

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

ANTONIO ISAAC ALEXANDER,
Plaintiff,

v.

**RYNE KIRCHBERG, individually;
SHALOM ALVAREZ, individually; and
CITY OF AUSTIN, TEXAS,**
Defendants.

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CAUSE NO. 1:26-cv- 00183

ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Antonio Isaac Alexander, by and through undersigned counsel, and pursuant to the Federal Rules of Civil Procedure, brings this action against the above-named Defendants and, in support thereof, respectfully alleges as follows:

I. INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983, alleging that Defendants Ryne Kirchberg and Shalom Alvarez, commissioned police officers of the Austin Police Department, acting under color of state law, violated Plaintiff's constitutional rights when they unlawfully seized and arrested him on July 30, 2024, using excessive force without justification. Defendant City of Austin is sued for its deliberate indifference to a documented pattern of misconduct by Officer Kirchberg, coupled with systemic failures in investigation, discipline, and accountability that created the conditions for the constitutional violations that occurred.
2. What began as a stop for an alleged pedestrian infraction crossing mid-block rather than at a designated crosswalk escalated within seconds into a violent takedown, physical restraint, and arrest, all captured on body-worn camera and dash-camera footage. The criminal charge against Mr. Alexander was subsequently dismissed by the Travis County Attorney's Office. Plaintiff alleges that the dismissal, together with the facts documented in APD records, is consistent with a lack of probable cause for the arrest.
3. The events of July 30, 2024, occurred in a context where the City of Austin was on actual and explicit notice, through the Office of Police Oversight's August 19, 2024 "Memorandum of Concern," that Officer Kirchberg exhibited a documented pattern of policy violations and concerning decision-making, and that his chain of command had failed to hold him adequately accountable. Plaintiff further alleges that, notwithstanding the Memorandum of Concern, APD Internal Affairs classified Mr. Alexander's complaint as "Class D" and closed it administratively with no further investigation, which Plaintiff contends constituted ratification and deliberate indifference to the risk of future constitutional violations.

II. JURISDICTION AND VENUE

4. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 1983 (civil action for deprivation of constitutional rights under color of state law).
5. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a), as such claims form part of the same case or controversy as Plaintiff's federal claims.
6. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), as a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in Travis County, Texas, within the Austin Division of the Western District of Texas, on July 30, 2024.

III. PARTIES

7. Plaintiff Antonio Isaac Alexander is an adult resident of Travis County, Texas, domiciled at 1817 E. Oltorf Street, Apartment 2034, Austin, Texas 78741.
8. Defendant Ryne Kirchberg ("Officer Kirchberg") is, and was at all relevant times, a commissioned police officer employed by the Austin Police Department, State of Texas, with badge number AP9241. Defendant Kirchberg is sued in his individual capacity. At all times relevant to this Complaint, Defendant Kirchberg acted under color of state law by virtue of his official capacity as a police officer.
9. Defendant Shalom Alvarez ("Officer Alvarez") is, and was at all relevant times, a commissioned police officer employed by the Austin Police Department, State of Texas, with badge number AP9207. Defendant Alvarez is sued in his individual capacity. At all times relevant to this Complaint, Defendant Alvarez acted under color of state law by virtue of his official capacity as a police officer.
10. Defendants Kirchberg and Alvarez will be served pursuant to Fed. R. Civ. P. 4(e) at addresses to be confirmed and reflected on the summonses issued by the Clerk
11. Defendant City of Austin, Texas is a home-rule municipality organized under the laws of the State of Texas, chartered to exercise municipal governance and police power within Travis County. The City of Austin is a legal entity capable of suit and being sued. The City of Austin is responsible for the hiring, training, supervision, and discipline of members of the Austin Police Department, including Defendants Kirchberg and Alvarez. The City of Austin is further responsible for establishing, implementing, and maintaining policies, customs, and practices governing the conduct of its police officers.
12. Service on Defendant City of Austin: Pursuant to Federal Rule of Civil Procedure 4(j)(2), the City of Austin may be served by delivering a copy of the summons and complaint to its chief executive officer. Service shall be made upon T.C. Broadnax, City Manager, City of Austin, at 301 W. 2nd Street, 3rd Floor, Austin, Texas 78701.
13. Plaintiff asserts no Texas common-law tort claims against the City of Austin. Plaintiff brings the City of Austin into this action solely under 42 U.S.C. § 1983 on the grounds of municipal liability under the doctrine articulated in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). Plaintiff asserts Texas common-law tort claims, if any, only against the individual officers in their individual capacities.

IV. FACTUAL ALLEGATIONS

A. The Incident of July 30, 2024

14. On July 30, 2024, at approximately 9:45 p.m., Mr. Alexander was lawfully present in the area of East Oltorf Street and Parker Lane in Austin, Texas.
15. Mr. Alexander crossed Parker Lane mid-block (approximately 20 yards south of a crosswalk), causing a northbound vehicle to yield to him as he traversed the roadway. Officers Kirchberg and Alvarez later cited this crossing as a violation of Texas Transportation Code § 552.005 (crossing at a point other than a crosswalk).
16. Defendants Kirchberg and Alvarez, operating together as a two-officer unit (Unit H302) in a marked patrol vehicle, observed Mr. Alexander crossing the street and decided to effectuate a stop.¹ Officers Kirchberg and Alvarez activated their emergency lights and exited their patrol vehicle in the area of East Oltorf Street and Parker Lane.
19. Mr. Alexander had just finished crossing the street and was near a bus stop when the officers made a U-turn, stopped, and parked with their emergency lights activated. Mr. Alexander was unarmed and posed no immediate threat to the officers. As the officers exited their patrol vehicle, one officer called out to Mr. Alexander by stating “hey red hoodie.” Mr. Alexander looked toward the officers and immediately raised his hands, with his palms visibly open and facing outward, demonstrating that he was unarmed and attempting to comply. This is clearly observable on the body-worn camera footage.
20. Before providing any complete or meaningful explanation for the detention, Defendant Alvarez reached toward Mr. Alexander’s waistband area.² When Mr. Alexander took a single step backward in response—an instinctive reaction to an officer reaching toward his person without explanation—Defendant Alvarez seized Mr. Alexander’s left wrist while Defendant Kirchberg simultaneously seized his right wrist. The officers then executed a coordinated takedown maneuver, using forward momentum and control of Mr. Alexander’s upper extremities to force him to the ground, resulting in Mr. Alexander being driven chest-first onto the concrete surface³.

B. The Unlawful Takedown and Excessive Force

26. Once Mr. Alexander was on the ground, Defendant Alvarez mounted him and placed his full body weight on Mr. Alexander's back and torso. Alvarez's own supplement narrative states: "I immediately went around Officer Kirchberg and Alexander in order to grab his right arm/wrist and roll him to his stomach... I grabbed a hold of his left bicep/inner elbow area... I pulled it out from under him as I simultaneously threw my

14. ¹ Both officers later characterized the area as “a high crime area known for illegal narcotic activity” and stated that they had “personally made numerous controlled substance arrests, Delivery of Controlled arrests, and illegal possession of firearm arrests in this area.” Plaintiff alleges that the decision to stop him for a minor pedestrian infraction was pretextual and part of a pattern of aggressive policing targeting individuals in areas the officers characterized as “high crime” locations.

19. ² Although officers later reported that Mr. Alexander reached toward his own waistband, the video evidence shows that Mr. Alexander’s hands were raised and visible immediately prior to the officers’ physical contact.

20. ³ Internal Affairs records, as documented in the Class D memorandum, confirm that Mr. Alexander was not provided an explanation for the stop until after he had been taken to the ground, restrained, and placed in handcuffs—approximately one minute after officers initiated physical contact. This sequence confirms that Mr. Alexander was physically seized through a forceful takedown prior to receiving any meaningful notice of the legal justification for the detention.

body weight in a side downward motion using my legs for propulsion... I was able to get Alexander onto his stomach and I mounted Alexander locking my legs/feet around his waist/leg area as I stayed low and maintained full body contact."

27. Defendant Alvarez applied pressure to Mr. Alexander's upper back with his forearm and subsequently with his knee and shin, pinning him to the pavement. Alvarez stated: "I proceeded to used my forearm and placed it on his upper back and I applied positive pressure downwards... I removed my right leg hook from Alexander's right side as I maintained positive downward pressure on his upper back using my forearm, then my whole hand, and finally my right knee/shin and I pivoted to his left side."
28. The Force Review Unit noted that "from the in-car dash-camera there was a point that it appeared Alvarez had his arm around Alexander's neck area for a moment. However, from Kirchberg's BWC angle it appears that Alvarez's arm is around Alexander's shoulder area—what is sometimes referred to as a seatbelt hold.
29. After Mr. Alexander was handcuffed, officers relocated him to an alternate location northbound on Parker Lane, described as an apartment parking lot. This relocation occurred after bystanders who had witnessed the incident gathered at the original location, expressing visible concern and alarm over the force used against Mr. Alexander, who was already restrained and under control.
30. As officers departed the original scene with Mr. Alexander in handcuffs, an unidentified individual threw an object that struck a patrol vehicle, causing damage to a window. This isolated act occurred after Mr. Alexander had been restrained and removed from the immediate area and was not attributable to Mr. Alexander or to the bystanders as a group. Rather, it followed a public use of force that multiple witnesses had just observed and reacted to in real time.
31. Mr. Alexander was transported to the Travis County Jail and charged with Resisting Arrest, Search, or Transportation under Texas Penal Code § 38.03(a). Officers described the charge as resisting a "search" or "frisk."

C. The Criminal Case and Its Dismissal

36. A charge was filed against Mr. Alexander for Resisting Arrest, in the County Court at Law of Travis County under Cause Number C1CR24208181. The Travis County Attorney's Office subsequently dismissed the criminal case against Mr. Alexander without prosecution, for lack of sufficient evidence.

D. Injuries Sustained by Plaintiff

39. As a direct and proximate result of Defendants' conduct, Mr. Alexander sustained serious physical injuries, including a fracture to his right leg, as well as pain and soreness to his neck, shoulder, and other parts of his body where he made contact with the ground and was subjected to compression by officers' body weight and pressure points. These injuries have resulted in permanent impairment and ongoing physical limitations.

40. Mr. Alexander was photographed by officers following the incident, and those photographs documenting his injuries were submitted to the Austin Police Department's evidence system via AxonCapture.
41. Beyond his physical injuries, Mr. Alexander has suffered and continues to suffer severe emotional distress, humiliation, anxiety, fear, and damage to his reputation and standing as a result of being violently arrested and criminally charged for alleged "resisting" conduct that was motivated by fear and confusion, and for a crime that was ultimately dismissed.

V. DEFENDANT KIRCHBERG'S DOCUMENTED PATTERN OF MISCONDUCT AND THE CITY'S NOTICE

A. Twenty-Five Internal Affairs and OPO Investigations (January 2023 – July 2025)

43. Defendant Kirchberg has been the subject of extraordinary scrutiny by the Austin Police Department's Internal Affairs Division and the Office of Police Oversight due to a documented, extensive pattern of misconduct spanning a 30-month period.
44. Between January 1, 2023, and July 31, 2025, the Internal Affairs Division and OPO conducted twenty-five (25) separate investigations into Defendant Kirchberg's actions and conduct. Of those investigations, nine (9) were internal APD investigations and sixteen (16) were external complaints initiated through the Office of Police Oversight.
45. Five (5) of the nine (9) internal investigations resulted in "sustained" findings, meaning that Defendant Kirchberg was found to have violated departmental policy.

B. The Five Sustained Policy Violations

46. The five sustained violations included the following policies and dates:
 - a. Section 215 (Foot Pursuit) – sustained May 22, 2023, resulting in oral reprimand
 - b. Section 214.4 (Pursuit Guidelines) – sustained October 13, 2023, resulting in written reprimand
 - c. Section 804.2 (General Operations of Department Vehicles) – sustained March 12, 2024, resulting in written reprimand
 - d. Section 803.2 (Safe Handling of Firearms/Storage) – sustained April 7, 2024, resulting in written reprimand
 - e. Section 804.1 (General Operation of Department Vehicles) – sustained December 26, 2024, with discipline pending as of the OPO memorandum dated August 19, 2024
 47. An additional investigation regarding Section 301.2 (Impartial Attitude & Courtesy) in April 2025 was administratively closed with training provided but no formal discipline.
- C. The August 19, 2024 OPO Memorandum of Concern: Explicit Notice to City Leadership**
48. On August 19, 2024 just twenty (20) days after the incident involving Mr. Alexander on July 30, 2024 the Director of the Office of Police Oversight issued a formal Memorandum of Concern to APD Chief Lisa Davis regarding Defendant Kirchberg.

49. The Memorandum stated explicitly that Defendant Kirchberg "has exhibited a pattern of behavior and decision-making that may not align with the training and standards APD expects from its officers."
50. The Memorandum further noted that "Kirchberg has received five sustained findings, some involving allegations of a similar nature; however, he was not subjected to progressive discipline intended to remediate the behavior. This suggests that his chain of command has not adequately held him accountable for his inappropriate conduct and decision-making."
51. Most significantly, the Memorandum observed that while Defendant Kirchberg's peer officers engaged in equally proactive policing in the same sector, those officers "receive[d] far fewer internal and external complaints," indicating that Defendant Kirchberg's methods and decision-making were "an outlier."
52. The OPO Director specifically recommended "a comprehensive review of Kirchberg's complaint history and the post-investigation actions taken by his chain of command to ensure compliance with departmental standards."
53. The Memorandum of Concern was issued before the Force Review Unit initiated its review of this incident, and it warned that Officer Kirchberg's conducts raised concerns regarding compliance with APD training, standards, and accountability.

D. City's Receipt of Explicit Notice

54. The August 19, 2024 Memorandum of Concern placed APD leadership on notice of OPO's concerns regarding Officer Kirchberg's complaint history and accountability within his chain of command.
55. The Memorandum identified five sustained policy violations over a 20-month period (May 2023–December 2024), a pattern of inadequate progressive discipline, and the officer's status as an "outlier" in terms of the volume and nature of complaints against him despite comparable proactive policing by peer officers.
56. The Memorandum of Concern is dated August 19, 2024, and Mr. Alexander's complaint was received by OPO on August 6, 2024 and forwarded to Internal Affairs on August 14, 2024.
57. The OPO Memorandum of Concern recommended that APD leadership review Officer Kirchberg's complaint history and post-investigation actions taken by his chain of command. Plaintiff alleges that APD's subsequent handling of Mr. Alexander's complaint closure as Class D with no further IA investigation reflects inadequate accountability.

VI. THE CITY'S FAILURE TO INVESTIGATE, CLASSIFY AS "CLASS D," AND CLOSE ADMINISTRATIVELY

A. OPO Identification of Potential Policy Violations

58. On August 6, 2024, the Office of Police Oversight received a telephone complaint from Mr. Alexander regarding the July 30, 2024 incident. A signed affidavit was submitted on August 14, 2024, and the complaint was forwarded to Internal Affairs on August 14, 2024.

59. The Office of Police Oversight explicitly identified potential violations of multiple Austin Police Department General Orders, including:

- a. General Order 200.2.1 (Assessment and De-Escalation);
- b. General Order 200.4.1 (Determining the Objective Reasonableness of Force);
- c. General Order 306.9 (Frisk/Pat-Down for Weapons).

B. Internal Affairs Class D Designation and Administrative Closure

60. Despite the OPO's identification of these potential policy violations, the Internal Affairs Division classified the complaint as "Class D" under General Order 902.3.1.

61. According to the Internal Affairs memorandum dated October 1, 2024 (signed by Jeremy Compton, IA Commander), a Class D complaint is defined as one in which "a review of this complaint has indicated no violations of Departmental Policy."

62. The Class D designation meant that the case was "being sent to [the chain of command] for administrative purposes only" and that "Internal Affairs will retain this original memo in order to close the complaint administratively and no further investigation will occur."

63. The Internal Affairs memorandum concluded that "No Department policies or procedures were violated by the officer in relation to the complaint received" and that the complaint would be closed administratively with no further investigation.

C. Contradictions Between the Class D Conclusion and the Record

64. The Class D administrative closure conclusion contradicts the factual and evidentiary record:

- a. De-escalation (GO 200.2.1): The OPO complaint alleged Mr. Alexander was "scared and fearful for his life during the incident because he was never told by Officer Alvarez why he was being contacted or why he was being detained." Verified police records confirm that Mr. Alexander was provided an explanation only after being handcuffed approximately one minute after physical contact. A tactical response that involves immediate physical seizure without explanation, escalating to a takedown shortly after officers made physical contact, is inconsistent with de-escalation protocols.
- b. Reasonableness of Force (GO 200.4.1): The facts as documented in officer narratives and FRU materials show that Mr. Alexander took steps away and pulled his hands away, and that once on the ground he continued to stiffen his body and pull his arms away while officers attempted to handcuff him. For a minor pedestrian traffic violation, where the subject was unarmed and posed no threat, a takedown and prone restraint raise serious questions about objective reasonableness.
- c. Frisk Procedures (GO 306.9): The complaint alleged Mr. Alexander was never told why he was being frisked. Officer narratives confirm the frisk was conducted after the takedown and restraint, not before.

65. The Force Review Unit separately concluded that "the Officers Response to Resistance complies with law and departmental policy," but the FRU's own narrative documents

that Mr. Alexander's resistive actions were "backing away and pulling his hands away" and "stiffening his body."

D. Systemic Pattern: Class D as Mechanism for Closure Without Accountability

66. In this matter, Internal Affairs designated the complaint "Class D" and closed it administratively, stating that "no further investigation will occur." Plaintiff alleges, upon information and belief, that similar administrative closures reflect deficiencies in APD's accountability systems that contribute to unconstitutional policing.

67. In Mr. Alexander's case, the Versadex General Offense report shows that Officer Kirchberg reported the offenses as:

- i. 1400-0 Criminal Mischief (completed)
- ii. 0905-0 Resisting Arrest or Search (completed)
- iii. 8403-0 Level 3 Response to Resistance (completed)

Yet the complaint against the officers for those same events was classified as "Class D No Policy Violations." This pattern charging a citizen with crimes arising from police force, while simultaneously closing the complaint against the officers as non-violative of policy suggests a systemic approach to insulating officers from accountability.

E. Ratification by Class D Administrative Closure

68. The City's classification of Mr. Alexander's complaint as "Class D" and its administrative closure without further investigation, despite the OPO's identification of potential policy violations and Kirchberg's known pattern of conduct, constitutes a ratification of the officers' conduct.

69. By closing the complaint without investigation, the City conveyed to its officers (and particularly to Officer Kirchberg) that the conduct at issue immediate physical seizure without explanation, a takedown for backing away during a minor traffic stop, and prone restraint with body-weight pressure was consistent with departmental policy and acceptable.

VII. DELIBERATE INDIFFERENCE: FAILURE TO TRAIN, SUPERVISE, AND DISCIPLINE

A. Actual and Constructive Notice of Substantial Risk

70. The City of Austin is liable for the constitutional violations suffered by Mr. Alexander based on deliberate indifference to a substantial risk of future constitutional violations by Officer Kirchberg.

71. The City was on actual and explicit notice through the August 19, 2024 OPO Memorandum of Concern that Officer Kirchberg exhibited:

- i. A documented pattern of policy violations (five sustained findings over 20 months)
- ii. A pattern of inadequate progressive discipline (multiple violations without escalated corrective action)
- iii. Status as an "outlier" despite comparable proactive policing by peer officers

- iv. A substantial risk of continued problematic conduct if accountability systems were not strengthened

72. The City was further on notice through the subsequent processing and Class D designation of Mr. Alexander's complaint (which itself involved a takedown and prone restraint during a minor traffic stop) that IA's accountability processes were permitting such conduct to be characterized as policy-compliant.

B. Failure to Implement Corrective Measures

73. Despite receiving explicit notice of Officer Kirchberg's pattern and the risk of future violations, the City implemented no corrective action, including but not limited to:

- a. No enhanced supervision or field oversight of Kirchberg's stops or use of force;
- b. No mandatory retraining on de-escalation, frisk procedures, or the constitutional limits on seizure and force for minor offenses;
- c. No restriction on Kirchberg's independent patrol or assignment to "high crime" areas where he engaged in proactive stops;
- d. No progressive discipline scheme that would deter repeated violations or signal to Kirchberg that his pattern was unacceptable;
- e. No structural review of his chain of command's inadequate response to prior sustained findings.

74. The OPO Director's August 19, 2024 recommendation for "a comprehensive review of Kirchberg's complaint history and the post-investigation actions taken by his chain of command" was not implemented.

C. Custom and Practice of Inadequate Accountability Mechanisms

75. The City's Class D administrative closure process, combined with its failure to implement progressive discipline for sustained violations and its failure to enhance supervision of known-problem officers, constitutes a custom and practice of inadequate accountability.

76. This custom and practice permitting officers with multiple sustained violations to continue unrestricted patrol with minimal supervision or corrective training creates and perpetuates a substantial risk that such officers will commit further constitutional violations.

D. Causation: The Pattern Created the Conditions for Alexander's Injury

77. Had the City implemented adequate progressive discipline, retraining, and supervision in response to Kirchberg's prior sustained violations and the OPO's August 2024 warning, Kirchberg would have been subject to heightened oversight, mandatory de-escalation training, and accountability mechanisms that would have deterred or prevented the conduct that injured Mr. Alexander.

78. Instead, the City's inaction (and the subsequent Class D closure of Mr. Alexander's own complaint) conveyed to Officer Kirchberg that his conduct was acceptable, thereby removing a significant deterrent to future violations.

VIII. CONTROLLING LEGAL STANDARDS

A. Excessive Force Under the Fourth Amendment

79. Excessive-force claims arising from an arrest, investigatory stop, or other seizure are analyzed under the Fourth Amendment's "objective reasonableness" standard. *Graham v. Connor*, 490 U.S. 386 (1989). The reasonableness inquiry is objective and considers the facts and circumstances confronting the officers, without regard to their underlying intent or motivation. *Id.* at 396–97.
80. The Fifth Circuit has repeatedly held that officers violate clearly established law when they abruptly use overwhelming physical force against a nonviolent, non-fleeing individual stopped for a minor offense. *Hanks v. Rogers*, 853 F.3d 738, 747–48 (5th Cir. 2017) (holding force unconstitutional where officer tackled a motorist stopped for a minor traffic violation who posed no immediate threat); *Trammell v. Fruge*, 868 F.3d 332, 341–42 (5th Cir. 2017) (finding excessive force where officers took a non-aggressive individual to the ground for pulling his arm away); *Timpa v. Dillard*, 20 F.4th 1020, 1033–35 (5th Cir. 2021) (holding continued force on a subdued, non-threatening individual unconstitutional and clearly established).
81. Courts evaluate the reasonableness of force by considering: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or the public; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Id.* at 396.
82. When a suspect is already subdued and restrained on the ground, subsequent force particularly force involving pressure applied to the back, body weight, or threats of additional force (such as tasing) may be excessive and constitute a constitutional violation.

B. Investigatory Stop and Frisk

83. An officer may conduct a brief investigatory detention only when supported by reasonable suspicion that a person has committed, is committing, or is about to commit a crime. *Terry v. Ohio*, 392 U.S. 1 (1968).
84. A brief detention must be supported by reasonable suspicion based on specific, articulable facts. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Absent such facts, stopping a pedestrian violates the Fourth Amendment. *Brown v. Texas*, 443 U.S. 47, 52 (1979). A seizure that escalates beyond the scope justified by the underlying offense is likewise unconstitutional.
85. A frisk for weapons is permitted only when the officer reasonably believes the person may be armed and presently dangerous. *Terry*, 392 U.S. at 27.

C. Municipal Liability Under Monell

86. A municipality is liable under 42 U.S.C. § 1983 when an official policy or custom is the moving force behind a constitutional violation. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Deliberate indifference may be shown where policymakers have notice of a pattern of similar constitutional violations and fail to take corrective action. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989); *Bd. of County Comm'rs v. Brown*,

520 U.S. 397, 407 (1997). The Fifth Circuit requires a showing that municipal policymakers were aware of prior similar misconduct and nonetheless failed to supervise or discipline offending officers. *Peterson v. City of Fort Worth*, 588 F.3d 838, 850–51 (5th Cir. 2009); *Hicks-Fields v. Harris County*, 860 F.3d 803, 810–11 (5th Cir. 2017).

87. A municipality may also be held liable when it exhibits deliberate indifference to a substantial risk of future constitutional violations by its employees. *Id.*; *City of Canton v. Harris*, 489 U.S. 378 (1989).
88. To establish municipal liability for deliberate indifference, a plaintiff must show: (1) actual or constructive notice of a substantial risk that a particular officer or class of officers would commit constitutional violations; (2) the municipality's deliberate indifference to that risk; and (3) a direct causal link between the municipality's inaction and the plaintiff's injury.
89. At the time of the incident, it was clearly established in the Fifth Circuit that officers may not resort to a forcible takedown or sustained body-weight restraint against a nonviolent, non-fleeing person who poses no immediate threat. See *Hanks v. Rogers*, 853 F.3d at 747; *Trammell v. Fruge*, 868 F.3d at 342. The unlawfulness of such force was therefore beyond debate, and Defendants are not entitled to qualified immunity.

IX. CAUSES OF ACTION

COUNT I: 42 U.S.C. § 1983 — UNLAWFUL SEIZURE AND ARREST IN VIOLATION OF THE FOURTH AMENDMENT

(Against Defendants Ryne Kirchberg and Shalom Alvarez, individually)

90. Plaintiff incorporates by reference all preceding paragraphs as if fully restated herein.
91. The Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, protects individuals from unreasonable searches and seizures. *U.S. Const. amend. IV*.
92. A seizure of a person occurs when a law enforcement officer restrains an individual's freedom of movement through the means intentionally applied, by force or threat of force. *Graham*, 490 U.S. at 395.
93. To justify an investigatory detention (a "stop"), an officer must possess reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. *Terry*, 392 U.S. at 27.
94. To justify an arrest, an officer must possess probable cause to believe that the individual has committed a crime.
95. Defendants Kirchberg and Alvarez unlawfully seized Mr. Alexander by:
 - a. Physically grabbing his wrists and arms without providing an explanation for the stop;
 - b. Executing a takedown maneuver, driving him to the ground;
 - c. Mounting him and applying sustained pressure to his back while handcuffing him;

- d. Transporting him to jail and charging him with a crime.
96. The officers reported the stop was for a pedestrian traffic violation (Texas Transportation Code § 552.005). Plaintiff alleges that, under the totality of circumstances shown in the reports and videos referenced in the FRU/IA materials, the manner and degree of force used were objectively unreasonable.
97. Plaintiff alleges that even if the officers possessed reasonable suspicion for an investigatory stop based on the pedestrian traffic violation, they violated the Fourth Amendment by:
- a. Failing to provide Mr. Alexander with an explanation for the stop before initiating physical contact;
 - b. Responding to his step backward (a non-resistive, fear-based movement) and stiffening of his body (a fear response) with a takedown maneuver, rather than with further de-escalation or verbal commands;
 - c. Employing a degree and duration of force grossly disproportionate to the minor nature of the alleged violation and the absence of any threat posed by an unarmed individual.
98. The criminal case identified as State of Texas v. Antonio Alexander, Cause No. C1CR24208181, was dismissed. Plaintiff alleges that, based on the circumstances documented in APD records and Plaintiff's complaint, the officers lacked probable cause for the arrest.
99. The seizure and arrest of Mr. Alexander violated the Fourth Amendment.
100. As a direct and proximate result of Defendants' unlawful seizure, Mr. Alexander suffered:
- a. Deprivation of liberty;
 - b. Physical injury;
 - c. Emotional distress;
 - d. Humiliation and damage to reputation;
 - e. Criminal prosecution and the lasting collateral consequences thereof.

**COUNT II: 42 U.S.C. § 1983 — EXCESSIVE FORCE IN VIOLATION OF THE
FOURTH AMENDMENT**

(Against Defendants Ryne Kirchberg and Shalom Alvarez, individually)

101. Plaintiff incorporates by reference all preceding paragraphs as if fully restated herein.
102. The Fourth Amendment prohibits law enforcement officers from using excessive force when effecting a seizure or arrest. *Graham*, 490 U.S. at 394.
103. The reasonableness of force is determined by balancing the government's interest in seizure against the individual's liberty interest, using an objective standard that considers:
- a. The severity of the crime at issue;
 - b. Whether the suspect poses an immediate threat to the safety of officers or the public;
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Graham, 490 U.S. at 396.

104. The officers stated they stopped Mr. Alexander for a pedestrian traffic violation, specifically Texas Transportation Code § 552.005 (crossing at a point other than a crosswalk).
105. Mr. Alexander was unarmed, and according to his complaint narrative, displayed his hands to show compliance. Officer narratives confirm he was armed with nothing.
106. Mr. Alexander's actions were:
 - a. Taking a step backward when officers reached for him without explanation (a natural fear response);
 - b. Tensing his body in fear as officers seized his wrists (a fear response);
 - c. Stiffening his body and pulling his arms as officers attempted to handcuff him while he was prone on the ground (resistance to continued restraint).
107. The FRU's own characterization of his conduct was "Defensive Resistance" and "backing away and pulling his hands away." Plaintiff alleges these are not the actions of a person actively resisting arrest; they are the actions of a confused, frightened person being seized without explanation by armed officers.
108. Defendants' use of a takedown maneuver to drive Mr. Alexander to the pavement when he posed no threat, was unarmed, posed no flight risk, and was backing away in fear was objectively unreasonable under the circumstances. *Graham*, 490 U.S. at 396.
109. The subsequent application of body weight, forearm pressure, knee pressure, and shin pressure to Mr. Alexander's back while he was prone and being handcuffed was objectively unreasonable and not proportionate to any legitimate law enforcement need or to the minor nature of the alleged infraction. *Graham*, 490 U.S. at 396.
110. Defendants' threats to deploy a taser against a prone suspect further demonstrate the unreasonableness of the force employed.
111. As a direct and proximate result of Defendants' use of excessive force, Mr. Alexander suffered:
 - a. Physical injuries including pain and injury to his neck, shoulder, and other body parts;
 - b. Lasting pain and discomfort;
 - c. Emotional trauma and ongoing psychological injury;
 - d. Humiliation and loss of dignity.

**COUNT III: 42 U.S.C. § 1983 — MUNICIPAL LIABILITY FOR DELIBERATE
INDIFFERENCE**

(Against Defendant City of Austin, Texas)

112. Plaintiff incorporates by reference all preceding paragraphs as if fully restated herein.
113. A municipality may be held liable under 42 U.S.C. § 1983 when a constitutional violation results from the municipality's policy, custom, or practice, or when the municipality exhibits deliberate indifference to the constitutional rights of individuals in its custody or under the force of its agents. *Monell*, 436 U.S. at 694; *City of Canton*, 489 U.S. at 390.

114. The City of Austin is liable under *Monell* for the constitutional violations committed by Defendants Kirchberg and Alvarez because those violations resulted from:

A. Custom and Practice of Inadequate Investigation and Administrative Closure Without Accountability

115. In Mr. Alexander's case, the OPO specifically identified three potential policy violations:

- i. General Order 200.2.1 (Assessment and De-Escalation)
- ii. General Order 200.4.1 (Determining the Objective Reasonableness of Force)
- iii. General Order 306.9 (Frisk/Pat-Down for Weapons)

Yet Internal Affairs classified the complaint "Class D" and closed it with a finding of "no violations."

116. This classification designating OPO-flagged complaints as "Class D" and administratively closing them without investigation is evidence of inadequate accountability processes that result in officers not being held accountable for potentially unconstitutional conduct.

B. Failure to Implement Progressive Discipline Despite Sustained Findings

117. Despite five sustained findings against Officer Kirchberg between May 2023 and December 2024 (spanning policy violations in pursuits, vehicle operations, and firearms handling), the City failed to subject him to progressive discipline intended to remediate his behavior.

118. The OPO Director explicitly noted: "Kirchberg has received five sustained findings, some involving allegations of a similar nature; however, he was not subjected to progressive discipline intended to remediate the behavior. This suggests that his chain of command has not adequately held him accountable for his inappropriate conduct and decision-making."

119. The City's failure to implement progressive discipline is a custom and practice that permits officers with documented patterns of misconduct to continue unrestricted patrol, thereby creating conditions that enable future constitutional violations.

C. Failure to Supervise Officers with Known Patterns of Misconduct

120. The City was on actual and explicit notice through the August 19, 2024 OPO Memorandum of Concern that Officer Kirchberg was an "outlier" whose "pattern of behavior and decision-making may not align with the training and standards APD expects," and whose peer officers engaged in comparable proactive policing yet received "far fewer internal and external complaints."

121. Despite this notice, the City failed to implement any enhanced supervisory measures, including:

- a. Field supervision or oversight of Kirchberg's investigatory stops and use of force;
- b. Mandatory retraining on constitutional limits, de-escalation, and frisk procedures;
- c. Restrictions on his independent patrol or reassignment to areas where he engaged in aggressive proactive policing;

- d. Any measure calculated to remediate the pattern or mitigate the risk of future violations.

D. Deliberate Indifference to Substantial Risk of Future Constitutional Violations

- 122. The City of Austin was on actual and explicit notice of a substantial risk that Officer Kirchberg would commit constitutional violations through:
 - a. Twenty-five separate investigations into his conduct (nine internal, sixteen external) within 30 months;
 - b. Five sustained findings of policy violations within a 20-month period (May 2023–December 2024);
 - c. The August 19, 2024 OPO Memorandum of Concern explicitly warning of a pattern of problematic behavior and inadequate accountability;
 - d. The subsequent processing and Class D administrative closure of Mr. Alexander's complaint (which itself involved force during a minor stop), signaling that the conduct was not being investigated as potentially unconstitutional.
- 123. The City's deliberate indifference its failure to implement corrective action, progressive discipline, enhanced supervision, or retraining despite this explicit notice created the conditions under which Officer Kirchberg committed the constitutional violations that injured Mr. Alexander.
- 124. The City's inaction (and the Class D closure of Mr. Alexander's complaint) removed a significant deterrent to Officer Kirchberg's continued misconduct, thereby contributing directly to the violation of Mr. Alexander's constitutional rights.

E. Moving Force

- 125. The City's custom and practice of inadequate investigation, failure to implement progressive discipline, and failure to supervise officers with known patterns of misconduct was the moving force behind the constitutional violations suffered by Mr. Alexander. *Monell*, 436 U.S. at 694.
- 126. Had the City implemented adequate accountability mechanisms, progressive discipline, and supervision in response to Kirchberg's prior sustained violations and the OPO's August 2024 warning, the constitutional violations against Mr. Alexander would not have occurred, or would have been substantially less likely to occur.
- 127. As a direct and proximate result of the City of Austin's deliberate indifference to the substantial risk of constitutional violations by Officer Kirchberg, Mr. Alexander was deprived of his rights under the Fourth and Fourteenth Amendments and suffered the injuries detailed above.
- 128. The City's continued administrative closure of force complaints without investigation, despite notice of repeated sustained findings, reflects a persistent and widespread practice sufficient to constitute municipal policy under *Peterson v. City of Fort Worth*, 588 F.3d 838, 850 (5th Cir. 2009).

COUNT IV: ASSAULT AND BATTERY UNDER TEXAS LAW

(Against Defendants Ryne Kirchberg and Shalom Alvarez, individually)

- 129. Plaintiff incorporates by reference all preceding paragraphs as if fully restated herein.

130. Under Texas Penal Code § 22.01(a)(1), a person commits assault if the person intentionally or knowingly causes bodily injury to another, or intentionally or knowingly threatens another with imminent bodily injury.
131. Under Texas common law, battery occurs when a person intentionally and unlawfully causes harmful or offensive contact with another without consent.
132. Defendants Kirchberg and Alvarez intentionally caused harmful and offensive physical contact with Mr. Alexander by:
 - a. Grabbing and seizing his wrists and arms;
 - b. Executing a takedown maneuver and driving him to the pavement;
 - c. Mounting and placing body weight and pressure on his back and torso;
 - d. Applying forearm, knee, and shin pressure to his body while he was prone and restrained.
133. Defendants' actions caused bodily injury to Mr. Alexander, including pain, soreness, and physical trauma to his neck, shoulder, and other body parts.
134. Defendants' actions were not justified by law. Mr. Alexander posed no threat, the force employed was not reasonable under the circumstances, and the manner of seizure and restraint was unconstitutional and tortious.
135. Mr. Alexander did not consent to the contact, and Defendants knew or should have known that their actions would cause bodily injury.
136. As a direct and proximate result of Defendants' assault and battery, Mr. Alexander suffered:
 - a. Physical injury and pain;
 - b. Emotional distress;
 - c. Humiliation and loss of dignity.

COUNT V: FALSE ARREST AND FALSE IMPRISONMENT UNDER TEXAS LAW

(Against Defendants Ryne Kirchberg and Shalom Alvarez, individually)

137. Plaintiff incorporates by reference all preceding paragraphs as if fully restated herein.
138. Under Texas common law, a person commits false imprisonment if the person intentionally or knowingly restrains another without legal authority or justification.
139. Under Texas common law, false arrest occurs when a person is arrested without probable cause.
140. Defendants Kirchberg and Alvarez intentionally restrained Mr. Alexander's liberty by:
 - a. Physically seizing him without explanation;
 - b. Executing a takedown and driving him to the ground;
 - c. Applying sustained restraint and pressure while handcuffing him;
 - d. Transporting him to the Travis County Jail;
 - e. Booking him on charges of Resisting Arrest, Search, or Transportation.

141. The criminal case (Cause No. C1CR24208181) was dismissed by the Travis County Attorney's Office. Plaintiff alleges that Defendants lacked probable cause to arrest Mr. Alexander for Resisting Arrest, Search, or Transportation.
142. Mr. Alexander did not consent to his detention or arrest.
143. The detention and arrest were unlawful and without legal justification.
144. As a direct and proximate result of Defendants' false arrest and false imprisonment, Mr. Alexander suffered:
 - a. Deprivation of liberty;
 - b. Emotional distress and trauma;
 - c. Humiliation and damage to reputation;
 - d. Collateral consequences of criminal arrest and prosecution.

X. DAMAGES

145. As a direct and proximate result of Defendants' unlawful conduct, Mr. Alexander is entitled to recover the following damages:
 - A. **Compensatory Damages**
 1. Physical pain and suffering from his injuries and the ongoing effects thereof;
 2. Medical and related expenses incurred in treating injuries sustained during the incident;
 3. Emotional distress and trauma, including fear, anxiety, humiliation, and lasting psychological injury;
 4. Lost wages and income resulting from any inability to work due to physical injury or emotional distress;
 5. Damage to reputation and standing in the community as a result of arrest and criminal prosecution;
 6. Collateral consequences of criminal arrest and prosecution, including impacts on employment, housing, educational opportunities, and other life opportunities.
 - B. **Punitive Damages**
 1. Against Defendants Kirchberg and Alvarez (individually): Punitive damages in an amount sufficient to deter similar conduct, reflecting the egregious nature of the conduct (seizure without explanation, takedown during a minor traffic stop, prone restraint with body weight and pressure threats), the deliberate or reckless disregard for constitutional protections, and the need for deterrence.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Antonio Isaac Alexander prays that this Court grant him the following relief:

- A. Judgment against Defendants Ryne Kirchberg and Shalom Alvarez, individually, for all compensatory damages including but not limited to past and

future pain and suffering, medical expenses, emotional distress, lost wages, reputational harm, and collateral consequences, in an amount to be proven at trial, jointly and severally;

- B. Punitive damages against Defendants Ryne Kirchberg and Shalom Alvarez, individually, in an amount sufficient to punish their conduct and deter similar violations by other officers, in an amount to be proven at trial, jointly and severally;
- C. Judgment against Defendant City of Austin, Texas, for all compensatory damages, including but not limited to past and future pain and suffering, medical expenses, emotional distress, lost wages, reputational harm, and collateral consequences, in an amount to be proven at trial;
- D. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- E. Attorney's fees and costs incurred in prosecution of this action, including expert witness fees, under 42 U.S.C. § 1988;
- F. A jury trial on all issues;
- G. Such other and further relief as the Court deems just and proper.

XII. JURY DEMAND

Plaintiff Antonio Isaac Alexander hereby demands a trial by jury on all issues in this case, as permitted by the Seventh Amendment to the United States Constitution and the Federal Rules of Civil Procedure.

Respectfully submitted,

TOLBERT & ASSOCIATES, PLLC

By: /s/Christopher L. Tolbert
Christopher L. Tolbert, Esq., LLM
State Bar No. 24080530
511 E. John W Carpenter Fwy Suite 500
Las Colinas, Texas 75206
817.380.8008 (Office)
Fax: 817.977.9661
chris@tolbertlawpc.com
Attorney For Plaintiffs

FILED

December 16, 2025

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

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

BY: Alicia Davis
DEPUTY

**IN RE: COURT DOCKET
MANAGEMENT**

FOR AUSTIN DIVISION

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MAGISTRATE REFERRAL ORDER

Under Rule 1 of the Local Rules for the Assignment of Duties to United States Magistrate Judges, Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, **IT IS HEREBY ORDERED** that the Clerk of the Court shall refer all civil matters assigned to the Honorable Alan D Albright to a United States Magistrate Judge for the Austin Division, allocated pursuant to the Clerk of the Court's standard procedure, except the following:

- Cases brought under 28 U.S.C. §§ 2254 and 2255;
- Cases brought under 28 U.S.C. § 2241, except for immigration habeas petitions with a nature of suit code 463;
- Cases brought by detainees and prisoners under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 430 U.S. 388 (1971);
- Cases brought under 35 U.S.C. § 1 et seq. (patent cases);
- Cases designated as "830 Patent" and "835 Patent (ANDA)"; and
- Cases that include *ex parte* applications for temporary restraining orders.

IT IS FURTHER ORDERED that the Clerk of the Court shall refer all criminal matters for the Austin Division assigned to the Honorable Alan D Albright to a United States Magistrate Judge for the Austin Division, allocated pursuant to the Clerk of the Court's standard procedure. The matters are referred for disposition of all non-dispositive pretrial matters as provided in 28 U.S.C. § 636(b)(1)(A) and for findings and recommendations on all case-dispositive motions as provided in 28 U.S.C. § 636(b)(1)(B).

SIGNED this 16th day of December, 2025.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas



ANTONIO ISAAC ALEXANDER,
Plaintiff,

Plaintiff(s)

v.

RYNE KIRCHBERG, SHALOM ALVAREZ,
and
CITY OF AUSTIN, TEXAS

Defendant(s)

Civil Action No. 1:26-cv-00183-ADA-SH

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* City of Austin, Texas
c/o T.C. Broadnax, City Manager
City Hall
301 W. 2nd Street, 3rd Floor
Austin, TX 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher L. Tolbert, Tolbert & Associates, PLLC, 511 E. John W. Carpenter Fwy
Suite 500, Las Colinas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 01/30/2026

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas



ANTONIO ISAAC ALEXANDER,
Plaintiff,

Plaintiff(s)

v.

RYNE KIRCHBERG, SHALOM ALVAREZ,
and
CITY OF AUSTIN, TEXAS

Defendant(s)

Civil Action No. 1:26-cv-00183-ADA-SH

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Ryne Kirchberg, in his individual and official capacity as Austin Police Officer #AP9241
Austin Police Department (HQ)
715 E 8th St
Austin, TX 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher L. Tolbert, Tolbert & Associates, PLLC, 511 E. John W. Carpenter Fwy
Suite 500, Las Colinas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 01/30/2026

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas



ANTONIO ISAAC ALEXANDER,
Plaintiff,

Plaintiff(s)

v.

RYNE KIRCHBERG, SHALOM ALVAREZ,
and
CITY OF AUSTIN, TEXAS

Defendant(s)

Civil Action No. 1:26-cv-00183-ADA-SH

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Shalom Alvarez, in his individual and official capacity as Austin Police Officer #AP9207
Austin Police Department (HQ)
715 E 8th St
Austin, TX 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher L. Tolbert, Tolbert & Associates, PLLC, 511 E. John W. Carpenter Fwy
Suite 500, Las Colinas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 01/30/2026

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Western District of Texas

ANTONIO ISAAC ALEXANDER,
Plaintiff,

Plaintiff(s)

v.

RYNE KIRCHBERG, SHALOM ALVAREZ,
and
CITY OF AUSTIN, TEXAS

Defendant(s)

Civil Action No. 1:26-cv-00183-ADA-SH

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SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) City of Austin, Texas
c/o T.C. Broadnax, City Manager
City Hall
301 W. 2nd Street, 3rd Floor
Austin, TX 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher L. Tolbert, Tolbert & Associates, PLLC, 511 E. John W. Carpenter Fwy
Suite 500, Las Colinas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 01/30/2026



CLERK OF COURT PHILIP J. DEVLIN

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Signature of Clerk or Deputy Clerk

CTT 3-20-2026 1:14 PM -
Delivered 3-25-2026

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

ANTONIO ISAAC ALEXANDER,
Plaintiff,

Plaintiff(s)

v.

RYNE KIRCHBERG, SHALOM ALVAREZ,
and
CITY OF AUSTIN, TEXAS

Defendant(s)

Civil Action No. 1:26-cv-00183-ADA-SH

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* City of Austin, Texas
c/o T.C. Broadnax, City Manager
City Hall
301 W. 2nd Street, 3rd Floor
Austin, TX 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher L. Tolbert, Tolbert & Associates, PLLC, 511 E. John W. Carpenter Fwy
Suite 500, Las Colinas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT PHILIP J. DEVLIN

Date: 01/30/2026

[Signature]
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

ANTONIO ISAAC ALEXANDER,
Plaintiff,

Plaintiff(s)

v.

RYNE KIRCHBERG, SHALOM ALVAREZ,
and
CITY OF AUSTIN, TEXAS

Defendant(s)

Civil Action No. 1:26-cv-00183-ADA-SH

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Ryne Kirchberg, in his individual and official capacity as Austin Police Officer #AP9241
Austin Police Department (HQ)
715 E 8th St
Austin, TX 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher L. Tolbert, Tolbert & Associates, PLLC, 511 E. John W. Carpenter Fwy
Suite 500, Las Colinas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT PHILIP J. DEVLIN

[Handwritten Signature]

Signature of Clerk or Deputy Clerk

Date: 01/30/2026

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

ANTONIO ISAAC ALEXANDER,
Plaintiff,

Plaintiff(s)

v.

RYNE KIRCHBERG, SHALOM ALVAREZ,
and
CITY OF AUSTIN, TEXAS

Defendant(s)

Civil Action No. 1:26-cv-00183-ADA-SH

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Shalom Alvarez, in his individual and official capacity as Austin Police Officer #AP9207
Austin Police Department (HQ)
715 E 8th St
Austin, TX 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher L. Tolbert, Tolbert & Associates, PLLC, 511 E. John W. Carpenter Fwy
Suite 500, Las Colinas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT PHILIP J. DEVLIN

Date: 01/30/2026

[Signature]
Signature of Clerk or Deputy Clerk

FILED

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

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

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Antonio Isaac Alexander,
Plaintiff,

v.

City of Austin, Ryan Kirchberg and
Shalom Alvarez,
Defendant.

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CIVIL ACTION NO. 1:26-CV-00183

**DEFENDANT CITY OF AUSTIN'S MOTION FOR EXTENSION OF TIME
TO FILE RESPONSIVE PLEADINGS**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Defendant City of Austin ("the City"), by and through its counsel of record, to file this Motion for Extension of Time to File Responsive Pleadings, and the City would respectfully show as follows:

I. MOTION TO EXTEND TIME

Plaintiff filed and served on the City his Original Complaint in the above-referenced matter. The deadline for the City to respond to this pleading is Wednesday, April 15. The Original Complaint is 145 paragraphs, not including subparagraphs, and includes extensive legal and factual allegations against the City and co-Defendants who, upon information and belief, have yet to be served. The City respectfully requests a thirty-day extension of the deadline to respond to the Original Complaint. This motion is not made for the purposes of delay but is needed to give the City an opportunity to review the extensive allegations against it and present the appropriate response. The requested extension will not prejudice any party. Counsel for the City has reached out to Plaintiff's counsel by phone and email and has not received a response whether Plaintiff is

opposed or unopposed to this Motion. The City respectfully requests that the Court extend the deadline to file responsive pleadings to May 15, 2026.

WHEREFORE PREMISES CONSIDERED, the City respectfully requests that the Court grant this Motion for Extension of Time and enter an order extending the deadline for the City to file responsive pleadings to May 15, 2026.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY
VASU BEHARA, CHIEF OF LITIGATION

/s/ Luke McHenry
LUKE MCHENRY
State Bar No. 24057993
Luke.mchenry@austintexas.gov
Assistant City Attorney
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2401
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendant City of Austin's Motion for Extension of Time to File Responsive Pleadings** has been provided to the following, in accordance with the Federal Rules of Civil Procedure, on April 14, 2026. I understand the CM/ECF system will send a Notice of Electronic Filing to the following counsel of record.

Christopher Tolbert
Tolbert & Associates, PLLC
511 E. John Carpenter Fwy Suite 500
Las Colinas, TX 72506
chris@tolbertlawpc.com

/s/ Luke McHenry
Luke McHenry

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

Antonio Isaac Alexander,
Plaintiff,

V.

**City of Austin, Ryan Kirchberg and
Shalom Alvarez,
Defendant.**

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**CIVIL ACTION NO. 1:26-CV-00183**

## ORDER

Before the Court is Defendant City of Austin's Motion For Extension of Time to File Responsive Pleadings. After consideration of the pleadings on file, the Court is of the opinion that the Motion should be granted.

It is hereby ORDERED, that Defendant's deadline for the filing of responsive pleadings to Plaintiff's Original Complaint is extended to May 15, 2026.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

## JUDGE PRESIDING

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

**Antonio Isaac Alexander,**  
***Plaintiff,***

**V.**

**City of Austin, Ryan Kirchberg and  
Shalom Alvarez,  
Defendant.**

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**CIVIL ACTION NO. 1:26-CV-00183**

**DEFENDANTS RYNE KIRCHBERG’S AND CITY OF AUSTIN’S UNOPPOSED  
MOTION FOR ENLARGEMENT OF TIME**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Defendants Ryne Kirchberg and the City of Austin (“the City”) (collectively “Defendants”), by and through its counsel of record, to file this Unopposed Motion For Enlargement of Time to file responsive pleadings to Plaintiff’s Original Complaint, and the Defendants would respectfully show as follows:

## I. MOTION TO EXTEND TIME

Plaintiff filed his Original Complaint on January 26, 2026. The City was served on March 25, 2026. The original deadline for the City to file a responsive pleading was Wednesday, April 15, but Plaintiff's counsel agreed to an extension of time to May 15, 2026. Kirchberg was served on April 20, 2026. Plaintiff's counsel has now agreed to an additional extension of time through May 22, 2026, for Defendants to file their respective responsive pleadings.

This motion is not made for the purposes of delay but is needed to give Defendants an opportunity to review the extensive allegations and present the appropriate response. The

requested extension will not prejudice any party.

WHEREFORE PREMISES CONSIDERED, the Defendants respectfully request that the Court grant this Unopposed Motion for Enlargement of Time and enter an order providing that the responsive pleading deadline for Defendants in this matter shall be May 22, 2026, and for such and further relief to which they may be justly entitled.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY  
VASU BEHARA, CHIEF OF LITIGATION

/s/ Luke McHenry  
LUKE MCHENRY  
State Bar No. 24057993  
[Luke.mchenry@austintexas.gov](mailto:Luke.mchenry@austintexas.gov)  
Assistant City Attorney  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-2401  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANTS**  
**CITY OF AUSTIN and RYNE KIRCHBERG**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Defendants Ryne Kirchberg and City of Austin's Unopposed Motion for Enlargement of Time** has been provided to the following, in accordance with the Federal Rules of Civil Procedure, on May 6, 2026. I understand the CM/ECF system will send a Notice of Electronic Filing to the following counsel of record.

Christopher Tolbert  
Tolbert & Associates, PLLC  
511 E. John Carpenter Fwy Suite 500  
Las Colinas, TX 72506  
chris@tolbertlawpc.com

/s/ Luke McHenry  
Luke McHenry

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

**Antonio Isaac Alexander,**  
***Plaintiff,***

**v.**

**City of Austin, Ryan Kirchberg and  
Shalom Alvarez,**  
***Defendant.***

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**CIVIL ACTION NO. 1:26-CV-00183**

**STIPULATION REGARDING DEFENDANTS KIRCHBERG AND ALVAREZ’S  
DEADLINE TO FILE RESPONSIVE PLEADING**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Defendants Ryne Kirchberg and Shalom Alvarez (“the Officers”) by and through their counsel of record, to file this Stipulation Regarding Defendants Kirchberg and Alvarez’s Deadline to File Responsive Pleading (“Stipulation”), and the Officers would respectfully show as follows:

**I. STIPULATION TO EXTEND TIME**

Plaintiff filed his Original Complaint on January 26, 2026. Defendant Kirchberg was served on April 20, 2026. Plaintiff’s counsel previously agreed to an extension of time (to May 22, 2026) for Defendant Kirchberg to file his responsive pleading. After that agreement, the parties learned that Defendant Alvarez was served on May 4, 2026, and his deadline to respond is May 26, 2026. The parties conferred and agreed that the Officers’ deadline to respond should be extended to May 29, 2026. This agreement does not impact the City of Austin’s May 22, 2026, deadline to respond.

WHEREFORE PREMISES CONSIDERED, the parties respectfully request that the Court extend the deadline for the Officers to file responsive pleadings to May 29, 2026.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY  
VASU BEHARA, CHIEF OF LITIGATION

/s/ Luke McHenry  
LUKE MCHENRY  
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**ATTORNEYS FOR DEFENDANTS  
CITY OF AUSTIN, RYNE KIRCHBERG, AND  
SHALOM ALVAREZ**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been provided to the following, in accordance with the Federal Rules of Civil Procedure, on May 21, 2026. I understand the CM/ECF system will send a Notice of Electronic Filing to the following counsel of record.

Christopher Tolbert  
Tolbert & Associates, PLLC  
511 E. John Carpenter Fwy Suite 500  
Las Colinas, TX 72506  
chris@tolbertlawpc.com

/s/ Luke McHenry  
Luke McHenry

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

**ANTONIO ISAAC ALEXANDER,**  
*Plaintiff,*

v.

**CITY OF AUSTIN, RYAN  
KIRCHBERG AND SHALOM  
ALVAREZ,**  
*Defendants.*

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**CIVIL ACTION NO. 1:26-CV-00183**

**CITY OF AUSTIN’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant City of Austin (the City) in the above-entitled and numbered cause and moves this Court to dismiss Plaintiff’s Original Complaint (“Complaint”), pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be granted, and in support would respectfully show the Court as follows:

**I. SUMMARY OF MOTION**

Plaintiff’s Complaint fails to state a claim for relief to impose municipal liability on the City as required by *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978) and its progeny. Plaintiff has not identified an unconstitutional policy, a widespread custom, or a specific training deficiency that plausibly caused the alleged constitutional violations by the two individual officer defendants. Instead, Plaintiff assembles a patchwork of factually dissimilar

officer investigations, generalized criticisms of policing, and selective excerpts from post-incident investigative materials. That is not enough. *Monell* expressly forecloses *respondeat superior* liability, and conclusory assertions that the City “failed to train,” “failed to supervise,” or “failed to discipline” cannot substitute for well-pleaded facts showing deliberate indifference, a pattern of similar violations, and a direct causal connection to Plaintiff’s alleged injury.

The Complaint falls far short of the rigorous standards imposed by the Supreme Court and the Fifth Circuit for municipal liability claims. Plaintiff does not identify what training was deficient, how it was deficient, who was deliberately indifferent to a known constitutional risk, or how any purported deficiency caused his alleged constitutional harm. Nor does he allege a pattern of materially similar constitutional violations sufficient to place City policymakers on notice that existing practices were constitutionally inadequate. Indeed, the very materials Plaintiff relies upon undermines his theory: they demonstrate the City investigates allegations of officer misconduct (including investigations initiated by the City itself) and imposes disciplinary measures when policy violations are sustained. Because the Complaint fails to plausibly allege that any municipal policy or custom was the moving force behind the alleged constitutional violations, all claims against the City should be dismissed under Rule 12(b)(6).

## II. BACKGROUND FACTS

This lawsuit arises from a July 30, 2024, law enforcement response involving Austin Police Department Officers Ryne Kirchberg and Shalom Alvarez (collectively “the Officers”). The Officers were patrolling the intersection of Oltorf Street and Parker Lane (“a high crime area known for illegal activity”) in Austin. Complaint ¶¶14-16. Shortly before 10 p.m. the Officers observed Plaintiff walking across Parker Lane, causing a northbound vehicle to yield so Plaintiff

could cross the street. *Id.* There is no dispute that Plaintiff crossed Parker Lane mid-block and not at a nearby crosswalk. *Id.* The Officers decided to stop Plaintiff for violation of Texas Transportation Code section 552.005 (Crossing at Point Other Than Crosswalk). *Id.*<sup>1</sup> Although what occurs next is the subject of dispute, Plaintiff alleges “what began as a stop for an alleged pedestrian infraction...escalated within seconds into a violent takedown, physical restraint, and arrest, all captured on body-worn camera and dash-camera footage” that is “clearly observable on the body-worn camera.” *Id.* at ¶¶ 2, 19. Plaintiff was charged with resisting arrest. *Id.* at ¶¶ 31, 36.

On August 6, 2024, Plaintiff called the City’s Office of Police Oversight (“OPO”) to file a formal complaint regarding his arrest. *Id.* at ¶ 58. Plaintiff submitted an affidavit on August 14, 2024, and OPO forwarded the complaint to Internal Affairs that same day. *Id.* at ¶ 58.

On August 19, 2024, the OPO sent a Memorandum of Concern: Early Intervention Review (“OPO Memorandum of Concern”) regarding Officer Kirchberg. *Id.* at ¶¶ 3, 43-47, 54-57, 71.<sup>2</sup> The Memorandum of Concern noted multiple investigations into Officer Kirchberg’s conduct between January 1, 2023, and July 31, 2025, including nine APD-initiated investigations five of which resulted in a sustained finding. *Id.* at ¶¶ 45-46, 55, 71. The five sustained policy violations were for Section 215 (foot pursuit), Section 214.4 (pursuit guidelines), Section 804.2 (general operation of departmental vehicles), Section 803.2 (safe handling of firearms/storage), and Section 804.1 (general operation of departmental vehicles). *Id.* at ¶ 46.

On September 23, 2024, Internal Affairs issued two Class D Memorandum (“IA Memorandum”), one for Alvarez and one for Kirchberg, to the Officers’ Commander, Patricia

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<sup>1</sup> “A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.” Tex. Crim. Proc. Code Ann. § 14.01(b).

<sup>2</sup> See Exhibit A: OPO Memorandum of Concern.

Cruz. *Id.* at ¶¶ 3, 20 fn. 3, 60-63, 66, 115. The IA Memorandum were reviewed with the Officers on October 1, 2024. *Id.* at ¶ 61. Internal Affairs determined “No Departmental policies or procedures were violated by the officer in relation to the complaint received” and that the complaint will be closed administratively with no further investigation.” *Id.* at ¶¶ 62-63, 66, 68.

In addition to Internal Affairs and the OPO, Austin Police Department’s Force Review Unit (“FRU”)—which reviews all use of force incidents involving APD personnel—reviewed the July 30, 2024, incident. Complaint at ¶ 64-65. The FRU Incident Review concluded “the Officers Response to Resistance complies with law and departmental policy” and describe Plaintiff’s resistive actions as “backing away and pulling his hands away” and stiffening his body.” *Id.* at ¶¶ 64-65, 106-107.

On January 26, 2026, Plaintiff filed his Complaint. Plaintiff claims the Officers violated his constitutional rights when they unlawfully seized and arrested him, using excessive force without justification. *Id.* at ¶¶ 1, 90-111. Plaintiff also brings false arrest, imprisonment, and assault and battery claims against the Officers pursuant to state law. *Id.* at ¶¶ 129-144.

Plaintiff also brings a *Monell* claim against the City. Plaintiff claims the City is liable under 42 U.S.C. §1983 because it allegedly knew Officer Kirchberg had a documented pattern of misconduct and failed to properly supervise, discipline, retrain, or restrict him. *Id.* at ¶¶ 70-72, 43-63, 65. Plaintiff’s *Monell* claim is premised on: (1) a custom and practice of inadequate investigation; (2) the administrative closure of Plaintiff’s OPO Complaint following his arrest; (3) a failure to implement progressive discipline against Officer Kirchberg; (4) a failure to supervise Officer Kirchberg; and (5) deliberate indifference to a risk of future constitutional violations at the hands of Officer Kirchberg. *Id.* at ¶¶ 115-124. Plaintiff contends the City’s failure was the moving force behind the constitutional violations he suffered. *Id.* at ¶¶ 125-128.

The City denies Plaintiff's allegations and moves to dismiss the Complaint as a matter of law under Rule 12(b)(6). As set forth below, Plaintiff fails to allege sufficient facts to support a claim to relief that is plausible on its face.

### **III. LEGAL AUTHORITY**

#### **A. Material central to Plaintiff's Complaint.**

While a court ruling on a 12(b)(6) motion typically cannot look beyond the pleadings and the documents attached thereto it may rely on "documents incorporated into the complaint by reference and matters of which a court may take judicial notice." *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008). A court may also consider documents that a defendant attaches to a motion to dismiss "if they are referred to in the plaintiff's complaint and are central to her claim." *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004). In attaching such documents, "the defendant merely assists the plaintiff in establishing the basis of the suit, and the court in making the elementary determination of whether a claim has been stated." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 499 (5th Cir. 2000).

The City attaches the OPO Memorandum of Concern as Exhibit A, as it is central to Plaintiff's claim and referenced in his Complaint. The OPO Memorandum of Concern identifies Officer Kirchberg's prior sustained policy violations, none of which reflect allegations of excessive force or false arrest.

#### **B. Legal Standard regarding dismissal motions under FED R. CIV. P 12(b)(6).**

If a complaint fails to state a claim upon which relief can be granted, the court is entitled to dismiss the complaint as a matter of law. *See* FED R. CIV. P 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a

claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Assertions in pleadings that “are no more than conclusions are not entitled to the assumption of truth.” *Iqbal*, 556 U.S. at 679. “[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir.2002).

### **C. Municipal liability for constitutional violations under 42 U.S.C. § 1983**

A municipality may be liable for constitutional violations under 42 U.S.C § 1983, but there is no *respondeat superior* liability. *Connick v. Thompson*, 563 U.S. 51, 60 (2011); *see also Monell* 436 U.S. at 691. To proceed with a section 1983 claim against a city, a plaintiff must “show the deprivation of a federally protected right caused by action taken ‘pursuant to an official municipal policy.’” *Valle v. City of Houston*, 613 F.3d 536, 541 (5th Cir. 2010). A policy must be either unconstitutional or “adopted with deliberate indifference to the known, or obvious facts that such constitutional violations would result.” *James v. Harris Cnty.*, 577 F.3d 612, 617 (5<sup>th</sup> Cir. 2009). To withstand a 12(b)(6) challenge by a municipality in a Section 1983 case, plaintiff must plead sufficient factual information that, if accepted as true, plausibly show that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right. *Groden v. City of Dallas*, 826 F.3d 280, 284-85 (5th Cir. 2016) (citing *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009)).

A policy will support liability if it was promulgated with a deliberate indifference to the “known or obvious consequence” that constitutional violations would result. *Est. of Davis v. City of N. Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005) (quoting *Bd. of Cnty. Comm’rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 407 (1997)). Deliberate indifference is a high standard and a showing of simple or even heightened negligence will not suffice. *Piotrowski v. City of Houston*, 237 F.3d 567, 579 (5th Cir. 2001). To show the existence of an informal “policy” by proof of a persistent, widespread practice, the plaintiff must show that “similar constitutional violations” were customary. *See, Medina v. Ortiz*, 623 Fed. Appx. 695, 700 (5th Cir. 2015); *Est. of Davis*, 406 F.3d at 383.

The plaintiff must allege more than an isolated incident of harm to establish a policy claim against a city. *See McConney v. City of Houston*, 863 F.2d 1180, 1184 (5th Cir. 1989). Prior indications cannot simply be for all “bad” or unwise acts but rather must point to the specific violation in question and a “single incident is usually insufficient to demonstrate deliberate indifference.” *Est. of Davis*, 406 F.3d at 382. In excessive use of force cases, the prior act must be similar to what ultimately transpired; thus, the prior act must have involved injury to a third party. *Id.*

To establish the “moving force” requirement, a plaintiff must show a direct causal link between the policy and the constitutional violation. *Id.* at 580. *Monell* pleading requirements “must not be diluted” because when a court “fails to adhere to [the] rigorous requirements of...causation, municipal liability collapses into *respondeat superior* liability.” *Snyder v. Trepagnier*, 142 F.3d 791, 796 (5th Cir. 1998) (quoting *Bryan Cnty.*, 520 U.S. at 415).

#### IV. ARGUMENT

Plaintiff's allegations fall well short of plausibly stating a claim for municipal liability. The Complaint fails to identify any specific official policy or identify a widespread custom or practice. It fails to identify any policymaker or identify a policy promulgated by the City. It also fails to show any policy was the moving force behind the alleged constitutional violations.

Instead, Plaintiff offers only the conclusory assertion that “The Defendant City of Austin is sued for its deliberate indifference to a documented pattern of misconduct by Officer Kirchberg, coupled with systemic failures in investigation, discipline, and accountability that created the conditions for the constitutional violations that occurred.” Complaint ¶ 3. Such formulaic recitations of *Monell* elements, unsupported by well-pleaded factual allegations, are insufficient to survive dismissal. Plaintiff relies on selective, out-of-context excerpts from various documents, most of which were created *after* his July 30<sup>th</sup> arrest—to create the appearance of a pattern of misconduct the City allegedly failed to address. But post-incident materials cannot plausibly establish the City's preexisting knowledge, deliberate indifference, or the existence of a policy or custom that was the moving force behind Plaintiff's alleged injury. At most, the Complaint invites speculation that some unidentified municipal failing *must* have existed. That is precisely the type of conclusory and inferential pleading rejected under *Twombly* and *Iqbal*.

##### A. Plaintiff fails to allege a pattern of similar constitutional violations.

To state a plausible failure-to-train, supervise, or discipline claim under 42 U.S.C. § 1983, Plaintiff must allege facts showing that the City had actual or constructive notice of a pattern of similar constitutional violations such that its failure to act amounted to deliberate indifference. *Connick v. Thompson*, 563 U.S. 51, 62 (2011). The Fifth Circuit has repeatedly held that prior incidents cannot consist merely of generalized misconduct or poor judgment; rather, they must

involve sufficiently similar constitutional violations to place the municipality on notice of the particular risk alleged. *Est. of Davis*, 406 F.3d at 381; *Cousin v. Small*, 325 F.3d 627, 637 (5th Cir. 2003); *Snyder v. Trepagnier*, 142 at 798-99.

**1. Plaintiff has not claimed any prior policy violations by Officer Alvarez.**

The absence of any alleged prior misconduct by Officer Alvarez is fatal to Plaintiff's attempt to impose municipal liability on the City. Here, Plaintiff identifies no prior complaints, sustained violations, disciplinary history, or similar incidents involving Officer Alvarez that could plausibly establish notice to the City of any alleged propensity for unconstitutional conduct. Without allegations of prior misconduct, Plaintiff cannot plausibly allege deliberate indifference, because the City cannot be said to have consciously disregarded a known or obvious risk. Nor can Plaintiff plausibly connect any purported deficiency in municipal policy, training, supervision, or discipline to the incident at issue.

**2. Officer Kirchberg's sustained violations are dissimilar to Plaintiff's constitutional claims.**

Contrary to Plaintiff's attempt to draw parallels between his arrest and Officer Kirchberg's disciplinary history, the sustained policy violations identified in the Complaint and listed in OPO's August 19, 2024, Memorandum of Concern, are factually dissimilar to—and wholly unrelated to—the allegations of excessive force and false arrest asserted here. Complaint ¶¶ 46, 117. Specifically, the five sustained violations referenced in the Complaint involve: (1) an April 24, 2023 foot pursuit that resulted in an oral reprimand; (2) a June 10, 2023 pursuit violation for failing to activate emergency lights and sirens, that resulted in a written reprimand; (3) a February 10, 2024 vehicle collision that resulted in an oral reprimand; (4) an April 15, 2024 firearms-storage violation, that resulted in a written reprimand and Education-Based Discipline (“EBD”); and (5) a November 21, 2024 minor vehicle collision caused by Officer that resulted in a written reprimand and EBD.

Complaint at ¶46. *See also*, Exhibit A: OPO Memorandum of Concern.<sup>3</sup> None of these incidents involved allegations of unlawful detention, false arrest, excessive force—or used of any force—or comparable constitutional misconduct alleged by Plaintiff.

**3. Allegations of generalized policy violations cannot establish notice or deliberate indifference to the constitutional claims alleged.**

Deliberate indifference is a “stringent standard of fault,” requiring factual allegations showing that municipal policymakers disregarded *a known or obvious consequence* of their actions. *Bryan Cnty.*, 520 U.S. at 410. It is not enough to allege negligence, poor judgment, or isolated disciplinary concerns. *McConney* 863 F.2d at 1184.

The Fifth Circuit has made clear that prior incidents cannot consist merely of generalized “bad” or imprudent conduct; rather, they must point to the specific constitutional violation alleged, and even then, “a single incident is usually insufficient to demonstrate deliberate indifference.” *Est. of Davis*, 406 F.3d at 382-83. Notice of a pattern of similar violations is required. *Id.* In excessive use of force cases, the prior act must be fairly similar to what ultimately transpired; thus, the prior act must have involved injury to a third party. *Id.*

Here, Plaintiff alleges no prior use-of-force incident involving Officer Kirchberg, no prior unlawful detention, no prior false arrest, and no allegation that any third party suffered constitutional injury arising from conduct. Absent such allegations, Plaintiff cannot plausibly establish municipal notice or deliberate indifference to a pattern of similar constitutional violations that the City ignored.

**B. Post-incident materials cannot establish pre-incident municipal notice or deliberate indifference.**

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<sup>3</sup> The November 21, 2024, sustained violation that resulted in a written reprimand and EBD occurred nearly four months after Plaintiff’s arrest.

Setting aside the fact that none of the sustained policy violations involve constitutional misconduct, Plaintiff's reliance on OPO's August 19, 2024, Memorandum of Concern is misplaced. The memorandum was issued approximately three weeks *after* Plaintiff's July 30, 2024, encounter with the Officers and therefore could not have provided the City with prior notice of any alleged constitutional risk associated with Officer Kirchberg. A post-incident memorandum cannot plausibly support an inference that the City was deliberately indifferent before the events giving rise to this suit.

**C. The Complaint allegations show the City investigated and disciplined Officer Kirchberg.**

Plaintiff's theory that the City maintained a custom of inadequate discipline and accountability is directly contradicted by the allegations in the Complaint and the documents incorporated therein. While he contends the City failed to investigate or discipline Officer Kirchberg, the Complaint itself cites multiple investigations initiated by Officer Kirchberg's chain of command, as well as disciplinary measures imposed following sustained findings, e.g., oral and written reprimands as well as Education-Based Discipline. The Complaint further notes that Officer Kirchberg was an "outlier" compared to peer officers engaged in proactive policing. Complaint at ¶¶ 51, 55, 71. Plaintiff cannot credibly plead that the City did not investigate or discipline, when he relies on multiple investigatory and disciplinary findings in the materials he cites.

The City's decision to impose discipline that Plaintiff deems insufficient or disagrees with does not amount to deliberate indifference to support a *Monell* claim.

**D. The investigation and administrative closure of Plaintiff's complaint cannot support ratification liability.**

Plaintiff’s attempt to infer municipal liability based on Internal Affairs’ finding that the Officers did not violate any departmental policies or procedures fails as a matter of law. Ratification requires more than a municipality’s post hoc approval of employee conduct after investigation; it requires approval by a final policymaker of a subordinate’s unconstitutional conduct and the basis for that conduct. *Peterson*, 588 F.3d at 847.

The IA Memorandum and FRU Incident Review—documents that Plaintiff quotes throughout his Complaint—indicate that each entity reviewed Plaintiff’s complaint to the OPO (a review that included Plaintiff’s affidavit and interview report), the body-camera footage, the dash-camera footage, offense reports, photographs, and offense report before concluding that no policy violations occurred. Complaint ¶ 116.

These allegations demonstrate investigation—not ratification. Plaintiff’s disagreement with the outcome of the review process does not transform the City’s investigative conclusions into constitutional approval of unlawful conduct.

**E. Plaintiff fails to plausibly allege that any City action was the moving force behind his alleged injury.**

Even if Plaintiff had plausibly alleged a policy deficiency, which he has not, the Complaint is still subject to dismissal because it does not plead facts establishing causation.

To satisfy *Monell*’s “moving force” requirement, Plaintiff must allege a direct causal connection between a specific municipal policy or omission and the constitutional injury alleged. *See Piotrowski*, 237 F.3d at 580; *Est. of Davis*, 406 F.3d 375; *Snyder v. Trepagnier*, 142 F.3d 791, 796 (5th Cir. 1998). Pleading requirements “must not be diluted” because when a court “fails to adhere to [the] rigorous requirements of...causation, municipal liability collapses into *respondeat superior* liability.” *Id.*

Plaintiff offers only the speculative assertion that additional training, supervision, or discipline “would have prevented” the alleged constitutional violation. Such conjecture is insufficient under Rule 12(b)(6). The Complaint contains no factual allegations showing how any specific deficiency in City policy caused Officers Kirchberg and Alvarez to allegedly use excessive force or effect an unlawful arrest on July 30, 2024.

**DEFENDANT’S PRAYER**

Defendant, the City of Austin, respectfully requests that Plaintiff’s claims against the City be dismissed with prejudice, and that the City be awarded any other relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY  
VASU BEHARA, CHIEF OF LITIGATION

/s/ Luke McHenry

LUKE MCHENRY

State Bar No. 24057993

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**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

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

**Antonio Isaac Alexander,**  
*Plaintiff,*

v.

**Ryne Kirchberg; Shalom Alvarez; and  
City of Austin, Texas,**  
*Defendants*

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**Case No. 1:26-cv-00183-ADA-SH**

**DOCKET CONTROL ORDER PURSUANT TO RULES 16(b) AND 26(f)**

Judge Alan D Albright referred this case to this Magistrate Judge pursuant to Rule 1 of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas. **IT IS HEREBY ORDERED** that the parties confer pursuant to Federal Rule of Civil Procedure 26(f) and file with the Court **both a joint proposed scheduling and discovery plan reflecting the Rule 26(f) criteria AND a completed version of the Court's standard Scheduling Order with all dates provided** on or before **July 21, 2026**.<sup>1</sup> If there are no disputes, the Court will enter the Scheduling Order.

During the Rule 26(f) meeting, the parties or their counsel shall discuss the nature and basis of their claims and defenses, the possibilities for prompt settlement or resolution of the case, and the scope and type of discovery, including electronic discovery. The parties shall also arrange for the disclosures required by Rule 26(a)(1) and develop their joint proposed scheduling/discovery plan. These are the minimum requirements for the meeting. The parties are encouraged to have a comprehensive discussion and are required to approach the meeting cooperatively and in good faith. The discussion of claims and defenses shall be a

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<sup>1</sup> The standard Scheduling Order is attached as Appendix A.

substantive, meaningful discussion. In addressing settlement or early resolution of the case, the parties are required to explore the feasibility of ADR between themselves as well. If the parties elect not to participate in an early ADR effort, the Court may nonetheless require a settlement conference shortly before trial.

In addressing the Rule 26(a)(1) disclosures, the parties shall discuss the appropriate timing, form, scope or requirement of the initial disclosures, keeping in mind that Rule 26(a)(1) contemplates that disclosures will be made by the date of the Rule 16(b) initial scheduling conference and will include at least the categories of information listed in the rule. Rule 26 affords the parties flexibility in the scope, form and timing of disclosures under both Rule 26(a)(1) (initial disclosures) and Rule 26(a)(2) (expert witness disclosures), but the parties' agreement on disclosures is subject to approval by this Magistrate Judge. In their discussion of disclosures, counsel shall address issues of relevance in detail, with each party identifying what it needs and why. The discussion shall include the sequence and timing of follow-up discovery, including whether that discovery should be conducted informally or formally and whether it should be conducted in phases to prepare for filing of particular motions or settlement discussions.

In addressing electronic discovery, the parties shall discuss what electronic sources each party will search, difficulty of retrieval, preservation of records, the form of production (electronic or hard-copy, format of production, inclusion of metadata, etc.), cost of production and which party will bear the cost, privilege/waiver issues, and any other electronic discovery issues present in the case. Before engaging in the Rule 26 discussion, the parties should determine who is most familiar with the client's computer system, what electronic records the client maintains, how the client's electronic records are stored, the

difficulty/ease of retrieving various records, the existence and terms of the client's document retention/destruction policy, and whether the client has placed a litigation hold preventing destruction of potentially relevant records.

This Magistrate Judge recognizes that Judge Albright typically resolves discovery disputes through email practice. Because those discovery disputes are referred to this Magistrate Judge by Judge Albright's referral order, however, this Magistrate Judge directs the parties to follow typical motion practice prescribed by the Federal Rules of Civil Procedure and the Local Rules to bring any discovery disputes before the Court.

The Court would also like to relay the following to the parties:

- (1) Counsel must review and comply with Judge Albright's Standing Order Regarding Joint or Unopposed Request to Change Deadlines, issued September 18, 2025.
- (2) The Court has recently faced a spate of discovery objections that do not track the 2015 amendments to the Federal Rules. Please remember that boilerplate objections are unacceptable.
- (3) Speaking objections during depositions are improper. Other than to evaluate privilege issues, counsel should not confer with a witness while a question is pending. Counsel may confer with witnesses during breaks in a deposition without waiving any otherwise applicable privilege.
- (4) Parties shall promptly notify the Court if they reach a settlement in a case and request to stay any deadlines.

**SIGNED** on May 26, 2026.



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SUSAN HIGHTOWER  
UNITED STATES MAGISTRATE JUDGE

# APPENDIX A

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

|             |   |                            |
|-------------|---|----------------------------|
|             | § |                            |
|             | § |                            |
|             | § |                            |
| Plaintiffs, | § | Case No.                   |
|             | § |                            |
| v.          | § |                            |
|             | § | <b>Jury Trial Demanded</b> |
|             | § |                            |
|             | § |                            |
| Defendants. | § |                            |
|             | § |                            |

**JOINT PROPOSED SCHEDULING ORDER**

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court **ORDERS** that the following schedule will govern deadlines up to and including the trial of this matter:

| Date | Event                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | Discovery commences on all issues.                                                                                                                                                                                                                                                                                                                                                                                                                   |
|      | All motions to amend pleadings or to add parties shall be filed on or before this date.                                                                                                                                                                                                                                                                                                                                                              |
|      | Fact Discovery Deadline. Any discovery requests must be propounded so that the responses are due by this date.                                                                                                                                                                                                                                                                                                                                       |
|      | The parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before this date. All offers of settlement are to be private, not filed, and the Court is not to be advised of the same. The parties are further ORDERED to retain the written offers of settlement and responses as the Court will use these in assessing attorney's fees and court costs at the conclusion of trial.                  |
|      | Parties with burden of proof to designate Expert Witnesses and provide their expert witness reports, to include all information required by Rule 26(a)(2)(B).                                                                                                                                                                                                                                                                                        |
|      | Each opposing party shall respond, in writing, to the written offer of settlement made by the parties asserting claims for relief by this date. All offers of settlement are to be private, not filed, and the Court is not to be advised of the same. The parties are further ORDERED to retain the written offers of settlement and responses as the Court will use these in assessing attorney's fees and court costs at the conclusion of trial. |
|      | Parties shall designate Rebuttal Expert Witnesses on issues for which the parties do not bear the burden of proof, and provide their expert witness reports, to include all information required by Rule 26(a)(2)(B).                                                                                                                                                                                                                                |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | Expert Discovery Deadline. Expert discovery must be completed by this date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|  | Any 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, not later than 14 days of receipt of the written report of the expert's proposed testimony or not later than 14 days of the expert's deposition, if a deposition is taken, whichever is later. <b>The failure to strictly comply with this paragraph will be deemed a waiver of any objection that could have been made pursuant to Federal Rule of Evidence 702.</b>                                                                                                              |
|  | All dispositive motions shall be filed and served on all other parties on or before this date 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. <b>The dispositive motion deadline must be at least 4 months before trial.</b><br>Each party shall complete and file the attached "Notice Concerning Reference to United States Magistrate Judge" |
|  | By this date the parties shall meet and confer to determine pre-trial deadlines, including, <i>inter alia</i> , exchange of exhibit lists, designations of and objections to deposition testimony, and exchange of demonstratives.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|  | By this date the parties shall exchange a proposed jury charge and questions for the jury. By this date the parties will also exchange draft Motions in Limine to determine which may be agreed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|  | By this date the parties shall exchange any objections to the proposed jury charge, with supporting explanation and citation of controlling law.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|  | By this date the parties shall also submit to the Court their Motions in Limine.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|  | By this date the parties will submit to the Court their Joint Pre-Trial Order, including the identification of issues to be tried, identification of witnesses, trial schedule provisions, and all other pertinent information.<br>By this date the parties will also submit to the Court their oppositions to Motions in Limine.                                                                                                                                                                                                                                                                                                                                                                               |
|  | Final Pre-Trial Conference. The parties shall provide to the Court an agreed jury charge with supported objections of each party, and proposed questions for the jury, at the final Pre-Trial Conference. This date should be a <b>Friday</b> not less than 90 days after the dispositive motion deadline and 2 months before trial.                                                                                                                                                                                                                                                                                                                                                                            |
|  | Jury Selection shall begin at 9:00 a.m. on this date during the week before trial.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|  | Jury Trial Commences at 9:00 a.m. on this Monday. This date should be during either the first or third week of the month.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

**SIGNED** on \_\_\_\_\_.

\_\_\_\_\_  
SUSAN HIGHTOWER  
UNITED STATES MAGISTRATE JUDGE

AGREED:

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

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

Attorneys for Plaintiffs

Attorneys for Defendants

AO 85 (Rev. 01/09) Notice, Consent, and Reference of a Civil Action to a Magistrate Judge

# UNITED STATES DISTRICT COURT

for the

|                            |   |                  |
|----------------------------|---|------------------|
| <i>Plaintiff</i><br>v.<br> | ) |                  |
|                            | ) |                  |
| <i>Defendant</i>           | ) | Civil Action No. |
|                            | ) |                  |

## NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

| <i>Parties' printed names</i> | <i>Signatures of parties or attorneys</i> | <i>Dates</i> |
|-------------------------------|-------------------------------------------|--------------|
|                               |                                           |              |
|                               |                                           |              |
|                               |                                           |              |
|                               |                                           |              |

### Reference Order

**IT IS ORDERED:** This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: \_\_\_\_\_

\_\_\_\_\_  
*District Judge's signature*

\_\_\_\_\_  
*Printed name and title*

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.



## **I. INTRODUCTION**

1. The Defendants admit that Defendants Ryne Kirchberg and Shalom Alvarez were police officers employed by the Austin Police Department on July 30, 2024. The Defendants deny the remaining allegations of Paragraph 1 of the Complaint.

2. The Defendants admit that criminal charges against Mr. Alexander were dismissed after July 30, 2024. The Defendants deny the remaining allegations of Paragraph 2 of the Complaint.

3. The Defendants deny the allegations contained in Paragraph 3 of the Complaint.

## **II. JURISDICTION AND VENUE**

4. The Defendants admit the allegations contained in Paragraph 4 of the Complaint.

5. The Defendants admit the allegations contained in Paragraph 5 of the Complaint.

6. The Defendants admit that the Austin Division of the Western District of Texas is the proper venue for this matter as the incident described occurred in the District as alleged in Paragraph 6 of the Complaint and deny Plaintiff's allegations that any omissions on the part of the Defendants occurred.

## **III. PARTIES**

7. The Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint and therefore deny the same.

8. The Defendants admit the allegations contained in the first two sentences of Paragraph 8 of the Complaint but are without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 8 of the Complaint and therefore deny the same.

9. The Defendants admit the allegations contained in the first two sentences of Paragraph 9 of the Complaint but are without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 9 of the Complaint and therefore deny the same.

10. The Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. The Defendants admit the allegations contained in Paragraph 11 of the Complaint.

12. The Defendants admit the allegations contained in Paragraph 12 of the Complaint.

13. The Defendants admit the allegations contained in Paragraph 13 of the Complaint.

#### **IV. FACTUAL ALLEGATIONS**

14. The Defendants generally admit Plaintiff's allegations contained in Paragraph 14 of the Complaint, as well as the footnote ascribed to it, but deny the decision to stop the Plaintiff was pretextual and deny Paragraph 14 reflects a complete or fully accurate description of the events that occurred.

15. The Defendants generally admit Plaintiff's allegations contained in Paragraph 15 of the Complaint, but deny it reflects a complete or fully accurate description of the events that occurred.

16. The Defendants generally admit Plaintiff's allegations contained in Paragraph 16 of the Complaint, as well as the footnote ascribed it, but deny the decision to stop the Plaintiff was pretextual and deny Paragraph 16 reflects a complete or fully accurate description of the events that occurred.

17-18. The Complaint contains no allegations for Paragraphs 17 and 18 and therefore no response from the Defendants is required.

19. The Defendants generally admit Plaintiff's allegations contained in the first and third sentences of Paragraph 19 of the Complaint, other than to deny it reflects a complete or fully accurate description of the circumstances. The Defendants deny the allegations contained in the second, fourth and fifth sentences of Paragraph 19 of the Complaint, as well as the footnote purportedly ascribed to Paragraph 19 of the Complaint. The Defendants further deny Plaintiff's inflammatory characterizations or conclusions stated in Paragraph 19.

20. The Defendants generally admit Plaintiff's allegations contained in Paragraph 20 of the Complaint, as well as the footnote ascribed to it, but deny Plaintiff was driven chest-first onto the concrete surface and deny Paragraph 20 reflects a complete or fully accurate description of the circumstances. The Defendants further deny Plaintiff's inflammatory characterizations or conclusions stated in Paragraph 20.

21-25. The Complaint contains no allegations for Paragraphs 21 through 25 and therefore no response from the Defendants is required.

26. The Defendants generally admit Plaintiff's allegations contained in Paragraph 26 of the Complaint, other than to deny it reflects a complete or fully accurate description of the circumstances or the information contained in Officer Alvarez's supplement narrative.

27. The Defendants generally admit Plaintiff's allegations contained in Paragraph 27 of the Complaint, other than to deny it reflects a complete or fully accurate description of the circumstances or the information contained in Officer Alvarez's supplement narrative.

28. The Defendants generally admit Plaintiff's allegations contained in Paragraph 28 of the Complaint other than to deny it reflects a complete or fully accurate description of the circumstances or the information contained in the Force Review Unit's documentation.

29. The Defendants generally admit Plaintiff's allegations contained in the first sentence of Paragraph 29 of the Complaint, other than to deny it reflects a complete or fully accurate description of the circumstances. The Defendants deny the allegations contained in the second sentence of Paragraph 29.

30. The Defendants admit that an unidentified individual threw an object that struck a patrol vehicle, as alleged in Paragraph 30 of the Complaint. The Defendants deny the allegations in Paragraph 30 present a complete or fully accurate description of the circumstances.

31. The Defendants admit Plaintiff's allegations contained in Paragraph 31.

32-35. The Complaint contains no allegations for Paragraphs 32 through 35 and therefore no response from the Defendants is required.

36. The Defendants admit Plaintiff's allegations contained in Paragraph 36.

37-38. The Complaint contains no allegations for Paragraphs 37 and 38, therefore no response from the Defendants is required.

39. The Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint and therefore deny the same.

40. The Defendants admit Plaintiff's allegations contained in Paragraph 40.

41. The Defendants is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint and therefore deny the same. The Defendants further deny Plaintiff's inflammatory characterizations or conclusions stated in Paragraph 41.

42. The Complaint contains no allegations for Paragraph 42, therefore no response from the Defendants is required.

43. The Defendants admit Defendant Kirchberg has been the subject of oversight by the Austin Police Department's Internal Affairs and Office of Police Oversight but deny the remaining allegations contained in Paragraph 43 of the Complaint. The Defendants further deny Plaintiff's inflammatory characterizations or conclusions stated in Paragraph 43 of the Complaint.

44. The Defendants admit the allegations contained in Paragraph 44 of the Complaint other than to deny it reflects a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

45. The Defendants admit the allegations contained in Paragraph 45 of the Complaint other than to deny it reflects a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

46. The Defendants admit the allegations contained in Paragraph 46 and each discrete subpart contained therein, but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

47. The Defendants admit the allegations contained in Paragraph 47 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

48. The Defendants admit the allegations contained in Paragraph 48 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

49. The Defendants admit the allegations contained in Paragraph 49 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

50. The Defendants admit the allegations contained in Paragraph 50 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

51. The Defendants admit the allegations contained in Paragraph 51 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern. The Defendants further deny Plaintiff's characterizations or conclusions stated in Paragraph 51.

52. The Defendants admit the allegations contained in Paragraph 52 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

53. The Defendants deny the allegations contained in Paragraph 53 of the Complaint regarding the timing of the Force Review Unit's review of the incident and deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern. The Defendants further deny Plaintiff's characterizations or conclusions stated in Paragraph 53.

54. The Defendants admit the allegations contained in Paragraph 54 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern. The Defendants further deny Plaintiff's characterizations or conclusions stated in Paragraph 54.

55. The Defendants admit the allegations contained in Paragraph 55 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information contained in the August 19, 2024, Memorandum of Concern.

56. The Defendants admit the allegations contained in Paragraph 56 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances regarding the receipt or forwarding of materials.

57. The Defendants admit the allegations contained in the first sentence of Paragraph 57 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances. The Defendants deny the allegations contained in the second sentence of Paragraph 57.

58. The Defendants admit the allegations contained in Paragraph 58 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances surrounding Plaintiff's complaint to the Office of Police Oversight.

59. The Defendants admit the allegations contained in Paragraph 59 of the Complaint and each discrete subpart contained therein, but deny the allegations present a complete or fully accurate description of the circumstances or the information referenced.

60. The Defendants admits Internal Affairs classified Plaintiff's complaint as Class D but deny the remaining allegations of Paragraph 60 of the Complaint, as they do not present a complete or fully accurate description of the circumstances. The Defendants further deny Plaintiff's characterizations or conclusions stated in Paragraph 60.

61. The Defendants admit the allegations contained in Paragraph 61 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information referenced.

62. The Defendants admit the allegations contained in Paragraph 62 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information referenced. The Defendants further deny Plaintiff's characterizations or

conclusions stated in Paragraph 62.

63. The Defendants admit the allegations contained in Paragraph 63 of the Complaint but deny the allegations present a complete or fully accurate description of the circumstances or the information referenced.

64. The Defendants deny the allegations contained in Paragraph 64 of the Complaint and each discrete subpart contained therein and deny there were any contradictions between the Class D Conclusion and the Record.

65. The Defendants admit the allegations contained in Paragraph 65 of the Complaint but deny there were any contradictions between the Class D Conclusion and the Record.

66. The Defendants admit the allegations contained in the first sentence of Paragraph 66 of the Complaint but deny the remaining allegations contained in Paragraph 66. The Defendants deny Plaintiff's allegation of closure without accountability.

67. The Defendants admit the allegations contained in the first sentence of Paragraph 67 of the Complaint and each discrete subpart contained therein but deny the remaining allegations contained in Paragraph 67. The Defendants deny Plaintiff's allegation of closure without accountability.

68. The allegations contained in Paragraph 68 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

69. The allegations contained in Paragraph 69 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

**V. DELIBERATE INDIFFERENCE: FAILURE TO TRAIN, SUPERVISE, AND DISCIPLINE**

70. The allegations contained in Paragraph 70 of the Complaint and each discrete subpart contained therein are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

71. The allegations contained in Paragraph 71 of the Complaint and each discrete subpart contained therein are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

72. The allegations contained in Paragraph 72 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

73. The allegations contained in Paragraph 73 of the Complaint and each discrete subpart contained therein are not directed to the answering Defendants but to the extent such allegations require an answer, they are denied.

74. The allegations contained in Paragraph 74 of the Complaint are not directed to the answering Defendants but to the extent such allegations require an answer, they are denied.

75. The allegations contained in Paragraph 75 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

76. The allegations contained in Paragraph 76 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

77. The allegations contained in Paragraph 77 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

78. The allegations contained in Paragraph 78 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

## **VI. CONTROLLING LEGAL STANDARDS**

79-82. The allegations contained in Paragraphs 79 through 82 of the Complaint contain conclusions of law or argument that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

83-85. The allegations contained in Paragraphs 83 through 85 of the Complaint contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

86-89. The allegations contained in Paragraphs 86 through 89 of the Complaint contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

### **1. CAUSES OF ACTION**

#### **COUNT I:42 U.S.C § 1983 – UNLAWFUL SEIZURE AND ARREST IN VIOLATION OF THE FOURTH AMENDMENT**

**(Against Defendants Ryne Kirchberg and Shalom Alvarez, individually)**

90. The Defendants adopt and incorporate by reference their responses to all preceding paragraphs as if fully stated herein.

91. The Defendants admit the allegations contained in Paragraph 91 of the Complaint.

92. The allegations contained in Paragraph 92 of the Complaint contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

93. The allegations contained in Paragraph 93 of the Complaint contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

94. The allegations contained in Paragraph 94 of the Complaint contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

95. The Defendants deny the allegations contained in Paragraph 95 of the Complaint and each discrete subpart contained therein.

96. The Defendants admit the allegations contained in the first sentence of Paragraph 96 of the Complaint. The Defendants deny the remaining allegations contained in Paragraph 96 of the Complaint.

97. The Defendants deny the allegations contained in Paragraph 97 of the Complaint and each discrete subpart contained therein

98. The Defendants admit the allegations contained in the first sentence of Paragraph 98 of the Complaint. The Defendants deny the remaining allegations contained in Paragraph 98 of the Complaint.

99. The Defendants deny the allegations contained in Paragraph 99 of the Complaint.

100. The Defendants deny the allegations contained in Paragraph 100 of the Complaint, including each discrete subpart contained therein.

**COUNT II:42 U.S.C § 1983 – EXCESSIVE FORCE IN VIOLATION OF THE  
FOURTH AMENDMENT**

101. The Defendants adopt and incorporate by reference their responses to all preceding paragraphs as if fully stated herein.

102. The allegations contained in Paragraph 102 of the Complaint contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

103. The allegations contained in Paragraph 103 of the Complaint and each discrete subpart therein contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

104. The Defendants admit the allegations contained in Paragraph 104 of the Complaint.

105. The Defendants admit the allegations contained in Paragraph 105 of the Complaint, but deny the allegations reflect a complete or fully accurate description of the events that occurred.

106. The Defendants admit Plaintiff stepped backward, tensed his body, stiffened his body and pulled his arms away from the officers, but deny the remaining allegations contained in Paragraph 106 of the Complaint and each discrete subpart therein to the extent they are argumentative and do not reflect a complete or fully accurate description of the events that occurred.

107. The Defendants admit Plaintiff's conduct was defensive resistance and backing away and pulling his hands away as set forth in Paragraph 107 of the Complaint but deny the remaining allegations contained in Paragraph 107.

108. The Defendants deny the allegations contained in Paragraph 108 of the Complaint.

109. The Defendants deny the allegations contained in Paragraph 109 of the Complaint.

110. The Defendants deny the allegations contained in Paragraph 110 of the Complaint.

111. The Defendants deny the allegations contained in Paragraph 111 of the Complaint and each discrete subpart therein.

**COUNT III:42 U.S.C § 1983 – MUNICIPAL LIABILITY FOR DELIBERATE  
INDIFFERENCE**

**(Against Defendant City of Austin, Texas)**

112. The Defendants adopt and incorporate by reference their responses to all preceding paragraphs as if fully stated herein.

113. The allegations contained in Paragraph 113 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

114. The allegations contained in Paragraph 114 of the Complaint are not directed to the answering Defendants and contain conclusions of law that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

115. The allegations contained in Paragraph 115 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

116. The allegations contained in Paragraph 116 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

117. The allegations contained in Paragraph 117 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

118. The allegations contained in Paragraph 118 of the Complaint are not directed to the

answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

119. The allegations contained in Paragraph 119 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

120. The allegations contained in Paragraph 120 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

121. The allegations contained in Paragraph 121 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

122. The allegations contained in Paragraph 122 of the Complaint and each discrete subpart therein are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

123. The allegations contained in Paragraph 123 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

124. The allegations contained in Paragraph 124 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

125. The allegations contained in Paragraph 125 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

126. The allegations contained in Paragraph 126 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

127. The allegations contained in Paragraph 127 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

128. The allegations contained in Paragraph 128 of the Complaint are not directed to the answering Defendants and require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

**COUNT IV: ASSAULT AND BATTERY UNDER TEXAS LAW**

**(Against Defendants Ryne Kirchberg and Shalom Alvarez, individually)**

129. The Defendants adopt and incorporate by reference their responses to all preceding paragraphs as if fully stated herein.

130. The allegations contained in Paragraphs 130 contain conclusions of law or argument that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

131. The allegations contained in Paragraphs 131 contain conclusions of law or argument that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

132. The Defendants deny the allegations contained in Paragraph 132 of the Complaint and each discrete subpart therein.

133. The Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 133 of the Complaint and therefore deny the same.

134. The Defendants deny the allegations contained in Paragraph 134 of the Complaint.

135. The Defendants deny the allegations contained in Paragraph 135 of the Complaint.

136. The Defendants deny the allegations contained in Paragraph 136 of the Complaint and each discrete subpart therein.

**COUNT V: FALSE ARREST AND FALSE IMPRISONMENT UNDER  
TEXAS LAW**

**(Against Defendants Ryne Kirchberg and Shalom Alvarez, individually)**

137. The Defendants adopt and incorporate by reference their responses to all preceding paragraphs as if fully stated herein.

138. The allegations contained in Paragraphs 138 contain conclusions of law or argument that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

139. The allegations contained in Paragraphs 139 contain conclusions of law or argument that require no answer from the Defendants, but to the extent such allegations require an answer, they are denied.

140. The Defendants deny the allegations contained in Paragraph 140 of the Complaint and each discrete subpart therein.

141. The Defendants admit the allegations contained in the first sentence of Paragraph 141 of the Complaint. The Defendants deny the allegations contained in the second sentence of Paragraph 141 of the Complaint.

142. The allegations contained in Paragraphs 142 contain conclusions of law or argument that require no answer from the Defendants, but to the extent such allegations require

an answer, they are denied.

143. The Defendants deny the allegations contained in Paragraph 143 of the Complaint.

144. The Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 144 of the Complaint and each discrete subpart therein and therefore deny the same.

#### **IX. DAMAGES**

145. The Defendants deny the allegations contained in Paragraph 145 of the Complaint including each discrete subpart.

#### **IX. PRAYER FOR RELIEF**

No response is required to the plaintiff's prayer for relief, but to the extent one is deemed necessary, the defendant denies that the plaintiff is entitled to the requested relief or any relief whatsoever."

#### **AFFIRMATIVE DEFENSES**

1. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith and would show that their actions were objectively reasonable in light of the law and the information possessed at that time. Moreover, no clearly established law exists that would put Defendants on notice that the conduct in question would arise to the level of a constitutional violation.

2. Defendants had the legal justification for every action taken relating to the incident based on the information available to them at the time.

3. Defendants assert the affirmative defense of contributory negligence. Plaintiff's claims are barred in whole or in part by Plaintiff's contributory negligence. Plaintiff, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to

his alleged injuries and the damages asserted in this case. Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code. In the unlikely event the Defendants are found to be liable, such liability shall be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons, including Plaintiff himself.

4. Plaintiff has failed to state a cause of action against these defendants and the lawsuit should be dismissed against them, individually.

5. Defendants affirmatively plead that the incident in question and the alleged resulting harm to the Plaintiff were caused or contributed to by the Plaintiff's own conduct or the conduct of others for which this defendant has no responsibility.

6. Defendants assert the affirmative defense that Plaintiff failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiff

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

8. Defendants assert the limitations and protections of Chapter 41 of the Texas Civil Practice & Remedies Code, and the Due Process Clause of the United States Constitution.

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

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

**DEFENDANTS' PRAYER**

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

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, CITY ATTORNEY  
VASU BEHARA, CHIEF OF LITIGATION

/s/. Luke McHenry  
LUKE MCHENRY  
State Bar No. XXXX  
[Luke.mchenry@austintexas.gov](mailto:Luke.mchenry@austintexas.gov)  
Assistant City Attorney  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-xxxx  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

I certify that on the 29th of May 2026, I served a copy of *Defendants' 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. I understand the CM/ECF system will send a Notice of Electronic Filing to the following counsel of record.

**Via CM/ECF:**

Christopher Tolbert  
Tolbert & Associates, PLLC  
511 E. John Carpenter Fwy Suite 500  
Las Colinas, TX 72506  
[chris@tolbertlawpc.com](mailto:chris@tolbertlawpc.com)

**/s/ Luke McHenry**  
LUKE MCHENRY