

CAUSE NO. D-1-GN-20-003037

IRIS E. SALAZAR,
INDIVIDUALLY, AND AS
INDEPENDENT ADMINSTRATOR OF
THE ESTATE OF LESLIE YOLANDA
SALAZAR

Plaintiff,

V.

THE CITY OF AUSTIN, TEXAS,
THOMAS BROWN, ELIAS ROBLES

Defendants

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

98TH JUDICIAL DISTRICT

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DEFENDANTS’ NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Please take notice that the Defendants have, pursuant to federal law, filed with the clerk of the United States Court for the Western District of Texas, Austin Division, a Notice of Removal, a copy of which is attached and filed with this document, and that this action is removed to United States District Court for trial as of today, July 7, 2020. This court is respectfully requested to proceed no further in this action, unless and until such time as the action may be remanded by order of the United States District Court.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III

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

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this 7th day of July 2020, as follows:

Via e-Service and/or facsimile:

Scott S. Cooley
Texas Bar No. 00796394
Jackie P. Paltrun
Texas Bar No. 24087140
512 E. Fourth St.
Lampasas, Texas 76550
Tel. (512) 556-6228
Fax. (844) 318-6073
Scott@lampasaslwyer.com

ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III

H. Gray Laird

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Iris E Salazar, Individually and as Independent Administrator for Estate of Leslie Yolanda Salazar

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott S Cooley (Attorney of Record), MARTIN MILLICAN COOLEY,
PLLc; 512 E Fourth St., Lampasas Texas 76550. Phn: 512-556-6228;
Fax: 844-318-6073

DEFENDANTS

City of Austin, Thomas Brown and Elias Robles

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

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

Attorneys (If Known)
H Gray Laird, Assistant City Attorney (Attorney of Record)
City of Austin Law Dept, PO Box 1546, Austin Tx 78767-1546
Phn: 512-974-1342 ; Fax: 512-974-1311

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

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

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

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

VI. CAUSE OF ACTION

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

42 USC Sec. 1983

Brief description of cause:

Civil Rights Violation based on Excessive Force

VII. REQUESTED IN COMPLAINT:

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

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/07/2020

/s/ H Gray Laird

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

Travis County District Court, 98TH Judicial District;

Cause No. D-1-GN-20-003037

Iris E. Salazar, individually, and as Independent Administrator of the Estate of Leslie Yolanda Salazar, v
The City of Austin, Texas, Thomas Brown, Elias Robles

2. Was jury demand made in State Court? Yes No

If yes, by which party and on what date?

Party Name Date

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

Plaintiff: Iris E Salazar, Individually & as Independent Administrator of Estate of Leslie Yolanda Salazar;
Counsel Scott S Cooley, MARTIN MILLICAN COOLEY, PLLC; 512 E Fourth St, Lampasas, Tx 76550;
Phn: 512-556-6228; Fax 844-318-6073

Defendant: Counsel H Gray Laird, Asst City Attny, Cityof Austin Law Department; PO Box 1546, Austin
Tx 78767-1546; Phn: 512-974-1342; Fax: 512-974-1311

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

Not Applicable

3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

Not Applicable

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

Not Applicable

VERIFICATION:

H Gray Laird

7/7/2020

Attorney for Removing Party

Date

Defendant City of Austin, Thomas Brown & Elias R_g

Party/Parties

(NOTE: Additional comment space is available on page 3)

ADDITIONAL COMMENTS (As necessary):

3. Upon information and belief, Defendants admit the allegations contained in Paragraph 3 of the Petition.
4. Defendants admit the allegations contained in Paragraph 4 of the Petition.
5. Defendants admit the allegations contained in Paragraph 5 of the Petition.
6. Defendants admit the allegations contained in Paragraph 6 of the Petition.
7. Defendants admit the allegations contained in Paragraph 7 of the Petition.
8. Defendants admit the allegations contained in Paragraph 8 of the Petition.

JURISDICTION AND VENUE

9. Defendants admit the allegations contained in Paragraph 9 of the Petition.
10. Defendants deny the allegations contained in Paragraph 10 of the Petition.
11. Defendants admit the allegations contained in Paragraph 11 of the Petition.
12. Defendants admit the allegations contained in Paragraph 12 of the Petition.

FACTS

13. Upon information and belief, Defendants admit the allegations contained in Paragraph 13 of the Petition.
14. Upon information and belief, Defendants admit the allegations contained in Paragraph 14 of the Petition.
15. Defendants admit the allegations contained in Paragraph 15 of the Petition.
16. Defendants admit the allegations contained in Paragraph 16 of the Petition.
17. Defendants admit the allegations contained in Paragraph 17 of the Petition.
18. Defendants admit the allegations contained in Paragraph 18 of the Petition with the exception of the allegations contained in footnote 2 of the Petition, which Defendants deny.

19. Defendants admit the allegations contained in the first 5 sentences contained in Paragraph 19 of the Petition. Defendants deny the remaining allegations contained in Paragraph 19 of the Petition and deny the allegations contained in footnote 3 of the Petition.
20. Upon information and belief, Defendants admit the allegations contained in Paragraph 20 of the Petition.
21. Defendants admit the allegations contained in Paragraph 21 of the Petition.
22. Defendants admit the allegations contained in Paragraph 22 of the Petition.
23. Defendants deny the allegations contained in Paragraph 23 of the Petition.
24. Defendants deny the allegations contained in Paragraph 24 of the Petition.

CAUSES OF ACTION

Wrongful Death

25. Defendants deny the allegations contained in Paragraph 25 of the Petition.
26. Defendants admit the allegations contained in Paragraph 26 of the Petition.
27. Defendants deny the allegations contained in Paragraph 27 of the Petition.
28. Defendants deny the allegations contained in Paragraph 28 of the Petition.
29. Defendants deny the allegations contained in Paragraph 29 of the Petition.
30. Defendants deny the allegations contained in Paragraph 30 of the Petition.
31. Defendants deny the allegations contained in Paragraph 31 of the Petition.

Survival Action

32. Defendants deny the allegations contained in Paragraph 32 of the Petition.

Proximate Cause

33. Defendants deny the allegations contained in Paragraph 33 of the Petition.

Damages for Wrongful Death and Survival

34. Defendants deny the allegations contained in Paragraph 34 of the Petition.
35. Defendants deny the allegations contained in Paragraph 35 of the Petition.
36. Defendants deny the allegations contained in Paragraph 36 of the Petition.
37. Defendants deny the allegations contained in Paragraph 37 of the Petition.

Exemplary Damages

38. Defendants deny the allegations contained in Paragraph 38 of the Petition.
39. Defendants deny the allegations contained in Paragraph 39 of the Petition.
40. Defendants deny the allegations contained in Paragraph 40 of the Petition.
41. Defendants deny the allegations contained in Paragraph 41 of the Petition.
42. As to the last unnumbered paragraph beginning “WHEREFORE, Iris E. Salazar...”, Defendants deny the allegations of that paragraph and specifically deny that the Plaintiff is entitled to any relief whatsoever of and from the Defendants.

AFFIRMATIVE DEFENSES

1. Defendants assert the affirmative defenses of qualified immunity and official immunity for actions taken by Officers Brown and Robles in the course and scope of their employment.
2. Defendant assert the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any.
3. Defendants assert the affirmative defense of contributory negligence. Plaintiff’s claims are barred in whole or in part by Leslie Salazar’s contributory negligence. Leslie Salazar, by her own actions, failed to exercise ordinary care for her safety. Her actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.
4. Defendants affirmatively plead that the Plaintiff’s claims are barred in whole or in part

since Leslie Salazar's intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.

5. 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.
6. The City, as a governmental entity, asserts the protections and limitations of the Texas Tort Claims Act. TEX. CIV. PRAC. & REM. CODE § 101.001, et seq.
7. The City asserts the affirmative defense of governmental immunity both from suit and liability.
8. The City denies that it can be liable for any exemplary damages.
9. The City asserts that it is not liable under the Texas Wrongful Death & Survivor's Statute because it would not have been liable to the decedent had she lived. TEX. CIV. PRAC. & REM. CODE § 71.003(a).
10. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III

H. Gray Laird

Assistant City Attorney

State Bar No. 24087054

gray.laird@austintexas.gov

City of Austin Law Department

P.O. Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-1342

Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, on this 14th day of July, 2020, as follows:

Via CM/ECF:

Scott S. Cooley
Texas Bar No. 00796394
Jackie P. Paltrun
Texas Bar No. 24087140
512 E. Fourth St.
Lampasas, Texas 76550
Tel. (512) 556-6228
Fax. (844) 318-6073
Scott@lampasasladyer.com
ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III

H. Gray Laird

- B. Survival action in Plaintiff's capacity as legal heir of decedent and Independent Administrator of the Estate of Leslie Yolanda Salazar pursuant to Texas Civil Practice & Remedies Code § 71.021.
- C. The factual allegations establish that it was Defendants' "wrongful act[s], neglect, carelessness, unskillfulness, or default," under the letter of the state statute, that proximately caused Leslie Yolanda Salazar's death.

2. There is no support for Defendants' argument in its Notice of Removal that "Plaintiff also alleges that the City of Austin was responsible for assuring that its employees complied with the laws of the United States and alleges that the policies and practices of the City of Austin resulted in the death of Plaintiff's decedent." To the contrary, under the Texas Wrongful Death Statute, a municipal corporation is liable for "damages arising from an injury that causes an individual's death if the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default." TEX. CIV. PRAC. & REM. CODE § 71.001(1), (2). The City, through its police department, plainly neglected, was careless, or defaulted in its duty to insure that its officers utilized the comprehensive written set of rules for "De-escalation" and "De-escalation Techniques" in the APD Policy Manual 2017-1.5 issued 7/20/2017. Plaintiff will show that decedent's death was wrongful under state law, and only state law. The duties breached by Defendants and complained of by Plaintiff are imposed strictly by state law, and the only forum to adjudicate Plaintiff's claims is state court.

3. Finally, Defendants' notice of removal served no other purpose but needlessly delay this case and increase the cost of this litigation. Accordingly, Plaintiffs further respectfully moves this court to order Defendants to pay all costs, expenses, and reasonable attorney's fees incurred by Plaintiff as a result of the removal action.

WHEREFORE PREMISES CONSIDERED, Plaintiff, Iris E. Salazar, Individually and as Independent Administrator of the Estate of Leslie Yolanda Salazar, prays that this Court

abstains from hearing Plaintiff's state law causes of action—the only causes of action pleaded by Plaintiff—and remand same to the 98th Judicial District Court, Travis County, Texas, for resolution on the merits, for recovery of all costs and disbursements, including attorney's fees, incurred by reason of the removal proceedings; and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

MARTIN • MILLICAN • COOLEY, PLLC

By: /s/Scott S. Cooley
Scott S. Cooley
Texas Bar No. 00796394
512 E. Fourth St.
Lampasas, Texas 76550
Tel. (512) 556-6228
Fax. (844) 318-6073
scott@lampasaslwyer.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on the 5TH day of August, 2020, a true and correct copy of the foregoing Motion was served upon the parties below by electronic transmission through the Court's ECF noticing system on those parties-in-interest registered to receive such service.

Anne Morgan, City Attorney
Meghan Riley, Chief of Litigation
H. Gray Laird III, Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

/s/ Scott S. Cooley
Scott S. Cooley

the laws and procedures of the courts of the State of Texas.

FURTHER, IT IS ORDERED that Defendants shall pay to Plaintiff all costs and expenses, including reasonable attorney's fees, incurred as a result of this removal action in the amount of

_____.

SIGNED this _____ day of _____, 20_____.

LEE YEA EL
UNITED STATES DISTRICT JUDGE

FILED

2020 AUG 20 AM 11:25

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY J
DEPUTY

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

IRIS E. SALAZAR,
INDIVIDUALLY, AND AS
INDEPENDENT ADMINISTRATOR
OF THE ESTATE OF LESLIE
YOLANDA SALAZAR
Plaintiff,

§
§
§
§
§

v.

CIVIL ACTION NO.: 1:20-cv-00730-LY

THE CITY OF AUSTIN, TEXAS,
THOMAS BROWN, ELIAS ROBLES
Defendants

§
§

ORDER OF REMAND

Came on for consideration Plaintiff's Motion to Remand (Doc. 5) and the Court having considered same and the parties' Advisory to the Court (Doc. 8) which advised the Court that Defendants do not oppose Plaintiff's Motion to Remand, the Court finds that the motion is well-taken and is hereby **GRANTED**.

Accordingly, it is hereby **ORDERED** that this action is remanded to the 98th Judicial District Court of Travis County, Texas and the Clerk of this Court shall forward a copy of this order to the Clerk of the Travis County District Court, Travis County, Texas. It is further ordered that the parties shall be responsible for their own costs and fees associated with the initial removal of this action to this Court and the remand of the action to Travis County District Court.

SO ORDERED, THIS THE 20th DAY OF August, 2020.

Lee Yeakel
LEE YEAKEL, UNITED STATES DISTRICT JUDGE

Yolanda Salazar, decedent, are as follows:

Name: Iris E. Salazar
Relationship: Mother

Name: Daniel McGarvey, II
Relationship: Father

The survival portion of this petition is brought by plaintiff in her capacity as the Independent Administrator of the Estate of Leslie Yolanda Salazar pursuant to Texas Civil Practice & Remedies Code § 71.021.

4. Defendant City of Austin, Texas (“the City”), is and was a home-rule, municipal corporation and political subdivision of the State of Texas and existing under the laws of the State of Texas, with the capacity to be sued. The City is responsible for the actions, omissions, policies, procedures, practices, and customs of its various agents and agencies, including the Austin Police Department (“APD”) and its agents and employees. At all relevant times, the City was responsible for assuring that the actions, omissions, policies, procedures, practices, and customs of the APD and its employees and agents complied with the laws of the United States and of the State of Texas. At all relevant times, the City was the employer of Defendants Thomas Brown and Elias Robles.

5. Pursuant to Texas Civil Practice and Remedies Code Section 17.024(b), Defendant City may be served by serving the mayor, clerk, secretary, or treasurer of the City at 301 West 2nd Street, Austin, Texas 78701.

6. Defendant Thomas Brown is an individual who, upon information and belief, resides in or around Travis County, Texas, and who may be served at his last known place of business: Austin Police Department; 715 E. 8th St., Austin, Texas 78701-3300, or wherever he may be found.

7. Defendant Elias Robles is an individual who, upon information and belief, resides in or around Travis County, Texas, and who may be served at his last known place of business: Austin Police Department; 715 E. 8th St., Austin, Texas 78701-3300, or wherever he may be found.

8. Brown and Robles were at all relevant time police officers for APD. They were acting under color of law within the course and scope of their duties as officers for the APD at all relevant times. Also at all relevant times, Brown and Robles were acting with the complete authority and ratification of their principal, Defendant City.

JURISDICTION AND VENUE

9. The subject matter in controversy is within the jurisdictional limits of this court.

10. Plaintiff seeks:

a. monetary relief over \$1,000,000.00.

11. This Court has jurisdiction over Defendants because the Defendant City is a Texas municipality, and the individual defendants are residents of the State of Texas.

12. Venue is appropriate because the facts of this case arose in Travis County, Texas and the Defendant City is a municipal entity located within Travis County, Texas, and Travis County was the county of residence of the individual defendants at the time the cause of action accrued.

FACTS

13. Leslie Yolanda Salazar was born on November 7, 1997, to Iris E. Salazar and Daniel McGarvey, II. When Leslie was 20 years old, on June 7, 2018, Defendant Thomas Brown shot and killed her in Austin, Travis County, Texas at the premises located at 7328 S. Glenn St., Austin, Texas 78744. Leslie was 5'3" tall and weighed 100 pounds when she was

killed. The medical examiner determined that the cause of death was “Gunshot Wounds.” The death certificate describes the “Manner of Death” as “Homicide.” Ms. Salazar was laid to rest in Lampasas, Texas.

14. This recitation of facts behind the incident is based largely on the police interviews and statements taken the night Ms. Salazar was killed as reflected in the Travis County District Attorney’s letter explaining her decision not to prosecute Officer Brown. (The “Declination Letter”).

15. On June 7, 2018, at 2:23:14 A.M. and 2:26:41 A.M., two telephone calls were made to 911 in quick succession. On the first, the caller complained of a suspect named “Leslie” attempting to break into a home at 7328 S. Glenn Street in Austin. As the facts later became clearer, it was discovered that “Leslie” was in fact an invited guest at the premises, and in the second 911 call, the caller, Sidney Joy, said the suspect Leslie was her cousin and was threatening people in the house with a knife.

16. Officer Elias Robles #7231 (Unit H703) assigned himself to the call, and Officer Thomas Brown #8106 (Unit H707) was assigned as his back-up. Records indicate that Officer Robles arrived at 2:30:21 A.M., and Officer Brown arrived about three minutes later. Leslie Salazar was dead less than thirty minutes later.

17. Officer Robles was the first on scene, and he went straight to the subject address, where he saw a knife lying in the driveway in front of the house. He knocked on the front door of the house, but got no response and was soon redirected to a nearby intersection. He collected the knife that was found outside and secured it in his vehicle. At the intersection, Officer Robles met with two residents of the home, Lauren Chips and Sidney Joy. Officer Brown arrived soon thereafter. It was at that time that officers learned that another woman, Valerie Kernes, a

roommate of Ms. Chips and Ms. Joy, was still in the house. Ms. Kernes later told police she had seen the earlier altercation, including Ms. Salazar shouting “Kill me! Kill me!”, and had helped break up a physical fight earlier in the evening between Ms. Salazar and Ms. Chips. Eventually, after 2:00 A.M., Ms. Kernes returned to her room and tried to go back to sleep. After police arrived, Ms. Chips called Ms. Kernes and told her to come outside, which she did, unharmed.¹

18. As soon as Officers Brown and Robles entered the house they announced themselves as police officers, with Brown in the lead and Robles directly behind him. Robles initially led the way in, but eventually, Officer Brown moved in front. Interestingly, Officer Brown admitted he could not remember Ms. Salazar’s name, so he asked Officer Robles. After calling her name Officer Brown moved in front to clear the kitchen area, and within seconds Ms. Salazar appeared approximately 8-10 feet in front of him. Officer Brown stated: “I see that she has a knife which in my mind looked - looked to be like two or three feet - it looked huge.² She had a knife in her right hand and she had it up like this. And I see that - at the same time that I see that I see her face and I just remember her face. I - I don’t know the - the word to put it but it looked like, staring off like - like she was on a mission or some -- I don’t - I don’t know who [sic] to put it. But like - like she was on a mission.”

19. Officer Robles also described that moment to investigators: “As we approached the kitchen was when Leslie pops out approximately 8 to 10 feet in front of us. I identified Leslie by the clothing description we had previously been given of wearing a dark gray shirt, and cut-off jeans. Leslie had a knife in her right hand and holding it in a stabbing type way with the

¹ The District Attorney’s declination letter states, “Even though Ms. Kernes had come out unhurt, the two officers were unsure whether anyone else might be in the house with Ms. Salazar due to the fact that all of the witnesses appeared to be intoxicated and therefore unclear on who’d been in the house and who might still be inside.” Direct statements recorded on Officer Robles’s bodycam show this to be untrue, as he remarks more than once that Ms. Salazar was the only person left in the house.

² In fact, instead of being “two or three feet,” the knife was a typical 6-8 inch kitchen steak knife.

point down. She is holding it in front of her at about her waist to chest height. Leslie had a blank stare on her face of just nothing.” Robles said that at this time Brown shouted at Leslie to drop the knife at least twice, and this statement is supported by the audio captured by Officer Brown’s bodycam. Immediately thereafter, Officer Brown fired three shots, and Ms. Salazar fell to the ground.³

20. At this point, Ms. Salazar still had the knife in her hand and she was still moving. When she stopped moving, Officer Brown “moved forward and removed the knife from her hand. I don’t think he used his hand but may have stepped on the knife and moved it away from Leslie’s reach.” Officer Brown confirmed that he put his foot on the knife and slid it out of the way, and then: “I believe I dragged her [be]cause even if she - where she fell was in a very tight space so I moved her out of that space and then I began [to] apply pressure.” EMS arrived on scene at 2:55 A.M., and Ms. Salazar was pronounced dead at 3:00 A.M.

21. On July 20, 2017, less than a year before this fatal shooting, APD issued its “Policy Manual,” which put into effect a comprehensive written set of rules for “De-escalation” and “De-escalation Techniques,” defined as:

De-escalation - Using techniques to stabilize the situation and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful resolution to an encounter with a non-compliant subject. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, thereby eliminating the need to use force in response to resistance.

De-escalation Techniques - Communicative or other actions used by officers, when safe, and without compromising law-enforcement priorities, that are designed to increase the likelihood of gaining voluntary compliance from a non-compliant subject, and reduce the likelihood of using force in response to resistance.

APD Policy Manual 2017-1.5 Issued 7/20/2017 (excerpt attached hereto as Exhibit A).

³ What the bodycam video actually proves is that instead of giving Ms. Salazar time to drop the weapon, Officer Brown fired almost simultaneously, or mere fractions of a second after his command.

22. Specifically, when determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (1) The conduct of the individual being confronted as reasonably perceived by the officer at the time.
- (2) Officer/subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers vs. subjects.
- (3) Influence of drugs/alcohol or mental capacity.
- (4) Proximity of weapons.
- (5) The degree to which the subject has been effectively restrained and his ability to resist despite being restrained.
- (6) Time and circumstances permitting, and the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (7) Seriousness of the suspected offense or reason for contact with the individual.
- (8) Training and experience of the officer.
- (9) Potential for injury to citizens, officers and subjects.
- (10) Risk of escape.
- (11) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (12) Other exigent circumstances.

Id.

23. These factors were largely ignored:

- (1) The conduct of the individual being confronted as reasonably perceived by the officer at the time;
 - There was no indication upon arrival of the officers on the scene that Leslie Salazar was a danger to anyone. There was literally no reason to “confront” her without some attempt to diffuse the situation.
- (2) Officer and subject factors such as age, size, relative strength, skill level, injury/ level of exhaustion and number of officers versus subjects;
 - This factor cannot be overemphasized. There is no “objective reasonableness” analysis that would allow the conclusion that two Austin police officers’ size, relative strength, or skill level would call for the use of deadly force to neutralize a petite woman with a steak knife.
- (3) Influence of drugs and alcohol or mental capacity;
 - Ms. Salazar was at least intoxicated, and perhaps mentally imbalanced. There was simply no reason to rush this confrontation.

- (4) Proximity of weapons;
 - Ms. Salazar was holding a kitchen steak knife eight to ten feet away from Officer Brown.
- (5) The degree to which the subject has been effectively restrained and his ability to resist despite being restrained;
 - This factor does not appear to apply.
- (6) Time and circumstances permitting, the reasonable availability of other resources to the officer;
 - Time and circumstance both permitted bringing in other resources to deal with the situation, including less lethal methods of subduing Ms. Salazar.
- (7) Seriousness of the suspected offense or reason for contact with the individual;
 - Presumably, the suspected offense was assault; that factor would not weigh in favor of an ill-prepared advance on the subject.
- (8) Training and experience of the officer;
 - It appears the training should have been there considering the de-escalation guidelines. Unfortunately, it was not put into practice.
- (9) Potential for injury to citizens, officers and subjects;
 - Literally none, if the proper de-escalation techniques were used before Officer Brown opened fire.
- (10) Risk of escape;
 - This factor does not appear to apply. Even if it did, the harm (death of a young woman) weighed against the potential risk of escape would mitigate in favor of de-escalation at least being attempted.
- (11) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others;
 - Again, Leslie Salazar was alone in a home with a kitchen steak knife. All complaining witnesses were outside the home. Ms. Salazar posed absolutely no imminent threat to anyone.
- (12) Other exigent circumstances.

Had other, less lethal actions been allowed to work, Leslie Salazar would be alive today.

24. Defendant City has a longstanding record of not providing APD officers with adequate training and not preventing excessive force claims against its officers. As a result of

the lack of training and the official custom or policies of the APD, Defendants Brown's and Robles's inadequate training and failure to implement APD's policies resulted in the death of Leslie Salazar. APD failed to provide adequate training to its officers in the use of deadly force. APD failed to provide adequate training to its officers on proper arrest and confrontation techniques. APD failed to provide adequate training to its officers on appropriate methods and techniques to control situations similar to the one at issue in this case. The City knew or should have known that the training provided to the officers was inadequate or nonexistent.

CAUSES OF ACTION

Wrongful Death

25. Plaintiff incorporates by reference the allegations set forth in the previous paragraphs. Plaintiff brings this wrongful death action on her behalf and on behalf of all statutory heirs pursuant to Texas Civil Practice and Remedies Code § 71.001, et seq.

26. Iris E. Salazar was Leslie Yolanda Salazar's mother.

27. Defendants City, Brown, and Robles are all "persons" under Chapter 71 of the Civil Practice and Remedies Code.⁴ Defendants' wrongful and intentional acts, neglect, carelessness, unskillfulness, and/or default described herein caused Leslie Yolanda Salazar's death. Leslie Yolanda Salazar would have been entitled to bring an action for her injuries against Defendants had she lived.

28. Plaintiff has suffered, and will continue to suffer, a loss of consortium and damage to the child/parent relationship, including the loss of love, affection, solace, comfort, companionship, society, assistance, and emotional support from her son as a proximate result of defendants' actions.

⁴ "Person" means an individual, association of individuals, joint-stock company, or *corporation* "Corporation" means a *municipal*, private, public, or quasi-public corporation other than a county or a common or independent

29. As a proximate cause of defendants' actions, Plaintiff has suffered severe mental depression and anguish, grief, and sorrow as a result of her daughter's death, and in all reasonable probability, will continue to suffer indefinitely into the future.

30. Plaintiff also suffered pecuniary loss and loss of inheritance due to the death of her daughter, which defendants' actions proximately caused.

31. The City is liable not only for its own wrongful act, neglect, carelessness, unskillfulness, or default, but also for its agents' or servants'. TEX. CIV. PRAC. & REM. CODE § 71.002(b).

Survival Action

32. Plaintiff brings this survival action in her capacity as legal heir of decedent and Independent Administrator of the Estate of Leslie Yolanda Salazar pursuant to Texas Civil Practice & Remedies Code § 71.021. Defendants' intentional and negligent acts were a proximate cause of tremendous conscious pain, suffering, terror, and mental anguish to Leslie Yolanda Salazar preceding her eventual death. The Estate of Leslie Yolanda Salazar is entitled to recover damages for:

- a. Leslie Yolanda Salazar's conscious physical pain and suffering suffered by prior to her death;
- b. Her conscious mental anguish suffered prior to her death; and
- c. Funeral and burial expenses for Leslie Yolanda Salazar.

PROXIMATE CAUSE

33. Each and every, all and singular of the foregoing acts and omissions, on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

school district. TEX. CIV. PRAC. & REM. CODE § 71.001(1), (2) (emphasis added).

DAMAGES FOR WRONGFUL DEATH AND SURVIVAL

34. As a proximate result of the above-described acts and/or omissions on the part of the Defendants, jointly and severally, by and through their vice principals, agents, employees, and representatives, Plaintiff and the deceased sustained serious, disabling, and permanent injuries.

35. The Estate of Leslie Yolanda Salazar has suffered the following damages:

- a. Past physical pain, suffering, and mental anguish;
- b. Loss of earning capacity;
- c. Past physical disfigurement; and
- d. Past physical impairment.

36. Iris E. Salazar has suffered the following damages:

- a. Loss of consortium in the past and in the future;
- b. Loss of advice and counsel in the past and in the future;
- c. Loss of services in the past and in the future;
- d. Loss of companionship and society in the past and in the future;
- e. Loss of inheritance;
- f. Past and future mental anguish; and
- g. Past and future medical and therapy.

37. Plaintiff is entitled to recover actual damages on her behalf and on behalf of the Estate of Leslie Yolanda Salazar in an amount that is sufficient to compensate for their injuries.

EXEMPLARY DAMAGES

38. The acts or omissions alleged herein, when viewed objectively from the standpoint of the Defendants, involved an extreme degree of risk, considering the probability and

magnitude of potential harm to others, and were of such a nature that Defendants had, or should have had, a subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others, including but not limited to Leslie Yolanda Salazar and Plaintiff.

39. As a result of the untimely death of Ms. Salazar, her family has suffered and will continue to suffer into the future a pecuniary loss from her death, including loss of household services, along with contributions of pecuniary value which they would have, in reasonable probability, received from Ms. Salazar during their lifetimes, had Ms. Salazar lived.

40. Iris E. Salazar has suffered severe mental depression and anguish, grief, and sorrow as a result of the death of her daughter, and in all reasonable probability will continue to suffer indefinitely into the future. She has experienced the one loss that every parent fears; she has buried her beloved daughter, Leslie. Plaintiff has suffered, and will continue to suffer, a loss of consortium and damage to the child/parent relationship, including the loss of love, affection, solace, comfort, companionship, society, assistance, and emotional support from her daughter.

41. For all the foregoing losses, plaintiff seeks exemplary damages within the jurisdictional limits of this Court.

PRAYER

WHEREFORE, Plaintiff, Iris E. Salazar, in her individual capacity and as the sole representative of the Estate of Leslie Yolanda Salazar, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Defendant per Section 41.006, Chapter 41, Texas Civil Practice and Remedies Code, excluding interest, and

as allowed by Sec. 41.008, Chapter 41, Texas Civil Practice and Remedies Code, together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

MARTIN • MILLICAN • COOLEY, PLLC

By: /s/Scott S. Cooley

Scott S. Cooley

Texas Bar No. 00796394

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Texas Bar No. 24087140

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ATTORNEYS FOR PLAINTIFF

Austin Police Department

Policy Manual

CHIEF'S MESSAGE

I am proud to present the newest edition of the Austin Police Department Policy Manual. The Policy Manual is designed to assist all employees in accomplishing the Department's mission in a professional and lawful manner. Adherence to these policies also helps safeguard employees and the Department against civil litigation and ensures that employees will be protected when their individual actions are scrutinized, especially after a critical incident.

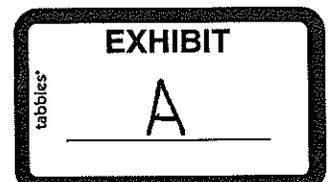
All employees will abide by these policies and are responsible for keeping themselves current on the content of this manual.

Stay safe,

Brian

Brian Manley

Chief of Police



Response to Resistance

200.1 PURPOSE AND SCOPE

This policy recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this policy is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This policy is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee.

200.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may exercise control over another in carrying out their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare requires a careful balancing of all human interests.

200.1.2 DEFINITIONS

Bodily Injury - Physical pain, illness or any impairment of physical condition (Tex. Penal Code § 1.07(8)).

Deadly Force - Force that is intended or known by the officer to cause, or in the manner of its use or intended use is known to be capable of causing death or serious bodily injury (Tex. Penal Code § 9.01(3)).

Force - Any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject.

Non-Deadly Force - Any application of force other than deadly force.

Objectively Reasonable - An objective standard viewed from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight, and within the limitations of the totality of the circumstances presented at the time of the incident.

Serious Bodily Injury - Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ (Tex. Penal Code § 1.07(46)).

Response to Resistance

De-escalation - Using techniques to stabilize the situation and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful resolution to an encounter with a non-compliant subject. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, thereby eliminating the need to use force in response to resistance.

De-escalation Techniques - Communicative or other actions used by officers, when safe, and without compromising law-enforcement priorities, that are designed to increase the likelihood of gaining voluntary compliance from a non-compliant subject, and reduce the likelihood of using force in response to resistance.

200.1.3 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Such officers should also promptly report these observations to a supervisor.

200.1.4 RESPONSE TO RESISTANCE RELATED POLICIES

- (a) Policy 200 (Response to Resistance).
- (b) Policy 202 (Firearm Discharge Situations).
- (c) Policy 204 (Leg Restraint Guidelines).
- (d) Policy 206 (Control Devices and Techniques).
- (e) Policy 208 (TASER® Guidelines).
- (f) Policy 211 (Response to Resistance Inquiry, Reporting and Review).
- (g) Policy 212 (Force Review Board).

200.2 RESPONSE TO RESISTANCE POLICY

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

- (a) Given that no policy can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate response to resistance in each incident.
- (b) Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use any of the standard tools, weapons, or methods provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.

Response to Resistance

- (c) While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying objectively reasonable force.
- (d) Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

200.2.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

- (a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:
 - 1. The conduct of the individual being confronted as reasonably perceived by the officer at the time.
 - 2. Officer/subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers vs. subjects.
 - 3. Influence of drugs/alcohol or mental capacity.
 - 4. Proximity of weapons.
 - 5. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained.
 - 6. Time and circumstances permitting, and the availability of other options (what resources are reasonably available to the officer under the circumstances).
 - 7. Seriousness of the suspected offense or reason for contact with the individual.
 - 8. Training and experience of the officer.
 - 9. Potential for injury to citizens, officers and subjects.
 - 10. Risk of escape.
 - 11. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
 - 12. Other exigent circumstances.

Response to Resistance

200.2.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

- (a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful.
- (b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful.
- (c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

200.2.3 NOTICE OF AUTHORITY AND IDENTITY

If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).

200.3 DEADLY FORCE APPLICATIONS

An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

- (a) Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
 - 1. The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
 - 2. The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

200.4 REPORTING THE RESPONSE TO RESISTANCE

Any response to resistance by a member of this department shall be documented promptly, completely and accurately in an appropriate report as prescribed by Policy 211 (Response to Resistance Inquiry, Reporting, and Review).

200.4.1 NOTIFICATION TO SUPERVISORS

Supervisor notification shall be made as soon as practicable following any force incident or allegation of use of force.

Response to Resistance

200.4.2 MEDICAL ATTENTION

Prior to booking or release, medical assistance shall be obtained for any subject who has sustained visible injury, expressed a complaint of injury or continuing pain or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail.

A subject who exhibits extreme agitation, violent irrational behavior accompanied by profuse sweating, public disrobing, extraordinary strength beyond their physical characteristics and a high resistance to pain (sometimes called "Excited Delirium Syndrome (ExDS)"), or who requires a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and shall be examined by qualified medical personnel as soon as the symptoms are recognized. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

200.4.3 ASSISTING MEDICAL PROFESSIONALS

- (a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in APD Policies 211 and 200.4.1.
 - 1. Medical personnel are:
 - (a) Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)
 - (b) Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties

- (b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to APD Policies 211 and 200.4.1 Response to Resistance by:
 - 1. Notifying their supervisor, and
 - 2. Completing an incident report including the title code 8400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Demand for Jury Trial has been served in accordance with the Texas Rules of Civil Procedure on the following counsel of record on September 28, 2022, as follows:

H. Gray Laird, III
Assistant City Attorney
State Bar No. 24087054
City of Austin-Law Department
P. O. Box 1546
Austin, Texas 78767-1546
(512) 974-1342
(512) 974-1311 [FAX]

/s/Scott S. Cooley
Scott S. Cooley

Automated Certificate of eService

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

Kathleen Wolf on behalf of Scott Cooley

Bar No. 796394

Katy@LampasasLawyer.com

Envelope ID: 68693707

Status as of 10/3/2022 11:30 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Gray Laird		gray.laird@austintexas.gov	9/28/2022 11:58:43 AM	SENT