w]e are to rely on clear video evidence when such evidence is available,” and the video evidence is clear in this case.<sup>3</sup> Any of Plaintiff’s deposition testimony that is contradicted by the video evidence, therefore, is indeed irrelevant.

2. Secondly, the relevant inquiry for qualified immunity is analyzed from the perspective of the officer, *not* the plaintiff. “[T]he relevant ‘justification for the use of force’ is the *officer’s reasonable perception of a threat of harm*. And this does *not* always require that a suspect be

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<sup>1</sup> See *Scott v. Harris*, 550 U.S. 372, 380 (2007) (reversing district court and granting an officer qualified immunity where video, holding that a court “should not...rel[y] on such visible fiction” and should “view[] the facts in the light depicted by the videotape.”); see also *Garcia v. Orta*, 47 F.4th 343, 350–51 (5th Cir. 2022) (Reversing and rendering because video and audio evidence blatantly contradicted Plaintiff’s summary judgment narrative, and holding that “[a]mong our [*Scott* video evidence] precedents are some that rely on what can be heard, and not just what can be seen, on a video.”) (citations omitted).

<sup>2</sup> *Walker Prado BWC*, 02:08:55 – 02:09:05, Dkt. 27-2.

<sup>3</sup> *Guerra v. Bellino*, 703 F. App’x 312, 316 (5th Cir. 2017) (reversing district court and granting qualified immunity to the officer where he used deadly force against an unarmed man because “[t]hough grainy, the video shows that Bellino’s detainee suddenly turned and charged toward him.”).

actively resisting, fleeing, or attacking an officer at the precise moment force is used.”<sup>4</sup> It is thus, for example, wholly irrelevant whether ***Plaintiff*** testified that he actually heard the words “***Austin Police Department!***”<sup>5</sup> The ***only*** relevant inquiry is whether a reasonable officer in Officer Walker Prado’s position ***could*** have seen Plaintiff’s physical reaction to the announcement of police—grabbing a gun, loading it, racking it, walking toward the door, and then begin to lower it downward—as a threat of harm. Plaintiff’s testimony about who ***he*** believed was at his door<sup>6</sup> is thus wholly irrelevant to determining whether qualified immunity must apply.

**B. Plaintiff’s deposition testimony is otherwise very relevant because it corroborates both (i) the video’s depiction and (ii) Officer Walker Prado’s recollection of the incident—thus creating undisputed summary judgment facts.**

3. Deposition testimony that is clear, unambiguous, and intentional may be deemed by a Court to be a judicial admission that can be supremely relevant and material at the summary judgment stage.<sup>7</sup> Even if it does not reach the level of a judicial admission, a plaintiff’s deposition testimony

<sup>4</sup> *Salazar v. Molina*, 37 F.4th 278, 283 (5th Cir. 2022) (emphasis added and original).

<sup>5</sup> See e.g., *Padilla v. City of Farmington, New Mexico*, No. 1:23-CV-00790-MLG-KK, 2025 WL 1414287, at \*2 (D.N.M. May 15, 2025) (“Plaintiffs contend that Dotson likely did not know that it was law enforcement officers at his door. Perhaps that is true, perhaps not. Either way, Dotson’s understanding of the events is not material for purposes of the qualified immunity analysis. The relevant inquiry is not “the arrestee’s subjective perception of the intrusion, but [ ] whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them.” The “focus is on how a reasonable officer on the scene would have assessed the manifest indicators of [the suspect’s] intentions—that is, [the suspect’s] actions.” Given the specific facts presented, the Court concludes the Defendant officers could reasonably believe that Dotson had hostile intentions.”).

<sup>6</sup> See e.g., Pl. Sur-Reply in Opp. to Mot. for Summ. J., Dkt. 64, pg. 3 (“Medel did not know he was responding to police at his door.”).

<sup>7</sup> See e.g., *Garcia v. EHealthScreenings, L.L.C.*, No. SA:12-CV-1213-DAE, 2014 WL 517484, at \*4 (W.D. Tex. Feb. 7, 2014) (collecting cases and holding that the plaintiff’s deposition testimony statement that she “‘never thought Defendant Morgese was retaliating’ against her” constituted a binding judicial admission that was clear, unambiguous, and intentional, and thus merited granting the summary judgment against her.).

is proper summary judgment evidence—whereas the argument of counsel is not.<sup>8</sup> A sworn affidavit or declaration likewise cannot be considered proper summary judgment evidence to the extent it is contradicted by sworn deposition testimony.<sup>9</sup>

4. Here, Plaintiff’s deposition testimony is extremely relevant to the qualified immunity analysis. For example, Officer Walker Prado testified that he saw Plaintiff load and rack his gun, but video evidence does not actually capture Plaintiff doing so. However, Plaintiff admitted during his deposition that he did indeed load and rack his gun just as Officer Walker Prado testified.<sup>10</sup> It is now an undisputed fact that Plaintiff grabbed, loaded, and racked his gun immediately after the officer knocked at his door. These new undisputed facts constitute *Manis* acts<sup>11</sup>—of an even more severe nature<sup>12</sup>—that are directly relevant to whether deadly force was justified, and directly relevant to whether the officer’s actions violated clearly established law due the highly specific

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<sup>8</sup> See e.g., *Mironelle Lee v. Ard*, No. CV 17-23-SDD-EWD, 2019 WL 1748523, at \*5 (M.D. La. Apr. 18, 2019), aff’d sub nom. *Lee v. Ard*, 785 F. App’x 247 (5th Cir. 2019) (explaining how a plaintiff cannot use argument alone to create an inference that must be taken as true, that a fact issue must be based on summary judgment evidence (not argument), and further holding that the plaintiff’s deposition testimony supports granting the motion for summary judgment against him in a § 1983 case.).

<sup>9</sup> See *Hardesty v. Cochran*, 621 F. App’x 771, 778 (5th Cir. 2015) (“This court does not allow a party to defeat a motion for summary judgment using an affidavit that impeaches, without explanation, sworn testimony.”).

<sup>10</sup> See *Medel Dep.*, pg. 101, lns. 4-8, pg. 104, lns. 6-7; pg. 109, lns. 8-10, 17-23, Dkt. 49-1; cf. *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (suspect who reached under his seat for what officer believed might be a gun).

<sup>11</sup> See e.g., *Argueta v. Jaradi*, 86 F.4th 1084, 1088 (5th Cir. 2023), cert. denied, 145 S. Ct. 435 (2024) (a suspect who concealed his right hand from view in a manner that looked like he was reaching for a gun on his right hip).

<sup>12</sup> See *Shullaw v. McMullen*, No. 3:23-CV-13317-MCR-ZCB, 2025 WL 976283, at \*7 (N.D. Fla. Mar. 31, 2025) (cleaned up) (holding that “[w]hile the mere presence of a gun may not be enough to engender the belief in an officer that someone is dangerous, **on hearing the sound of racking a weapon, making it ‘available for ready use,’ ‘an officer is ‘not required to wait and hope for the best’**” before using deadly force.).

factual parallel required of the doctrine.<sup>13</sup> Plaintiff's testimony is thus crucially relevant.

5. The Fifth Circuit has held intoxication evidence to be “***directly relevant***” for “explaining [a plaintiff's] alleged odd behavior” that was observed by the officer.<sup>14</sup> Officer Walker Prado's perception that Plaintiff was acting in an erratically and hyper-aggressive fashion affected his decision to use deadly force. Plaintiff's testimony about his intoxication is very relevant because it corroborates the conclusion that it was ***reasonable*** to make the split-second deduction that Plaintiff's erratic state created a higher possible threat of harm.

6. As a final example, Plaintiff testified that he was on the ground ***behind the couch*** when the fourth and final shot struck him in the back and went through his scapula, which up to this point was information unknown in the record.<sup>15</sup> The Fifth Circuit has held multiple times that deadly force is “reasonable when a suspect ‘moves out of the officer's line of sight such that the officer could reasonably believe the suspect was reaching for a weapon.’”<sup>16</sup> This is even more true when the subject has *already retrieved* his gun. In *Terrell*, the plaintiff argued that the officer should have realized he had already dropped his gun moments before the officer used deadly force, that the video evidence was ambiguous, and thus his own narrative should be taken as true. The Fifth Circuit disagreed, analyzed whether *Scott* applied, and affirmed qualified immunity:

Although Terrell is correct that the shooting took place out of frame, he is incorrect that the video evidence is ambiguous...Contrary to Terrell's conclusory assertions, the body cam does not establish that it was apparent to Officer Malone that Terrell lost control of the gun or that it fell to the ground...In light of this analysis, we hold that the district court did not err in discrediting Terrell's version of events as

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<sup>13</sup> *Morrow v. Meachum*, 917 F.3d 870, 876 (5th Cir. 2019) (“[t]he dispositive question is whether the violative nature of particular conduct is clearly established.”).

<sup>14</sup> See e.g., *Rodriguez v. Zepeda*, 176 F. App'x 631, 631-32 (5th Cir. 2006) (emphasis added).

<sup>15</sup> *Medel Dep.*, pg. 113, lns. 12-19, Dkt. 49-1.

<sup>16</sup> *Argueta*, 86 F.4th at 1091 (citing *Manis*, 585 F.3d at 844 (collecting cases); *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 385 (5th Cir. 2009); *Young v. City of Killeen*, 775 F.2d 1349, 1353 (5th Cir. 1985); *Reese v. Anderson*, 926 F.2d 494, 500-01 (5th Cir. 1991)).

contradicted by the video evidence.<sup>17</sup>

Here, Plaintiff admitted he was out-of-sight behind a couch at the specific moment in time the fourth shot that struck his back and scapula was fired. His position is directly relevant to whether a reasonable officer could perceive the armed Plaintiff was still a threat when the final round was fired.

**C. Plaintiff is not prejudiced by the defense’s use of his own deposition testimony—as Plaintiff has already filed a Sur-Reply responding to it.**

7. Plaintiff has already filed a Sur-Reply. Within, Plaintiff’s counsel made extensive arguments exclusively addressing Plaintiff’s new deposition testimony—which was filed with Officer Walker Prado’s Reply brief.<sup>18</sup> As this Court has already resoundingly established, the late nature of Medel’s deposition was not caused by a lack of diligence by the defense, it was caused by the Plaintiff.<sup>19</sup> Furthermore, Plaintiff’s Motion for Leave to file a Sur-Reply also took the opportunity to submit new evidence for this Court to consider at this dispositive stage of the litigation.<sup>20</sup>

8. Nevertheless, Plaintiff waited seven days after his Motion for Leave to file a Sur-Reply, and then unexpectedly filed a motion to oppose the use of new evidence that he already addressed in that Sur-Reply. Plaintiff cannot have it both ways. Plaintiff’s filing of a Sur-Reply vitiated any ostensibly prejudice to the consideration of the new evidence filed in the defense’s reply.

9. In *Lynch*, the Northern District of Texas considered a very similar situation, and held that a Plaintiff could not object to a deposition used by the defense in a Reply in Support of a Motion

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<sup>17</sup> *Terrell v. Town of Woodworth*, No. 23-30510, 2024 WL 667690, at \*5 (5th Cir. Feb. 19, 2024).

<sup>18</sup> Pl. Sur-Reply in Opp. to Summ. J., Dkt. 64.

<sup>19</sup> Order, pg. 2, Dkt. 63 (Holding “Medel’s assertions that Prado has not been diligent in discovery thus ring hollow.”).

<sup>20</sup> Pl. Ex. 23, *Various Photos of Medel’s Couch*, Dkt. 59-2.



for Summary Judgement—namely because the delay in obtaining those depositions were caused by the Plaintiff rather than the defense.<sup>21</sup> In that case, the *Lynch* Court did not even allow the Plaintiff the opportunity to file a sur-reply. Accordingly, Plaintiff’s objection to the use of his own deposition in support of summary judgment is meritless under both the facts and the law. Thus, this Court should consider the Deposition of the Plaintiff as part of the Summary Judgment evidence ripe for this Court’s review.

### **III. PRAYER**

WHEREFORE PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court grants this Opposed Motion for Leave, allow him to cite to and use as evidence Plaintiff’s deposition transcript in support of his Amended Reply brief, and for such other and further relief to which he may justly be entitled.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**

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**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

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<sup>21</sup> *Lynch v. Union Pac. R.R. Co.*, No. 3:13-CV-2701-L, 2015 WL 6807716, at \*1 (N.D. Tex. Nov. 6, 2015). (Noting “Moreover, the deposition testimony of John Begley relied on by Defendant that Plaintiff seeks to strike was obtained as a result of Plaintiff’s request to delay briefing on Defendant’s summary judgment to depose Begley and other witnesses, and Plaintiff relies on John Begley’s deposition in response to Defendant’s summary judgment motion.”).

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of August, 2025, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake  
Blair J. Leake

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

**AVELINO MEDEL II,**

*Plaintiff*

**v.**

**GABRIEL WALKER PRADO, IN**

**HIS INDIVIDUAL CAPACITY;**

**AND CITY OF AUSTIN,**

*Defendants*

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**No. 1:24-CV-00990-RP**

**ORDER**

Before the Court is Defendant Gabriel Walker Prado's motion for leave to cite new evidence in his amended reply in support of summary judgment, Dkt. 54, and all related briefing. After considering the filings and the relevant law, the Court grants the motion.

Counsel for Prado state that they deposed Plaintiff Avelino Medel II on July 9, 2025, after the motion for summary judgment and Medel's response to the motion for summary judgment were filed. Dkt. 54, at 3; *see* Dkts. 34; 42. Prado now moves to use the deposition testimony in his amended reply in support of the motion for summary judgment. Dkt. 54, at 3. Prado argues that he should be permitted to use the testimony to rebut new evidence included in Medel's response. *Id.* (citing *Anonymous Media Rsch. Holdings, LLC v. Roku, Inc.*, No. 1:23-CV-1143-DII, 2024 WL 4182592, at \*3 (W.D. Tex. July 10, 2024) ("Parties are permitted to submit evidence and arguments in a reply brief 'to rebut a new argument raised by the opposing party in a response.'")). Medel opposes the motion, arguing that the Court should not consider

Medel's deposition for summary judgment because (a) the amended reply "misstates the content of the deposition," (b) "the entire deposition is irrelevant," and (c) "the portions of the deposition concerning information which [Prado] did not know at the time of the shooting" are also irrelevant and should be stricken. Dkt. 62, at 1-2. Medel also asks that the deposition "remain sealed as to the portions that [Medel] has designated confidential and attorneys' eyes only." *Id.* at 3-4.

Initially, whether or not the deposition testimony is relevant or should be stricken from the record is not at issue in this motion. Prado is free to make his arguments in support of his motion for summary judgment, which the Court will consider in due time. If Medel wishes portions of the deposition testimony to be stricken from the record, he should move to strike them in accordance with the Local Rules.

The heart of this dispute is the sealed deposition transcript, Dkt. 49-1. In support of his response to Medel's motion to strike,<sup>1</sup> Prado filed an unopposed motion to file the deposition transcript under seal, Dkt. 49, which the District Judge granted via text order. No party has filed any motion to unseal the deposition transcript. Accordingly, the deposition transcript will remain sealed. And since the transcript is sealed, Prado should file a redacted version of his amended reply accounting for that.<sup>2</sup>

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<sup>1</sup> In that motion, Medel moves to strike or strike parts of exhibits 6, 9, 10, 11, 13, and 16 to Prado's motion for summary judgment. Dkt. 38, at 1. Medel does not move to strike his deposition testimony. *See* Dkts. 27-11; 27-15; 27-18; 28-2; 28-3; 28-4. At the time the deposition occurred, the motion for summary judgment and its attachments had already been filed. *See* Dkts. 27; 28; 49-1.

<sup>2</sup> Medel has "withdrawn his opposition to the procedural timeliness of [Prado's] amended reply." Dkt. 62, at 1 n.1; *see* Dkt. 58.

Allowing Prado to cite the transcript as if it were not under seal would undo the effect of the District Judge's sealing order.

Therefore, the Court **ORDERS** that Prado's motion for leave to cite new evidence in his amended reply in support of summary judgment, Dkt. 54, is **GRANTED**. The Court **FURTHER ORDERS** that Prado shall file a redacted public version of his amended reply in accordance with the District Judge's order that the deposition transcript be filed under seal.

SIGNED August 29, 2025.



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DUSTIN M. HOWELL  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II.

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

### *Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990

**PLAINTIFF’S MOTION TO COMPEL AGREED DISCOVERY AND RULE 56(d)**  
**EXTENSION OF TIME TO RESPOND TO THE CITY OF AUSTIN’S MOTION FOR**  
**SUMMARY JUDGMENT**

Plaintiff Avelino Medel, II respectfully moves to compel the City of Austin's compliance with a long-overdue, agreed-upon subpoena and Rule 30(b)(6) deposition notice to the City. The Court should further extend Plaintiff's time to respond to the City's dispositive motion until 30 days after the City has fully complied with this agreed-upon discovery.

## I. SUMMARY OF ARGUMENT

Plaintiff requested the documents at issue and set the City's deposition on April 1, 2025. Plaintiff repeatedly rescheduled the deposition to dates the City agreed to, entered into agreements with the City to reduce the scope of the requests, and moved for multiple extensions with this Court at the City's request. Meanwhile, the City moved for summary judgment and continued to produce no records. Eventually, the City presented a witness on only 5 of the 19 topics—and that witness referred to documents which had not and still have not been produced. Despite the City's stipulation which formed the basis of the last extension, the City has not complied with its agreement to produce documents or its 30(b)(6) representative on the remaining topics.

Accordingly, Plaintiff moves to compel and to extend Plaintiff's time to respond to the City's motion for summary judgment until 30 days after the City has complied with all of the outstanding, agreed discovery.

## **II. LEGAL STANDARD**

After a motion for summary judgment is filed, "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order."

FED. R. CIV. P. 56(d).

Rule 56(d) "motions are broadly favored and should be liberally granted." *Culwell v. City of Fort Worth*, 468 F.3d 868, 871 (5th Cir. 2006) (reversing grant of summary judgment).

## **III. PROCEDURAL HISTORY**

This is a police shooting case brought pursuant to 42 U.S.C. § 1983.

Plaintiff has diligently worked to secure the City's testimony and production of certain documents on the topics of the deposition since April 1, 2025, when Plaintiff set the deposition for April 28, 2025, but the City was not ready to present its Rule 30(b)(6) representatives or produce documents responsive to a subpoena *duces tecum*. See Doc. 51-1, Stipulation, ¶¶ 1, 2, 9; Doc. 51-2, Deposition Notice.

On May 27, 2025, the City of Austin agreed to a compromise, where Plaintiff agreed to limit the scope of certain deposition topics in exchange for the City's agreement to specific production responsive to the subpoena *duces tecum*. Ex. 1, Email from counsel for the City of Austin.

On May 28, 2025, Defendants separately moved for summary judgment. Doc. 25; Doc. 27-1. Walker Prado's motion and related motions relating to summary judgment evidence on that motion are fully briefed. *See* Doc. 38; Doc. 40; Doc. 42; Doc. 48; Doc. 55; Doc. 56; Doc. 64.

Plaintiff began the City's deposition on June 5, 2025, but the deposition was held open by agreement because the representative was prepared to testify only on topics 3, 4, 10, 13, and 14. *See* Doc. 51-1, Stipulation, ¶¶ 3-4; Doc. 51-3, Amended Deposition Notice; Ex. 3, Henderson Depo., pp. 8:10-17, 8:21-9:23. During the deposition, the City's representative revealed that she had read certain documents to prepare which had not, and still have not, been produced to Plaintiff. *See* Ex. 3, Henderson Depo., pp. 15:17-16:13, 17:4-18:4.

Plaintiff obtained an extension of his deadline to respond to the City's summary judgment motion until August 5, 2025, based on the City's assertion that it was not able to complete its 30(b)(6) testimony prior to July. *See* Doc. 36.

The City's deposition was then set, but the City was not prepared to testify, on July 10, 2025 and then again on July 31, 2025. Doc. 51-1, Stipulation, ¶¶ 4-7; Doc. 51-4, Second Amended Deposition Notice; Doc. 51-5, Third Amended Deposition Notice.

The City then advised that it still was not ready, and entered into a stipulation that it would produce the documents on or before September 2, 2025, and it would testify on or before September 16, 2025. Doc. 51-1, Stipulation, ¶¶ 10-11. The City agreed that documents would only be withheld based on privilege. Doc. 51-1, Stipulation, ¶ 10.

Based on those stipulations, Plaintiff agreed not to move to compel and instead sought an extension of his deadline to respond to the City's motion for summary judgment. *See* Doc. 51. The Court granted the extension, giving Plaintiff until October 6, 2025 to respond to the motion for summary judgment and file any motion to compel.



On August 21, 2025, counsel for the City of Austin withdrew from this case. Doc. 65. Plaintiff has been working with replacement counsel to get him up to speed, and has further offered an additional compromise to limit the scope of documents which would need to be produced pursuant to the subpoena *duces tecum*. However, no documents have been produced and no deposition dates have been offered.

#### IV. ARGUMENT

The Court should compel the City of Austin's compliance and extend Plaintiff's time to respond to the City's motion for summary judgment until 30 days after it has complied for five reasons.

First, as the City previously stipulated, Plaintiff needs the City's deposition, including the documents associated with the topics of that deposition, to respond to the pending motion for summary judgment. Doc. 51, p. 3; Doc. 51-1, p. 2, ¶ 15; Doc. 51-6, Declaration of Plaintiff's Counsel. As previously discussed and as evinced by prior litigation involving the use of force by Austin Police Department officers,<sup>1</sup> most of Plaintiff's theories of municipal liability pursuant to *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658, 690–91 (1978) will unsurprisingly require summary judgment evidence of a pattern of prior similar incidents to prove deliberate indifference—as the City's own dispositive motion argues. *See* Doc. 25, p. 10. To date, the City has failed to provide any such evidence in this case,<sup>2</sup> and many of Plaintiff's counsel's files that contain similar evidence in other cases are both not tailored to the facts of this case and

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<sup>1</sup> *See, e.g., Ambler v. Nissen*, No. 1:20-CV-1068-DII-SH, 2023 WL 4879903, at \*13 (W.D. Tex. July 31, 2023), *report and recommendation adopted*, No. 1:20-CV-1068-DII, 2023 WL 6168253 (W.D. Tex. Sept. 21, 2023), *appeal dismissed*, 116 F.4th 351 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2683, 221 L. Ed. 2d 956 (2025).

<sup>2</sup> Plaintiff did not move to compel as to other requests—which are not before the Court—in light of the City's agreement to comply with the subpoena and deposition notice at issue.

hidden under the veil of confidentiality orders. *See* Doc. 51-6, Declaration of Plaintiff’s Counsel, p. 2, ¶¶ 6–8.

Second, there is no dispute as to relevance, burden, or other typical discovery factors, as the City has agreed to the production and testimony (except for privilege, which Plaintiff is not seeking to pierce). *See* Doc. 51-1, Stipulation, p. 2, ¶¶ 10–11. Even if the City changes its position, it has long since waived any discovery objections, as the response to the subpoena was due at the June 5, 2025 deposition—and any objections to topics were due, at the latest, on July 31, 2025, which was the last agreed deposition setting. Untimely discovery objections are waived.<sup>3</sup>

Third, notwithstanding the change in attorneys, the City should still be able to comply with these requests in light of its prior agreement. Since the original agreed deadline for production was September 3, 2025, and it has now been nearly 30 days since the change in attorneys and over three weeks since the original agreed deadline, the City should need no longer than 30 days to comply. Following that production, the City should be able to present its 30(b)(6) witness within 14 days of the production, as originally agreed.

Fourth, Plaintiff does not wish to delay the resolution of Walker Prado’s dispositive motion, which is ripe for consideration, and the Court could choose to avoid allowing this discovery dispute to cause such a delay in this case. The Court could choose to decide Walker Prado’s motion separately and, if the Court’s decision does not moot the City’s motion, consider the City of Austin’s motion during the pendency of the practically inevitable appeal. *See* 28 U.S.C. § 1291; *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) (there is limited interlocutory appellate

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<sup>3</sup> *See, e.g., Pruitt v. Fab Tech Downhole, LLC*, No. MO:22-CV-00151-DC-RCG, 2023 WL 8482981, at \*1 (W.D. Tex. June 27, 2023); *Peitz v. Republic EES, LLC*, No. 22-CV-00257-DC-RCG, 2023 WL 11830305, at \*1 (W.D. Tex. June 2, 2023); *Morris v. Sorenson*, No. MO-16-CV-00071-KC, 2017 WL 10841356, at \*2 (W.D. Tex. Dec. 14, 2017); *Kaden v. Schleese Saddlery Serv. Ltd.*, No. EP-17-CV-00053-KC, 2017 WL 7905498, at \*4 (W.D. Tex. Nov. 20, 2017); *Talley v. Spillar*, No. A-16-CV-670-LY-ML, 2017 WL 9288622, at \*3, n.1 (W.D. Tex. Mar. 31, 2017).

jurisdiction for § 1983 cases against individuals with qualified immunity). If the Court chooses that path, then there would likely be sufficient time for the City to comply with the agreed-upon discovery, the parties to complete their briefing on the City's dispositive motion, and the Court to rule on the City's dispositive motion before the Fifth Circuit appeal is complete. *See* Ex. 2, United States Courts, *Table B-4A, U.S. Courts of Appeals—Median Time Intervals in Months for Civil and Criminal Appeals Terminated on the Merits, by Circuit, 12-Month Period Ending September 30, 2024* (retrieved Sep. 23, 2025), available at [https://www.uscourts.gov/sites/default/files/2025-01/jb\\_b4a\\_0930.2024.pdf](https://www.uscourts.gov/sites/default/files/2025-01/jb_b4a_0930.2024.pdf) (5th Circuit non-prisoner civil appeals take a median of 9.7 months from the time of the appeal to the last opinion or final order in the appellate court). This would avoid any unfair prejudice to Defendant Walker Prado,<sup>4</sup> reduce the unfair prejudice to Plaintiff, and promote judicial economy by allowing the case to ultimately resolve more quickly.

Finally, Plaintiff asks that he receive 30 days to respond to the City's motion for summary judgment after the deadline for the City to complete all of its deposition testimony. In addition to the time required to receive the deposition transcript and complete citations to records not yet available, Plaintiff needs the additional time because this discovery and briefing will now be occurring at an unpredictable time which is likely to overlap with other deadlines and obligations in Plaintiff's counsel's practice, particularly an upcoming December 16, 2025 trial setting in the matter of *Ward v. Young*, No. 1:16-cv-917 (W.D. Tex.) which is a bench trial not subject to interlocutory appeal and appears likely to proceed as scheduled.

The extension of time is requested for the reasons stated, and not solely for the purposes of delay.

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<sup>4</sup> Although Walker Prado will presumably choose to have his attorneys review the City's production and attend the City's deposition, that will only require the same amount of time that his attorneys should have expected to spend on this case if the City had completed the agreed-upon discovery in a timely fashion.

**V. CONCLUSION**

Accordingly, Plaintiff respectfully requests an order compelling the City to comply with its agreements as to discovery and an extension of time for Plaintiff's response to the City of Austin's motion for summary judgment until 30 days after the date when the City is required to complete its deposition testimony.

Dated: September 24, 2025.

Respectfully submitted,

**EDWARDS LAW**

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have repeatedly conferred with counsel for the City of Austin by telephone and email. The City of Austin has been unable to commit to any specific date for its compliance with the previously agreed-upon discovery. Accordingly, further conference is unable to resolve this issue and the Court's intervention is necessary in light of the impending October 6, 2025 deadline to respond to the City's dispositive motion.

/s/ David James  
David James

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

**AVELINO MEDEL II**  
*Plaintiff*

v.

**GABRIEL WALKER PRADO, in his  
individual capacity, and the CITY OF  
AUSTIN**  
*Defendants*

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**CAUSE OF ACTION No.  
1:24-CV-00990-RP**

**DEFENDANT CITY OF AUSTIN'S RESPONSE  
TO PLAINTIFF'S MOTION TO COMPEL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant, the City of Austin, responds to Plaintiff's Motion to Compel [Dkt 68] as follows:

**OVERVIEW**

The Plaintiff, as part of the 30(b)(6) deposition notice, requests documents (including videos and other things) for approximately 73 prior incidents. Plaintiff's counsel has indicated that the requested documents are already available to plaintiff's counsel in approximately 47 of the prior incidents if an agreement can be reached with the City regarding various protective orders which plaintiff's counsel signed in other lawsuits against the City. The City believes this should be viable assuming the terms of those other protective orders and any restrictions (Confidential, etc.) on the documents are identified and carried over to and incorporated into the protective order in the present lawsuit.

For the remaining 27 prior incidents, the City is aware of at least some responsive documents for 21 of the incidents. For many of these, the document retention period has expired and the available documents are limited, and the files are incomplete. The City believes it can

produce the available documents within 30 days (this relates to the incidents identified by plaintiff's counsel as: Nathaniel Sanders, Chacon, Hernandez, Schaefer, Pinney, Smith, King, Munroe, Wallace, Jackson, Rocque, Williams, Grant, Meredith Williams, Arawn, Cates, Hayes, Herrera-Amaro, Franklin).

For 6 of the prior incidents, the City has not been able to locate any responsive documents (this relates to the incidents identified by plaintiff's counsel as Campbell, Chavez, Fuentez, Hank Doe, Rodriguez, and Short).

For 1 of the prior incidents, the City objects to production because the incident is the subject of ongoing criminal legal proceedings for which the City has not completed an Internal Affairs investigation (this relates to the Moonsinghe incident).

For 1 of the prior incidents, the City objects to production because the incident is the subject of a separate civil lawsuit which is the subject of a separate protective order to which plaintiff's counsel in the present lawsuit is not a party. And discovery is ongoing and incomplete (this relates to the Ramos incident).

Further, as for scheduling testimony for the remaining 30(b)(6) deposition topics, the City can provide the following at this time, but it awaits the return to duty of a couple of APD representatives.

**TOPIC 1**

October 22 or 24;

October 30-31;

November 4-7;

November 11-14;

December (checking on availability)

January (checking on availability)

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**TOPICS 6 and 18**

(checking on availability)

(checking on availability)

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**TOPICS 5, 7, 8, 9, 15, 16, 17, 19**

October 30-31 (subject to if Topic 1 testimony is scheduled for this time - as it will be a different representative)

November 4-7; (subject to if Topic 1 testimony is scheduled for this time - as it will be a different representative)

November 11-14; (subject to if Topic 1 testimony is scheduled for this time - as it will be a different representative)

December 9 - 12, 16-18

January 6-9, 13-6

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**RESPONSE**

The City has been delayed in producing documents and 30(b)(6) testimony. By way of explanation the City states that lead trial counsel for this case, Gray Laird, recently changed employment and is no longer with the City. Mr. Laird withdrew as legal counsel per the Court's Order on August 22, 2025. The undersigned legal counsel has now been assigned to the litigation responsibilities for this case. But, undersigned counsel did not participate in the original scheduling conversations and agreements regarding the 30(b)(6) topics, documents, and



testimony. Consequently, undersigned counsel is coming to this lawsuit without the accumulated knowledge of the record and the past discussions. Due to this, combined with the extraordinary press of deadlines and obligations in other pending lawsuits, undersigned legal counsel for the appellants has not had an ample opportunity to sufficiently review and research the Plaintiff's extensive list of topics and request for documents and things requested per the Third Amended Deposition Notice of the City of Austin (July 21, 2025) [Dkt 51-5] incorporated herein -- including Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E, which identified over 188 separate incidents. And Exhibit C, Exhibit D, and Exhibit E, did not include the identifiers typically included by which documents and things are organized and can be located.

Plaintiff's counsel and the undersigned lawyer for the City did discuss this on September 17, and Plaintiff's counsel provided a listing with incident identifiers and the 73 incidents identified above in the Overview section. Plaintiff's counsel also proposed a path for the deposition to go forward by agreeing to incorporate document production from various other lawsuits pursuant to protective orders which plaintiff's counsel signed in other lawsuits. The City believes this should be viable assuming the terms of those other protective orders and any restrictions on the documents are identified and carried over to and incorporated into the protective order in the present lawsuit.

The City notes that at all times, previous legal counsel reserved objections to the 30(b)(6) deposition, as set out in Exhibit 1 [Dkt 68-1, p.5] to the Plaintiff's Motion to Compel, and as stated below.

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**From:** Laird, Gray <[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)>

**Sent:** Thursday, April 24, 2025 5:29 PM

**To:** David James <[david@edwards-law.com](mailto:david@edwards-law.com)>; Chavez, Priscilla <[Priscilla.Chavez@austintexas.gov](mailto:Priscilla.Chavez@austintexas.gov)>; Jeff Edwards <[jeff@edwards-law.com](mailto:jeff@edwards-law.com)>

**Cc:** Blair Leake <[bleake@w-g.com](mailto:bleake@w-g.com)>; Sam Houston <[shouston@w-g.com](mailto:shouston@w-g.com)>; Stephen Barron

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**Subject:** RE: Medel v. Prado and City of Austin - Deposition notice to the City of Austin

***I agree to a 30(b)(6) depo but will need to reserve the right to object and confer on the scope if needed.*** As to the deadline, I am not sure I am following which deadline you are referring to. I am sure I will agree to extend it but am not clear on it. thanks

(emphasis added)

— — —

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully submits and agrees that another extension of time to complete the 30(b)(6) deposition and for Plaintiff to respond to the City's pending motion for summary judgment [Dkt 25] (***which is fully incorporated herein by reference***) would be appropriate, generally as described in Plaintiff's Motion to Compel [Dkt 68] on page 6. Defendant further requests any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY  
VASU BEHARA, CHIEF, LITIGATION

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.  
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City of Austin- Law Department  
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**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this day, October 1, 2025.

**Via ECF:**

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Michael Singley  
Lisa Snead  
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GABRIEL PRADO

/s/ Monte L. Barton Jr. \_\_\_\_\_  
MONTE L. BARTON JR.  
Counsel for Defendant, City of Austin

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

### *Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION TO COMPEL AGREED  
DISCOVERY AND RULE 56(d) EXTENSION OF TIME TO RESPOND TO THE CITY  
OF AUSTIN’S MOTION FOR SUMMARY JUDGMENT**

Plaintiff respectfully submits this reply in support of his motion to compel and for extension of time to respond to the City's motion for summary judgment. *See* Doc. 68.

## I. ARGUMENT

As the City has indicated it agrees to supply dates for its deposition and it agrees to an extension of time for Plaintiff's response to its motion for summary judgment, *see* Doc. 69, pp. 2–3, 5, Plaintiff replies only to the City's effort to dispute the scope of the deposition topics and subpoena *duces tecum*. The City's arguments should be rejected and its fulsome testimony and responsive production, substantively limited only by privilege objections, should be compelled for two reasons.

**A. The City agreed not to object and its objections are untimely.**

The City's response erroneously suggests that it reserves the ability to raise objections other than privilege to the Rule 30(b)(6) deposition and the accompanying subpoena. Doc. 69, pp. 4–5. This argument is factually and legally meritless for three reasons.

First, the City misstates the City's prior agreement and the very email chain the City quotes from. The sole ground for the City's argument is an April 24, 2025 email from the City's attorney, which concerned the first occasion when the parties agreed to reschedule the initial setting of the City's deposition, which had been set for April 28, 2025.<sup>1</sup> Plaintiff's counsel then conferred on the phone with the City's attorney about the topics on May 7, 2025 and memorialized that phone conference in a subsequent email from the same chain. Doc. 68-1, p. 3. Plaintiff's email makes clear that the only dispute remaining was for topics 15, 16, and 17, which the City then agreed to resolve with a compromise via email on May 27, 2025. Doc. 68-1, pp. 2–3. Thus, in the very next email from the City after that quoted in the City's response, the City agreed to the topics. The City's initial reservation of objections did not entitle it to object after agreeing to the topics in conference. Permitting such a bait and switch would certainly subvert the purpose of the rule requiring that conference. *See* FED. R. CIV. P. 30(b)(6) (requiring that “the serving party and the organization must confer in good faith about the matters for examination” prior to the deposition).

Second, in addition to agreeing to these topics and the subpoena, the City independently waived any such objections multiple times. In reliance on the aforementioned agreement, Plaintiff set and took the City's deposition on June 5, 2025. Doc. 51-1, p. 1, ¶ 3; Doc. 51-3. The City appeared at that deposition without any objections to the topics or the subpoena, but it was only able to testify to topics 3, 4, 10, 13, and 14. Doc. 51-1, p. 1, ¶ 4; *see* Doc. 68-3, pp. 4, 9. This was the first occasion when the City waived its ability to object due to timeliness.<sup>2</sup> Next, the City was

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<sup>1</sup> *See* Doc. 68-1, p. 5; Doc. 51-1, p. 1, ¶¶ 1–2 (stipulation that the City had been set for its deposition on April 28, 2025, but was not prepared and did not testify); Doc. 51-2 (original deposition notice).

<sup>2</sup> *See, e.g., Pruitt v. Fab Tech Downhole, LLC*, No. MO:22-CV-00151-DC-RCG, 2023 WL 8482981, at \*1 (W.D. Tex. June 27, 2023); *Peitz v. Republic EES, LLC*, No. 22-CV-00257-DC-RCG, 2023 WL 11830305, at \*1 (W.D. Tex. June 2, 2023); *Morris v. Sorenson*, No. MO-16-CV-00071-KC, 2017 WL 10841356, at \*2 (W.D. Tex. Dec. 14, 2017); *Kaden v. Schleese Saddlery Serv. Ltd.*, No. EP-17-CV-00053-KC, 2017 WL 7905498, at \*4 (W.D. Tex. Nov. 20, 2017); *Talley v. Spillar*, No. A-16-CV-670-LY-ML, 2017 WL 9288622, at \*3, n.1 (W.D. Tex. Mar. 31, 2017).

scheduled by agreement for the continuation of its deposition on July 10, 2025, a date which passed without the City's appearance, without any objections, and without any motion for protective order. Doc. 51-1, p. 1, ¶¶ 5–6; Doc. 51-4. Thus, the City waived its ability to object a second time. And, likewise, the City was scheduled to resume its deposition on July 31, 2025, did not appear, did not object, and did not seek a protective order. Doc. 51-1, p. 2, ¶¶ 7–8. Accordingly, the City declined to object on the three occasions when its compliance was due, and so its belated objections in its response are therefore waived as untimely. The City's reservation of objections months before it repeatedly showed up without objecting or simply missed without objecting to agreed deposition settings does not permit it to object now, four months after its first agreed deadline for compliance.

Third, the City *again* agreed not to object as part of the prior motion for extension of time.

The stipulation which the City entered into with Plaintiff states:

10. The City has agreed it **will respond and produce all nonprivileged documents** in its possession which it has identified as responsive to the subpoena duces tecum after a reasonably diligent search on or before September 2, 2025.
11. The City has agreed it **will be prepared to testify on the remaining topics** in the above deposition notices and will present its representative(s) on those topics at a mutually agreeable time on or before September 16, 2025.

Doc. 51-1, p. 2, ¶¶ 10–11 (emphasis added). The City's reservation of objections in April, months before this August 1, 2025 stipulation, is obviously not relevant to this later agreement, particularly because the parties' positions had changed dramatically—including by the unfair prejudice to Plaintiff from the delay which accrued in no small part because of reliance on the City's previous agreements. Had Plaintiff understood the City to intend to fight the substance of these requests after conferring on May 7, 2025, Plaintiff would have moved to compel at that time.

Accordingly, the Court should not reach the merits of the City's objections and the City should be ordered to comply with its stipulation and agreements without withholding nonprivileged information in its possession, custody, and control which it has found after a reasonably diligent search.

**B. The City's objections are meritless.**

The City's grossly untimely and expressly waived objections are also meritless for three reasons.

First, other courts in this circuit consistently conclude that similar incidents are discoverable. *See Roque v. City of Austin*, No. 1-17-CV-00932-LY, 2018 WL 5848988, at \*5 (W.D. Tex. Nov. 7, 2018) (documents and information "regarding known prior incidents of similar misconduct by other APD officers ... is highly relevant."); *Maurer v. St. Tammany Par. Sch. Bd.*, CV 19-13479, 2020 WL 12801030, at \*3 (E.D. La. June 26, 2020); *Adams v. City of New Orleans*, 2017 WL 713853, at \*2 (E.D. La. Feb. 23, 2017); *Mayfield v. Brewer*, 2:13-CV-73-KS-MTP, 2014 WL 11515052, at \*2 (S.D. Miss. Jan. 10, 2014); *Chauvin v. Lee*, No. CIV.A. 99-2200, 2000 WL 567006, at \*3 (E.D. La. May 8, 2000). All of the City's objections are limited to such incidents, and there is no authority permitting a municipality to refuse to answer questions about a prior incident that a civil rights plaintiff is trying to prove is similar under *Monell*.

Second, the City summarily objects that APD Officer Daniel Sanchez's fatal shooting of Rajan Moonsinghe on November 15, 2020 "is the subject of ongoing criminal legal proceedings," but this does not provide any basis for the City to refuse to testify. Doc. 69, p. 2. The City is not a defendant in any ongoing criminal case and is free to comment on it. Indeed, the City chose to publish video footage of the shooting and made official public statements about that specific

shooting.<sup>3</sup> This situation also bears some similarity to *Segner v. Sinclair Oil & Gas Co.*, No. 3-11-CV-03606-F, 2012 WL 12885057, at \*3 (N.D. Tex. Dec. 14, 2012), where that Court permitted discovery despite pending criminal proceedings against two non-party witnesses because the party—like the City in this case—had earlier agreed to it.

Third, the City stretches even further to complain about answering questions concerning the shooting of Michael Ramos by Christopher Taylor and Mitchell Pieper on April 24, 2020, merely because “the incident is the subject of a separate civil lawsuit which is the subject of a separate protective order.” Doc. 69, p. 2. This conclusion simply does not follow from the premise. Plaintiff needs to ask the City about its position on the Ramos shooting—for which, again, the City chose to publish video footage, 911 audio, and its own comments.<sup>4</sup> The City does not need to retrieve information from other parties who may have designated documents confidential in a civil case to answer questions about its own position and its own documents in this lawsuit, as other parties do not control the confidentiality of the City’s own records or its knowledge from those records. The Court should reject this novel, unsupported argument.

## II. CONCLUSION

Accordingly, the Court should compel the City of Austin to comply with the stipulation and its other written agreements to appear for its deposition and produce documents pursuant to the subpoena *duces tecum*. Further, as the City agrees, the Court should extend the time for Plaintiff’s response to the City of Austin’s motion for summary judgment until 30 days after the date when the City is required to complete its production and deposition testimony.

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<sup>3</sup> See, e.g., <https://www.kxan.com/news/local/austin/apd-releases-video-from-fatal-south-austin-police-shooting/>; [https://www.youtube.com/watch?v=e7v1\\_3G8F\\_8](https://www.youtube.com/watch?v=e7v1_3G8F_8);

<sup>4</sup> See, e.g., <https://www.youtube.com/watch?v=v-3gM5avFIA>; <https://www.kvue.com/article/news/local/mike-ramos-video-shooting-austin-police-update/269-cfcb7ba4-e5d4-4b39-a171-173693850bf8>.



Dated: October 6, 2025.

Respectfully submitted,

**EDWARDS LAW**

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

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

**AVELINO MEDEL II,**  
*Plaintiff*

**v.**

**GABRIEL WALKER PRADO, IN  
HIS INDIVIDUAL CAPACITY;  
AND CITY OF AUSTIN,**  
*Defendants*

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**No. 1:24-CV-00990-RP**

**ORDER**

Before the Court is Plaintiff Avelino Medel II’s motion to compel Defendant City of Austin’s (“the City”) responses to agreed discovery and motion for extension of time to file response/reply to Defendant’s motion for summary judgment, Dkt. 68, and all related briefing. The District Judge referred the motions for disposition. Having reviewed the motions, the undersigned enters the following Order.

Medel moves to compel the City’s compliance with a subpoena and Rule 30(b)(6) deposition notice. Dkt. 68, at 1. In support of his motion, Medel asserts that despite repeated extensions, the City has failed to produce records in response to Medel’s requests and presented a witness on only five of the 19 topics raised in Medel’s Rule 30(b)(6) deposition notice. *Id.* Medel contends that he “needs the City’s deposition, including the documents associated with the topics of that deposition, to respond to [the City’s] pending motion for summary judgment.” *Id.* at 4. Medel asks the Court to compel the City to produce documents responsive to the subpoena and to present one or more representatives to testify by deposition on the remaining

deposition topics. *Id.* at 4-6. He also asks for an extension of time to file a response to the City's pending motion for summary judgment, Dkt. 25, until on or before 30 days after the City completes its deposition testimony pursuant to any order granting the instant motion. *Id.* at 6. The City responds that it is not opposed to Medel's motion for extension of time to respond and that it will provide dates for the deposition, but that it disputes the scope of the deposition topics and subpoena. *See* Dkt. 69.

In light of the City's non-opposition to Medel's motion for extension of time to file his response to the City's motion for summary judgment, *id.* at 5, the Court **GRANTS** the motion. Medel shall respond to the City's motion for summary judgment on or before 30 days after the City completes its deposition testimony, if any. Alternatively, if the Court declines to order the City to produce the deposition testimony, Medel shall respond to the City's motion for summary judgment on or before 30 days after the Court issues any order denying the instant motion to compel.

The parties are **ORDERED** to meaningfully confer telephonically or in person regarding the issues in the motion and **FILE** a Joint Advisory with the Court **before 2:00 p.m. on Tuesday, November 4, 2025**. The advisory should discuss the parties' conference, identify any remaining disputed issues that will require resolution by the undersigned, and set forth briefly the parties' respective positions on each remaining issue. Additionally, the parties must serve on opposing counsel any demonstrative exhibits or presentation materials intended to be used during the hearing by **5:00 p.m. of the business day prior to the hearing**. Please also send a copy of any demonstratives to the Court's Courtroom Deputy, Victoria Rivera, at

Victoria\_Rivera@txwd.uscourts.gov by **5:00 p.m. of the business day prior to the hearing.**

**IT IS FURTHER ORDERED** that the parties are **TO APPEAR** for an in-person hearing before the undersigned on **Friday, November 7, 2025, at 11:00 a.m.** The hearing will last no more than 1 hour with each side afforded 30 minutes to make its arguments.

The parties are advised and hereby placed on notice that the undersigned may award expenses against any party that is uncooperative in discovery. *See* Fed. R. Civ. P. 37(a)(5).

SIGNED October 6, 2025.



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DUSTIN M. HOWELL  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Avelino Medel II

vs.

Gabriel Walker Prado, City of Austin

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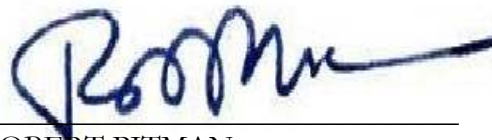
NO: AU:24-CV-00990-RP

**ORDER RESETTING HEARING**

IT IS HEREBY ORDERED that the above entitled and numbered case is reset for JURY SELECTION AND TRIAL in Courtroom 4, on the Fifth Floor, United States Courthouse, 501 West Fifth Street, Austin, TX, on April 27, 2026 at 9:00am.

Jury selection may be conducted by a Magistrate Judge and may occur the Friday before the case is set for trial. Because criminal and civil cases are often set for the same trial week, the Court may need to reschedule your trial shortly before the trial date. If the parties resolve their dispute after 5:00 p.m. the day before jury selection or resolve their dispute earlier but fail to timely notify the Court, the parties may be assessed up to \$5,000 for the lost opportunity to schedule other matters and to cover court costs like summoning the jury panel and paying the fees of the jury panel.

SIGNED THIS 21st day of October, 2025 .

A handwritten signature in blue ink, appearing to read 'Robert Pitman', written over a horizontal line.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF AND CITY OF AUSTIN'S JOINT STATUS REPORT REGARDING  
PLAINTIFF'S MOTION TO COMPEL**

Pursuant to the Court's order, Doc. 71, counsel for Plaintiff and Defendant City of Austin conferred by email several times, and then conferred by telephone on October 31, 2025 and November 4, 2025.

Plaintiff set the City's Rule 30(b)(6) deposition on dates offered by the City as follows:

October 31, 2025 – Topic 1 (as to APD's Internal Affairs investigation)

November 14, 2025 – Topics 5, 7, 8, 9, 15, 16, 17, 19, subject to the City's objections

December 2, 2025 – Topic 1 (as to APD's Special Investigations Unit investigation)

December 9, 2025 – Topics 6 and 18

The City's deposition as to the Internal Affairs component of Topic 1 was completed on October 31, 2025.

The City provided supplemental document production responsive to the subpoena *duces tecum* on November 3, 2025, which largely concerns documents from other incidents of uses of force by APD officers. For most of the relevant incidents, rather than producing documents again, the City agrees to allow Plaintiff's counsel to use in this case responsive documents about those incidents produced by the City in other litigation under protective orders in those other cases.

The City and Plaintiff have tentatively agreed to the production of the documents and testimony related to the Michael Ramos shooting.

# **I. PLAINTIFF AVELINO MEDEL II'S POSITION**

The Court should grant the motion to compel because the City is still opposed to providing any responsive documents or testimony as to two prior incidents as to the shooting Rajan Moonsinghe and because the City's production of documents remains incomplete as to videos for ten other incidents.

As to the Rajan Moonsinghe shooting, the City states it is withholding all documents purportedly because a criminal case is pending related to Mr. Moonsinghe's death. As discussed in Plaintiff's reply, Doc. 70, these objections are waived, as the City expressly agreed to produce these files earlier and missed its deadline to object. These objections are also meritless. The City has video of what happened in the shootings, and released those videos to the press.<sup>1</sup> If it so chooses, the City can testify that it has no information beyond what is documented and is choosing to take no further position due to pending litigation, but then it must actually provide those documents and testify to its position.<sup>2</sup>

The ten other incidents where video should be available but has not been produced to date are the following:

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<sup>1</sup> See, e.g., [https://www.youtube.com/watch?v=e7v1\\_3G8F\\_8](https://www.youtube.com/watch?v=e7v1_3G8F_8) (Moonsinghe); [https://www.youtube.com/watch?v=i7bQC1DZ\\_-M](https://www.youtube.com/watch?v=i7bQC1DZ_-M) (Moonsinghe). Plaintiff hopes that the agreement as to Ramos will not require the Court's intervention, but that shooting was also published by the City: <https://www.youtube.com/watch?v=v-3gM5avFIA> (Ramos); <https://abc7news.com/post/austin-pd-releases-video-showing-killing-of-mike-ramos/6338494/> (Ramos).

<sup>2</sup> See, e.g., *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006) (Rule 30(b)(6) requires presenting a witness to testify with the corporate entity's knowledge of facts, but also its "subjective beliefs and opinions.").

| <b>Date</b> | <b>Victim of Force</b>       | <b>Officers involved</b>                                                 |
|-------------|------------------------------|--------------------------------------------------------------------------|
| 3/18/14     | Jawhari Smith                | Greg White                                                               |
| 6/15/15     | Breaion King                 | Bryan Richter                                                            |
| 7/5/15      | Richard Munroe               | Matthew Murphy, Stephen Johnson                                          |
| 11/6/15     | Matthew Wallace, Jeremy King | Gustave Gallenkamp, Brian Huckaby, Daniel McCameron, Nathan Canche       |
| 12/20/15    | Gregory Jackson              | Jason Jones, Brian Huckaby                                               |
| 5/2/17      | Jason Roque                  | James Harvel, James Ayers, Corey Connelly, Patrick Nelsen, Willis Rounds |
| 6/26/17     | Brenna Williams              | Nathan Canche, Vanessa Jimenez                                           |
| 7/4/18      | Justin Grant                 | Gadiel Alas, Corey Hale                                                  |
| 12/1/20     | Armando Herrera-Amaro        | Gadiel Alas, Alexander Khidre                                            |
| 1/15/23     | Anthony Marquis Franklin     | Kelby Radford, Ryan Rawlins, Jacob Bowman                                |

Other than the use of force against Mr. Herrera-Amaro, these incidents all involved litigation based on video evidence. The incident against Mr. Herrera-Amaro was recent enough, and identified by police report number, so that body-worn camera should remain available. Although the City has produced some paperwork about these incidents, it has not produced the videos of the uses of force. As stated in Plaintiff's motion, the City previously agreed to this production; further, development of the City's position on prior uses of force is directly relevant to Plaintiff's pattern and practice claims. *See generally* Doc. 68.

Accordingly, Plaintiff asks that the Court grant the motion to compel.

## **II. DEFENDANT CITY OF AUSTIN'S POSITION**

The City maintains its objections as to the Moonsinghe incident. The criminal jury trial for one of the involved officers (David Sanchez) is in process this week and likely will continue for many days. The City has not completed an internal affairs investigation. There is no compelling need for the information requested by the Plaintiffs, especially in light of the potential for prejudice, confusion, and incomplete information related to and associated with the Moonsinghe legal proceedings.



As for video in the above referenced 10 other incidents -- the City does not know at this time if video exists. But it does agree to search for available video and present it in accordance with any applicable protective orders.

Dated: November 4, 2025.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

DEBORAH THOMAS, CITY ATTORNEY  
VASU BEHARA, CHIEF, LITIGATION

By /s/ Monte Barton, Jr.  
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City of Austin- Law Department  
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Austin, Texas 78767-1546  
Telephone: (512) 974-2409  
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

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**Western District of Texas**

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**Case Name:** Medel II v. Prado et al

**Case Number:** [1:24-cv-00990-RP](#)

**Filer:**

**Document Number:** [74](#)

**Docket Text:**

**Minute Entry for proceedings held before Judge Dustin M. Howell: Motion Hearing held on 11/7/2025 re [68] MOTION to Compel City of Austin's Responses to Agreed Discovery MOTION for Extension of Time to File Response/Reply as to [25] MOTION for Summary Judgment Pursuant to Rule 56(d) filed by Avelino Medel II (Minute entry documents are not available electronically) (Court Reporter FTR GOLD - ERO.)(cc3)**

**1:24-cv-00990-RP Notice has been electronically mailed to:**

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

David Anthony James david@edwards-law.com, greg@edwards-law.com, willy@edwards-law.com

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2c89808a77a11cb73c3074d71a2a873b0045ada3ed7d6d81b31b174b3115267]]

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

**AVELINO MEDEL II,**

*Plaintiff*

**v.**

**GABRIEL WALKER PRADO, IN**

**HIS INDIVIDUAL CAPACITY;**

**AND CITY OF AUSTIN,**

*Defendants*

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**No. 1:24-CV-00990-RP**

**ORDER**

Before the Court is Plaintiff Avelino Medell II's Motion to Compel Agreed Discovery and Rule 56(d) Extension of Time to Respond to the City of Austin's Motion for Summary Judgment, Dkt. 68. The District Judge referred the motion to the undersigned for disposition. The Court set the motion for hearing, Dkt. 71, and after considering the parties' filings, the record as a whole, the applicable law, and the arguments made at the hearing, the Court announced its ruling, and the reasons for that ruling, on the record. This written order memorializes that oral ruling.

For the reasons stated on the record, the Court **GRANTS** Plaintiff's motion, Dkt. 68. The Court **ORDERS** the City of Austin to produce to counsel for Plaintiff all nonprivileged documents in the City's possession, custody, or control which are responsive to the subpoena duces tecum attached to the notice of the City's deposition in this matter. *See* Dkt. 51-5, at 8. The City's production shall be completed within 30 days of the entry of this order. As appropriate, the City may designate any production as Confidential and/or Attorneys' Eyes Only pursuant to the parties' protective order

at Dkt. 21. The parties may extend this deadline by agreement without further intervention from the Court. If the parties cannot reach an agreement regarding the City's deadline, the dispute may be presented in the form of a motion or joint filing seeking a ruling from the Court.

The Court **FURTHER ORDERS** the City of Austin to present one or more representatives to testify by deposition pursuant to Fed. R. Civ. P. 30(b)(6) as to topics 1-2, 5-9, and 15-19 in the notice of the City's deposition in this matter. *See* Dkt. 51-5, at 5-7. The City's deposition or depositions will take place at a time or times which are mutually agreed between the parties. The City of Austin is responsible for proposing dates for its representative(s) to comply with this order.

Finally, the Court **ORDERS** that Plaintiff may file a response to Defendant City of Austin's Motion for Summary Judgment, Dkt. 25, on or before 30 days after the date the City completes its deposition testimony pursuant to this order.

SIGNED November 7, 2025.



---

DUSTIN M. HOWELL  
UNITED STATES MAGISTRATE JUDGE

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

**Western District of Texas**

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**Case Number:** [1:24-cv-00990-RP](#)

**Filer:**

**Document Number:** [76](#)

#### **Docket Text:**

**Transcript filed of Proceedings held on 11/7/2025, Proceedings Transcribed: Motion Hearing. Court Reporter/Transcriber: Dipti Patel, Telephone number: (847) 848-4907. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 12/16/2025, Redacted Transcript Deadline set for 12/26/2025, Release of Transcript Restriction set for 2/23/2026, (bc)**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

### *Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990

**JOINT MOTION TO ENTER AMENDED CONFIDENTIALITY AND PROTECTIVE ORDER**

Plaintiff Avelino Medel, II, Defendant City of Austin, and Defendant Gabriel Walker Prado respectfully move for entry of the enclosed amended protective order.

## I. PROCEDURAL HISTORY

This is a police shooting case brought pursuant to 42 U.S.C. § 1983.

On November 7, 2025, the Court compelled the City of Austin to produce additional documents by December 8, 2025. Doc. 75.

The City wishes to designate records “attorneys’ eyes only” in order to produce the records required by the Court’s November 7, 2025 order.

Although there is a protective order in this case, it does not permit designation of documents as “attorneys eyes only.” Doc. 21.

## II. ARGUMENT

The Court should enter the amended protective order which adds an “attorneys eyes only” classification based on the standard Western District Order.

All parties agree to the entry of this order.

### III. CONCLUSION

Accordingly, the parties respectfully request entry of the enclosed amended confidentiality and protective order.

Dated: December 23, 2025.

Respectfully submitted,

**EDWARDS LAW**

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sbarron@w-g.com

**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF SERVICE**

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with counsel for Defendants and they agree to the relief request in this motion.

/s/ David James  
David James

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**AMENDED CONFIDENTIALITY AND PROTECTIVE ORDER**

Before the court is the joint motion of the parties for the entry of an amended confidentiality and protective order (“Protective Order”). After careful consideration, it is hereby ORDERED as follows:

**1. Classified Information**

“Classified Information” means any information of any type, kind, or character that is designated as “Confidential”, “For Counsel Only”, or “Attorneys Eyes Only” by any of the supplying or receiving persons, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise.

**2. Qualified Persons**

“Qualified Persons” means:

- a. For Counsel or Attorneys Only information:
  - i. retained counsel for the parties in this litigation and their respective staff;
  - ii. actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, by their receipt of Classified Information are bound by the terms of this Protective Order;

- iii. this court and its staff and any other tribunal or dispute resolution officer duly appointed or assigned in connection with this litigation.
- b. For Confidential information:
  - i. the persons identified in subparagraph 2(a);
  - ii. the party, if a natural person;
  - iii. if the party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case who, by their receipt of Confidential information, are bound by the terms of this Protective Order;
  - iv. litigation vendors, court reporters, video camera operators, translators, and other litigation support personnel;
  - v. any person who was an author, addressee, or intended or authorized recipient of the Confidential information and who agrees to keep the information confidential, provided that such persons may see and use the Confidential information but not retain a copy.
- c. Such other person as this court may designate after notice and an opportunity to be heard.

### **3. Designation Criteria**

- a. *Nonclassified Information.* Classified Information shall not include information that either:
  - i. is in the public domain at the time of disclosure, as evidenced by a written document;
  - ii. becomes part of the public domain through no fault of the recipient, as evidenced by a written document;
  - iii. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or
  - iv. lawfully comes into the recipient's possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.
- b. *Classified Information.* A party shall designate as Classified Information only

such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Classified.

Information and documents that may be designated as Classified Information include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, and competitive analyses, personnel files, personal information that is protected by law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to third parties.

Correspondence and other communications between the parties or with nonparties may be designated as Classified Information if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public.

c. *For Counsel or Attorneys Only.* The designation “For Counsel Only” or “Attorneys Eyes Only” shall be reserved for information that is believed to be unknown to the opposing party or parties, or any of the employees of a corporate party. For purposes of this order, so-designated information includes, but is not limited to, product formula information, design information, non-public financial information, pricing information, customer identification data, and certain study methodologies.

d. *Ultrasensitive Information.* At this point, the parties do not anticipate the need for higher levels of confidentiality as to ultrasensitive documents or information. However, in the event that a court orders that ultrasensitive documents or information be produced, the parties will negotiate and ask the court to enter an ultrasensitive information protocol in advance of production to further protect such information.

#### **4. Use of Classified Information**

All Classified Information provided by any party or nonparty in the course of this litigation



shall be used solely for the purpose of preparation, trial, and appeal of this litigation and for no other purpose, and shall not be disclosed except in accordance with the terms hereof.

#### **5. Marking of Documents**

Documents provided in this litigation may be designated by the producing person or by any party as Classified Information by marking each page of the documents so designated with a stamp indicating that the information is “Confidential”, “For Counsel Only”, or “Attorneys Eyes Only”. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. Originals shall be preserved for inspection.

#### **6. Disclosure at Depositions**

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty may be designated by any party as Classified Information by indicating on the record at the deposition that the testimony is “Confidential” or “For Counsel Only” and is subject to the provisions of this Order.

Any party also may designate information disclosed at a deposition as Classified Information by notifying all parties in writing not later than 30 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Classified Information thereafter. Each party shall attach a copy of each such written notice to the face of the transcript and each copy thereof in that party’s possession, custody, or control. All deposition transcripts shall be treated as For Counsel Only for a period of 30 days after initial receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as Classified Information with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing Classified Information shall have page numbers that correspond to the blank pages in the main transcript.

Counsel for a party or a nonparty witness shall have the right to exclude from depositions

any person who is not authorized to receive Classified Information pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Classified Information is being used or discussed.

**7. Disclosure to Qualified Persons**

a. *To Whom.* Classified Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction; ***provided, however,*** that in the event of a disclosure compelled by law or court order, the receiving party will so notify the producing party as promptly as practicable (if at all possible, prior to making such disclosure) and shall seek a protective order or confidential treatment of such information. Information designated as For Counsel Only shall be restricted in circulation to Qualified Persons described in subparagraph 2(a).

b. *Retention of Copies During this Litigation.* Copies of For Counsel Only information shall be maintained only in the offices of outside counsel for the receiving party and, to the extent supplied to experts described in subparagraph 2(a)(ii), in the offices of those experts. Any documents produced in this litigation, regardless of classification, that are provided to Qualified Persons shall be maintained only at the office of such Qualified Person and only necessary working copies of any such documents shall be made. Copies of documents and exhibits containing Classified Information may be prepared by independent copy services, printers, or illustrators for the purpose of this litigation.

c. Each party's outside counsel shall maintain a log of all copies of For Counsel Only documents that are delivered to Qualified Persons.

**8. Unintentional Disclosures**

Documents unintentionally produced without designation as Classified Information later may be designated and shall be treated as Classified Information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential information or For Counsel Only information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

**9. Documents Produced for Inspection Prior to Designation**

In the event documents are produced for inspection prior to designation, the documents shall be treated as For Counsel Only during inspection. At the time of copying for the receiving parties, Classified Information shall be marked prominently “Confidential”, “For Counsel Only”, or “Attorneys Eyes Only” by the producing party.

**10. Consent to Disclosure and Use in Examination**

Nothing in this order shall prevent disclosure beyond the terms of this order if each party designating the information as Classified Information consents to such disclosure or if the court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this order prevent any counsel of record from utilizing Classified Information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Classified Information, irrespective of which party produced such information.

**11. Challenging the Designation**

a. *Classified Information.* A party shall not be obligated to challenge the propriety of a designation of Classified Information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Classified Information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who designated the document or information as Classified Information. The designating party shall then have 14 days to move the court for an order preserving the designated status of the disputed information. The

disputed information shall remain Classified Information unless and until the court orders otherwise. Failure to move for an order shall constitute a termination of the status of such item as Classified Information.

**1. *Qualified Persons. In Challenging Release of Confidential Information to Qualified Persons***

In the event that any party in good faith believes that a particular Qualified Person or the disclosure of particular Classified information to such person should be precluded, the objecting party shall give written notice to the opposing party and the parties shall first try to resolve the dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party shall have 21 days from the date of the written notice to move the court for an order denying the disputed person (a) status as a Qualified Person, or (b) access to particular Classified information. The objecting party shall demonstrate that disclosure to the disputed person would expose the objecting party to a substantial risk of harm. Upon the timely filing of such a motion, no disclosure of Confidential information shall be made to the disputed person unless the court enters an order preserving the designation.

**12. Manner of Use in Proceedings**

In the event a party wishes to use any Classified Information in affidavits, declarations, briefs, memoranda of law, or other papers filed in this litigation, the party shall do one of the following: (1) with the consent of the producing party, file only a redacted copy of the information; (2) where appropriate (e.g., in connection with discovery and evidentiary motions) provide the information solely for *in camera* review; or (3) file such information under seal with the court consistent with the sealing requirements of the court.

**13. Filing Under Seal**

The clerk of this court is directed to maintain under seal all documents, transcripts of deposition testimony, answers to interrogatories, admissions, and other papers filed under seal in

this litigation that have been designated, in whole or in part, as Classified Information by any party to this litigation consistent with the sealing requirements of the court.

#### **14. Return of Documents**

Not later than 120 days after conclusion of this litigation and any appeal related to it, any Classified Information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any of the persons specified in paragraph 2 (except subparagraph 2(a)(iii)) shall be returned to the producing party or destroyed, except as this court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including document indices, so long as that work product does not duplicate verbatim substantial portions of the text of any Classified Information.

#### **15. Ongoing Obligations**

Insofar as the provisions of this Protective Order, or any other protective orders entered in this litigation, restrict the communication and use of the information protected by it, such provisions shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used as exhibits in open court unless such exhibits were filed under seal, and (b) a party may seek the written permission of the producing party or order of the court with respect to dissolution or modification of this, or any other, protective order.

#### **16. Advice to Clients**

This order shall not bar any attorney in the course of rendering advice to such attorney's client with respect to this litigation from conveying to any party client the attorney's evaluation in a general way of Classified Information produced or exchanged under the terms of this order; provided, however, that in rendering such advice and otherwise communicating with the client, the attorney shall not disclose the specific contents of any Classified Information produced by

another party if such disclosure would be contrary to the terms of this Protective Order.

**17. Duty to Ensure Compliance**

Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order.

**18. Waiver**

Pursuant to Federal Rule of Evidence 502, neither the attorney-client privilege nor work product protection is waived by disclosure connected with this litigation.

**19. Modification and Exceptions**

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this court modifying this Protective Order.

It is SO ORDERED this 5th day of January, 2026.



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UNITED STATES DISTRICT JUDGE

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

**AVELINO MEDEL II,**  
*Plaintiff*

**v.**

**GABRIEL WALKER PRADO, IN  
HIS INDIVIDUAL CAPACITY;  
AND CITY OF AUSTIN,**  
*Defendants*

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**No. 1:24-CV-00990-RP**

**REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

Before the Court are Defendant City of Austin's motion for summary judgment, Dkt. 25, Gabriel Walker Prado's first amended motion for summary judgment, Dkt. 34, Plaintiff Avelino Medel II's motion to strike, Dkt. 38, and all related briefing. After reviewing the filings and the relevant law, the undersigned recommends that the District Judge grant the motions for summary judgment and deny the motion to strike as moot.

**I. BACKGROUND**

Walker Prado responded to a disturbance at Medel's home in the early morning hours of April 6, 2024, after Medel's neighbor called police to report a possible physical disturbance. Dkts. 34-2, at 4; 34-5, at 99. Walker Prado positioned himself outside a sliding-glass door, out of sight of the occupants. Dkts. 34-2, at 5; 34-2, at 1 (2:07:54). Two other officers, Arlene Lozano and Ryan Daniel, arrived at Medel's

home and walked by the sliding-glass door. Dkt. 34-2, at 1 (2:07:55). Lozano testified that she did not see any physical violence, crime, or gun as she passed. Dkt. 42-2, at 14-15. Daniel testified that, upon glancing in “for maybe a second or two,” he saw two men “standing close together” in “active argument.” Dkt. 42-6, at 10.

From his vantage point outside the glass door, Walker Prado observed a younger man, Medel, “repeatedly yell and scream” at an older man, who was later identified as Medel’s father, Avelino Medel, Sr. *Id.* Consistent with Lozano and Daniel’s earlier impressions, Walker Prado told the other officers that the men were “just yelling.” Dkt. 34-2, at 1 (2:08:12). A fourth officer, Adam Reinhart, arrived shortly afterward, but did not see inside the apartment. Dkts. 42-10, at 11-12; 34-2, at 1 (2:08:29); 34-2, at 2 (2:08:27). Officers Lozano, Daniel, and Reinhart positioned themselves outside and to the side of Medel’s front door. Dkts. 34-2, at 1 (2:08:40); 34-2, at 2 (2:08:38); 42-2, at 16; 42-6, at 10.

Medel attests that while police were stationed outside his home, he was talking to his father about Medel’s belief that his father’s friends owed Medel, Sr. money. Dkt. 42-7, at 2. Medel admits that the conversation was loud but insists that he never threatened his father during their conversation. *Id.*; *see also* Dkt. 42-8, at 2. Based on his observations, Walker Prado believed that Medel was about to attack Medel, Sr., and that the officers needed to engage Medel in order to prevent him from doing so. Dkt. 34-2, at 5-6.

Reinhart positioned himself on the left side of Medel’s front door and Lozano and Daniel positioned themselves on the right. Dkts. 34-2, at 1 (2:08:59); 34-2, at 2



(2:08:54). Walker Prado remained outside the sliding-glass door. Dkt. 34-2, at 1 (2:08:59). From there, Reinhart used his baton to knock loudly on Medel's door. *Id.* at 2:09:00. After he knocked, Reinhart called out, "Austin Police Department. Open the door." *Id.* at 2:09:02.

Medel stated that after hearing the knocking, he was "surprised and scared." Dkt. 42-7, at 3. According to Medel, he "did not hear anyone outside say anything after the banging" on his door. *Id.* Concerned that someone dangerous could be outside his door, Medel picked up his pistol. *Id.* at 4.<sup>1</sup> This was the first time Walker Prado saw the gun. Dkt. 34-2, at 6. Medel contends that he walked at a "normal" pace to his pistol, picked it up, and resumed walking at a normal pace to the door to look through the peephole. Dkt. 42-7, at 4. Medel states that as he walked, he "kept the pistol pointed up." *Id.*; see Dkt. 34-2, at 1 (2:09:04). In contrast, Walker Prado contends in his declaration that Medel grabbed the gun, loaded a magazine, chambered a round, and "aggressively" walked toward the door. Dkt. 34-2, at 6. He adds that Medel "muzzle swept" the door before pointing the gun up. *Id.* In his deposition, Walker Prado testified that after loading the gun, Medel held it in a "low, ready position" as he moved toward the door. Dkt. 42-1, at 10.

Next, Walker Prado yelled to the other officers, "He's got a gun! Gun, gun, gun, gun, gun!" Dkt. 34-2, at 1 (2:09:04); 34-2, at 7. At that time, he states he had "just seen" Officers Lozano, Daniel, and Reinhart standing behind the front door. Dkt. 34-

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<sup>1</sup> The footage from Walker Prado's body-worn camera does not show Medel picking up the gun. Walker Prado explains that because he "positioned his body to try and stay out of sight of the subjects," his "line of sight was different from what was captured by the body worn camera positioned on [his] chest." Dkt. 34-2, at 5.

2, at 6; *see* Dkt. 34-2, at 2 (2:08:59). Before Medel reached the front door, he heard Walker Prado yelling from outside the sliding-glass door but could not make out what had been yelled. Dkt. 42-7, at 4.<sup>2</sup> He looked toward the sliding-glass door and saw his own reflection. *Id.* Medel attested that he did not point his gun toward either the sliding-glass door or the front door. Dkt. 42-7, at 4.

As he alerted the other officers that Medel had a gun, Walker Prado aimed at Medel. Dkts. 34-2, at 7; 34-2, at 1 (2:09:04). Medel asserts that at the time Walker Prado stepped out to aim, Medel's gun was pointing up in a "high ready" position. Dkts. 42, at 6-7; 34-2, at 1 (2:09:04). Medel then moved the gun to his chin but did not fully extend his arms; he also looked toward the sound of yelling outside his sliding-glass door. Dkt. 34-2, at 1 (2:09:05). Walker Prado did not verbally warn Medel before he started shooting. Dkts. 34-2, at 7; 42-1, at 15-16; 34-2, at 1 (2:09:04). Walker Prado fired three rounds. Dkt. 34-2, at 1 (2:09:05-06). Medel then dropped behind the couch, and according to Walker Prado, Medel still had his gun in his hand as he did so. Dkt. 34-2, at 7; 34-2, at 1 (2:09:05-06). While Walker Prado was not able to see Medel after he fell behind the couch, Medel does not dispute that he had the gun in his hand while laying behind the couch. Dkts. 34-2, at 7; 42-7, at 4; *see* Dkt. 42, at 11 (stating only that Medel did not *reach* with a gun in his hand). Walker Prado realigned his sights to aim at where he believed Medel would have landed and fired a fourth shot. Dkts. 34-2, at 7; 34-2, at 1 (2:09:08).

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<sup>2</sup> While it is unclear from Medel's declaration whether the "window" he refers to is the sliding-glass door that Walker Prado was positioned behind, body-worn camera footage depicts Medel looking out of the sliding-glass door in Walker Prado's direction. *See* Dkt. 34-2, at 1 (2:09:04).

Based on these facts, Medel sued Walker Prado for excessive force in violation of the Fourth Amendment. Dkt. 1, at 24-25. Walker Prado now moves for summary judgment on qualified-immunity grounds. *See* Dkt. 34. Medel also moves to strike certain exhibits to Walker Prado’s motion for summary judgment. Dkt. 38.

## II. LEGAL STANDARD

Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986); *Washburn v. Harvey*, 504 F.3d 505, 508 (5th Cir. 2007). A dispute regarding a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When ruling on a motion for summary judgment, the court is required to view all inferences drawn from the factual record in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986); *Washburn*, 504 F.3d at 508. Further, a court “may not make credibility determinations or weigh the evidence” in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *Anderson*, 477 U.S. at 254-55.

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party’s case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine

fact issue. *Matsushita*, 475 U.S. at 586. Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence. *Id.* The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to its case and on which it will bear the burden of proof at trial, summary judgment must be granted. *Celotex*, 477 U.S. at 322-23.

### III. WALKER PRADO'S MOTION FOR SUMMARY JUDGMENT

Medel brought an excessive-force claim against Walker Prado, alleging that Walker Prado shot Medel four times despite Medel's having "not done anything justifying" such a use of force. Dkt. 1, at 24-25. Walker Prado moves for summary judgment on Medel's excessive-force claim, arguing that Medel cannot overcome his assertion of qualified immunity. *See* Dkt. 34.

Qualified immunity shields a public official "from suit when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted." *Taylor v. Riojas*, 592 U.S. 7, 8 (2020). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Roque v. Harvel*, 993 F.3d 325, 335 (5th Cir. 2021) (quoting *White v.*

*Pauly*, 580 U.S. 73, 79 (2017)). “When a defendant invokes qualified immunity, the burden shifts to the plaintiff to demonstrate the inapplicability of the defense.” *Club Retro LLC v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009). To meet this burden, a plaintiff must plead specific allegations demonstrating: “(1) the violation of a constitutional right that (2) was clearly established at the time of the alleged misconduct.” *Linicomn v. Hill*, 902 F.3d 529, 533 (5th Cir. 2018).<sup>3</sup> “A clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Mullenix v. Luna*, 577 U.S. 7, 11 (2015). The law is clearly established if there is factually similar, controlling case law. *Mason v. Lafayette City-Parish Consol. Gov’t*, 806 F.3d 268, 277 (5th Cir. 2015). Because Walker Prado asserts a qualified-immunity defense, Medel “must rebut the defense by establishing a genuine fact issue as to whether the [officers’] allegedly wrongful conduct violated clearly established law.” *Darden v. City of Fort Worth*, 880 F.3d 722, 727 (5th Cir. 2018) (quoting *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010)); *Bazan ex rel. Bazan v. Hidalgo Cnty.*, 246 F.3d 481, 489 (5th Cir. 2001). When video evidence is available, the court should consider “the facts in the light depicted by the videotape.” *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011) (quotation omitted).

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<sup>3</sup> The Fifth Circuit has at times described the second prong as an inquiry into whether an official’s “actions were objectively unreasonable in light of clearly established law.” *See, e.g., Roque*, 993 F.3d at 334. As it has clarified though, “there is no standalone ‘objective unreasonableness’ element to the Supreme Court’s two-pronged test for qualified immunity” as “[t]hat language is a vestige of older case law that predates the Supreme Court’s current test.” *Hicks v. LeBlanc*, 81 F.4th 497, 503 n.14 (5th Cir. 2023) (internal citations removed).

Clearly established law must be particularized to the facts of the case and should not be defined at a high level of generality. *White*, 580 U.S. at 79; *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021) (instructing appellate courts “not to define clearly established law at too high a level of generality”). Though a plaintiff need not identify “a case directly on point,” he must nevertheless demonstrate that “existing precedent” has “placed the statutory or constitutional question beyond debate.” *Mullenix*, 577 U.S. at 12 (internal citation removed). Ultimately, “[t]he *sine qua non* of the clearly-established inquiry is ‘fair warning.’” *Morgan v. Swanson*, 659 F.3d 359, 372 (5th Cir. 2011) (en banc); *Newman*, 703 F.3d at 763 (“[t]he central concept is that of ‘fair warning’”). In “an obvious case,” the *Graham* excessive-force factors themselves, laid out below, can clearly establish the right at issue without a body of relevant case law. *Cooper v. Brown*, 844 F.3d 517, 524 (5th Cir. 2016); *see also White*, 580 U.S. at 79 (“Of course, general statements of the law are not inherently incapable of giving fair and clear warning to officers, but in the light of pre-existing law the unlawfulness must be apparent.” (internal citation removed)).

To succeed on his excessive-force claim, Medel must establish “(1) an injury (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.” *Craig v. Martin*, 49 F.4th 404, 409 (5th Cir. 2022) (quoting *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir. 2009)). In this case, there is no dispute that Medel was injured by Walker Prado’s use of force, so the only remaining question is whether the degree of force was unreasonable. *See* Dkt. 34, at 14 (arguing only that Walker Prado’s use of force did

not violate the Constitution or clearly established law); *Lozano v. City of Austin*, No. A-09-CA-200-SS, 2010 WL 3069811, at \*5 (W.D. Tex. Aug. 4, 2010). “Excessive force claims are necessarily fact intensive; whether the force used is ‘excessive’ or ‘unreasonable’ depends on ‘the facts and circumstances of each particular case.’” *Id.* (quoting *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (per curiam)). When deciding whether to use force, officers must determine “not only the need for force, but also ‘the relationship between the need and the amount of force used.’” *Deville*, 567 F.3d at 167 (quoting *Gomez v. Chandler*, 163 F.3d 921, 923 (5th Cir. 1999)). The reasonableness of the officer’s conduct cannot be judged with the benefit of 20/20 hindsight but rather must be assessed from the viewpoint of a reasonable officer on the scene at that very moment. *See Graham v. Connor*, 490 U.S. 386, 396 (1989).

Courts evaluate excessive-force claims under the Fourth Amendment’s “reasonableness” standard. *Graham*, 490 U.S. at 396. In *Graham*, the Supreme Court instructed courts to use the following factors to determine whether an officer used unreasonable force: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight. 490 U.S. at 389; *see also Amador v. Vasquez*, 961 F.3d 721, 727-28 (5th Cir. 2020).

Because the second *Graham* factor “typically predominates the analysis when deadly force has been deployed,” the undersigned begins there. *See Crane v. City of Arlington*, 50 F.4th 453, 463 (5th Cir. 2022) (internal quotation marks omitted). Walker Prado asserts that the threat-of-harm factor weighs in his favor in part

because Medel engaged in threatening acts making it reasonable for Walker Prado to believe he posed an immediate threat. *Id.* at 14-24. Medel counters that Walker Prado's use of force was unconstitutionally excessive in part because Medel did not engage in a threatening act sufficient to warrant the use of deadly force and because Walker Prado did not warn Medel to put down his gun before shooting him, despite having time to do so. Dkt. 42, at 26-27.

There are a number of disputed facts in this case. In particular, the parties disagree regarding whether Medel heard the police announce themselves. *See* Dkts. 34-2, at 1 (2:09:02); 34, at 19; 42-7, at 4. They also disagree about the pace at which Medel approached the front door, where the officers had knocked. *See* Dkts. 34-2, at 1 (2:09:04-05); 34-2, at 6 (stating that Medel walked "aggressively" toward the door); 42-7, at 4 (asserting that Medel walked at a "normal" pace toward the door). And the parties dispute the position in which Medel held his gun, and whether he "muzzle-swept" or lowered the gun toward the door. Dkts. 34-2, at 1 (2:09:05); 34-2, at 6; 34-3, at 7; 42-7, at 3-4; 42-12.<sup>4</sup> Essentially, the parties disagree regarding whether Medel posed a risk of immediate harm that would justify Walker Prado's use of deadly force. *See Reyes v. Bridgwater*, 362 F. App'x 403, 408 (5th Cir. 2010) (citing *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009)) (stating that the summary judgment standard requires the court to conclude that there was no threatening act leading the officer to discharge the weapon).

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<sup>4</sup> As discussed in more detail below, the video evidence shows that Medel lowered his gun to his chin as he looked toward the sliding-glass door. Dkt. 34-2, at 1 (2:09:05).



Further, the parties agree, and the footage confirms, that upon seeing Medel with a gun in his hand, Walker Prado yelled, “He’s got a gun! Gun, gun, gun, gun, gun!” Dkt. 34-2, at 1 (2:09:04); 34-2, at 7. Despite this, Walker Prado contends that he “did not believe it was feasible to negotiate with [Medel] or warn him [Walker Prado] was going to use deadly force, because those options would not definitely stop the attack [he] believed was actively about to happen.” Dkt. 34-2, at 6-7. Finally, the parties disagree regarding whether Medel, once he fell behind the couch, extended his arm toward the front door. Dkts. 34-2, at 7; 42-7, at 4. As explained below, none of these disputed facts is material to whether Walker Prado violated Medel’s constitutional rights.<sup>5</sup>

**A. Walker Prado did not violate Medel’s clearly established rights with respect to the first three shots.**

1. Walker Prado did not violate Medel’s constitutional rights when he fired the first three shots.

Even viewing the evidence in the light most favorable to Medel, Walker Prado did not violate the Fourth Amendment by firing the first three shots. An “officer’s use of deadly force is not unreasonable when the officer has reason to believe that the suspect poses a threat of serious harm to the officer or to others.” *Argueta*, 86 F.4th at 1089. Walker Prado had reason to believe Medel posed a serious threat here. Notwithstanding the parties’ disputes regarding whether Medel pointed his gun at the officers at any time, Medel committed a requisite threatening act when he

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<sup>5</sup> “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Crane*, 50 F.4th at 461 (internal quotation marks omitted).

lowered the gun to his chin, as the video evidence shows. *See* Dkt. 34-2, at 1 (2:09:05).<sup>6</sup> Under *Manis*, to deny summary judgment, the court is required to conclude that there was no threatening act that posed a risk of serious harm leading the officer to discharge the weapon. *See Reyes v. Bridgwater*, 362 F. App'x 403, 408 (5th Cir. 2010) (citing *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009)). The undersigned cannot do so in this case.

The Fifth Circuit's opinion in *Ramirez v. Knoulton* is instructive on the kind of threatening act that *Manis* requires. *Ramirez v. Knoulton*, 542 F.3d 124, 128 (5th Cir. 2008). In that case, officers responded to a call reporting that the suspect was suicidal and armed, and arrived to find him walking from his home to his car. *Id.* at 127. Police followed the suspect's vehicle as the suspect drove below the speed limit, activating their overhead lights. *Id.* After pausing at two stop signs and making two turns, the suspect stopped his car on the side of a road. *Id.* The officers crouched behind their cars with their weapons drawn. *Id.* After initially refusing to comply with the officers' instructions to keep his hands visible and open the car from the outside, the suspect opened the car from the inside and set his feet on the ground. *Id.* The officers saw that the suspect held something in his right hand, yelled at him to show his hands, and asked what was in his hand. *Id.* Continuing to ignore police orders, the suspect

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<sup>6</sup> Contrary to Medel's assertion that Walker Prado fired before Medel brought the gun to his chin, *see* Dkt. 42, at 32, the video shows Medel lower the gun to his chin before Walker Prado fired the gun. Dkt. 34-2, at 1 (2:09:04-05); *see also* Dkt. 42-13 (showing the "[l]ast frame of Walker Prado's body-worn camera before his bullet shattered the glass of Medel's sliding door"). Nor does Walker Prado's declaration admitting he "decided to fire" before Medel moved the gun to his chin show that Walker Prado fired before Medel lowered the gun: Walker Prado states that he aimed at Medel and began firing but does not describe the position of Medel's gun at the time he decided to fire. *See* Dkt. 34-2, at 6.

stood up and closed the car door with his right hand, in which he held a gun. *Id.* The suspect then stood in profile to the officers, with his arms at his sides and his gun in his right hand opposite the officers. *Id.* The suspect put his hands on his hips, then brought them together in front of his waist. *Id.* As his hands came together, the defendant officer shot him. *Id.* The Fifth Circuit reversed the district court's denial of qualified immunity, noting that the magistrate judge improperly evaluated the officer's actions with the benefit of hindsight and concluding that the officer had probable cause to believe that the suspect posed a threat of serious physical harm. *Id.* at 129-30. Of note, the Fifth Circuit found that the officer was entitled to qualified immunity even though the suspect stood in one place and kept his gun pointed away from the officers. *See id.* And the court noted that the suspect's gesture of bringing his hands together could reasonably be interpreted as a threatening gesture. *Id.* at 131.

If there was no constitutional violation in *Ramirez*, there is no constitutional violation in this case. Medel insists that he approached his front door at a normal pace and kept his gun pointing away from the officers at all times. Yet, in *Ramirez*, the Fifth Circuit found that the officer was entitled to qualified immunity even though the suspect stood in one place and kept his gun pointed away from the officers. 542 F.3d at 129-130. Even considered in the light most favorable to Medel, Medel's pace and the angle of his gun do not establish that Walker Prado's use of force was unreasonable. Further, though *Ramirez* involved a low-speed car chase where the suspect refused to comply with certain police commands, the undersigned finds that

Walker Prado's belief that Medel posed a serious threat of harm to the officers is no less reasonable, given that police announced themselves and certain undisputed facts—including that Medel walked toward the front door with a gun in his hand—could suggest an even more imminent risk of harm. Put another way, even if Medel is correct that he did not walk aggressively toward the door, muzzle-sweep the door, or otherwise lower or point his gun toward the officers, *Ramirez* suggests that Medel engaged in a *Manis* act justifying the use of deadly force.<sup>7</sup>

Medel contends that the act of lowering the gun to his chin, with locked elbows, cannot constitute a *Manis* act because Medel “never lowered it to aim it.” Dkt. 42, at 32. Yet the law does not require Medel to completely lower and aim his gun before Walker Prado may act to defend himself or other officers. *See Manis*, 585 F.3d at 844-45; *Argueta*, 86 F.4th at 1087, 1092; *Rice v. ReliaStar Life Ins. Co.*, 770 F.3d 1122, 1127, 1135 (5th Cir. 2014); *Ontiveros*, 564 F.3d at 385; *Ramirez*, 542 F.3d at 127, 131. Again, the undersigned is mindful that the reasonableness of Walker Prado's conduct cannot be judged with the benefit of 20/20 hindsight. *Graham*, 490 U.S. at 396. It is enough that Medel shifted the gun to his chin for Walker Prado to have reasonably believed Medel posed an immediate threat.

Medel argues that Walker Prado's cases, including *Ramirez*, are distinguishable because in many of those cases, the suspect knew that he was

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<sup>7</sup> In *Reyes*, an unpublished Fifth Circuit opinion, the court distinguished the facts before it from *Ramirez* on the grounds that under the nonmovant's facts, the decedent did not make a “threatening gesture.” 362 F. App'x at 407. The court also noted that in its case, the decedent was armed with a knife, not a gun. *Id.* As explained, the undersigned finds that Medel made a threatening gesture in this case when he lowered the gun to his chin.

interacting with police. For example, in *Manis*, the Fifth Circuit found no constitutional violation when the plaintiff reached under the seat of his vehicle and appeared to retrieve a gun while ignoring five commands from officers to show his hands. 585 F.3d at 844-45. In *Argueta*, the plaintiff ran from officers, concealing his right hand from view in a manner that looked like he was carrying a gun, after officers had followed his car, with emergency lights on, for two blocks. *Argueta*, 86 F.4th at 1087, 1092. In *Rice*, the decedent walked toward the officers with a gun, stating that he wanted to commit suicide. 770 F.3d at 1127, 1135. In *Ontiveros*, police announced themselves upon entering and then yelled, “let me see your hands” several times before the plaintiff, while hiding behind a door, reached into a boot he was holding to his chest for what could have been a gun. 564 F.3d at 385. And finally, in *Ramirez*, the decedent held a gun in his right hand, ignored officer commands to raise his hands, and brought his hands together in front of his waist while facing away from the officers. 542 F.3d at 127, 131.

This argument is unavailing. Even accepting Medel’s testimony that he did not know police were at his door as true, the Fifth Circuit has stated that an “officer’s use of deadly force is not unreasonable when the officer has reason to believe that the suspect poses a threat of serious harm to the officer or to others.” *Argueta*, 86 F.4th at 1089 (emphasis added). Whether or not Medel heard Reinhart announce police presence, the footage shows that they did announce themselves, and that Walker Prado reasonably believed that Medel heard the warning. Dkt. 34-2, at 1 (2:09:02). The undersigned cannot conclude that Walker Prado’s belief that Medel posed a

threat of serious harm was unreasonable based on the fact that Medel did not know police were at his door. *See Ramirez*, 542 F.3d at 131 n.5 (stating that the suspect’s “subjective intent is irrelevant where the only issue is what a reasonable officer would have believed under the circumstances”). Further, the Fifth Circuit has found no constitutional violation in at least one case in which the plaintiff did not know he was interacting with police at the time he engaged in a threatening act. In *Cass v. City of Abilene*, the plaintiff saw only the officer’s gun coming through a doorway and began to raise his own gun in response. 814 F.3d 721, 726, 731-32 (5th Cir. 2016). Nothing the plaintiff could see indicated that the officer was police, as he was not wearing a police vest and his badge was opposite the plaintiff. *Id.* at 726. As the officer stepped further into the doorway, he saw that the plaintiff was raising his gun and shot him. *Id.*

Application of the remaining *Graham* factors does not counsel in favor of a different result. Even accepting Medel’s argument that the officers responded to a report of a misdemeanor offense and that Medel was not attempting to resist or flee, *see* Dkt. 42, at 33-35, it remains that Walker Prado was reasonable in believing that Medel posed an immediate threat to the other officers’ safety. *See Graham*, 490 U.S. at 389 (setting out the factors). Once again, the Fifth Circuit has made clear that an officer’s use of deadly force is not unreasonable when that officer has reason to believe that the suspect poses a threat of serious harm to the officer or to others. *Argueta*, 86 F.4th at 1089. Walker Prado’s belief was reasonable here.

Because Medel engaged in a threatening gesture that reasonably showed he posed an immediate threat to the safety of the officers, Walker Prado did not violate the Constitution when he fired the first three shots.

2. Medel cannot show clearly established law barred Walker Prado's first three shots.

At the very least, there is no “body of relevant case law” in which an officer acting under similar circumstances as Walker Prado was held to have violated the Constitution. *Joseph v. Bartlett*, 981 F.3d 319, 330 (5th Cir. 2020). Notably, save one case distinguished below,<sup>8</sup> the parties cite no case denying qualified immunity where it is undisputed that the suspect was walking toward officers with a loaded gun in his hands. *But see Graves v. Zachary*, 277 F. App'x 344, 348 (5th Cir. 2008) (“Merely having a gun in one’s hand does not mean *per se* that one is dangerous.”).<sup>9</sup> None of the aforementioned cases clearly establishes that it is constitutionally impermissible for an officer to use deadly force against a suspect who lowered a loaded gun to his chin after walking toward a door where police officers had knocked. Indeed, many of the cases in which the Fifth Circuit has found in favor of the officer involve scenarios in which it was unclear whether the suspect had a gun in his hand at all. *See Manis*, 585 F.3d at 844-45 (suspect reached under the seat of his vehicle and appeared to retrieve a gun); *Argueta*, 86 F.4th at 1087, 1092 (suspect concealed his right hand from view in a manner that looked like he was carrying a gun); *Ontiveros*, 564 F.3d

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<sup>8</sup> *Cole v. Carson*, 935 F.3d 444 (5th Cir. 2019).

<sup>9</sup> In *Graves*, which is an unpublished opinion, officers first shot the suspect when he was “sitting still with his eyes closed, his hands up, and the gun to his [own] head.” 277 F. App'x at 346.

at 385 (suspect reached into a boot he was holding to his chest for what could have been a gun). Further, *Poole v. City of Shreveport* is distinguishable because video evidence showed that the plaintiff's hands were visible and empty before he was shot. 13 F.4th 420, 422, 425-26 (5th Cir. 2021).

Neither do Medel's other cases clearly establish that Walker Prado violated the Constitution. Medel asserts that five binding Fifth Circuit cases "gave Walker Prado fair notice that his use of deadly force on someone who was not an imminent threat of serious bodily injury violated clearly established law, even if the person was holding a gun." Dkt. 42, at 35. Medel frames the question at too high a level of generality. *See White*, 580 U.S. at 79. To deny Walker Prado's qualified-immunity defense, the Court must find that it is "beyond debate" that deadly force may not be used against an individual who, in response to knocking on his door, picks up his gun, loads it, walks at a normal pace toward the door with his gun in "high-ready" position, and ultimately lowers the gun to his chin.

In support of his assertion that Walker Prado violated his clearly established rights, Medel cites *Griffin v. Newell*, where the plaintiff alleged that he fired two shots into the air next to a creek nearby his home—ostensibly to warn off a group of men who were chasing him—then walked home. 981 F.2d 1256, 1992 WL 386807, at \*2 (5th Cir. 1992).<sup>10</sup> The defendant police officers confronted plaintiff in his front yard. *Id.* The officers shouted, "Stop, hands up and drop the bag." *Id.* When Griffin bent down to place the holster he was carrying on the ground, one officer shot him in the

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<sup>10</sup> Under Fifth Circuit Rule 47.5.3, unpublished opinions issued before January 1, 1996, are precedent.



chest. *Id.* When Griffin asked what he had done wrong, the officer fired a second shot into Griffin's chest. *Id.* The police officers told a different version of the story: that they responded to a call about an individual who was firing a weapon, Griffin was carrying a gun as he approached his home, the officers stopped the car and informed Griffin they were police, Griffin pointed the gun in the officers' direction, one officer gave Griffin four warnings, and when Griffin did not drop the gun, the officer shot him in the chest. *Id.* The officer shot Griffin a second time when he continued to point the gun in the officers' direction. *Id.* The district court denied summary judgment based on qualified immunity, and defendants appealed, arguing that Griffin's allegations were not true. *Id.* at \*3. The Fifth Circuit dismissed the appeal, explaining that the case turned on a factual dispute. *Id.*

Medel argues that his case is like *Griffin* in that he was in his own home, holding a gun, and "moving in a manner that a reasonable officer would not consider immediately threatening." Dkt. 42, at 36. Walker Prado responds that this case is different from *Griffin* because the plaintiff in that case had placed his gun back in its holster before he was shot and was shot as he bent down to place the holster on the ground. Dkt. 55, at 6. In contrast, Walker Prado argues, Medel loaded the gun and chambered a round, walked toward police with the gun, and appeared to lower the gun. *Id.* The undersigned agrees with Walker Prado that *Griffin* is distinguishable. Unlike in *Griffin*, there is no dispute that Medel's gun was unholstered and loaded with a just-chambered round at the time he was shot. Nor is there any dispute, in light of the video evidence, that Medel lowered his gun to his chin in a manner that

could be considered to pose a threat of immediate physical harm. *See* Dkt. 34-2, at 1 (2:09:05). *Griffin* does not place the constitutional question in this case beyond debate. *See Argueta*, 86 F.4th at 1092.

Medel also argues that *Baker v. Putnal* put Walker Prado on notice that his conduct was unconstitutional. 75 F.3d 190 (5th Cir. 1996). In that case, an officer responding to gunfire on a crowded beach found a suspect sitting inside a truck. *Id.* at 193. As the officer approached the truck, one suspect, Baker, turned in the officer's direction. *Id.* The officer shot and killed Baker. *Id.* Afterward, police recovered a pistol from under the passenger seat. *Id.* The parties disputed whether the officer had warned Baker and whether Baker was holding the pistol or pointing it at the officer. *Id.* at 198. The Fifth Circuit reversed the district court's order, finding that fact issues precluded summary judgment. *Id.*

Medel argues that this case is similar to *Baker* in that Walker Prado had the opportunity to warn Medel yet shot him without warning, notwithstanding the fact that Medel's gun was not pointed at any officer. Dkt. 42, at 39. Walker Prado asserts that *Baker* does not foreclose qualified immunity because it predated *Scott* and because Medel admitted to numerous threatening *Manis* acts that were absent in *Baker*. Dkt. 55, at 8. As with *Griffin*, the undersigned finds that *Baker* is distinguishable because uncontroverted video evidence shows that Medel engaged in a *Manis* act by lowering his gun to his chin.

Medel also argues that Walker Prado violated his rights by shooting him without warning. True, the Fifth Circuit has noted that the use of deadly force is

prohibited without a warning when one is “feasible,” even when the suspect is armed. *Poole*, 13 F.4th at 425; *Joseph*, 981 F.3d at 337-338 (citing *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985)); *Cole v. Carson*, 935 F.3d 444, 453 (5th Cir. 2019) (noting that the warning requirement is a “critical component of risk assessment and de-escalation”). But case law does not clearly establish that Walker Prado violated Medel’s constitutional rights by failing to warn him in this case because the police had announced themselves and Walker Prado reasonably believed that Medel posed an imminent risk of serious physical harm to the other officers.

Importantly, the Fifth Circuit has interpreted *Garner*’s mandate that police warn suspects, when possible, before using excessive force as a “general rule” that may not apply in every case. *See Argueta*, 86 F.4th at 1093 (concluding that notwithstanding the rule from *Garner*, the parties had not presented “clearly established law holding that a furtive gesture signaling an immediate threat to officers followed by deadly force without warning constitutes a violation of the suspect’s federal rights”); *see also White*, 580 U.S. at 80 (“*Garner* ... do[es] not by [itself] create clearly established law outside ‘an obvious case.’”). With that in mind, the undersigned considers Medel’s cases.

First, in *Cole*, the suspect was a teenager walking around his neighborhood and through the woods near his home while holding a gun to his own head. 935 F.3d at 448. The defendant officers were searching for him. *Id.* One officer heard rustling in the woods near him and signaled to the other two officers that the suspect was there. *Id.* The suspect backed out of the woods with the gun to his head. *Id.* at 448-

49. He was unaware of the officers' presence. *Id.* He never pointed the gun at the officers or made any threatening or provocative gestures toward them. *Id.* at 449. Despite having the time and opportunity to warn the suspect to disarm himself, the officers shot him multiple times. *Id.* When the first shot hit him, he was not facing the officers or the woods but rather was oriented away from the officers at a 90-degree angle. *Id.* The suspect's body turned or fell toward one officer, and that officer shot the suspect a second time. *Id.* As a reflex from the officers' gunshots, the suspect involuntarily shot himself in the temple. *Id.* The Fifth Circuit affirmed that genuine issues of material fact precluded summary judgment, noting that viewed in the light most favorable to the suspect, the case was "obvious" with respect to the fact that the force was excessive. *Id.* at 453.

Medel asserts that his case is like *Cole* because he was not pointing his gun at the officers and did not know the officers were present when Walker Prado shot him. Dkt. 42, at 37. Medel also notes it is well-established that an officer's use of deadly force is excessive and in violation of clearly established law where an officer has time and opportunity to give a warning before resorting to deadly force but the officer forgoes that warning and shoots first. *Id.* at 38. Walker Prado disagrees, pointing out the Fifth Circuit's reading of *Cole* as clearly establishing only that it is unconstitutional to "shoot a suicidal teenager who was armed but made no threatening or provocative gestures, posed no immediate threat of harm to [the officers], [and] was facing away from the officers[.]" Dkt. 55, at 6 (citing *Batyukova v. Doege*, 994 F.3d 717, 729 (5th Cir. 2021)).

*Cole* does not place the constitutional question in this case beyond debate. Most obviously, this case does not involve a suicidal teenager backing out of the woods with a gun pointed at his own head, but rather an adult walking toward his front door with a gun pointed away from his head. Additionally, as explained above, the undersigned finds that the evidence shows that Medel lowered his gun to his chin, engaging in a threatening *Manis* act. In *Cole*, there were genuine issues of material fact regarding whether the suspect made any threatening gesture toward the officers. 935 F.3d at 449. Regarding Walker Prado’s failure to warn Medel, *Cole* is further distinguishable because in *Cole*, the officers had no reason to believe that the suspect knew of their presence. 935 F.3d at 448. Indeed, the Fifth Circuit has distinguished both *Cole* and *Baker* on the grounds that the suspects were “undoubtedly unaware” of the officers’ presence in those cases. *See Batyukova*, 994 F.3d at 729. It was undisputed in *Cole* that the officers did not announce themselves, and viewing the evidence in the light most favorable to the suspect, he was unaware of the officers’ presence. *Id.* at 448-49. *Cole* does not clearly establish that an officer must warn a suspect before shooting when the police already announced their presence.<sup>11</sup>

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<sup>11</sup> *Bakutis v. Dean* does not help Medel because it was decided in 2025 and the events leading to this case occurred in 2024. Even if it did predate this case, *Bakutis* does not clearly establish that Walker Prado violated Medel’s rights because unlike in *Bakutis*, Walker Prado had reason to believe Medel posed an imminent threat to the officers, Dkt. 34-2, at 6, and it is undisputed that Medel approached the front door with a gun in his hand, Dkt. 34-2, at 1 (2:09:04). Further, each of the pre-2025 cases the Fifth Circuit relied on in reaching its conclusion that the officer violated the decedent’s constitutional rights in *Bakutis* involved scenarios in which it was at least unclear whether the officer or officers announced themselves. *See Bakutis*, 129 F.4th at 306-07 (citing *Singleton v. Casanova*, No. 22-50327, 2024 WL 2891900, at \*3 (5th Cir. June 10, 2024) (noting that the officer failed to identify himself as police)); *Cole*, 935 F.3d at 448 (noting it was disputed whether the officers warned the suspect); *Baker*, 75 F.3d at 198 (stating the parties disputed whether the officer ordered the suspect to freeze or drop the pistol).

Because Walker Prado had reason to believe that Medel posed a threat of serious harm to the officers at the scene, *see Argueta*, 86 F.4th at 1089, and alternatively, because Medel fails to carry his burden to show that Walker Prado violated his clearly established rights, the undersigned will recommend that the District Judge grant Walker Prado's motion for summary judgment as to the first three shots.

**B. Walker Prado did not violate Medel's clearly established rights with respect to the fourth shot.**

Having determined that Walker Prado did not violate Medel's clearly established rights with respect to the first three shots, the undersigned turns to the fourth shot, which poses a slightly different question. Nonetheless, the undersigned again reaches the conclusion that Walker Prado is entitled to qualified immunity.

Medel argues that because he did not move or raise his gun from the ground after collapsing behind the couch, Walker Prado's fourth shot was an unconstitutional use of force and violated clearly established law. Dkt. 42, at 27. Walker Prado responds by pointing out that it is undisputed that Medel was still holding his gun when he dropped behind the couch, so Walker Prado reasonably believed Medel still posed a serious threat. Dkt. 55, at 3.

1. Walker Prado did not violate the constitution when he fired the fourth shot.

"It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014). Even viewed in

the light most favorable to Medel, the facts of this case indicate that Walker Prado had reason to believe the threat to his fellow officers had not ended.

It is undisputed that Medel fell behind the couch with his gun still in his hand. *See* Dkts. 34-2, at 7; 42-7, at 4; *see* Dkt. 42, at 11 (stating only that Medel did not *reach* with a gun in his hand). Of course, merely having a gun in one's hand does not make one dangerous *per se*. *See Graves* 277 F. App'x at 348. But binding case law demonstrates that an officer does not violate the Fourth Amendment where the safety threat has not ended, as here.

In *Plumhoff*, the Supreme Court held that officers did not violate the Constitution after firing a total of 15 shots into a car when the suspect, who had engaged in a high-speed chase with police, still had his foot on the accelerator of his trapped vehicle during the 10-second volley. 572 U.S. at 776-77. The court noted that “this would be a different case if [the officers] had initiated a second round of shots after an initial round had *clearly incapacitated* [the suspect] and had ended any threat of continued flight.” *Id.* at 777 (emphasis added). Fifth Circuit precedent also demonstrates that a suspect must be clearly incapacitated in order for an officer's actions to be unreasonable. True, the Fifth Circuit has held that “use of deadly force against a person who the officer knows is not dangerous is a constitutional violation.” *Allen v. Hays*, 65 F.4th 736, 745 (5th Cir. 2023). But that is not the situation in this case.

Medel offers two cases he contends show that Walker Prado violated his constitutional rights by firing the fourth shot. Neither helps him. First, in *Roque v.*

*Harvel*, officers responded to an attempted suicide. 993 F.3d at 330. When they arrived, the decedent was pacing the sidewalk with a gun in his waistband, repeatedly saying, “Shoot me.” *Id.* One officer yelled at the decedent to put his hands up, and the decedent put his arms out to the side and continued walking, yelling at the officers to shoot and kill him. *Id.* The decedent then pulled out the gun, pointed it at his head, and stated that he would kill himself. *Id.* At the time, he was turned away from the officers. *Id.* One officer yelled at the decedent to put his gun down. *Id.* The decedent then turned to face the officers with the gun pointed in the air. *Id.* An officer shot the decedent, and he doubled over, dropped the gun, and stumbled toward the street, away from the officers. *Id.* The court noted in its description of the facts that the video from home surveillance cameras near the scene “shows the black gun hitting the white sidewalk in broad daylight.” *Id.* About two seconds later, while the decedent was stumbling into the street, an officer fired another shot that missed. *Id.* Two seconds after that, as the decedent “continued floundering,” the officer shot him again, killing him. *Id.* The officer claimed he kept shooting because he did not see the decedent drop the gun. *Id.* at 333. The Fifth Circuit affirmed the district court’s order denying summary judgment as to the last shot. *Id.* at 339.

Medel asserts that his case is analogous, and that the conflict between a reasonable interpretation of the evidence conflicts with the officer’s subjective understanding of the situation similarly bars summary judgment in this case, particularly with respect to the shot to Medel’s back. Dkt. 42, at 39. While the parties dispute whether Medel, once he fell behind the couch, extended his arm toward the



front door, Medel does not dispute that he was holding the gun as he lay behind the couch. Dkts. 34-2, at 7; 42-7, at 4; *see* Dkt. 42, at 11 (stating only that Medel did not *reach* with a gun in his hand). Because the video evidence in *Roque* clearly showed that the decedent dropped the gun onto the sidewalk, *Roque* does not show that it was a constitutional violation for Walker Prado to fire the fourth shot when Medel still had the gun in his hand. This is particularly true given that Walker Prado fired all four shots within the same two-second span—the officer in *Roque* waited two seconds between each round of shots. 993 F.3d at 330. Unlike in *Roque*, where the decedent had dropped the gun and moved away from the officers for a period of around four seconds, *see id.*, it was not clear in Medel’s case that Medel had been incapacitated by the first shots.

Likewise, the decedent in *Mason* never held a gun in his hand. 806 F.3d at 273-74. In that case, the officer first fired at the decedent because he reached down to either shield himself from a police canine or, in the officer’s version of the facts, to retrieve a gun from his waistband. *Id.* at 273. Once the decedent lay on the ground because of the initial volley, the officer shot him because the officer believed he was still trying to reach for the gun. *Id.* at 274. No party alleged that the decedent ever actually reached the gun. *Id.* Further, the officers in *Mason* had a clear view of the decedent and could see that he was incapacitated. *See id.* Here, Walker Prado knew only that Medel had not dropped the gun and that the initial round had not clearly incapacitated him. *See* 572 U.S. at 777. And Walker Prado had reason to believe that Medel still posed a serious threat. *See Allen*, 65 F.4th at 745 (stating that use of

deadly force against a person who the officer *knows is not dangerous* is a constitutional violation); *see also Poole*, 13 F.4th at 425 (“[W]hether the suspect is armed is often the key factor in determining if a threat to the officer justifies the use of deadly force.”).

2. Walker Prado did not violate Medel’s clearly established rights with respect to the fourth shot.

Medel does not carry his burden to show that Walker Prado violated his clearly established rights. As described above, neither *Roque* nor *Mason* clearly establish that Walker Prado violated the Constitution when he fired his fourth shot at a still-armed Medel, and the cases certainly do not answer the question beyond debate. Namely, *Roque* involved a visibly incapacitated and clearly unarmed suspect who, for around four seconds, had been moving away from the officers. 993 F.3d at 330. Similarly, *Mason* involved a clearly unarmed suspect. 806 F.3d at 273-74.<sup>12</sup> Based on these cases, every reasonable official would not have understood that Walker Prado’s actions violated Medel’s rights. *See Mullenix*, 577 U.S. at 11. Walker Prado’s motion should be granted.

Finally, because the undersigned does not rely on any evidence subject to Medel’s objections in this report, the undersigned will recommend that the District

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<sup>12</sup> In *Graves*, the court found that there was a genuine issue of material fact as to whether the officer violated the suspect’s constitutional rights by shooting him after he was incapacitated, but while he still held a gun in his hand. 277 F. App’x at 348-49. But a single unpublished opinion—particularly one finding only a genuine fact issue—cannot demonstrate that the law was clearly established. Therefore, Medel has not identified a case in which an officer acting under similar circumstances was held to have violated the Constitution, much less a body of relevant case law. *See Joseph v. Bartlett*, 981 F.3d at 330.

Judge deny Medel's motion to strike exhibits to Walker Prado's motion for summary judgment, Dkt. 38, as moot.

#### IV. THE CITY OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT

The City of Austin moves to dismiss Medel's claims against it under *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978). Dkt. 25. To succeed on his *Monell* claim, Medel must demonstrate there was (1) an official policy (2) promulgated by the municipal policymaker (3) that was the moving force behind the violation of a constitutional right. *Reitz v. Woods*, 85 F.4th 780, 795 (5th Cir. 2023). "[W]ithout a predicate constitutional violation, there can be no *Monell* liability." *Id.* (internal quotation marks omitted). As Walker Prado is the only City of Austin employee in this suit, Medel's claims against the City of Austin are wholly premised on Walker Prado's alleged wrongdoing. Because the undersigned finds that Walker Prado did not violate the Constitution with respect to his use of force, Medel's *Monell* claim must also fail. *See id.* at 795-96. Accordingly, the undersigned will recommend that the District Judge grant the City of Austin's motion for summary judgment.

#### V. RECOMMENDATION

In accordance with the foregoing discussion, the undersigned **RECOMMENDS** that the District Judge **GRANT** Walker Prado's motion for summary judgment, Dkt. 34.

The undersigned **FURTHER RECOMMENDS** that the District Judge **GRANT** the City of Austin's motion for summary judgment, Dkt. 25.

The undersigned **FINALLY RECOMMENDS** that the District Judge **DENY** Medel's motion to exclude Walker Prado's summary-judgment exhibits, Dkt. 38, as **MOOT**.

The referral of this case to the Magistrate Judge should now be canceled.

## **VI. WARNINGS**

The parties may file objections to this report and recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Judge need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after the party is served with a copy of the report shall bar that party from *de novo* review by the District Judge of the proposed findings and recommendations in the report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED January 12, 2026.



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DUSTIN M. HOWELL  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

V.

GABRIEL WALKER PRADO, in his individual capacity, and the CITY OF AUSTIN

### *Defendants*

CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF'S UNOPPOSED MOTION TO EXCEED PAGE LIMITS FOR  
OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION REGARDING DEFENDANTS' MOTIONS FOR SUMMARY  
JUDGMENT AND PLAINTIFF'S MOTION TO STRIKE**

Plaintiff Avelino Medel II respectfully requests leave to exceed any applicable page limits and file up to thirty-two pages in his objections to the Magistrate Judge's Report and Recommendation, Doc. 79, and deem them filed at the time leave was sought. Defendants are unopposed to the relief requested herein.

## I. FACTS AND PROCEDURAL BACKGROUND

On August 26, 2024, Plaintiff filed this 42 U.S.C. § 1983 case against the City of Austin and Austin Police Department officer Gabriel Walker Prado. Doc. 1.

On May 28, 2025, Defendant City of Austin filed its motion for summary judgment. Doc. 25. After a series of extensions of time, on November 7, 2025, the Court extended the time for Plaintiff to respond until after the City had complied with a motion to compel, which has not yet occurred, so Plaintiff has not yet responded. Doc. 75.

On June 5, 2025, Defendant Walker Prado filed his first amended motion for summary

judgment, which is thirty-three pages in length. Doc. 34. That motion has been fully briefed. *See* Doc. 27 (Walker Prado's exhibits); Doc. 42 (Plaintiff's response); Doc. 40-1 (Plaintiff's sealed exhibit); Doc. 55 (Walker Prado's amended reply); Doc. 64 (Plaintiff's sur-reply).

On June 25, 2025, Plaintiff Medel moved to strike certain exhibits from Walker Prado's motion as well as to exclude portions of his designated expert's opinions. Doc. 38. The motion has been fully briefed. *See* Doc. 48 (Walker Prado's response); Doc. 56 (Plaintiff's reply).

On January 12, 2026, the Magistrate Judge issued a thirty-page Report and Recommendation addressing all three motions. Doc. 79.

## **II. ARGUMENT**

Plaintiff respectfully requests leave of Court to file his Objections to the Report and Recommendation, not in excess of thirty-two pages, exclusive of the required caption, signatures, and certificates and deem them filed today, at the time leave was sought.

Under the Western District Local Rules, a response to a non-case management motion is limited to twenty pages, exclusive of the caption, signature block, certificates, and accompanying documents. W.D. LOCAL RULE CV-7(d)(3). Plaintiff assumes, in an abundance of caution, that this rule is applicable to Plaintiff's Objections to the Report and Recommendation, as it addresses two non-case management motions.

Plaintiff respectfully submits that, to the extent the twenty-page limit applies in this scenario, the additional pages are necessary for three reasons.

First, under Rule 56, Plaintiff must lay out, with specific citations, the evidence that each of Defendant Walker Prado's shots were excessive. Evaluating Defendant Walker Prado's qualified immunity defense at the summary judgment stage is a fact-intensive inquiry, as demonstrated by the lengthy briefing on the underlying motion as well as the thirty-page length of

the Report and Recommendation. Further, many factual differences, in Plaintiff's view, remain between the Report and Recommendation and Plaintiff's version of events, limiting Plaintiff's ability to shorten the briefing.

Second, Plaintiff also needs additional pages to set out the case law showing that Plaintiff's right to be free from excessive force was clearly established, distinguish the cases relied upon by the Report and recommendation, and set out the application of those cases to the specific facts of this case, as Plaintiff analyzes those decisions differently than the Report and Recommendation.

Third, the need for extra pages is further compounded by the fact that two other motions are addressed in the same Report and Recommendation.

The Objections should be entered at the time leave was sought, as they are attached to this motion so that the Court and all Defendants have access as of the date of this filing.

This motion is made for the reasons stated and not for the purpose of delay. No party will be prejudiced by this relief as Defendants will have an opportunity to respond.

Plaintiff has conferred with counsel for Defendants and they indicated they are unopposed to Plaintiff's motion for leave to file excess pages.

### **III. CONCLUSION**

For the foregoing reasons, to the extent there is an applicable page limit, the Court should grant Plaintiff leave to file his Objections to the Report and Recommendation with up to thirty-two pages (plus the caption, signatures, and required certificates) and deem the Objections filed at the time leave was sought.

Dated: January 26, 2026.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS



**CERTIFICATE OF CONFERENCE**

By my signature below, I certify that I conferred via email with counsel for Defendants, who expressed that Defendants are unopposed to Plaintiff's requested relief.

By /s/ David James  
David James

**FILED**

January 29, 2026

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXASUNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISIONBY: PG  
DEPUTY

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*§  
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§CAUSE OF ACTION NO.  
1:24-cv-00990-RP**PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION REGARDING DEFENDANTS' MOTIONS FOR SUMMARY  
JUDGMENT AND PLAINTIFF'S MOTION TO STRIKE**

Plaintiff Avelino Medel II ("Medel") respectfully objects to the Magistrate Judge's Report and Recommendation to dismiss his claims and deny his motion to strike. Doc. 79.

**I. SUMMARY OF THE OBJECTIONS**

The Court should sustain Plaintiff Medel's objections to the Magistrate Judge's Report and Recommendation ("Recommendation"), deny Defendants' motions for summary judgment, and grant Medel's motion to strike for four reasons.

First, although the Recommendation identifies several disputes of fact, it overlooks their materiality and other material disputes presented by Medel's evidence which show that Defendant Austin Police Department Officer Gabriel Walker Prado violated Medel's constitutional rights by shooting Medel without warning. Medel did not pose an imminent threat. Neither Medel moving his gun slightly nor anything else he did was a *Manis* act in light of the following fact disputes:

- (a) Walker Prado did not even see Medel move the gun "to his chin;"
- (b) if he had, then he also saw Medel kept his arms locked so did not start pointing the gun;
- (c) Medel turned his head away from the front door before the slight movement of the gun;
- (d) Walker Prado knew that the police were not behind the front door to be threatened;
- (e) Medel could not see the police to confirm their presence, much less shoot them;
- (f) Medel was understandably cautious until he could check the peephole; and, finally,
- (g) Medel stopped moving after he fell to the ground, so he posed no threat.

When these disputes are resolved in Plaintiff Medel's favor, Walker Prado violated the Constitution by shooting at Medel four times without warning.

Second, the Recommendation's analysis of clearly established law is incorrect both due to the foregoing fact disputes and because it misapplies key elements of the decisions upon which Medel relies. Most notably, in assessing *Cole v. Carson II*, 935 F.3d 444 (5th Cir. 2019) (en banc), the Recommendation misstates the factual predicate in that case. The *Cole* subject *did* move his gun toward those officers by turning toward them and *was* aware of police presence, just not of the specific officers who shot him. These facts are closely analogous to this case, so *Cole* clearly established that both the *Cole* subject and Medel did not pose an imminent threat sufficient to justify deadly force without warning merely because they approached police while armed.

Third, the only reason given for granting the City's motion for summary judgment—before Medel has had a chance to respond—is the lack of a constitutional violation. As this finding is erroneous, the Court should continue to extend Medel's time to respond until Court-ordered discovery is complete and Medel is able to respond to the City's motion for summary judgment.

Finally, although the Recommendation correctly declined to consider most of Walker Prado's improper summary judgment exhibits, the appropriate relief is to sustain Medel's objections and grant Medel's motion to strike those exhibits—not deny the motion as moot.

## **II. FACTUAL BACKGROUND**

On April 6, 2024 Austin Police Department (APD) Officer Gabriel Walker Prado ("Walker Prado") shot without warning Plaintiff Avelino Medel II, a pharmacy technician, seconds after Medel armed himself after hearing loud banging on his door shortly after 2 a.m.

### ***A. Walker Prado shot Medel when Medel posed no immediate threat.***

In the early morning hours of April 6, 2024, police received a 911 call which reported loud

yelling in Medel’s apartment.<sup>1</sup> APD Officers Arlene Lozano, Ryan Daniel, and Adam Reinhart were assigned to the call. Walker Prado assigned himself to the call.<sup>2</sup> Walker Prado arrived first to Medel’s apartment at 2:07 a.m. and stood in the dark, out of sight of Medel, peering around the corner of an exterior wall and into Medel’s apartment through the sliding glass door,<sup>3</sup> where he could see and hear Medel and his father “just yelling.”<sup>4</sup> Lozano, Daniel, and Reinhart arrived soon after, then positioned themselves to the side of Medel’s front door consistent with APD training.<sup>5</sup>

Contrary to the Recommendation’s factual summary that Walker Prado had “just seen” the other three officers “standing behind the front door,” the video shows that from his position, Walker Prado saw Daniel, Lozano, and Reinhart had positioned themselves to the side of Medel’s front door—not in front of the door.<sup>6</sup> Walker Prado also knew his fellow officers were specifically trained not to stand in front of the door when they knocked.<sup>7</sup>

Reinhart stretched his arm out and banged his baton loudly on Medel’s door seven times then said, “Austin Police Department. Open the door.”<sup>8</sup> As the Recommendation acknowledges, there is a fact dispute about whether Medel could have heard the announcement “police.”<sup>9</sup> Doc. 79, p. 10. Yet whether or not he realized Medel did not hear the announcement, Walker Prado

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<sup>1</sup> Doc. 27-16, COA 2712, “1<sup>st</sup> 911 Call.wav” at 00:14–00:29, 01:17–01:24; Doc. 79, p. 1.

<sup>2</sup> Doc. 27-6, COA 1342–1369, Walker Prado IA Interview, p. 6, ln. 248–250.

<sup>3</sup> Doc. 42-3, Walker Prado Body-Worn Camera (“BWC”) at 02:07:40; *see also* Doc. 27-4, Declaration of Walker Prado, at p. 2, ¶ 6; Doc. 79, p. 1.

<sup>4</sup> Doc. 42-3, Walker Prado BWC at 02:08:02–02:08:15; Doc. 79, p. 2; *see also* Doc. 42-7, Medel II Declaration, p.1, ¶¶ 2–3; Doc. 42-8, Medel, Sr. (Father’s) Affidavit, p. 1, ¶ 1; Doc. 79, p. 2.

<sup>5</sup> Doc. 42-2, Lozano Deposition, 38:15–39:12, 39:19–40:4; Doc. 42-6, Daniel Deposition, 28:24–29:12, 30:5–12; Doc. 42-10, Reinhart Deposition, 50:11–16, 51:10–18.

<sup>6</sup> *Compare* Doc. 79, p. 3 *with* Doc. 42-3, Walker Prado BWC at 02:08:39–02:08:47; *see also* Doc. 42-5 at 02:08:59 (no officers were in front of the door).

<sup>7</sup> Doc. 27-7, Walker Prado Deposition, 193:9–16.

<sup>8</sup> Doc. 42-9, Reinhart BWC 02:08:59–02:09:02.

<sup>9</sup> *See* Doc. 42-7, Medel II Declaration, p. 2, ¶ 14; Doc. 42-11, Rikita Ghimire Witness Interview Summary; Doc. 27-17, “SIU Rikita Ghimire Interview.mp4” at 06:35:15–06:35:40; Doc. 27-15 “SIU Presentation” at COA 2742, p. 12 (summarizing interview with Allison Saiko).

knew that from Medel's position inside the apartment, Medel could not see any of the officers—Walker Prado was near the sliding-glass door, but deliberately hiding behind a brick exterior corner in the dark, while there were no front windows to see the three other officers.<sup>10</sup> Thus, the only way for Medel to verify who was banging on his front door at 2 a.m. was to look through the peephole.<sup>11</sup>

Concerned who would be suddenly banging on his door at 2 a.m.,<sup>12</sup> Medel retrieved his handgun and walked toward his front door to look through the peephole.<sup>13</sup> He positioned the gun in a “high ready” position with the handgun held up near his right shoulder with the muzzle pointed up and his elbows bent close to his body.<sup>14</sup>

As Medel approached his front door with a gun pointed up, Walker Prado decided to fire at Medel. (Contrary to the impetus credited by the Recommendation, Walker Prado twice admitted that he shot Medel simply because he came to the door with a gun.<sup>15</sup>) Walker Prado began yelling “He’s got a gun! Gun, gun, gun, gun, gun” and, within a second, stepped out from behind the corner aiming his own weapon at Medel.<sup>16</sup> Walker Prado’s body-worn camera shows that when Walker Prado stepped out to aim and fire at Medel, the muzzle of Medel’s gun pointed directly up,

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<sup>10</sup> Doc. 27-7, Walker Prado Deposition, 152:5–7, 152:11–18, 170:15–25; *see* Doc. 42-3, Walker Prado BWC, 02:07:40, 02:08:29; Doc. 27-4, Declaration of Walker Prado, p. 2, ¶¶ 6, 12; *see also* Doc. 42-7, Medel II Declaration, p. 3, ¶¶ 24, 29; Doc. 42-8, Father’s Affidavit at p. 2, ¶ 23.

<sup>11</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶ 24; Doc. 42-8, Father’s Affidavit, p. 2, ¶ 23.

<sup>12</sup> Doc. 42-7, Medel II Declaration, p. 2, ¶ 15.

<sup>13</sup> Doc. 42-7, Medel II Declaration, pp. 2–3, ¶¶ 15, 21, 23; Doc. 42-8, Father’s Affidavit, p. 2, ¶ 17.

<sup>14</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶ 26; *see also* Doc. 42-12, Still Image from Walker Prado’s Body-Worn Camera (showing when Medel is first seen in body-worn camera video holding a gun).

<sup>15</sup> *Compare* Doc. 79, p. 12 *with* Doc. 42-3, Walker Prado BWC at 02:12:55–02:13:01 (Medel: “...why did you shoot me?” Walker Prado: “We announced police and you came to the door with the gun.”); *id.* at 02:16:26–28 (Walker Prado refers to the gun: “it was here, he grabbed it and came to the door with it. That’s why I shot him.”); *see also* Doc. 27-4, Walker Prado Declaration, pp. 3–4, ¶¶ 12, 15 (list of everything he thought justified shooting before “decid[ing] to act” and stepping out from corner). Instead of addressing this fact dispute about what Walker Prado perceived, the Recommendation appears to misunderstand Plaintiff to be asserting that Walker Prado fired “before Medel brought the gun to his chin.” Doc. 79, p. 12, n.6.

<sup>16</sup> Doc. 42-3, Walker Prado BWC at 02:09:03–02:09:04.

Medel's elbows were bent with his forearms close to his torso, and Medel held the gun at his shoulder in a "high ready" position:



*Doc. 42-12, p. 2 – Cropped still image from Walker Prado's Body-Worn Camera when he aimed at Medel*

Medel, who had no idea anyone was at his sliding glass door, suddenly heard yelling from that side of his apartment (though he could not hear what Walker Prado was yelling) and looked away from the front door to the sliding glass door where he saw only his own reflection.<sup>17</sup> Only *after* Walker Prado decided to shoot at 02:09:03 and stepped out to aim did Medel look away from the front door and then, at 02:09:05 on Walker Prado's camera, slightly change the position of the gun—beginning less than one third of one second before Walker Prado fired.<sup>18</sup> Although the handgun does move to Medel's chin, the video shows he was not extending his arms to point the gun forward—instead, Medel's elbows remain locked at his chest, with his left elbow folding more

<sup>17</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶¶ 28, 29.

<sup>18</sup> Doc. 42-3, Walker Prado BWC at 02:09:03–02:09:05; Ex. 23, Frame-by-Frame of Walker Prado BWC, Frames 15–24 (10 frames of video leading up to Walker Prado's first shot).

tightly.<sup>19</sup> Looking out the sliding glass door and then closing his elbow is the exact opposite of what Medel would have done had he instead been bringing the gun to bear on the front door.



*Doc. 42-13, p. 2 – Cropped last frame of Walker Prado’s body-worn camera before his bullet shattered the glass of Medel’s sliding glass door*

Thus, the facts in the light most favorable to Medel are that Walker Prado did not see that Medel’s gun moved slightly before he started firing and instead, as he twice admitted mere minutes after the shooting (*see supra* p. 4, n.15), Walker Prado perceived only that Medel brought his gun towards the door while it was pointed up (as his own video shows at 02:09:03–02:09:04). Medel’s mere possession of a gun as he approached the front door is thus the only reason Walker Prado fired. In any event, the small movement of Medel’s gun before Walker Prado shot Medel was more consistent with Medel reacting to the noise outside or going to check his peephole than pointing

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<sup>19</sup> Doc. 42-13, Still images of last frame of Walker Prado’s body-worn camera before his bullet shattered the glass of Medel’s sliding glass door.

the gun, as it brought his left elbow closer to his body.<sup>20</sup> Indeed, Walker Prado himself mimicked Medel's actual position when asked to show what it would look like to check the peephole:<sup>21</sup>



*Doc. 42-16 – Still image of deposition of Walker Prado demonstrating how he claims Medel would have held the gun if he were checking to see who was at his door.*

Even in this final position at timestamp 02:09:05, Medel was still not beginning to point his gun at the front door (behind which Walker Prado knew stood no officers<sup>22</sup>); indeed, Medel had just turned to look away from the front door.

It is undisputed that Walker Prado did not warn Medel before he fired his gun at Medel, even though he had seen, and indeed been trained to know, no officers were in danger even if Medel was pointing his weapon at the front door (which he was not).<sup>23</sup> And, of course, Walker

<sup>20</sup> See Doc. 42-13, Still images from last frame of Walker Prado's BWC before bullet shattered Medel's sliding glass door; Doc. 42-14, Noble Expert Report, pp. 86–87, ¶ 80.

<sup>21</sup> Doc. 42-15, Excerpt from Video of Walker Prado Deposition at 01:20–01:34; *see also* Doc. 42-16, Still Image from Walker Prado Deposition.

<sup>22</sup> Doc. 42-3, Walker Prado BWC at 02:08:39–02:08:47; Doc. 42-2, Lozano Deposition, 38:15–39:12, 39:19–40:4; Doc. 42-6, Daniel Deposition, 28:24–29:12, 30:5–12; Doc. 42-10, Reinhart Deposition, 50:11–16, 51:10–18; Doc. 27-7, Walker Prado Deposition, 193:9–16.

<sup>23</sup> Doc. 27-7, Walker Prado Deposition, 11:15–17; *see supra* n.22.



Prado had time to yell “He’s got a gun! Gun, gun, gun, gun, gun,”<sup>24</sup> which warned only the other APD officers while providing no warning to Medel that police wanted him to put his gun away.<sup>25</sup> This warning took only two seconds to deliver.<sup>26</sup> Though Walker Prado had time to give a short warning such as “Drop the gun, or I’ll shoot” instead, which would have warned both the other officers and Medel that he planned to shoot, he chose not to.<sup>27</sup>

Walker Prado initially fired three rounds, one of which hit Medel in the thigh.<sup>28</sup> Medel immediately collapsed to the ground. Over two seconds passed after Walker Prado’s third shot, then he fired his fourth, final shot.<sup>29</sup> By the time Walker Prado fired his final shot into the back of Medel’s shoulder blade, Medel was not moving, did not reach (with a gun in his hand or otherwise), and was effectively subdued by Walker Prado’s initial volley of shots.<sup>30</sup> Yet Walker Prado still gave Medel no warning before this fourth and final shot.<sup>31</sup> A reasonable officer in Walker Prado’s position who had shot at a man, saw him collapse, and saw the man was no longer moving would believe the man was subdued such that the final shot was not necessary.<sup>32</sup>

***B. Police officers know that criminals impersonate officers, Texans own guns, and a Texan responding to unknown banging late at night may come to the door armed.***

Criminals famously can and do impersonate peace officers to great and tragic effect.<sup>33</sup> Law

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<sup>24</sup> Doc. 42-3, Walker Prado BWC at 02:09:03–02:09:05.

<sup>25</sup> Doc. 27-7, Walker Prado Deposition, 156:9–14; *id.* at 11:10–12, 14–17.

<sup>26</sup> Doc. 42-3, Walker Prado BWC at 02:09:03–02:09:05.

<sup>27</sup> Doc. 27-7, Walker Prado Deposition, 161:7–12, 14–17, 19; Doc. 42-14, Noble Expert Report, p. 78, ¶ 61.

<sup>28</sup> Doc. 42-3, Walker Prado BWC at 02:09:05–02:09:06; Doc. 42-7, Medel II Declaration, p. 3, ¶ 31.

<sup>29</sup> Doc. 42-3, Walker Prado BWC at 02:09:06–02:09:09.

<sup>30</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶ 33; Doc. 42-3, Walker Prado BWC at 02:09:06–02:09:09.

<sup>31</sup> Doc. 42-3, Walker Prado BWC at 02:09:06–02:09:09.

<sup>32</sup> *See* Doc. 42-14, Noble Expert Report, p. 87, ¶ 82.

<sup>33</sup> *See* Doc. 42-19, Affidavit of Terry Getsch in *United States of America v. Vance Luther Boelter*, Case No. 25-mf-376 in the United States District Court for the District of Minnesota at pp. 2–10,

enforcement officers know that criminals impersonate police officers for all kinds of nefarious reasons, including to gain access to occupied dwellings.<sup>34</sup> Barely two months before Walker Prado shot Medel, APD finally identified and arrested a man who had been impersonating an officer for more than three years.<sup>35</sup> Walker Prado and two of the other officers present at Medel’s home on April 6, 2024 had all heard about this police impersonator.<sup>36</sup>

The public cannot and does not blindly trust that everyone who verbally claims to be a peace officer is one—and law enforcement officers know this. All four officers at Medel’s home on April 6, 2024, including Walker Prado, readily agreed that anyone, including criminals, can claim to be “police” when knocking on doors.<sup>37</sup> Indeed, former Austin Police Chief Robin Henderson, the police chief at the time, agreed that it is “true that criminals may yell ‘police’ when they’re trying to break into an occupied residence,” that this is “a known risk” to APD, that APD has encountered these criminals, and that APD has tried to prosecute these criminals.<sup>38</sup> In fact, this risk is so well known that APD trains its officers—including Walker Prado—that criminals may claim to be police when trying to break into a residence and that this possibility affects how people inside a dwelling respond to APD officers knocking and announcing.<sup>39</sup>

Of course, police officers, including Walker Prado, know that many citizens are gun

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¶¶ 4, 6, 3–12, 16–17, 19, 22–28; *see also*, e.g., Doc. 42-22, Arrest Affidavit for Jason M. Parnell, Cause No. C-1-CR-25-204260.

<sup>34</sup> Doc. 42-14, Noble Expert Report, p. 77, ¶ 59(d); *see also* Doc. 40-1, Henderson Deposition, 101:1–8. Chief Henderson was testifying on behalf of the City of Austin and was also the Austin Chief of Police at the time Walker Prado shot Medel. *Id.* at 7:25–8:3, 40:22–41:1.

<sup>35</sup> Doc. 42-21, Arrest Warrant in *State of Texas v. Sean Michael MacDonald*, No. D-1-DC-24-300268 (describing impersonation of an officer from July 10, 2020 to December 31, 2023).

<sup>36</sup> Doc. 27-7, Walker Prado Deposition, 29:20–30:1; Doc. 42-10, Reinhart Deposition, 51:25–52:5; Doc. 42-2, Lozano Deposition, 41:7–12.

<sup>37</sup> Doc. 27-7, Walker Prado Deposition, 170:11–25; Doc. 42-2, Lozano Deposition, 40:20–22; Doc. 42-6, Daniel Deposition, 30:22–24; Doc. 42-10, Reinhart Deposition, 51:22–24.

<sup>38</sup> Doc. 40-1, Henderson Deposition, 101:1–8.

<sup>39</sup> Doc. 40-1, Henderson Deposition, 101:9–19.

owners, consistent with their Second Amendment rights.<sup>40</sup> The United States Supreme Court recognizes that “handguns,” like the one possessed by Medel, “are the most popular weapon chosen by Americans for self-defense in the home.” *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008). Texas law similarly reflects this principle, providing affirmative defenses to prosecution for the use of deadly force in defense of persons or homes. TEX. PENAL CODE §§ 9.32, 9.42. The officers involved on April 6, 2024, including Walker Prado, were trained on these laws.<sup>41</sup>

Accordingly, Chief Henderson testified that APD officers—including Walker Prado—are trained that it is lawful and even foreseeable for a person in their own home in Austin, Texas to retrieve a gun and get it ready to fire before checking to see who is at their door.<sup>42</sup> Indeed, every officer who responded to Medel’s home on April 6, 2024, including Walker Prado, agreed that arming oneself before approaching to see who is at the door is a reasonable response to an unexpected, late night knock and within the rights of a lawfully-armed citizen under the Second Amendment.<sup>43</sup> Lozano further testified that when she was personally confronted by an unknown noise outside her own home at 4 a.m., she too started to retrieve her own handgun until her video doorbell loaded and she confirmed it was not a criminal at her door.<sup>44</sup> Lozano confirmed that if she had not gotten her video doorbell to work, she would have continued to get her gun ready.<sup>45</sup>

Accordingly, a reasonable officer in Walker Prado’s position would have recognized that

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<sup>40</sup> See Doc. 42-14, Noble Expert Report, pp. 77-78, ¶ 59(e); Doc. 27-7, Walker Prado Deposition, 13:24–14:14, 33:9–16.

<sup>41</sup> Doc. 27-7, Walker Prado Deposition, 151:16–22; Doc. 42-6, Daniel Deposition, 21:22–24; Doc. 42-10, Reinhart Deposition 37:15–38:6.

<sup>42</sup> Doc. 40-1, Henderson Deposition, 75:19–23, 75:25–76:4; *see also* Doc. 42-14, Noble Expert Report, pp. 77–78, ¶ 59(e).

<sup>43</sup> Doc. 42-2, Lozano Deposition, 29:15–21, 23; Doc. 42-6, Daniel Deposition, 20:12–25, 21:3–5; Doc. 42-10, Reinhart Deposition, 36:19–37:3, 37:5–14; Doc. 27-7, Walker Prado Deposition, 67:22–68:3.

<sup>44</sup> Doc. 42-2, Lozano Deposition, 30:9–31:14.

<sup>45</sup> Doc. 42-2, Lozano Deposition, 31:18–21, 31:23–32:4, 32:6–9.

Medel's conduct throughout the encounter after the knock on the door was the reasonable, expected response of an ordinary gunowner in Texas, not a threat.<sup>46</sup>

### III. STANDARD OF REVIEW

"[A] district court must engage in *de novo* review where a party has objected to a magistrate's decision." *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989); *see also Walker v. Savers*, 583 F. App'x 474, 475 (5th Cir. 2014); 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. PROC. 72(b)(3).

### IV. ARGUMENT AND AUTHORITIES

#### ***A. The Magistrate Judge's Recommendation Overlooks Material Fact Disputes to Erroneously Identify Manis Acts.***

While the Recommendation acknowledges some of the fact disputes in this case, it overlooks others, undermining its conclusion that the fact disputes are not material based solely on the immediate threat factor of the *Graham v. Connor* test.<sup>47</sup> When each stage of the shooting is viewed in the light most favorable to Medel, none of Medel's conduct posed an immediate threat.

1. *Medel's moving his handgun to his chin did not pose an immediate threat of serious physical injury to anyone.*

The Recommendation errs because Medel's slight movement of the handgun to his chin was not a *Manis* act which could justify Walker Prado shooting him without warning due to the following three material fact disputes.

First, the Recommendation erroneously credits Walker Prado's after-the-fact justification

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<sup>46</sup> Doc. 42-14, Noble Expert Report, pp. 77–78, ¶ 59(e).

<sup>47</sup> The Recommendation appears to conclude that Medel's evidence satisfies every other element of his claims against Walker Prado, and that the other two *Graham* factors weigh against Walker Prado. To the extent the Court needs further information on those questions, Plaintiff respectfully refers to and incorporates his original briefing. *See* Doc. 42, pp. 19–24, 33–35.

for shooting rather than his original justification,<sup>48</sup> to dubiously infer that Walker Prado perceived and reacted to the slight movement of Medel's gun "to his chin" which began less than one third of one second before Walker Prado opened fire.<sup>49</sup> Doc. 79, pp. 10, 12, 14. To the contrary, at the scene, when Medel asked Walker Prado why he shot Medel just minutes after the shooting, Walker Prado explained "because you came to the door with a gun."<sup>50</sup> A few minutes later, Reinhart asked where Medel's gun was, so Walker Prado volunteered "it was here" gesturing to the kitchen counter, then volunteered "he grabbed it and came to the door with it. That's why I shot him."<sup>51</sup> Thus, Walker Prado himself twice said he opened fire because Medel approached the door with a gun, not because he saw the slight movement identified by the Recommendation.

In light of this discrepancy, the Recommendation misapplies *Manis v. Lawson*, 585 F.3d 839 (5th Cir. 2009). Doc. 79, pp. 11–12. In *Manis*, officers approached an idling vehicle where the subject, Manis, was sleeping in the driver's seat. *Manis*, 585 F.3d at 842. The *Manis* plaintiffs contended that after an officer roused Manis, he remained drunk and confused; was unable to release his seatbelt to comply with officers' orders to exit the vehicle; and then he "leaned forward over the front seat in a stupor, leading the officers to order him to show his hands." *Id.* The Fifth Circuit concluded it was undisputed that one officer then "shot Manis because he believed Manis had retrieved a weapon" when he leaned forward. *Manis*, 585 F.3d at 845. The Fifth Circuit then applied the relevant test to that specific perceived act: whether Manis "reached under the seat of

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<sup>48</sup> Compare Doc. 42-3, Walker Prado BWC at 02:12:55–02:13:01, 02:16:26–28 (Walker Prado stating he shot Medel only because he walked toward his front door with a gun) with Doc. 79, p. 11–12 (focused instead on whether "Medel lowered the gun to his chin").

<sup>49</sup> Doc. 42-3, Walker Prado BWC, 02:09:04–02:09:05. In the thirty-frame-per-second video, Medel can be seen with the handgun pointed straight up just ten frames before Walker Prado opens fire, i.e., one third of one second. Ex. 23, Frame-by-Frame of Walker Prado BWC, Frame 15 (Medel's gun pointed straight up); *id.* at Frame 25 (Walker Prado fires his first shot).

<sup>50</sup> Doc. 42-3, Walker Prado BWC at 02:12:55–02:13:01.

<sup>51</sup> Doc. 42-3, Walker Prado BWC at 02:16:23–02:16:29.

his vehicle and appeared to retrieve an object that [the officer] reasonably believed to be a weapon. *This* was the act that led [the officer] to discharge his weapon, and it is undisputed.” *Id.* The grant of qualified immunity in *Manis* therefore depended upon the undisputed identification of “the act that led [the officer] to discharge his weapon” *as well as* what Manis actually did. *Id.*

Here, identifying “the act that led [Walker Prado] to discharge his weapon” *is* disputed—by Walker Prado’s own statements. *Manis*, 585 F.3d at 845. Walker Prado *at the scene* twice claimed Medel merely walking to his door with a gun was “the act.”<sup>52</sup> Only hours later, after advice of counsel and reviewing the body-worn camera, did Walker Prado adopt his current position that “the act” was instead the slight movement of Medel’s gun.<sup>53</sup> A reasonable jury could believe Walker Prado’s initial story, particularly where the latter version depends on Walker Prado perceiving and reacting to a slight movement within less than one third of one second.<sup>54</sup> *Bazan v. Hidalgo County*, 246 F.3d 481, 493 (5th Cir. 2001) (credibility issues within police’s statements created fact issue in shooting case); *Trevino v. Trujillo*, 756 Fed. Appx. 355, 357–58 (5th Cir. 2018) (fact issue due to officer’s differing explanations for shooting).

Second, the Recommendation also erroneously credits Walker Prado’s after-the-fact misinterpretation of Medel’s movement of the gun “to his chin” as a threat. Doc. 79, pp. 12, 14. Even if the jury were to assume Walker Prado saw the slight movement reflected in the video, the

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<sup>52</sup> Doc. 42-3, Walker Prado BWC at 02:12:55–02:13:01, 02:16:26–28.

<sup>53</sup> Doc. 42-3, Walker Prado BWC at 03:07:21–03:07:35 (Walker Prado’s attorney arrives to the scene to have discussion with Walker Prado); Doc. 42-17, Memorandum re: Administrative Inquiry Notice COA 1323-1326 at p. 4; Doc. 27-6, Walker Prado IA Interview at p. 1, ln. 2 (noting the time); *id.* at p. 2, ln. 43–56 (Walker Prado acknowledges he reviewed the items listed on the Notice of Administrative Inquiry); *see also Hobart v. Estrada*, 582 Fed. App’x. 348, 354 (5th Cir. 2014) (noting officer’s timing of talking to attorney in summarizing factual disputes regarding when and why officer decided to use force in case dismissing qualified immunity appeal for lack of jurisdiction based on material fact disputes).

<sup>54</sup> Doc. 42-3, Walker Prado BWC, 02:09:04–02:09:05; *see* Ex. 23, Frame-by-Frame of Walker Prado BWC, Frames 15–24; *see supra* n.49.

video also shows Medel was not threatening anyone with this movement. Yet, the Recommendation infers in the officer's favor that Walker Prado did *not* see Medel look at the sliding glass window at least one second earlier<sup>55</sup> while also *not* perceiving that Medel's elbows remained locked so he was never in the process of pointing the gun forward.<sup>56</sup> These highly selective inferences against the Plaintiff—particularly combined with the inference that Walker Prado *did* see the movement “to his chin” while missing the foregoing facts—contravene Rule 56 and nullify the Recommendation's application of caselaw. These disputed inferences are material, since Medel could not be about to shoot through his front door while looking through his sliding-glass door or while keeping his left elbow locked against his chest. Instead, they match Medel's explanation that he was reacting to Walker Prado's sudden yelling outside his sliding glass door.

At the very least, a jury needs to resolve the dispute about how a reasonable officer would perceive Medel's conduct. *See Curran v. Aleshire*, 800 F.3d 656, 664 (5th Cir. 2015) (upholding denial of qualified immunity where video did not “conclusively resolve[] the factual disputes” surrounding alleged excessive force); *Darden v. City of Fort Worth, Tex.*, 880 F.3d 722, 730 (5th Cir. 2018) (“a court should not discount the nonmoving party's story unless the video evidence provides so much clarity that a reasonable jury could not believe his account”); *Ambler v. Nissen*, 116 F.4th 351, 359 (5th Cir. 2024) (affirming denial of qualified immunity where district court found video evidence did “not provide the clarity necessary to resolve the factual dispute presented by the parties' conflicting accounts”); *Spiller v. Harris Cnty., Tex.*, 113 F.4th 573, 580 (5th Cir. 2024) (Willet, J. concurring) (“Even high-definition video footage can yield competing eye-of-

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<sup>55</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶ 29; Doc. 42-3, Walker Prado BWC, 02:09:04–05; *see also* Doc. 42-13, Still images from last frame of Walker Prado's BWC before bullet shattered Medel's sliding glass door; Ex. 23, Frame-by-Frame of Walker Prado BWC, Frame 3.

<sup>56</sup> *Compare* Doc. 42-13, Still images from last frame of Walker Prado's BWC before bullet shattered Medel's sliding glass door *with* Doc. 42-16, Still Image of Walker Prado Deposition.

the-beholder takeaways.”); *see also Scott v. Harris*, 550 U.S. 372, 380–381 (2007) (court should not resolve fact disputes at summary judgment unless video evidence has “utterly discredited” one side’s version of events). The video shows Medel was not moving to point the gun forward and, if the Court accepts that Walker Prado saw the slight movement of the gun (despite the preceding fact dispute), then it must necessarily conclude Walker Prado also saw the other aspects of Medel’s movement which prove he was not moving to point the gun forward to aim.

Third, regardless, Walker Prado also knew Medel could not pose an immediate threat with the gun because he did not have the ability to immediately shoot the officers even if Medel hypothetically were to have pointed the gun at his front door. Walker Prado has never alleged he thought he was in danger himself (because he was hiding and behind hard cover until he moved to fire),<sup>57</sup> but Walker Prado also knew that the other three officers—whom he had also just warned—were concealed and not behind the front door even if Medel had hypothetically fired blindly into it as Walker Prado later claimed was his fear.<sup>58</sup> The Recommendation errs by concluding, contrary to all evidence, that the other three officers were behind the front door. Doc. 79, p. 3. Since all four officers were concealed and out of the hypothetical line of fire, there was no immediate threat.

These facts highlight the Recommendation’s error in distinguishing *Griffin v. Newell*, 981 F.2d 1256, 1992 WL 386807 (5th Cir. 1992) (unpublished).<sup>59</sup> Doc. 79, pp. 19–20. Like Medel, the subject in *Griffin* was holding a loaded gun, albeit in a holster. *Id.* at \*2. Unlike Medel, the *Griffin*

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<sup>57</sup> Doc. 42-3, Walker Prado BWC at 02:08:59–02:09:03; Doc. 27-4, Declaration of Walker Prado, p. 2, ¶ 6; Doc. 27-7, Walker Prado Deposition, 152:15–19.

<sup>58</sup> Doc. 42-3, Walker Prado BWC at 02:08:59; Doc. 27-7, Walker Prado Deposition, 170:15–25, 193:9–16; Doc. 42-2, Lozano Deposition, 38:15–39:12, 39:19–40:4; Doc. 42-6, Daniel Deposition, 28:24–29:12, 30:5–12; Doc. 42-10, Reinhart Deposition, 50:11–16, 51:10–18; Doc. 42-14, Noble Expert Report, p. 78, ¶ 59(g); *contra* Doc. 27-4, Walker Prado Declaration, p. 3, ¶ 12.

<sup>59</sup> Under 5th Circuit Rule 47.5.3, as an unpublished opinion issued before January 1, 1996, *Griffin* is precedential.



subject had just fired that gun in public, was aware of police presence, and overtly disobeyed police instructions; when police told him to raise his hands, he bent down instead. *Id.* at \*2. The *Griffin* subject posed a far greater threat than Medel, as he lowered his gun when police were in plain view—and thus ready targets for the recently active shooter in *Griffin*. Nonetheless, the Fifth Circuit held that factual disputes precluded qualified immunity in *Griffin*. *Id.* at \*1–2. Medel posed far less of a threat, as Medel’s slight movement of his gun to his chin occurred when he could not see anyone to shoot, and instead he was only stopping to look towards the sound of Walker Prado’s shouting. *See supra* pp. 14–15, nn.55–58 and accompanying text. The fact that the *Griffin* subject had their loaded gun in a holster posed far less of an impediment to suddenly opening fire than the fact that Medel did not even have a line of sight to any officer. If an armed, recently active shooter with a loaded gun and clear line of sight to the police who lowers their gun contrary to commands does not pose an immediate threat, then Medel—who had not fired his weapon, could not even see the police to threaten them, and had not disobeyed orders—did not pose a threat by slightly moving his gun and looking away from his front door.

Relatedly, even with the Recommendation’s mistaken factual predicates, the Recommendation errs by relying on *Ramirez v. Knoulton*, 542 F.3d 124, 127 (5th Cir. 2008). Doc. 73, pp. 12–13. Unlike Medel, the *Ramirez v. Knoulton* plaintiff knew he was interacting with police officers who were investigating him for sexual assault of a child, fled from those officers, expressed suicidal intent to officers, disobeyed repeated commands to keep his hands visible, stepped out of a car with a gun in his hand, and, rather than obey subsequent commands to drop the weapon, moved his hands together as if to lift the gun to aim it at officers whom he could actually see mere yards away. 542 F.3d at 127. That plaintiff not only acted in a manner that was immediately threatening, he also ticked the box on all three *Graham* factors, unlike Medel, who

had no idea it was police on the other side of his door (or at least, from Walker Prado's alleged viewpoint that Medel heard the announcement, was reasonably moving to confirm they were police), could not see any officers, was not suicidal or acting erratically, and did not disobey any commands, much less repeated commands.<sup>60</sup> The Recommendation's focus on the fact that the *Ramirez* subject was also holding a gun in both hands completely disregards the entirely contrary context: In *Ramirez*, the subject had been warned, actually demonstrated non-compliance, and could actually see the officers when he seemingly prepared to use his weapon, so those officers had every reason to infer his intent to aim the gun, 542 F.3d at 127—whereas Walker Prado knew Medel had not been warned, was not disobeying any command, could not see any officers to shoot, and looked *away* from the direction of his supposed threatened targets.<sup>61</sup>

Likewise, the subjects in *Rice*, *Manis*, *Argueta*, and *Ontiveros* unequivocally knew they were interacting with law enforcement, had a line of sight to one or more officers, and either fled or otherwise actively disobeyed police commands, presenting critically different context for whether their gestures posed an immediate threat. *Argueta v. Jaradi*, 86 F.4th 1084, 1087, 1092 (5th Cir. 2023) (man made a furtive gesture akin to reaching to a waistband while running from officers whom he knew were police); *Rice v. ReliaStar Life Ins. Co.*, 770 F.3d 1122, 1127 (5th Cir. 2014); *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (man ignored five commands from law enforcement officers not to reach and lunged under his seat as if he had obtained a weapon before officers opened fire); *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 381 (5th Cir. 2009) (man

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<sup>60</sup> See generally *supra* pp. 3–10; Doc. 42-3, Walker Prado BWC at 02:08:02–02:08:15 (Medel “just yelling”); Doc. 42-7, Medel II Declaration, pp. 2, 4, ¶¶ 15, 35.

<sup>61</sup> See generally *supra* pp. 3–10; Doc. 27-7, Walker Prado Deposition, 152:5–7, 152:11–18, 170:15–25; see Doc. 42-3, Walker Prado BWC, 02:07:40, 02:08:29, 02:09:05; Doc. 27-4, Declaration of Walker Prado, p. 2, ¶¶ 6, 12; see also Doc. 42-7, Medel II Declaration, p. 3, ¶¶ 24, 29; Doc. 42-8, Father's Affidavit, p. 2, ¶ 23; Doc. 42-13, Still images from last frame of Walker Prado's BWC before bullet shattered Medel's sliding glass door.

retreated from police wearing marked uniforms after they ordered him outside, refused repeated commands to show them his hands, and then reached into a boot). Medel, by contrast, never saw the police (even in Walker Prado’s version of events) as he never had line of sight to attack the police,<sup>62</sup> and never disobeyed commands. It simply cannot be reasonable to assume a completely lawful gesture is “furtive” or “threatening” when the person making the gesture, at a minimum, cannot see anyone to threaten—and, further, has not even had the opportunity to (even in Walker Prado’s version of events) confirm police are present. The Recommendation errs by concluding otherwise and comparing these disparate cases to Medel’s despite those critical differences.

Lastly, notwithstanding the Recommendation’s recitation, *Cole v. Carson* also involved a gesture which the Fifth Circuit rejected as a potential *Manis* act. *Contra* Doc. 79, p. 23. In *Cole v. Carson I*, the Fifth Circuit analyzed a suicidal subject who was holding a pistol to his own head and had ignored officers telling him to stop. 802 F.3d 752, 755 (5th Cir. 2015). That subject then encountered a second group of officers and undisputedly “made some turning motion to his left” *toward* those officers before they shot him. *Id.* Those officers argued the subject was a threat because he had been non-compliant with police orders, was openly suicidal, and they could not anticipate what he would do next with the gun in his hand as he turned to face the officers. *Id.* The Fifth Circuit held those officers used excessive force because “[t]urning to one’s left is not a threatening *Manis* act in these circumstances.” *Id.* at 761. After several years of further appeals, the Fifth Circuit ultimately reinstated that holding from *Cole I* in its 2019 en banc decision. *Cole II*, 935 F.3d at 447. Here, Medel also slightly moved his gun, and the Recommendation latches onto the fact that this movement brought the gun slightly closer to the officers concealed outside—

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<sup>62</sup> Doc. 42-3, Walker Prado BWC at 02:08:59–02:09:03; Doc. 42-9, Reinhart BWC at 02:08:56 (other officers’ positions); Doc. 27-4, Declaration of Walker Prado, p. 2, ¶¶ 6, 12; Doc. 27-7, Walker Prado Deposition, 152:15–19, 170:15–25; Doc. 42-7, Medel II Declaration, p. 2, ¶ 15.

although Medel had also just turned his head away from them—but, just like *Cole*, this slight movement was not an immediate threat due to the fact disputes about whether Medel would have appeared to a reasonable officer in Walker Prado's position to be purposefully preparing to aim.

Accordingly, the Recommendation errs by asserting Medel posed an immediate threat.

2. *The conduct Walker Prado actually responded to, Medel's walking to the front door with his handgun, did not pose an immediate threat.*

Medel posed no immediate threat by merely walking to his door to investigate knocking at 2 a.m. while understandably keeping his personal handgun at the ready until he determined who was outside, and the Recommendation's opposite conclusion is wrong for four reasons.

First, regardless of whether it was reasonable for Walker Prado to mistakenly assume Medel had heard the announcement of police, the Recommendation should not have ignored the testimony by Walker Prado, the three other officers present at the scene, their police chief, and Plaintiff's retained policing expert that a reasonable gunowner in Medel's position would have armed themselves and approached the door to check who was really outside before stowing their weapon.<sup>63</sup> This is because, as discussed above, criminals are widely known in Austin and around the country to impersonate police. *See supra* pp. 8–10. Accordingly, the Recommendation should not have found a *Manis* act from Medel's reasonable, foreseeable, and lawful conduct.

The Fifth Circuit has held that merely holding a gun while approaching unseen officers is not threatening, as that is what the victim was doing in *Cole v. Carson II*, 935 F.3d 444, 453 (5th Cir. 2019) (en banc). Indeed, contrary to the Recommendation's interpretation, the illegally armed victim in *Cole* specifically knew police were responding to the scene and defied their orders to

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<sup>63</sup> Doc. 27-7, Walker Prado Deposition, 67:22–68:3; Doc. 42-2, Lozano Deposition, 29:15–21, 23; Doc. 42-6, Daniel Deposition, 20:12–25, 21:3–5; Doc. 42-10, Reinhart Deposition, 36:19–37:3, 37:5–14; Doc. 27-7, 67:22–68:3; Doc. 40-1, Henderson Deposition, 75:19–23, 75:25–76:4; Doc. 42-14, Noble Expert Report, pp. 77–78, ¶ 59(e).

stop—so his brandishing a handgun was non-compliant, unlike Medel’s lawful conduct. *See Cole II*, 935 F.3d at 448 (noting that two other officers were following the subject, explaining why he was walking backwards when he encountered the officers who opened fire); *id.* at 455 (“Officers ... found themselves in a search for a suicidal teenager who they knew had already encountered fellow officers and walked away from them with his gun to his head”); *Cole v. Carson I*, 802 F.3d 752, 755 (5th Cir. 2015) (explaining further that subject was illegally in possession of the handgun and refused police commands to stop by other officers before encountering the officers who opened fire). Nonetheless, those officers in *Cole* violated “obvious” clearly established law when they fired without warning on an armed subject who did not see them, just like Walker Prado. *Cole II*, 935 F.3d at 453, 457.

While of course Medel did arm himself in response to the knocking at his door, the critical implication of the Second Amendment, as effectuated by *Cole*, is that “[m]erely having a gun in one’s hand does not mean *per se* that one is dangerous.” *Graves v. Zachary*, 277 Fed. Appx. 344, 348 (5th Cir. 2008); *see also Smith v. City of El Paso, Tex.*, 2011 WL 13180179, \*9 (W.D. Tex. Oct. 13, 2011) *appeal dism’d* by 477 Fed. Appx. 240 (5th Cir. 2012) (noting that the “Court could conclude as a matter of law that [an] officer’s actions were excessive and unreasonable” if an officer had fired his gun at a man solely for bringing a gun and flashlight to his door and sweeping left-to-right to see who was there late at night, notwithstanding that the gun swept by the officer). Thus, nothing about Medel’s act of retrieving his handgun and approaching his door showed more than a lawful, foreseeable response to the late-night knock at his door, not a threat.

Second, the Recommendation focuses on Walker Prado’s claimed assumption that Medel heard the police announce themselves—notwithstanding the evidence that Medel, his father, and

his neighbors could not hear it<sup>64</sup>—because the Fourth Amendment standard is based on what the officer knew at the time. Doc. 79, p. 15. But Walker Prado knew Medel was in an enclosed space where the police announcement would be muffled and that it was possible Medel could not hear the announcement.<sup>65</sup> Walker Prado should have known the occupants’ unawareness was a likelihood.<sup>66</sup> Rather than acknowledging a fact dispute about whether Walker Prado’s incorrect (alleged) assumption was reasonable, the Recommendation accepted Walker Prado’s argument that it was reasonable to discount the possibility that Medel did not hear. Doc. 79, pp. 15–16.

The Recommendation also erroneously dismissed that fact dispute as immaterial based on *Cass v. City of Abilene*, because *Cass* is factually inapplicable. 814 F.3d 721 (5th Cir. 2016); Doc. 79, p. 16.<sup>67</sup> In *Cass*, an armed officer participated in a no-knock raid of a business and entered an office with a subject who it was undisputed reacted by suddenly drawing a handgun, then pointing it directly at the officer. 814 F.3d at 731. These key, undisputed facts were dispositive in *Cass*, as the officer reasonably perceived an immediate danger from an armed man pointing a gun at him in an enclosed space, *id.* at 732, but neither fact was present here, as Walker Prado knew that Medel could not see any officers<sup>68</sup> and was not pointing a gun at anyone.<sup>69</sup>

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<sup>64</sup> See Doc. 42-11, Rikita Ghimire Witness Interview Summary; Doc. 27-17 “SIU Rikita Ghimire Interview.mp4” at 06:35:15–06:35:40; Doc. 27-15 “SIU Presentation” at COA 2742, p. 12; Doc. 42-7, Medel II Declaration, p. 4, ¶ 36; Doc. 42-8, Father’s Affidavit, p. 2, ¶ 20.

<sup>65</sup> Doc. 27-7, Walker Prado Deposition, 43:15–20.

<sup>66</sup> Doc. 42-14, Noble Expert Report, p. 77, ¶ 59(a)–(c).

<sup>67</sup> A portion of *Cass*’s reasoning has also been overruled by a subsequent Supreme Court decision. Compare *Cass*, 814 F.3d at 731 (expressly refusing to consider the earlier “context” of the shooting, relying on *Harris v. Serpas*, 745 F.3d 767 (5th Cir. 2015)) with *Barnes v. Felix*, 605 U.S. 73, 82 (2025) (overruling Fifth Circuit precedent, including specifically *Harris v. Serpas*, because a court must consider the entire preceding totality of the circumstances known to the officer).

<sup>68</sup> Doc. 27-7, Walker Prado Deposition, 152:5–7, 152:11–18, 170:15–25; see Doc. 42-3, Walker Prado BWC, 02:07:40, 02:08:29; Doc. 27-4, Declaration of Walker Prado, p. 2, ¶¶ 6, 12; see also Doc. 42-7, Medel II Declaration, p. 3, ¶ 24; Doc. 42-8, Father’s Affidavit, p. 2, ¶ 23.

<sup>69</sup> See *supra* pp. 5–9; Doc. 42-3, Walker Prado BWC, 02:09:03–5; Doc. 42-7, Medel II Declaration, pp. 2–3, ¶¶ 18–19, 23, 26, 30.

Third, the Recommendation further erred by crediting as an “immediate threat” the mere possibility that Medel might suddenly attack officers, since Medel’s actual conduct was inconsistent with any such threat. *See* Doc. 79, pp. 13–14. Walker Prado claimed he was afraid Medel would shoot his colleagues, which either means through the closed door or after opening the door.<sup>70</sup> The Recommendation does not specify which possibility it is crediting, but Walker Prado knew neither was plausible: The first possibility was contradicted both by the officers’ positions and by Medel’s ongoing conduct of approaching the door, and the second was contradicted by his holding the gun in high ready. If Medel planned to fire through the closed door, walking right up to the door and away from cover would undermine that purpose,<sup>71</sup> and in any event this would pose no threat because Walker Prado saw that his colleagues were not behind the door and knew they were trained not to stand in front of doors.<sup>72</sup> If Medel planned to open the door first, Walker Prado testified that holding the gun in both hands would prevent him from doing so.<sup>73</sup> Thus, in the light most favorable to Medel, these far-fetched possibilities failed to create probable cause to suspect an immediate threat because Medel’s conduct of walking towards his front door with the gun in high-ready position contradicted Walker Prado’s speculation.

Fourth, the lack of any immediate threat by Medel and the excessiveness of Walker Prado’s force is further highlighted by the fact that Walker Prado could have issued a warning yet chose

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<sup>70</sup> Doc. 27-7, Walker Prado Deposition, 86:22–1, 138:22–139:1; Doc. 27-4, Walker Prado Declaration, p. 3, ¶ 13.

<sup>71</sup> Doc. 42-14, Noble Expert Report, p. 78, ¶ 60 (“Mr. Medel did not attempt to take cover, aim his weapon at the door, or do anything else inconsistent with the expected response of an armed homeowner late at night responding to sudden knocks at the door.”).

<sup>72</sup> Doc. 42-3, Walker Prado BWC at 02:08:59; Doc. 27-7, Walker Prado Deposition, 193:9–16; Doc. 42-2, Lozano Deposition, 38:15–39:12, 39:19–40:4; Doc. 42-6, Daniel Deposition, 28:24–29:12, 30:5–12; Doc. 42-10, Reinhart Deposition, 50:11–16, 51:10–18; Doc. 42-14, Noble Expert Report, p. 78, ¶ 59(g); *contra* Doc. 27-4, Walker Prado Declaration at p. 3, ¶ 12.

<sup>73</sup> Doc. 27-7, Walker Prado Deposition, 26:19–20.

not to. This was, again, a critical fact in *Cole v. Carson. Cole II*, 935 F.3d at 457. And, similarly, the Recommendation errs by discounting Walker Prado's failure to warn Medel merely because another officer had announced their presence. Doc. 79, p. 21. Once again, in *Cole*, the officers did exactly the same thing—relying on the announcement of other officers to surprise and shoot an armed subject—yet the Fifth Circuit still held their conduct of shooting an armed subject without a warning was unlawful. *Cole II*, 935 F.3d at 448, 455; *Cole I*, 802 F.3d at 755. The Recommendation repeats this error when it discounts two other binding decisions simply because of Reinhart's announcement, even though in each of those decisions the failure to warn was material despite the subject's undisputed prior awareness of police presence. *Compare* Doc. 79, p. 21 *with Poole v. City of Shreveport*, 13 F.4th 420, 422, 425 (5th Cir. 2021) (emphasizing materiality of fact dispute whether officer gave a warning before shooting, even though subject had fled a traffic stop initiated by the officer's marked police vehicle); *Joseph v. Bartlett*, 981 F.3d 319, 338 (5th Cir. 2020) (emphasizing “[t]he parties agree that Joseph ran from the officers and disobeyed commands,” but still concluding it was material that officers did not warn the subject or give commands before escalating to a taser).

As set forth above, the summary judgment facts show that Walker Prado, who had time to give his fellow officers a warning (“He’s got a gun! Gun, gun, gun, gun, gun”), could have instead issued a warning like “Police, Drop the Gun” that would have effectively warned both Medel as well as Reinhart, Lozano, and Daniel.<sup>74</sup> Likewise, where Medel was not lowering or pointing his weapon at the front door and no officers were even behind that door, Medel was no threat at all and there was plenty of time for Walker Prado to warn Medel before firing.<sup>75</sup> The fact that Walker

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<sup>74</sup> Doc. 27-7, Walker Prado Deposition, 105:3–8, 161:10–16, 162:12–16; Doc. 42-14, Noble Expert Report, p. 78, ¶ 61.

<sup>75</sup> Doc. 42-1, Walker Prado Deposition, 161:7–12, 14–17, 19; Doc. 42-14, Noble Expert Report,



Prado never gave a warning undermines the Recommendation’s inference that Medel’s walking to the door was somehow threatening—to the contrary, even if Walker Prado mistakenly assumed Medel heard the police tell him to open the door, then Medel appeared to be actively complying with the only command he received.

3. *The Recommendation identifies no threatening conduct after Medel fell to the ground.*

For the shot after Medel collapsed, the Recommendation attempts to bypass the fact dispute about whether Medel was moving his arm toward police because it remained possible Medel was still touching or holding his gun, but this reasoning is fundamentally flawed. *See* Doc. 79, p. 24.

As an initial matter, there is no evidence Medel had a gun in his hand after he fell. *Contra* Doc. 79, p. 24 (citing only Walker Prado’s reply, not evidence). Instead, Walker Prado has offered only his self-serving claim that he “believed” that Medel had a gun in his hand; Walker Prado admits he “wouldn’t know” if Medel did have the gun in his hand, but yet also claims he could see Medel reaching towards the front door to point the gun.<sup>76</sup> More importantly, Walker Prado’s testimony that he saw reaching necessarily implies that he could see what Medel was actually doing—which, according to Medel, is not moving at all after falling by the couch.<sup>77</sup> So whether he still had the gun or not, the Recommendation does not and cannot identify any “furtive gesture” or *Manis* act Medel engaged in while not moving on the ground by the couch. As discussed above, neither of his earlier gestures posed a threat. But even if there had been a threat before, then that threat would have been eliminated by Medel falling to the ground face down where he could not immediately open his front door or otherwise shoot the police—at least not without Walker Prado

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p. 78, ¶ 61; *see supra* pp. 9–10.

<sup>76</sup> Doc. 27-7, Walker Prado Deposition, 94:16–17 (“I wouldn’t know”); Doc. 42-3, Walker Prado BWC at 02:09:05–02:09:09; Doc. 42-7, Medel II Declaration, p. 3, ¶ 33; *contra* Doc. 27-4, Walker Prado Declaration, p. 4, ¶¶ 15–16.

<sup>77</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶ 33.

seeing movement first according to his own testimony about what he could and could not see. The Recommendation thus erred by concluding that Medel nonetheless posed a sufficient threat to justify Walker Prado shooting him in the back (still without warning) with his last shot.

Accordingly, the Recommendation erred by concluding Walker Prado did not violate Medel's constitutional rights. Furthermore, as this error is the sole basis for the Recommendation to dismiss the City of Austin, it should also be overruled in that respect. *See* Doc. 79, p. 29.

**B. Walker Prado violated Medel's clearly established rights when he shot Medel.**

The Recommendation also errs by distinguishing the clearly established law that precluded Walker Prado's shooting Medel for five reasons.

First, as described above, Walker Prado shot Medel solely for having a firearm in his possession, pointing straight up, while in his own home checking to see who was at his door. *See supra* pp. 11–13. *Griffin v. Newell*, denied summary judgment to officers who shot a man who had actually fired his gun minutes before, was standing armed in his yard, and was moving to disarm himself when officers shot him put Walker Prado on notice that his shooting Medel violated clearly established law. *Griffin*, 981 F.2d 1256, 1992 WL 386807 at \*3.<sup>78</sup> The Recommendation errs when it distinguishes *Griffin* on two counts: first by asserting it is undisputed that Medel lowered his gun without acknowledging that whether Walker Prado saw this movement is both disputed and material and second by emphasizing that Medel's gun was unholstered. Doc. 79, pp. 19–20. Viewing the facts in the light most favorable to Medel, Walker Prado did not see Medel's gun move before he decided to fire, so the movement of Medel's gun does not distinguish *Griffin*. Further, the holster in *Griffin* obviously did far less to impede the hypothetical threat that the

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<sup>78</sup> As discussed above, *Griffin* is binding. FIFTH CIR. R. 47.5.3; *see also Johnson v. Halstead*, 916 F.3d 410, 417 (5th Cir. 2019) (relying on pre-1996 unpublished but precedential opinion in support of proposition that law was clearly established to deny qualified immunity in discrimination case).

subject in *Griffin* would suddenly shoot police than the solid walls of Medel’s apartment impeded the hypothetical threat Medel would shoot APD officers. *See supra* p. 15. Thus, again, the Recommendation became ensnared by an immaterial factual detail that did not obscure the case’s clear application to these facts; the rights established by *Griffin* are “sufficiently clear that a reasonable officer would understand what they are doing violates that right” in the situation Walker Prado faced with Medel. *Hope*, 526 U.S. at 739.

Second, even if the Court were to disregard the summary judgment standard and assume Walker Prado somehow saw the movement of the gun one third of one second before Walker Prado fired, the heart of the violation in *Cole II* is also present in this case: a subject, while armed, did move the gun slightly, but did not know the police’s position and was not overtly threatening anyone else, so police shooting that person without warning was unconstitutional. *Cole II*, 935 F.3d at 448; *Cole I*, 802 F.3d at 755. The Recommendation’s concern that in *Cole* the subject was a seventeen-year-old pointing the gun at his own head and facing 90° away from police in the woods is misplaced. Whether in the woods or an apartment, the setting of the shooting, the exact age of the victim, and the precise direction the gun is pointing are details which do not need to be spelled out by the decision to make it “sufficiently clear that a reasonable officer would understand” the constitutional right evinced by *Cole* applies equally to Medel. *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). Clearly established law does not require a case “directly on point.” *McCoy v. Alamu*, 950 F.3d 226, 233 (5th Cir. 2020) (citing *Newman v. Guedry*, 703 F.3d 757, 764 (5th Cir. 2012)). “While the Fourth Amendment’s reasonableness test is not capable of precise definition or mechanical application, the test is clear enough” to alert officers in sufficiently similar scenarios. *See Crane v. City of Arlington, Tex.*, 50 F.4th 453, 467 (5th Cir. 2022). And indeed *Cole*

itself was an “obvious” case,<sup>79</sup> as Medel’s should be obvious, because in each case police—without prior warning—shot a nonthreatening subject who could not see the police solely because the subject held a gun and moved the gun slightly closer, but was not pointing or in the process of pointing the gun at the police.<sup>80</sup> *Cole II*, 935 F.3d at 453; *Cole I*, 802 F.3d at 755.

Third, as also discussed above, the Recommendation’s emphasis on Reinhart’s announcement to try to distinguish *Cole II*, 935 F.3d at 448; *Poole*, 13 F.4th at 425; and *Joseph*, 981 F.3d at 338 is simply a misreading of the facts addressed in those three decisions. Doc. 79, p. 21. In each of those three cases, the police *did* give an announcement, but the Fifth Circuit still found constitutional violations in part because of the lack of any warnings. *See supra*, pp. 18–20, 22–23; *see Cole II*, 935 F.3d at 455; *Cole I*, 802 F.3d at 755; *Poole*, 13 F.4th at 422, 425; *Joseph*, 981 F.3d at 338. These decisions conclusively refute the Recommendation to the extent it suggests Walker Prado could shoot Medel without warning simply because he assumed (reasonably or not) that Medel heard the word “police” earlier. As the Recommendation offers no other basis to excuse Walker Prado’s failure to warn, which the facts demonstrate he had every opportunity to do,<sup>81</sup> Walker Prado should be denied qualified immunity. *Cole II*, 935 F.3d at 453 (a warning prior to deadly force is a “critical component of risk assessment and de-escalation”).

Fourth, the Recommendation errs by distinguishing *Mason* and *Roque*, where in both cases

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<sup>79</sup> Moreover, Medel posed far less of a threat than the suspect in *Cole*, as he was lawfully in possession of his handgun in his own home, was not acting in a suicidal or erratic manner before Walker Prado encountered him, did not know police were involved at all, and had not been given any earlier commands that he had refused to comply with. Where it was “obvious” officers could not shoot the illegally armed suspect in 2010, it was both obvious and Walker Prado was on notice that his shooting of Medel thirteen years later was excessive and violated clearly established law.

<sup>80</sup> And of course, if the facts are viewed in the light most favorable to Medel, Walker Prado did not see Medel’s gun move, making Medel even less threatening than the seventeen-year-old in *Cole II* where officers did see the gun move. *See supra* pp. 11–12.

<sup>81</sup> Doc. 42-1, Walker Prado Deposition, 161:7–12, 14–17, 19; Doc. 42-14, Noble Expert Report, p. 78, ¶ 61; *see supra* pp. 9–10.

the officers' awareness of the subject's incapacitation after earlier shots was disputed. The key question in both was whether a reasonable officer would have "probable cause to believe that [the deceased] posed a threat of serious physical harm at the time the [...] shot[] w[as] fired." *Mason v. Lafayette City-Parish Consol. Gov't*, 806 F.3d 268, 277 (5th Cir. 2015) (citing *Garner*, 471 U.S. at 11); *Roque v. Harvel*, 993 F.3d 325, 330, 334 (5th Cir. 2021). *Mason* provides a close factual predicate once that subject fell to the ground;<sup>82</sup> like this case, the armed subject fell to the ground after police initially shot him. *Mason*, 806 F.3d at 274. Like Medel, after the initial volley of shots, the *Mason* subject fell face down in the officers' view and then, after he moved only his head but not his arms, was shot in the back. *Id.* at 273–74. The Recommendation contends that it is undisputed that Medel was still holding the gun, but there is no evidence of this. Doc. 79, p. 24 (citing only Walker Prado's reply, not evidence). Walker Prado admits he had no idea if Medel was holding his gun on the ground;<sup>83</sup> Walker Prado only argues that he saw Medel reaching, whereas Medel attests he did not move at all and the video shows no movement.<sup>84</sup> This is directly analogous to the fact dispute in *Mason*: whether that subject kept his arms at his side or reached towards his waistband where the gun was. *Id.* The officers in *Mason* had no more reason to believe the threat was over from their subject not moving his arms than Walker Prado did from Medel not moving. *Contra* Doc. 79, p. 27. Further, the Recommendation complains that only two seconds passed between Walker Prado's third shot and his fourth shot—but that is the same duration of time between the first, uncontested shot in *Roque* and the second, unconstitutional shot. 993 F.3d at 330, 331, 334. The third shot in *Roque* did not retroactively affect the unconstitutionality of the

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<sup>82</sup> Before he fell, unlike Medel, the *Mason* subject had been an actual threat—he tried to force his way into his girlfriend's locked bedroom, threatened to pistol whip two acquaintances of his girlfriend, and knew officers were responding and present. *Mason*, 806 F.3d at 272–73.

<sup>83</sup> Doc. 27-7, Walker Prado Deposition, 94:16–18.

<sup>84</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶ 33.

second. *See Hernandez v. Mesa*, 137 S. Ct. 2003, 2007 (2017); *contra* Doc. 79, p. 27.

Finally, the Recommendation does not attempt to address the consensus of persuasive authority also on point. The law can be clearly established by a robust consensus of persuasive authority. *Wigginton v. Jones*, 964 F.3d 329, 355 (5th Cir. 2020). Seven other federal courts of appeals have confirmed constitutional violations in analogous or similar shootings. *See Knibbs v. Momphard*, 30 F.4th 200, 214, 223-24 (4th Cir. 2022) (officer who approached house near midnight, announced himself once, and then shot man who retrieved and loaded shotgun and held it with the barrel pointing up to protect himself as he could not verify the officer's identity used excessive force in violation of clearly established law);<sup>85</sup> *Pauly v. White*, 874 F.3d 1197, 1203-05 (10th Cir. 2017) *cert. denied* 585 U.S. 1010 (2018) (finding constitutional violation, but not clearly established, that officers who approached home of violent crime victims after 11 p.m. and didn't adequately identify themselves used excessive force when they shot home owner who reasonably armed himself against perceived home invaders);<sup>86</sup> *Curnow by and through Curnow v. Ridgecrest Police*, 952 F.2d 321, 323, 325 (9th Cir. 1991) (officers who broke into man's house unexpectedly and unannounced in the evening, shot him, and then shot him again when he picked up a gun in response to being shot in his own home used excessive force in violation of clearly established law);<sup>87</sup> *Dickerson v. McClellan*, 101 F.3d 1151, 1163-64, 1165 (6th Cir. 1996) (reversing grant of

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<sup>85</sup> *See also Hensley v. Price*, 876 F.3d 573, 582–83 (4th Cir. 2017) (law clearly established officers cannot shoot an armed man, holding gun pointed down).

<sup>86</sup> *See also St. George v. City of Lakewood, Colorado*, No. 20-1259, 2021 WL 3700918, at \*3, 5–8 (10th Cir. Aug. 20, 2021) (unpublished) (considering *Pauly* among other precedents to reverse grant of qualified immunity to officers for shooting a man who exited his home late at night armed with a shotgun after police identified themselves on the phone, but remained visually concealed outside until after they shot him).

<sup>87</sup> *See also Solis-Diaz v. Tompkins*, 656 Fed. Appx. 294, 296–97 (9th Cir. 2016) (unpublished) (officer not entitled to qualified immunity where dispute of fact whether rifle-wielding man who was cursing at officers was attempting to place gun down).

summary judgment on qualified immunity on excessive force claim where officers responded to a home at 1 a.m. in response to call of drunk prowler and “shots fired” but disputed material facts in light most favorable to that plaintiff showed they shot a man inside his own home holding gun down by his side without warning); *see also McKenney v. Mangino*, 873 F.3d 75, 79-80, 84 (1st Cir. 2017) (officers who shot suicidal man ambling around his garage, house and driveway with a gun held in his hand without close-in-time warning used excessive force in violation of clearly established law); *Weinmann v. McClone*, 787 F.3d 444, 448, 451 (7th Cir. 2015) (officer who entered home unannounced and within seconds shot man holding a gun in his own home without warning “plainly” used excessive force in violation of clearly established law where it was disputed where the gun was pointing); *Partridge v. City of Benton II, Arkansas*, 70 F.4th 489, 491-93 (8th Cir. 2023) (denying qualified immunity to officer who shot and killed suicidal teenager while he was moving a gun in his hand where it was disputed whether the gun was moving to point down or to point in the direction of officers).<sup>88</sup>

Accordingly, Walker Prado’s motion for summary judgment and his defense of qualified immunity should be denied.

**C. The City’s motion for summary judgment should be abated so Medel can respond.**

In this case, the Recommendation recommends granting the City’s motion solely based on the lack of a constitutional violation by Walker Prado, but this is an error for the reasons discussed above. *See supra* pp. 11–25; Doc. 79, p. 29. Furthermore, Plaintiff Medel needs discovery the Court already ordered the City of Austin to produce before he can respond to its motion. Doc. 75. As explained in the underlying motion to compel, Rule 56(d) “motions are broadly favored and

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<sup>88</sup> *See also Partridge v. City of Benton, Ark. I*, 929 F.3d 562, 565 (8th Cir. 2019) (clearly established officer could not shoot suicidal teenager holding a gun to his own head as he started to move the gun away from his head).

should be liberally granted.” *Culwell v. City of Fort Worth*, 468 F.3d 868, 871 (5th Cir. 2006) (reversing grant of summary judgment). *See* Doc. 68; Doc. 70. Here, the City conceded that its withholding of documents prevented Medel from responding to the motion for summary judgment. *See* Doc. 51-1, Stipulation, p. 2, ¶ 15. The City has not complied with the order compelling its production and attendance at a deposition, so Medel’s response is not yet due. *See* Doc. 75.

As Walker Prado did violate the Constitution and Medel has not had an opportunity to respond to the City’s motion, Medel’s objection to the Recommendation should be sustained and Medel should have the opportunity to respond to the City’s motion as ordered by the Court.

**D. Based on the Recommendation’s reasoning, Plaintiff Medel’s motion to strike should be granted, not denied as moot.**

Plaintiff Medel moved to strike and objected to some of Walker Prado’s summary judgment evidence based on Rule 56(c)(2) and Rule 702. Doc. 38; Doc. 64, pp. 5–7. Medel specifically asked both that certain documents, including portions of Medel’s deposition, not be considered for summary judgment and, for the purposes of complying with the Court’s *Daubert* motion deadline, that an expert report be excluded from trial. Doc. 38-7; Doc. 64, pp. 5–7.

The Recommendation expressly declined to consider all of the exhibits that Medel moved to strike, without expressly addressing Medel’s deposition, but then denied the motion as moot. Doc. 79, pp. 28–29. This is not correct, since the objected-to exhibits remain before the Court, so the motion is not moot and the Recommendation erred by declining to assess the motion on its merits or otherwise explain its reasoning. The Recommendation did not expressly address Medel’s deposition, although it appears to have also declined to consider the irrelevant portions. Thus, Medel respectfully incorporates his briefing on the motion to strike and sur-reply by reference, as Medel objects that the Recommendation does not purport to address any of the arguments therein. *See* Doc. 38; Doc. 56; Doc. 64, pp. 5–7. In summary, Walker Prado’s Exhibits 9 and 11 are



unsworn, unauthenticated, inadmissible hearsay, and more prejudicial than probative because they reflect irrelevant facts not known to Walker Prado at the time of the shooting. *Hernandez v. Mesa*, 137 S. Ct. 2003, 2007 (2017). The portions of Medel’s deposition on those subjects are likewise irrelevant. *See* Doc. 64, pp. 5–7. Further, Walker Prado’s Exhibit 11 is an inadmissible, unreliable expert report which contains myriad improper legal conclusions, speculation about the effects of drugs and alcohol on Medel,<sup>89</sup> and speculation about the parties’ mental states.<sup>90</sup>

If the Court were to adopt the Recommendation’s reasoning, denying the motion as moot would still be incorrect. Medel specifically asked the Court not to consider the documents, so if the Court adopts the Recommendation’s reasoning, then it would ignore the documents and thus *de facto* grant the motion. Thus, the motion should be granted, not denied, at least as to the Rule 56(c)(2) relief of disregarding the inadmissible evidence for the purposes of summary judgment.

Accordingly, Medel’s motion to strike should be granted, the identified exhibits should be disregarded, and the identified, irrelevant portions of Medel’s deposition should be disregarded.

## V. CONCLUSION

For the foregoing reasons, the Court should sustain Medel’s objections to the Magistrate Judge’s Report and Recommendation; deny Walker Prado’s motion for summary judgment; abate the City of Austin’s motion for summary judgment, and grant Medel’s motion to strike.

Date: January 26, 2026.

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<sup>89</sup> *See, e.g., White v. Life Ins. Co. of N. Am.*, 892 F.3d 762, 769 (5th Cir. 2018) (noting that although pilot’s blood was positive for illegal drugs, those tests alone did not permit “an estimation of [his] level of impairment”); *Factory Mut. Ins. Co. v. Alon USA L.P.*, 705 F.3d 518, 524 (5th Cir. 2013) (“Courts ... must serve a gate-keeping function with respect to Rule 703 opinions to ensure ‘the expert isn’t being used as a vehicle for circumventing the rules of evidence.’”).

<sup>90</sup> *Gobert v. Caldwell*, 463 F.3d 339, 348 n.29 (5th Cir. 2006) (“expert testimony cannot create a question of fact as to what [the party] actually knew”); *Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992) (“[T]he trial judge ought to insist that a proffered expert bring to the jury more than the lawyers can offer in argument.”).

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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Case No. 1:24-cv-00990-RP

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**UNOPPOSED MOTION FOR LEAVE FOR EXTENTION OF TIME TO FILE  
DEFENDANT WALKER PRADO'S RESPONSE BRIEF IN OPPOSITION TO  
PLAINTIFF'S OBJECTIONS TO THE REPORT AND RECOMMENDATION**

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gabriel Walker Prado, Defendant in the above-entitled and numbered cause, and submits this unopposed motion for leave for extension of time to file his Response Brief in Opposition to Plaintiff's Objections to the Report and Recommendation (Dkt. 81), and in support thereof would respectfully show this Court as follows:

**I. Relevant Procedural Background**

1. On January 12, 2026, the Honourable Magistrate Dustin Howell rendered his Report and Recommendation of the United States Magistrate Judge recommending that Defendant Walker Prado's Motion for Summary Judgment be granted (Dkt. 79). Plaintiff's Objections to the same were filed the by the clerk on February 2, 2026 (Dkt. 81). Defendant Walker Prado's deadline to file his Reply Brief is currently Thursday, February 12, 2026.

**II. Request for Leave**

2. Defendant requests leave from this Court for a 12-day extension of time to submit his Response Brief would extend his deadline to **Tuesday, February 24, 2026**. Counsel believes that extra time is needed due to unexpected staffing issues, other pressing legal matters, the complexity of the case at bar, to properly brief and address arguments raised by Plaintiff's counsel in his 33-page Response brief. The Defense does not seek this extension for the purposes of delay, but so that justice may be done.

3. The undersigned has conferred with Plaintiff's counsel regarding this motion. Counsel for Plaintiff is unopposed to the requested extension.

### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the Defendant Gabriel Walker Prado respectfully requests that this Court grant this unopposed motion and allow Defendant to file his Response Brief on or before **February 24, 2025**, and for all other relief to which he may be entitled in law or in equity.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF CONFERENCE**

On February 9, 2026, the undersigned conferred with Plaintiff's counsel regarding the requested extension. Plaintiff's counsel is unopposed to Defendant's Motion. Attorney for co-defendant City of Austin is also unopposed.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of February, 2026, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_  
/s/ Blair J. Leake  
Blair J. Leake

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

**AVELINO MEDEL II**  
*Plaintiff*

v.

**GABRIEL WALKER PRADO, in his  
individual capacity, and the CITY OF  
AUSTIN**  
*Defendants*

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**CAUSE OF ACTION No.  
1:24-CV-00990-RP**

**DEFENDANT CITY OF AUSTIN’S RESPONSE TO PLAINTIFF’S OBJECTIONS  
TO MAGISTRATE JUDGE’S RECOMMENDATIONS FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

The City of Austin opposes the requests set out in [Dkt 81], Plaintiff’s Objections to the Magistrate Judge’s Report and Recommendation. The Magistrate Judge correctly recommends [see Dkt. 79] that the Court grant the Defendant Officer’s Motion for Summary Judgment [Dkt. 34] and grant the City of Austin’s Motion for Summary Judgment [Dkt. 25]. The City respectfully submits that the Court should adopt the Magistrate Judge’s report and grant Final Judgment in favor of the defendants. This would resolve the case in its entirety and render moot any remaining discovery obligations. The Plaintiff’s objections [Dkt. 81] should be overruled and Final Judgment should be entered for all Defendants.

**I. STANDARD OF REVIEW**

Upon timely objection, the Court reviews a Magistrate Judge’s report and recommendation *de novo*. 28 U.S.C. § 636.

**II. ARGUMENT**

The Defendants’ motions for summary judgment should be granted and Plaintiff’s objections to the Magistrate Judge’s Report and Recommendation should be overruled for the reasons stated in the original briefs and for those stated in the Magistrate Judge’s Report and Recommendation [Dkt. 79].

The Magistrate Judge correctly determined that summary judgment is proper for Defendant Walker Prado [Dkt 34] and the City of Austin [Dkt 25]. The report states, in part, that: “Because the undersigned finds that Walker Prado did not violate the Constitution with respect to his use of force, Medel’s Monell claim must also fail.” [Dkt 79 at p. 29].

As for the City of Austin, plaintiff asserts on page 2, in part:

[T]he only reason given for granting the City’s motion for summary judgment—before Medel has had a chance to respond—is the lack of a constitutional violation. As this finding is erroneous, the Court should continue to extend Medel’s time to respond until Court-ordered discovery is complete and Medel is able to respond to the City’s motion for summary judgment.

And on page 30-31:

Furthermore, Plaintiff Medel needs discovery the Court already ordered the City of Austin to produce before he can respond to its motion. Doc. 75. ... The City has not complied with the order compelling its production and attendance at a deposition, so Medel’s response is not yet due.

As noted above, the Magistrate Judge’s report is correct and Plaintiff’s objections to the Magistrate Judge’s Report and Recommendation should be overruled. There is no potential *Monell* claim since there is no constitutional violation. Additional discovery would be moot, and simply an unwarranted intrusion and waste of time and resources for everyone concerned. The only discovery that possibly remains to be done relates to the November 15, 2022, incident concerning the death of Raj Moonesinghe. But the civil lawsuit for that incident (*Moonesinghe, et*

*al v. City of Austin, Sanchez, et al*, USDC WD Civil Action No. 1:24-cv-1375-RP) has been stayed by this Court pending the resolution of the parallel criminal proceedings in Travis County District Court against Officer Sanchez. (*State of Texas vs. Sanchez*, 299th District Court, Travis County, Case No. D-1-DC-22-900135). The Travis County DA's office continues its criminal investigation and prosecution following the recent mistrial, and has not agreed to the production of documents in the *Moonesinghe* civil lawsuit, or any others. Also, because of the ongoing criminal legal proceedings, the City has not completed an Internal Affairs investigation for the incident.

Further, Plaintiff has mischaracterized the nature of any outstanding discovery. In reality ***all other discovery has been completed*** except for the *Moonesinghe* incident identified above. The City directs the Court to Exhibit A (incorporated herein) which identifies the depositions and vast amount of discovery that has been completed. Plaintiff's counsel has had the opportunity to ask every question and review every document that could reasonably be calculated to lead to admissible evidence. In pertinent part, the following 30(b)(6) depositions have taken place:

**FED. R. CIV. P. 30(b)(6) REPRESENTATIVES**

Plaintiff's counsel deposed five separate City representatives as to 30(b)(6) deposition topics 1-2, 3, 4, 5-9, 10, 13, 14, and 15-19, as follows:

**June 5, 2025**

Former Chief of Staff Robin Henderson  
30b6 deposition Topics 3,4,10,13,14;

**October 31, 2025**

Sgt. Ryan Metcalf (Internal Affairs)  
30b6 deposition Topic 1 - IA;

**November 14, 2025**

Assistant Chief Angie Jones  
30b6 deposition Topics 5, 7, 8, 9, 15, 16, 17, and 19,



**December 2, 2025**

Lt. Joshua Muchnikoff (Special Investigations Unit - SIU)  
30b6 deposition Topic 1 - SIU;

**December 9, 2025**

Travis Joyner (SPO #5929)  
30b6 deposition Topics 2, 6, and 18  
Learned Skills-Defensive Tactics

Also, the City produced or otherwise made available hundreds of documents, videos, and things as follows on November 3, 2025, November 13, 2025, November 21, 2025, December 8, 2025, and December 16, 2025, (and previously on 11/25/2024, 1/22/2025, 3/14/2025, 3/25/2025, 6/30/2025), as detailed on Exhibit A.

Despite the great amount of discovery, the Plaintiff has not raised a genuine issue of material fact. The Plaintiff's objections [Dkt. 81] should be overruled and Final Judgment should be entered for all Defendants.

**III. CONCLUSION**

For the foregoing reasons, Defendants respectfully submit that the Court should approve and adopt the Magistrate Judge's Report and Recommendation, overrule the Plaintiffs' objections, and enter Final Judgment for all Defendants.

Dated: February 12, 2026.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY  
VASU BEHARA, CHIEF, LITIGATION

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**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

I certify that on the 12th day of February 2026, I served a copy of DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S RECOMMENDATIONS on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

**Via ECF:**

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CITY OF AUSTIN'S RESPONSE TO PLAINTIFF'S  
OBJECTIONS TO MAGISTRATE JUDGE'S RECOMMENDATIONS

ATTORNEYS FOR DEFENDANT  
GABRIEL PRADO

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.  
Counsel for Defendant, City of Austin

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

AVELINO MEDEL II,  
*Plaintiff,*

v.

GABRIEL WALKER PRADO, in his  
individual capacity, and the  
CITY OF AUSTIN  
*Defendants.*

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**Case No. 1:24-cv-00990-RP**

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**DEFENDANT'S RESPONSE IN OPPOSITION TO  
PLAINTIFF'S OBJECTIONS TO THE REPORT AND RECOMMENDATION**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant, **Gabriel Walker Prado**, files this Response in Opposition to Plaintiff's Objections and to the Report and Recommendation (Dkt. 81). In support, Officer Walker Prado would respectfully show the Court as follows:

## I. SUMMARY OF THE ARGUMENT

1. This case asks a straightforward question: is it *unconstitutional* for a police officer—with only a split-second to decide—to use deadly force against an aggressive suspect seen yelling at an elderly man, who responds to police arriving at his door by grabbing a gun, loading it, chambering it, stalking toward the door in the high ready position, and then lowering the gun in front of him? Common sense and decades of binding precedent answer “no.” Plaintiff’s objections should be overruled accordingly, and The Report of the magistrate judge should thus be accepted.

2. Plaintiff’s objections repeatedly rest on a flawed, impermissible method of analysis for § 1983 claims. He imposes a subjective standard rather than an objective one. He also repeatedly scrutinizes Officer Walker Prado’s conduct with hindsight, frame-by-frame, from the comfort of a desk chair—based on things like biomechanical elbow angles and forced assumptions about the positioning of unseen potential victims. Officer Walker Prado had neither time nor freeze frames nor the safety of detached hindsight. *Graham* expressly forbids Plaintiff’s flawed approach.

3. *Barnes* only confirms that the Report & Recommendation’s analysis was correct. *Barnes* teaches that totality of the circumstances includes earlier facts known to the officers. Here, a suspect had repeatedly screamed at an elderly man loudly enough, and aggressively enough, to generate *multiple* 911 calls from neighbors. A reasonable officer on the scene would have seen this suspect respond to police arriving at his door by arming himself and moving toward the officers. This is precisely the context *Barnes* demands we consider. Plaintiff’s request that this Court decide this case in the vacuum of “a man merely holding a gun in his home” would itself violate *Barnes* by stripping away all context.

4. The Report also correctly relied on the clear video evidence pursuant to *Scott*, rather than cede the day to Plaintiff's unsupported inferences. Plaintiff's argument that Officer Walker Prado should have recognized Plaintiff as merely a righteous gun owner and stand down accordingly would effectively eliminate every officer's ability to use force against an aggressive suspect advancing gun-in-hand toward unsuspecting apparent victims—whether in a home, a theater, a school, or anywhere else. The Fourth Amendment contains no such prohibition. Danger is still danger no matter where it occurs. Officer Walker Prado made a split-second decision in response to what a reasonable officer could—and **would**—perceive to be truly terrifying circumstances. The law does not punish those willing to be saddled with the responsibility to do so.

## II. ARGUMENTS & AUTHORITIES

### A. Plaintiff's general objections and incorporations by reference are impermissible.

1. Plaintiff's conclusory and general objections have been waived as a matter of law and do not merit a response.<sup>1</sup> These include Plaintiff's argument that the Court should have granted the motion to strike rather than denying it as moot. This objection lacks legal support,<sup>2</sup> and fails to articulate how it constitutes actual prejudice in a dismissed case. [Dkt. 81, pp. 31 – 32].

2. It is likewise impermissible to drastically expand page limits through incorporation. [*See e.g.* Dkt. 47, p. 11, n. 47 “Plaintiff respectfully refers to and incorporates his original briefing.” *See also e.g. id* at 31 “Medel [] incorporates his briefing on the motion to strike and sur-reply by

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<sup>1</sup> *See Williams v. Lakeview Loan Serv. LLC*, 694 F. Supp. 3d 874, 881 (S.D. Tex. 2023) (citing *Battle v. U.S. Parole Comm'n.*, 834 F.2d 419, 421 (5th Cir. 1987)) (noting that objections to a R&R that are frivolous, conclusory, or general in nature need not be considered by the District Court).

<sup>2</sup> *See* W.D. Tex. Loc. R. CV-7(c)(1) (requiring grounds and legal authority); *see also Wilson v. Cordero*, 2024 WL 5118480, at \*3 (W.D. Tex. Dec. 16, 2024) (granting qualified immunity motion for summary judgment where respondent violated Local Rule CV-7(c)(1)).

reference.”). Incorporated arguments are (i) waived for not constituting a specific objection to the R&R, and (ii) a violation of the Local Rules.<sup>3</sup> Plaintiff obtained leave to expand his page limits. [Dkt. 80] Allowing him to incorporate multiple other briefs would effectively double that extension. Officer Walker Prado formally objects to all such content.

**B. The R&R correctly concludes a reasonable officer could and would assume Plaintiff heard the announcement of police at his door.**

3. Officer Walker Prado’s assumption that Plaintiff heard the police announcement was reasonable and legally sufficient. The announcement is clearly heard on video. [Dkt. 34-2, at 1, 2:08:59—09:02] It would be reasonable for an officer to assume outside voices can be heard inside the apartment, because Plaintiff’s screams of “shut the fuck up!” to the elderly man while inside were audibly heard outside. [*Id.* at 2:08:56–58] A reasonable officer would thus believe Plaintiff, standing inside mere feet away from the door, heard the announcement of police at his door. Whether Plaintiff actually did, however, is legally irrelevant. The Fourth Amendment inquiry focuses on what a reasonable officer on the scene could believe, not the plaintiff’s subjective awareness.<sup>4</sup> This reasonable assumption provides terrifying color to Plaintiff’s act of arming himself in response to learning police had arrived.

**C. The R&R correctly concludes Plaintiff’s conduct constituted a *Manis* act.**

4. Plaintiff fundamentally misrepresents how the law analyzes force used in § 1983 cases. Plaintiff asks the Court to decide this entire case based on an adrenaline-filled “[w]e announced police and you came to the door with a gun” statement minutes after the shooting. [Dkt. 81, p. 4,

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<sup>3</sup> See *Battle*, 834 F.2d at 421; see W.D. Tex. Loc. R. CV-7(c)(1) (“Any legal authority in support of a motion must be cited in the motion, and ***not in a separate brief***”) (emphasis added).

<sup>4</sup> See *Ramirez v. Knoulton*, 542 F.3d 124, 131, n. 5 (5<sup>th</sup> Cir. 2008) (the plaintiff’s “subjective intent is irrelevant where the only issue is what a reasonable officer would have believed under these circumstances.”); see also *Padilla v. City of Farmington, New Mexico*, 2025 WL 1414287, at \*5 (D.N.M. May 15, 2025) (holding in a factually analogous case that it was entirely irrelevant whether the man knew the people at his door were police officers.).

n. 15] Plaintiff in effect argues that Officer Walker Prado was required to detail every reason why he used deadly force *mere moments after the event*. Such a requirement would be both reductive and intellectually disingenuous.<sup>5</sup> It would also be *flat wrong*, legally speaking. The Supreme Court recently reminded in *Barnes*:

*The “touchstone of the Fourth Amendment is ‘reasonableness,’” as measured in objective terms.* So the question ... is whether the force deployed was justified from “*the perspective of a reasonable officer on the scene.*”<sup>6</sup>

The R&R correctly recognized the objective standard, noting “[t]he reasonableness of the officer’s conduct cannot be judged with the benefit of 20/20 hindsight but rather must be assessed from the viewpoint of *a reasonable officer on the scene.*” [Dkt. 79, p. 9 (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989)) (emphasis added)]. *Graham* drew its objective standard from *Scott v. U.S.*, which put it plainly: “the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide legal justification for the officer’s action does not invalidate the action taken *as long as the circumstances, viewed objectively, justify that action.*”<sup>7</sup>

5. Plaintiff cites *Bazan* to argue that competing eye-witness accounts create a fact issue by raising “credibility issues” for the officer. [Dkt. 81, p. 12]. This ignores *Scott v. Harris* where clear video evidence wins the day.<sup>8</sup> *Scott* was not precedent when *Bazan* was decided, nor did

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<sup>5</sup> Here, Plaintiff’s argument commits logical fallacies ranging from the incomplete evidence fallacy (cherry picking) to contextomy (stripping a quote of its context).

<sup>6</sup> *Barnes v. Felix*, 605 U.S. 73, 79 (2025) (citing *inter alia* *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006), *County of Los Angeles v. Mendez*, 581 U.S. 420, 428 (2017)) (emphasis added).

<sup>7</sup> *Scott v. United States*, 436 U.S. 128, 138 (1978) (emphasis added); *see also* *Ramirez v. Knoulton*, 542 F.3d at 129 (“*the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.*”) (cleaned up).

<sup>8</sup> *See Scott v. Harris*, 550 U.S. 372, 380 (2007).



any video evidence of the subject incident in *Bazan*.<sup>9</sup> Similarly, Plaintiff omits that the *Trujillo* Court importantly held that the video evidence “could potentially support either party’s version of events,” unlike here.<sup>10</sup> Officer Walker Prado testified he decided to shoot for several reasons collectively that included Plaintiff lowering his gun. The video confirms Plaintiff did lower his gun. Pursuant to *Scott v. Harris*, Plaintiff’s video-contradicted narrative has no merit.

6. *Barnes* teaches that “[p]rior events may show why a reasonable officer would perceive otherwise ambiguous conduct as threatening.”<sup>11</sup> A reasonable officer on the scene would have (i) understood they were observing a potential domestic/physical disturbance, (ii) observed a suspect aggressively screaming at an elderly man, (iii) observed police officers knock on his door and announce themselves as police, and observed the suspect suddenly (iv) grab a gun, (v) load it, (vi) chamber it, (vii) walk toward the officers with the gun held in the high-ready position, and (viii) begin to lower it. [See Dkt. 79, pp. 1—4] There was thus a buffet of qualifying *Manis* acts in this case—especially when prior *Barnes* context is factored in, including arming himself in direct response to the arrival of police. Among them, the R&R correctly recognized that Plaintiff “committed a requisite [*Manis*] act when he lowered the gun to his chin, as the video evidence shows.” [Dkt. 79, pp. 11-12].

7. Cherry-picking a post-incident statement and reductively declaring it dispositive ignores *Scott* and *Graham* altogether. This is **not** how § 1983 cases are decided. The video depicts circumstances that would lead a reasonable officer to ***objectively*** conclude that deadly force could and would be a reasonable response. This objection should be overruled.

**D. Speculative assumptions about the positioning of the other officers do not negate the perceived threat.**

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<sup>9</sup> See generally *Bazan ex rel. Bazan v. Hidalgo Cnty.*, 246 F.3d 481 (5th Cir. 2001).

<sup>10</sup> *Trevino v. Trujillo*, 756 F. App’x 355, 357-58 (5th Cir. 2009).

<sup>11</sup> *Barnes*, 605 U.S. at 81.

8. Plaintiff argues that Officer Walker Prado constructively “knew” the other officers were not standing behind the door during the relevant time period. [Dkt. 81, p. 3] This is contradicted by video evidence showing that Officer Walker Prado could ***not*** see the other officers’ respective positioning between the time Plaintiff armed himself and when Officer Walker Prado discharged his firearm. [Dkt. 34-2, at 1, 2:08:59—09:08]. He obviously did not have live access to their body worn camera footage. He also had every reason to believe at least one of them had just put their body in front of the door to knock on it, or that they may have moved around once they suddenly learned the man inside had armed himself. Common sense also dictates that builder-grade apartment walls are ***not*** bulletproof. Anyone standing in that general area was still at risk of being shot. Standing one foot to the left of the door would not change the threat level. It would merely change the geometry. A reasonable officer faced with those circumstances would believe the officers near the door were at serious risk of death or bodily injury.

**E. Officer Walker Prado’s split-second decision not to issue a more specific warning did not create a constitutional violation.**

9. *Garner* only requires a warning “where feasible.”<sup>12</sup> In reality, the officers did collectively issue a warning that served an important purpose: alerting the occupant that police had arrived at his door. [Dkt. 34-2, at 1 (2:09:02)]. Common sense dictates that drawing a gun—one of the most threatening physical acts of communication possible—on a police officer or any armed person is understandably a potentially fatal decision if the act appears in any way threatening.<sup>13</sup> The Fifth Circuit has held in numerous instances that a lack of a warning is immaterial if a

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<sup>12</sup> *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

<sup>13</sup> See *Allen v. Hays*, 65 F.4th 736, 744 (5th Cir. 2023) (“[I]f the officer believes the suspect has a gun, the calculation changes.”).

reasonable officer could perceive the risk to be imminent.<sup>14</sup> Plaintiff's loaded, chambered gun could be fired in the blink of an eye. The risk here was imminent for the unsuspecting officers behind the door.

**F. The fourth shot was constitutionally justified.**

10. “[I]f police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.”<sup>15</sup> The entire four-shot volley took roughly *only two seconds* to fire. [Dkt. 79, p. 27] Plaintiff has never under oath suggested that he relinquished his gun when he dropped down behind the couch between the third and fourth shot. Even if he had, however, Plaintiff *has not, and cannot*, prove that an officer in Officer Walker Prado's position would have any *visible* reason to believe Plaintiff had dropped his gun or was otherwise incapacitated—which is the operative legal question. In *Roque*, the video footage conclusively showed the subject dropped the gun “in broad daylight.”<sup>16</sup> In *Mason*, the officers had a clear line of sight of the subject lying “in the prone position, face down” before the final two shots.<sup>17</sup> Neither is true here. There is no summary judgment evidence whatsoever proving an officer standing in Officer Walker Prado's position would know a gun had been dropped before the fourth shot—if that even happened—nor any proving he could see Plaintiff when he was behind the couch. There was no way to know whether he had even successfully struck Plaintiff between the third and fourth shots. The R&R's conclusions regarding the fourth shot were correct.

<sup>14</sup> See e.g. *Argueta v. Jaradi*, 86 F.4<sup>th</sup> 1084, 1093 (5<sup>th</sup> Cir. 2023); see also e.g. *Batyukova v. Doege*, 994 F.3d 717, 729 (5<sup>th</sup> Cir. 2021); see also e.g. *Mendez v. Poitevent*, 823 F.3d 326, 332 n. 6 (5<sup>th</sup> Cir. 2016).

<sup>15</sup> *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014).

<sup>16</sup> *Roque v. Harvel*, 993 F.3d 325, 330 (5<sup>th</sup> Cir. 2021).

<sup>17</sup> *Mason v. Lafayette City-Par. Consol. Gov't*, 806 F.3d 268, 273 (5<sup>th</sup> Cir. 2015) (where the officers claim they could see him reaching for his gun on the ground, confirming they had a line of sight on him).

**G. Plaintiff’s “obvious case” clearly established law argument lacks any merit.**

11. Plaintiff’s objection to the R&R that his case is an “obvious” one like *Cole* fails outright. The Fifth Circuit subsequently clarified that *Cole* merely “clearly established at that time” that it would be unconstitutional “to shoot *a suicidal teenager who was armed but made no threatening or provocative gestures, posed no immediate threat of harm, [and] was facing away from the officers...*”<sup>18</sup> The *Cole* decedent was also shot while he was standing “*with his gun pointed at his own head.*”<sup>19</sup> Shooting a person holding a gun to their head is an entirely different animal from the facts presented here.

12. The *Cole* Plaintiff also had expert testimony establishing that “no evidence...would indicate Mr. Cole was or could have been aware of the presence of the police officers prior to the time he was shot.”<sup>20</sup> In contrast, a reasonable officer faced with this case’s circumstances would have perceived—and would have every reason to believe—Plaintiff Medel *armed himself* and walked directly toward officers as a *direct response to police arriving at his door*. This is a terrifying response to police arrival, and a far cry from the sky-high standard of an “obvious case.”<sup>21</sup>

**H. Plaintiff still fails to identify applicable clearly established law.**

13. Plaintiff’s reliance on out-of-circuit cases [Dkt. 81, pp. 29-30] should be treated like what it is: a tacit admission that no factually analogous cases exist within the Fifth Circuit or Supreme Court. The Fifth Circuit standard for a robust out-of-circuit consensus is almost

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<sup>18</sup> *Batyukova*, 994 F.3d at 729 (emphasis added) (cleaned up).

<sup>19</sup> *Cole v. Carson*, 802 F.3d 752, 755 (5th Cir. 2015), *cert. granted, judgment vacated sub nom. Hunter v. Cole*, 580 U.S. 994 (2016), and *opinion reinstated in part*, 905 F.3d 334 (5th Cir. 2018) (collecting facts and inferences presented to District Court).

<sup>20</sup> *Cole v. Carson*, 935 F.3d 444, 449, n. 7 (5th Cir. 2019), as revised (Aug. 21, 2019).

<sup>21</sup> *See Cope v. Cogdill*, 3 F.4th 198, 206 (5th Cir. 2021).

insurmountable.<sup>22</sup> It is unfair to expect officers to stay abreast of precedents from other circuits when even most civil rights litigators do not.<sup>23</sup> Plaintiff's out-of-circuit cases are also not factually analogous. Unlike the case at bar, several of them include officers never identifying themselves as police, as in *Pauly*, *Curnow*, and *Weinmann*. [Dkt. 81, p. 29-30] The clearly audible police identification is precisely what made Plaintiff Medel's subsequent actions so alarming.

14. The Fifth Circuit made it clear in *Morrow* what clearly established law requires:

“The dispositive question is whether the violative nature of *particular* conduct is clearly established. That is because qualified immunity is inappropriate only where the officer had fair notice—*in light of the specific context of the case*, not as a broad general proposition”—that his *particular* conduct was unlawful.<sup>24</sup>

*Griffin* involves a man who responded to police arrival by **surrendering his already-holstered gun**, whereas Medel responded to police arrival by arming, grabbing, loading, chambering, and **readying his gun to fire**.<sup>25</sup> *Poole* was **visibly unarmed**, unlike here.<sup>26</sup> The officers in *Joseph* “**saw no weapon** in Joseph's hands” or otherwise believed he had a weapon,<sup>27</sup> unlike Plaintiff Medel. A warning is not feasible when the delay caused by giving the warning might cause someone to die—which is absent in the weaponless *Joseph* case but present here. *Cole* is distinguished by *Batyukova*. There simply is no binding precedent that would have put Officer Walker Prado on notice it would be unconstitutional to use deadly force against an aggressive domestic disturbance suspect who responded to the arrival of police by grabbing, loading,

<sup>22</sup> *Morrow v. Meachum*, 917 F.3d 870, 879 (5th Cir. 2019).

<sup>23</sup> See *Wilson v. Layne*, 526 U.S. 603, 618 (1999) (“If judges disagree on a Constitutional question it is unfair to subject police to money damages for picking the losing side....”).

<sup>24</sup> *Morrow*, 917 F.3d at 875.

<sup>25</sup> *Griffin v. Newell*, 981 F.2d 1256, 1992 WL 386807, at \*2 (5th Cir. 1992) (unpublished).

<sup>26</sup> *Poole v. City of Shreveport*, 13 F.4th 420, 421, 425 (5th Cir. 2021).

<sup>27</sup> See *Joseph v. Bartlett*, 981 F.3d 319, 338 (5th Cir. 2020).

chambering a gun, moving toward officers, and beginning to lower the weapon in front of him near where the officers stood.

15. Plaintiff goes on to advance a bridge-too-far argument: changing the facts of the case entirely to make them fit previously existing precedents by way of asking for improper inferences. First, he posits he is entitled to an inference that Walker Prado could not have seen Plaintiff lower his gun in front of him because of the timing. [*See e.g.* Dkt. 81, p. 13 “the latter version depends on Walker Prado perceiving and reacting to a slight movement within less than one third of a second”]. Plaintiff offers no expert testimony establishing how much time is needed for an officer to perceive an event and react to it, yet Plaintiff asks this Court to impose just such an expert inference here. “Unsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment.”<sup>28</sup> Plaintiff likewise asks for an inference that he did not know police were at his door in an attempt to force this square-peg case into round-hole precedents where the officers failed to identify themselves. (*See e.g.* Dkt. 81, p. 27, n. 79 “[Plaintiff Medel] did not know police were involved at all.”) Pursuant to *Scott*, the summary judgment evidence before this Court is the video, which clearly depicts, among other things, (i) a loud announcement of “AUSTIN POLICE DEPARTMENT!” at the door, (ii) the audibility of Plaintiff twice saying indoors “shut the fuck up!” heard from outside the apartment, proving that a reasonable officer would expect the inverse to be audible, and (iii) Plaintiff visibly lowering his gun in front of him. Plaintiff cannot satisfy the factually analogous requirement of the clearly established law prong by simply changing the case facts entirely. The Court should adopt the Report in its entirety and Plaintiff’s objections should be overruled.

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<sup>28</sup> *McGill v. BP Expl. & Prod., Inc.*, 830 F. App’x 430, 432 (5th Cir. 2020).

### III. P R A Y E R

16. WHEREFORE PREMISES CONSIDERED, Defendant Gabriel Walker Prado respectfully requests that this Court overrule Plaintiff's Objections to the Report and Recommendation of the Magistrate Judge, grant dismissal with prejudice, and for all other relief to which he may be justly entitled in law or equity.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
GABRIEL WALKER PRADO**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of February, 2026, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail, in accordance with the Federal Rules of Civil Procedure.

\_\_\_\_\_/s/ Blair J. Leake  
Blair J. Leake



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

AVELINO MEDEL II,

*Plaintiff*

v.

GABRIEL WALKER PRADO, et al.

*Defendants*

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CAUSE OF ACTION NO.  
1:24-cv-00990-RP

**PLAINTIFF’S REPLY IN SUPPORT OF OBJECTIONS TO THE MAGISTRATE  
JUDGE’S REPORT AND RECOMMENDATION REGARDING DEFENDANTS’  
MOTIONS FOR SUMMARY JUDGMENT AND PLAINTIFF’S MOTION TO STRIKE**

The Court should overrule the Magistrate Judge’s Report and Recommendation and deny Defendants’ motions for summary judgment for the reasons stated in Plaintiff Avelino Medel II’s objections, Doc. 81, and the following four reasons.

**I. SUMMARY OF THE REPLY**

First, Defendant Gabriel Walker Prado’s response, like the Recommendation, relies upon the officer’s preferred rendition of disputed material facts rather than viewing the evidence in the light most favorable to the Plaintiff. These material disputed facts include (i) whether a reasonable officer would conclude Medel heard the announcement of police; (ii) whether a reasonable officer would expect a homeowner to rely on a single spoken word, “police,” rather than check his peephole; (iii) the reason Walker Prado fired his gun at Medel; (iv) what Walker Prado actually saw before beginning to shoot; (v) how a reasonable officer would interpret Medel’s movement; (vi) whether Walker Prado knew his fellow officers were not standing directly in front of the door; and (vii) whether a reasonable officer would assume their colleagues would abandon their training to stand directly in front of the door. These material, disputed facts preclude summary judgment.

Second, the Recommendation and Walker Prado fail to identify any immediate threat when

Medel fell behind his couch, rendering his final shot unlawful in light of clearly established law.

Third, Walker Prado gave no warning to Medel before he fired at him, though his warning to his fellow officers demonstrates it was feasible to do so, rendering his force clearly unlawful.

Finally, Medel cited and explained the application of the caselaw supporting his motion to strike in his objections, albeit succinctly due to this Court's encouragement to keep submissions concise. Doc. 81, pp. 31–32; *see* Jan. 29, 2026, June 26, 2025, May 29, 2025 Text Only Orders. Neither the Recommendation nor Walker Prado's response address any of that caselaw. The Recommendation errs in recommending the Court deny the motion to strike.

Accordingly, the Magistrate Judge's Report and Recommendation should be overruled; Defendants' motions for summary judgment should be denied; and Plaintiff Medel's motion to strike should be granted.

## II. ARGUMENT

### **A. Walker Prado's response, like the Recommendation, relies on impermissibly resolving numerous material disputed facts in his favor.**

Walker Prado's response invites the Court into error by repeatedly resolving material disputed facts against Medel, just as the Recommendation did, in violation of binding precedent. *See Tolan v. Cotton*, 572 U.S. 650, 660 (2014) (reversing grant of summary judgment to officers in excessive force case where district court resolved material disputed facts in favor of officers). Specifically, Walker Prado insists the Court resolve seven material, disputed facts in his favor.

First, Walker Prado's assertion and the Recommendation's conclusion that he was reasonable to assume Medel should defer to the announcement of "police" disputes two facts: (i) the spoken announcement (unlike Medel's yelling) was not loud enough for Walker Prado to reasonably expect people inside to hear and (ii) Walker Prado, his colleagues, his police chief, and Plaintiff's expert all agreed that Medel could not have known who was at his door without going

to look, regardless of what he heard through the door, and thus Medel's arming himself to go check the door was a reasonable, expected, and non-threatening response from a Texan in their own home. *Compare* Doc. 79, p. 15 *and* Doc. 84, p. 4, ¶¶ 3,<sup>1</sup> 12, 14 *with* Doc. 81, pp. 8–10, 19.

Second, Walker Prado and the Recommendation erroneously resolved three disputed facts about the movement of Medel's gun: (iii) the officer's own admission that any perceived movement of Medel's gun was not the reason he fired on Medel; (iv) the video showing Medel did not move his gun in any manner consistent with pointing it at the door; and, (v) regardless, the slight movement occurred in just one third of one second, so Walker Prado did not and likely could not have seen it before deciding to fire. *See* Doc. 84, pp. 5, 11, ¶¶ 4, 15; Doc. 79, pp. 10, 12, 14. Walker Prado's repeated, consistent admissions regarding why he shot Medel show what Walker Prado actually saw before shooting: merely that Medel walking to the door with a gun pointed upwards.<sup>2</sup> His admission is corroborated by the fact that Medel's slight movement is inconsistent with Medel aiming the gun at the door: Medel looked away from the door and tightened his elbows rather than straightened his arms<sup>3</sup> and, in any event, a jury could reasonably conclude Walker

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<sup>1</sup> Walker Prado's arguments concerning clearly established law are likewise predicated on resolving the disputed material fact about whether a reasonable officer would have believed Medel knew it was actually police at his door against Medel. *See, e.g.,* Doc. 84, pp. 9–10, ¶ 13 (“The clearly audible police identification *is precisely what made Plaintiff Medel's subsequent actions so alarming.*”) (emphasis added); *see also id.* at pp. 9–11, ¶¶ 12–15 (predicating clearly established law arguments on resolving the disputed fact regarding whether reasonable officer would have concluded Medel knew police were at his door against Medel).

<sup>2</sup> Doc. 42-3, Walker Prado BWC at 02:12:55–02:13:01 (Medel: “...why did you shoot me?” Walker Prado: “We announced police and you came to the door with the gun.”); *id.* at 02:16:26–28 (Walker Prado refers to the gun: “it was here, he grabbed it and came to the door with it. That's why I shot him.”); *see also* Doc. 27-4, Walker Prado Declaration, pp. 3–4, ¶¶ 12, 15 (list of everything he thought justified shooting before “decid[ing] to act” and stepping out from corner); Doc. 42-3, Walker Prado BWC at 02:09:03–02:09:04; Doc. 42-12, p. 2; Doc. 81, pp. 4-5.

<sup>3</sup> Doc. 42-3, Walker Prado BWC at 02:09:03–02:09:05; Doc. 81-1, Frame-by-Frame of Walker Prado BWC, Frames 15–24; Doc. 42-7, Medel II Declaration, p. 3, ¶¶ 28–29; *see* Doc. 81, pp. 4–6, 13-15.

Prado did not see that movement in the less than one-third of a second before firing at Medel.<sup>4</sup>

Contrary to Walker Prado's arguments on this point, the objective standard does not mean an officer's perceptions are irrelevant. Indeed, *Scott v. United States*, the case primarily relied upon by Walker Prado,<sup>5</sup> explicitly acknowledged that a Court *can* consider an officer's stated motive when evaluating "the credibility of [an] officer[']s claims with respect to what information was or was not available to [him] at the time of the incident in question." 436 U.S. 128, 139 n. 13 (1978). This is precisely the issue presented to the Court here where Walker Prado's shifting reasons for the shooting raise concerns about his credibility<sup>6</sup> that must be resolved in Medel's favor at this stage of proceedings. *See Bazan v. Hidalgo Cnty.*, 246 F.3d 481, 493 (5th Cir. 2001). What Walker Prado *actually perceived* is a question of material fact, as the objective inquiry begins with a hypothetical reasonable officer knowing only what Walker Prado knew at the time. *See Hernandez v. Mesa*, 137 S. Ct. 2003, 2007 (2017); Doc. 81, pp. 11–13. Thus, for example, in a recent shooting case where the subject really had a gun but the officer was recorded asking, "did he have a gun?" immediately after the shooting, the Fifth Circuit expressly found a genuine dispute of material fact as to whether that officer "perceived" the subject was armed. *Ramirez v. Granado*, 163 F.4th 204, 209 (5th Cir. 2025). This was a genuine dispute even though that gun was visible, with the benefit of hindsight, on body-worn camera footage. *See id.* at 217–218 (Oldham, J., dissenting).

Construing Walker Prado's admissions in Medel's favor, the Court should conclude that

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<sup>4</sup> Doc. 42-3, Walker Prado BWC at 02:09:03–02:09:05; Doc. 81-1, Frame-by-Frame of Walker Prado BWC, Frames 15–24 (10 frames of video leading up to Walker Prado's first shot); *see* Doc. 81, pp. 12-13.

<sup>5</sup> Doc. 84, pp. 5, 11, ¶¶ 4, 15.

<sup>6</sup> *Compare supra* n. 2 *with* Doc. 42-3, Walker Prado BWC at 03:07:21–03:07:35 (Walker Prado's attorney arrives to the scene to have discussion with Walker Prado); Doc. 42-17, Administrative Inquiry Notice, p. 4; Doc. 27-6, Walker Prado IA Interview at p. 1, ln. 2 (noting the time); *id.* at p. 2, ln. 43-56 (Walker Prado acknowledges he reviewed the items listed on the Notice of Administrative Inquiry); Doc. 81, p. 13.

Walker Prado fired on Medel solely because he was walking to the door carrying a gun pointing upwards. There is thus no need for the Court to consider Walker Prado's appeal to "split-second decisions." *See* Doc. 84, pp. 2, ¶¶ 1, 4. Based on his own admission, Walker Prado decided to shoot Medel merely for picking up the gun, as he stepped out from behind cover after he decided to shoot in order to aim at Medel,<sup>7</sup> and yet did not fire until three seconds after making the decision to shoot.<sup>8</sup> That is enough time for a reasonable officer in Walker Prado's position to realize Medel posed no threat or at least issue a warning to confirm it,<sup>9</sup> as clearly established in Fifth Circuit decisions where it became unreasonable for an officer to shoot a previously threatening subject more than one second after that threat ended. *See Roque v. Harvel*, 993 F.3d 325, 330–331, 334 (5th Cir. 2021) (finding unconstitutional shot was fired only two seconds after uncontested shot); *Baker v. Coburn*, 68 F.4th 240, 249 (5th Cir. 2023) (reversing grant of qualified immunity where officer fired "seconds" after subject vehicle passed another officer who had been directed in front of the vehicle); *Edwards v. Oliver*, 31 F.4th 925, 928, 930, 932, nn.1, 5 (5th Cir. 2022) (dismissing qualified immunity appeal where suspect's car had passed the officer, ending the threat of the accelerating car, only one second before officer fired); *Lytle v. Bexar Cnty., Tex.*, 560 F.3d 404, 414 (5th Cir. 2009) (unconstitutional shots fired three to ten seconds after threat had ended).

Indeed, accepting Walker Prado's admissions as true, as the Court must, those admissions also suggest that he did not perceive the slight movement upon which the Recommendation's analysis rests.<sup>10</sup> *See* Doc. 79, pp. 11–12. While Walker Prado complains that Medel is trying to

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<sup>7</sup> Doc. 27-4, Walker Prado Declaration, pp. 3–4, ¶¶ 12, 15 (list of everything he thought justified shooting before "decid[ing] to act" and stepping out from corner).

<sup>8</sup> Doc. 42-3, Walker Prado BWC at 02:09:02 (starting to move out of cover and unholster gun); *id.* at 02:09:05 (first shot).

<sup>9</sup> Doc. 27-7, Walker Prado Deposition, 161:7–12, 14–17, 19; Doc. 42-14, Noble Expert Report, p. 78, ¶ 61.

<sup>10</sup> Doc. 42-3, Walker Prado BWC at 02:12:55–02:13:01, 2:16:23–02:16:29.

impose a hindsight analysis, it is in fact the Recommendation which erroneously uses the benefit of hindsight in Walker Prado's favor—a reasonable jury could conclude that, in the moment, Walker Prado never saw Medel's slight movement of the gun in the last one third of one second before Walker Prado opened fire.

Further, even if the Court were to (impermissibly) discount Walker Prado's admissions and consider his improbable, *post-hoc* claims that he saw Medel's gun move, whether Walker Prado unreasonably mistook Medel moving the gun to his chin for a threat is likewise a material fact dispute as the video shows this movement was inconsistent with Medel pointing the gun. *See, e.g., Roque*, 993 F.3d at 334 (material fact dispute about whether officer mistakenly did not notice suspect had dropped apparent handgun); *Edwards*, 31 F.4th at 930 (material fact dispute about whether officer mistakenly believed that the sound of shattering glass was instead the sound of incoming gunfire); *Ambler v. Nissen*, 116 F.4th 351, 361 (5th Cir. 2024) (material fact dispute about whether officer heard and believed subject complaining about health conditions); *Bagley v. Guillen*, 90 F.4th 799, 803 (5th Cir. 2024) (material fact dispute whether officer was mistaken that detainee failed to use his turn signal, as video included sound of their turn signal); *see also Byrd v. City of Bossier*, 624 Fed. App'x 899, 904 (5th Cir. 2015) (fact dispute whether officers perceived arrestee "flailing or grasping for a branch," rather than resisting, after rescuing him from a river); *Chacon v. Copeland*, 577 Fed. App'x 355, 361 (5th Cir. 2014) (fact dispute whether officers mistook 911 caller for suspect despite caller not matching the suspect's physical description).

Third, as the objections articulate and Walker Prado's response does not contest, (vi) Walker Prado actually saw his colleagues were not immediately behind Medel's front door, despite swearing to the opposite in his declaration,<sup>11</sup> raising further concerns with Walker Prado's

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<sup>11</sup> Compare Doc. 42-3, Walker Prado BWC at 02:08:39–02:08:47, 59 with Doc. 27-4, p. 3, ¶ 12;

credibility. Instead, Walker Prado argued (without support) that he was nonetheless entitled to speculate that the officers rejected all of their training<sup>12</sup> and moved to stand in front of the door. Doc. 84, p. 7, ¶ 8. Whether (vii) a reasonable officer would assume his fellow officers would abandon all their training and stand directly in front of a door when he had just seen them following that training and standing to the side is thus a material, disputed fact. Further, Walker Prado had no cause to expect Medel would aim for the walls and somehow hit police that he could not see through the walls. *Contra* Doc. 84, p. 7, ¶ 8. Perhaps a jury might credit this irrational, *post hoc* speculation, but at this stage crediting unsupported speculation is inappropriate; mere possibilities are not immediate threats that justify deadly force as a matter of law. *See Cole v. Carson II*, 935 F.3d 444, 455 (5th Cir. 2019) (en banc) (rejecting immediate threat despite evidence that armed subject could possibly have quickly turned and fired before officers could react).

Accordingly, because at least seven genuine and material disputes of fact exist that, when resolved in Medel’s favor, render Walker Prado’s deadly force excessive, the Court should find Walker Prado violated clearly established law and deny his motion. *See* Doc. 81, pp. 25–30.

#### **B. No threat justified Walker Prado’s final shot after Medel fell to the ground.**

Similar to the Recommendation, Walker Prado’s analysis of his fourth shot is backwards and again relies on material disputed facts. A use of deadly force must be justified by an ongoing, immediate threat. *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Both the Recommendation and Walker Prado frame the threat question as whether “the threat had ended,”<sup>13</sup> yet if the Court

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*see also* Doc. 81, pp. 3, 7, 15, 22–23.

<sup>12</sup> Doc. 42-3, Walker Prado BWC at 02:08:39–02:08:47, 59; Doc. 27-7, Walker Prado Deposition, 170:15–25, 193:9–16; Doc. 42-2, Lozano Deposition, 38:15–39:12, 39:19–40:4; Doc. 42-6, Daniel Deposition, 28:24-29:12, 30:5-12; Doc. 42-10, Reinhart Deposition, 50:11–16, 51:10-18; Doc. 42-14, Noble Expert Report, p. 78, ¶ 59(g).

<sup>13</sup> Doc. 79, pp. 24-25; Doc. 84, p. 8, ¶ 10.

resolves the material disputed facts identified immediately above in Medel’s favor, Medel had not engaged in any acts justifying deadly force for Walker Prado to end by shooting him again.

Whether Medel engaged in any act justifying deadly force after he fell to the ground is both material and disputed. Walker Prado himself justified his final shot not because he believed Medel may have still had a gun but specifically because he could see Medel was allegedly “reach[ing] out from behind the couch toward the door” with what Walker Prado “believed was a gun in his hand.”<sup>14</sup> Medel disputes that he ever reached after he fell to the ground<sup>15</sup> and the body-worn camera video does not show Medel reaching or doing anything at all with the gun before the final shot.<sup>16</sup> Resolving this material dispute in Medel’s favor, as the Court must, Walker Prado did not see Medel make any threatening action or even move after being shot and Medel’s mere proximity to a gun was not a sufficient threat to justify deadly force absent any evidence of a threatening act. *Mason v. Lafayette City-Parish Consol. Gov’t*, 806 F.3d 268, 277 (5th Cir. 2015). And Walker Prado could see this was true both because he shot Medel in the back of his shoulder, so he could necessarily see that shoulder, and because he claimed the ability to see whether Medel was reaching or not.<sup>17</sup> See Doc. 81, pp. 27–29; *contra* Doc. 84, p. 8, ¶ 10.

This analysis does not change even if the Court resolves the earlier material disputed facts against Medel. Merely being on the ground after having been seen with a gun is not an immediate threat, even if the subject previously did actually engage in threatening behavior justifying earlier uses of force and the officer believes a gun may still be in reach. *Roque v. Harvel*, 993 F.3d 325,

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<sup>14</sup> Doc. 27-4, Walker Prado Dec., p. 4, ¶ 15; *see also id.* at ¶ 16 (necessarily admitting Medel did not have the gun in his hand immediately after the final shot when he asserts he thought Medel “might grab it again”).

<sup>15</sup> Doc. 42-7, Medel II Declaration, p. 3, ¶¶ 31, 33.

<sup>16</sup> Doc. 42-3, Walker Prado BWC at 02:09:06 – 02:09:09.

<sup>17</sup> Doc. 42-7, Medel II Declaration, p. 4, ¶ 34; Doc. 27-4, Walker Prado Dec. p. 4, ¶ 15.



333 (5th Cir. 2021); *Mason*, 806 F.3d at 277; Doc. 81, pp. 8, 24–25, 27–28; *see also Graves v. Zachary*, 277 Fed. Appx. 344, 348 (5th Cir. 2008) (rejecting argument that subject who had just been shot and still had gun in his hand was sufficiently threatening to justify second shot seconds later). Whether Walker Prado saw Medel move in a way that a reasonable officer would perceive as threatening before the final shot remains material and disputed regardless for the reasons identified in the preceding paragraph, thus precluding summary judgment.

**C. Walker Prado gave no warning.**

Walker Prado fails to address the clearly established law requiring that he give a warning in this specific situation. *See* Doc. 81, pp. 2, 7–8, 19–20, 22–24; *Cole II*, 935 F.3d at 453, 457; *Poole v. City of Shreveport*, 13 F.4th 420, 422, 425 (5th Cir. 2021); *Joseph v. Bartlett*, 981 F.3d 319, 338 (5th Cir. 2020). As stated in the objections, *Cole*, *Poole*, and *Joseph* each addressed a use of force after officers had announced their presence to the subject (in *Cole*, as here, the officers who announced did not fire), but it was still unconstitutional to use force without a warning. Doc. 81, pp. 22–23. Notwithstanding the tortured logic of his response, Walker Prado himself admitted he gave no warning to Medel,<sup>18</sup> and in any event his lack of a warning to Medel is captured on video as is his warning to his fellow officers,<sup>19</sup> which demonstrates there was time to warn Medel.

**D. Medel’s objections regarding his motion to strike were sufficiently specific.**

Medel’s objection to the Recommendation’s failure to rule on his motion to strike was sufficiently specific to preserve the objection and put the Court on notice of the bases for the objection. An objection to a Recommendation is sufficient when it “specifically identif[ies] the portions of the proposed findings, recommendations or reports to which objection is made and the

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<sup>18</sup> Doc. 27-7, Walker Prado Deposition, 11:10–12, 14–17, 105:3–8, 156:9–14, 161:10–16, 162:12–16; *see also* Doc. 42-14, Noble Expert Report, p. 78, ¶ 61.

<sup>19</sup> Doc. 42-3, Walker Prado BWC at 02:09:02–02:09:09.

basis for such objections.” W.D. TEX. LOCAL RULES, APPX. C: ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATE JUDGES, Rule 4(b); *see also* Doc. 79, p. 30. The key question is whether the objections “were sufficiently specific to put the district court on notice of the urged error.” *Williams v. K&B Equipment Co., Inc.*, 724 F.2d 508, 511 (5th Cir. 1984). Contrary to Walker Prado’s arguments,<sup>20</sup> the Fifth Circuit in *Williams* confirmed an objection was sufficient when it simply identified the finding or portion of the magistrate’s recommendation objected to and then incorporated prior briefing. *Id.*

Medel’s objection not only sufficiently identified both the portion of the Recommendation he objected to and the basis for the objection, but also summarized the main points of the briefing he incorporated by reference. *See* 81, pp. 31–32. This was more than sufficient under *Williams* to put the Court on notice of the objection. Once an objection is appropriately lodged under Rule 72, the Court engages in a *de novo* review of the underlying briefing, so Walker Prado’s objection to the Court reading that briefing is misplaced. FED. R. CIV. P. 72(b)(3); 28 U.S.C. § 636(b)(1).

In any event, for the reasons stated on the face of Medel’s objections, the motion to strike is meritorious, and Walker Prado does not contend otherwise in his response. Doc. 81, pp. 31–32.

### III. CONCLUSION

For the foregoing reasons, and those stated in Medel’s objections, Doc. 81, the Court should sustain Medel’s objections to the Magistrate Judge’s Report and Recommendation; deny Walker Prado’s motion for summary judgment; abate the City of Austin’s motion for summary judgment; and grant Medel’s motion to strike.

Date: March 3, 2026.

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<sup>20</sup> Doc. 84, pp. 3–4. Indeed, though Walker Prado cites *United States v. Battle* for the proposition that incorporated arguments are waived, *Battle* contains no such holding. *See id.* at n.3 *citing* 834 F.2d 419, 421 (5th Cir. 1987). Instead, the plaintiff in *Battle* did not object at all. *Battle*, 834 F.2d at 421.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards  
JEFF EDWARDS

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

AVELINO MEDEL II,

Plaintiff,

v.

GABRIEL WALKER PRADO, *in his individual capacity*, and CITY OF AUSTIN,

Defendants.

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1:24-CV-990-RP

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Dustin Howell concerning Defendant City of Austin’s (the “City”) motion for summary judgment, (Dkt. 25), Defendant Gabriel Walker Prado’s (“Walker Prado”) first amended motion for summary judgment, (Dkt. 34), Plaintiff Avelino Medel II’s (“Medel”) motion to strike, (Dkt. 38). (R. & R., Dkt. 79). Medel timely filed objections to the report and recommendation, (Objs., Dkt. 81), the City and Prado filed responses, (Dkts. 83, 84), and Medel filed a reply, (Dkt. 85).

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Medel timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules both parties’ objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Dustin Howell, (Dkt. 79), is **ADOPTED**.

**IT IS FURTHER ORDERED** that Walker Prado's motion for summary judgment, (Dkt. 34), is **GRANTED**; the City's motion for summary judgment, (Dkt. 25), is **GRANTED**; and Medel's motion to exclude Walker Prado's exhibits, (Dkt. 38), is **DENIED AS MOOT**.

**IT IS FINALLY ORDERED** that Medel's claims in this case are **DISMISSED WITH PREJUDICE**.

The Court will enter final judgment by separate order.

**SIGNED** on March 25, 2026.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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

AVELINO MEDEL II,

Plaintiff,

v.

GABRIEL WALKER PRADO, *in his individual*  
*capacity*, and CITY OF AUSTIN,

Defendants.

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1:24-CV-990-RP

**FINAL JUDGMENT**

On this date, the Court adopted United States Magistrate Judge Dustin Howell's report and recommendation, (R. & R., Dkt. 79). The Court's Order dismissed Plaintiff Avelino Medel's claims with prejudice.

As nothing remains to resolve, the Court renders final judgment pursuant to Federal Rule of Civil Procedure 58.

**IT IS ORDERED** that the case is **CLOSED**.

**SIGNED** on March 25, 2026.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE