

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

LOUIS FLORES,

*Plaintiff*

v.

FELIX PEREZ, JACKSON PIERRON,  
and JORGE PASTORE in their  
individual capacities, and the CITY OF  
AUSTIN,

*Defendants*

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CAUSE OF ACTION NO.  
1:23-cv-673

**PLAINTIFF’S ORIGINAL COMPLAINT**

Plaintiff Louis Flores brings this 42 U.S.C. § 1983 case against Defendants Felix Perez, Jackson Pierron, and Jorge Pastore, officers of the Austin Police Department (APD), for the brutal and excessive force they inflicted on him, and against Defendant City of Austin for its practices that caused such brutal and excessive force to be employed.

**I. PARTIES**

1. Plaintiff Louis Flores is a resident of Austin, Texas.

2. Defendant Felix Perez is a police officer with the APD and is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Officer Perez was acting under color of law as an APD officer. He can be served with process at 715 E. 8<sup>th</sup> Street, Austin, TX 78701.

3. Defendant Jackson Pierron is a police officer with the APD and is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Officer Pierron was acting under color of law as an APD officer. He can be served with process at 715 E. 8<sup>th</sup> Street, Austin, TX 78701.

4. Defendant Jorge Pastore is a police officer with the APD and is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Officer Pastore was acting under color of law as an APD officer. He can be served with process at 715 E. 8<sup>th</sup> Street, Austin, TX 78701.

5. Defendant City of Austin is a municipality that operates the Austin Police Department and employed Defendants Perez, Pierron, and Pastore at all relevant times. The City's policymaker for policing matters at the time of the incident was and still is Chief of Police Joseph Chacon. The City may be served with process through its City Manager at 301 W. 2<sup>nd</sup> Street, Austin, TX 78701.

## II. JURISDICTION AND VENUE

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

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

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

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

## III. FACTS

### A. OFFICERS PEREZ, PIERRON, AND PASTORE'S BRUTAL USE OF EXCESSIVE FORCE ON PLAINTIFF LOUIS FLORES.

10. Plaintiff Louis Flores, a young Hispanic male, was the victim of police brutality.

11. During the early morning hours of January 15, 2023, Louis was moving through a crowd on East 6<sup>th</sup> Street in downtown Austin.

12. Among those present on East 6<sup>th</sup> Street that morning were several APD officers on foot along with others mounted on horseback, riding in formation through the crowd.

13. As Louis moved through the crowded street with his friends, APD officers on horseback cut through the crowd where Louis was walking.

14. APD Officer Kilgore rode his mount directly by Louis through the crowd, forcing Louis to one side and brushing by Louis as he turned away to get out of the horse's way.

15. As Officer Kilgore and his horse passed Louis, the horse briefly turned its head towards the left. The horse did not divert from its path and continued moving straight forward.

16. Around the same time, Defendant APD Officer Felix Perez stood on the street, behind other officers and a considerable distance away from where Louis was walking and the spot where Officer Kilgore and his horse had passed Louis.

17. Without cause or justification, Defendant Perez sprinted towards Louis in the crowd after Officer Kilgore passed him, followed shortly behind by Defendant Officers Jackson Pierron and Jorge Pastore.

18. After bursting through the crowd and reaching Louis, Defendant Perez ran directly into him, grabbed Louis by his left wrist, and shouted "hands behind your back" without once identifying himself as police.

19. Louis, stunned by Defendant Perez's sudden appearance and inexplicable and unprovoked aggression, took one step away from the shouting Perez, though Perez maintained a firm grasp on Louis's left wrist.

20. Louis was at all times unarmed.

21. Louis was not remotely threatening to any person at any time.

22. Louis did not make any threatening or aggressive physical movements towards Officer Perez, or any other person or police animal.

23. Louis did not verbally threaten Perez or anyone nearby.

24. Without giving Louis any chance to comply with his shouted directive and within a few seconds of reaching Louis, Defendant Perez grabbed Louis by his neck without any warning and slammed him forcefully, headfirst, into the concrete street.

25. As a result, Louis struck his head and back on the street.

26. Immediately after throwing Louis to the ground, Defendant Perez then drove his knee into Louis's abdomen, pinning him to the ground.

27. Defendant Perez also pinned Louis's left arm to his chest then grabbed Louis' face with his left hand and pushed the side of Louis's face into the street.

28. While Defendant Perez remained on top of Louis, pinning him flat on his back and controlling his arm and head, Perez shouted for Louis to "put [his] hands behind his back," a physically impossible command to follow.

29. Though Defendants Pierron and Pastore reached Defendant Perez before he threw Louis to the ground, neither Pierron nor Pastore intervened to stop Perez's obvious use of excessive and disproportionate force.

30. Instead, Defendants Pierron and Pastore joined Defendant Perez in his use of excessive force against Louis.

31. Specifically Defendant Pierron pinned Louis's right arm over his head, onto the street.

32. Defendant Pastore grabbed ahold of Louis's legs and twisted them.

33. With Louis's torso under Defendant Perez's knee and Defendants in control of all of his extremities (including, inexplicably, his head), the Defendant Officers brutalized him further.

34. Defendants Perez and Pastore roughly pulled and pushed Louis from his back to his stomach, with Pierron continuing to pin Louis's arm over his head, forcing his arm to rotate beyond his shoulder's natural range of motion.

35. Then Defendant Perez needlessly and violently drove his knee into Louis's mid-back, pinning him once again to the street and causing him great pain and injury.

36. Rather than stop the abuse, Defendant Pastore then crossed Louis's calves and forcefully pushed Louis's feet towards his buttocks, further injuring Louis's now-fractured back.

37. Defendants Perez, Pierron, and Pastore held Louis in this excruciating position for nearly 30 tortuous seconds.

38. Throughout that time, the Defendants maintained firm control of Louis' body and hands.

39. Louis never made any threatening movements towards the officers.

40. At no point did Louis actively resist the officers' actions.

41. Throughout the time Defendants Perez, Pastore, and Pierron had Louis pinned to the street, additional APD officers arrived, including Officers Marr and Johnson.

42. Neither Officer Marr nor Officer Johnson, nor any of the other APD officers who arrived during Defendants' uses of excessive force against Louis, intervened to stop their fellow officers' obvious uses of excessive and disproportionate force.

43. After handcuffing Louis, Defendants Perez and Pastore then half-walked, half-dragged a stumbling, severely injured and disoriented Louis to a different street where Louis collapsed into a doorway and lost consciousness for several minutes.

44. By the time emergency medical services personnel arrived several minutes later, thankfully, Louis had regained consciousness and was asking for medical attention.

45. Rather than providing him the care he obviously needed, Louis was told he had to “stand up and walk” to the ambulance if he wanted medical attention.

46. Louis was unable to do so as a result of his spinal injuries.

47. Defendant Pastore and other, unknown APD officers then pulled Louis to his feet again, half-dragging and half-walking Louis to a police transport van.

48. As a result of his spinal injuries, Louis was unable to lift his legs to step into the vehicle when commanded to do so and was roughly lifted into the van and onto a metal bench by Defendant Pastore and other APD officers.

49. Louis was ultimately transported to the Travis County jail, where he remained imprisoned for over a day.

50. As a consequence of Defendants Perez, Pierron, and Pastore’s uses of excessive force, Louis suffered intense, excruciating pain and a severe spinal fracture that required spinal fusion surgery, a dislocated shoulder, and injuries to his face and head.

51. After violently assaulting Louis, though no facts supported any criminal charge, Defendant Perez charged Louis with “interference with a police service animal,” “resisting arrest” and “resisting transport” to support and cover up his and his fellow Defendants’ misconduct.

52. Defendant Perez made numerous false statements on the probable cause affidavit against Louis in attempt to justify his indefensible actions.

53. For example, Defendant Perez falsely claimed that Louis “grabbed the reins on the side of Lucky’s mouth and used his weight/strength to pull the reins back” and that this “caused Lucky to stop and turn almost 90 degrees to the side.”

54. Defendant Perez also falsely claimed that Louis “struck Mount Bishop [another APD horse] as he was going by as well.”

55. In fact, Louis did not do anything resembling striking any horse, and his back was turned as Bishop passed him.

56. Additionally, Defendant Perez falsely alleged that Louis resisted arrest, claiming that “it took [Perez] and multiple officers on scene to overcome his resistance and get him into handcuffs.”

57. In reality, Louis put forward no resistance that would justify the Defendant Officers’ wanton and wholly unjustified used of excessive force.

58. Finally, Defendant Perez falsely alleged that Louis was “resisting transport” by “pretending that he could not walk” and going “completely limp,” such that the officers had to “lift up his limp body and get him in the back of the transport van.” Louis was not, as claimed, “pretending” he could not walk. In fact, he had suffered a serious spinal injury at the hands of the Defendant APD Officers that prevented him from lifting his legs to step into the van.

59. Given the baseless charges and numerous false representations made by Officer Perez, the Travis County Attorney’s office dismissed all three charges Perez filed after reviewing the APD officers’ body worn camera video.

60. Louis continues to struggle every day with the injuries and immense pain caused by Defendants Perez, Pierron, and Pastore.

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

61. Unfortunately, the actions of Defendants Perez, Pierron, and Pastore are part of a longstanding pattern of APD officers' using excessive force against civilians, failing to de-escalate, and failing to intervene to stop other officers' use of force.

62. APD fails to adequately train its officers, and failed to adequately train the Defendant Officers, on the appropriate use of force and using de-escalation strategies.

63. Upon information and belief, none of the Defendant Officers nor any of the other APD officers who arrived at the scene were ever trained that they have a constitutional obligation to prevent their fellow officers from using excessive force.

64. Moreover, the City of Austin has systematically failed to supervise or discipline its officers, almost never investigating or disciplining officers for using excessive force, failing to de-escalate, or failing to intervene.

65. As APD officers are not trained to stop one another's use of excessive force, and are not disciplined for failing to stop one another's use of excessive force, unchecked excessive force by APD officers is common.

66. As a consequence, APD officers' engaging in excessive force and not intervening to stop the use of excessive force has become the de facto practice/policy of APD and the City of Austin which is well-known by the City's policymakers, including Chief Chacon.

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

- a. **Nathaniel Sanders and Sir Smith:** On May 11, 2009, then-Officer Leonardo Quintana shot both Nathaniel Sanders and Sir Smith after approaching their car

while they were asleep—Sanders died, Smith survived. Quintana and another officer came up on the car from behind, and could tell through the car windows that both occupants were asleep. Instead of making a plan, communicating with his partner, or identifying himself as police, Quintana woke Sanders, saw that Sanders had a pistol in his waistband, unsuccessfully tried to grab it, then backed away and opened fire on the car, killing Sanders. Smith, unarmed and suddenly under fire, awoke from sleeping and tried to escape by running from the car. Instead of letting Smith escape to safety, Quintana shot him while Smith was fleeing, unarmed, and posed no danger to anyone. The police chief disciplined Quintana only for failing to activate his squad car's video camera, rejecting an internal recommendation to discipline him for his poor tactics that ultimately led to deadly force. Tellingly, the City paid Sanders' family \$750,000 and Smith \$175,000. Quintana's partner and the other officer present did nothing to stop the improper tactics or excessive force throughout the ordeal. Despite this, the City did not even investigate whether they should have intervened to stop the use of deadly force.

- b. **Carlos Chacon:** On April 29, 2011, APD officers Eric Copeland and Russell Rose used excessive force against Carlos Chacon when he called 911 to report he was the victim of an armed robbery. When Copeland and Rose arrived and saw Chacon, they immediately brandished their firearms before saying a word. When Chacon did not immediately comply with contradictory commands issued by the officers, Copeland and Rose escalated to punching and electrocuting Chacon with a TASER. In reviewing the undisputed facts from

the video, Judge Sparks concluded that “[b]oth officers’ involvement in the entire struggle could likely have been avoided had the officers behaved reasonably,” and “[i]t was, after all, *the officers* who escalated the situation by drawing their weapons and shouting profanity.” The Fifth Circuit affirmed and a jury found against the officers on May 13, 2015. Yet APD never disciplined Copeland or Rose for abusing Chacon. APD likewise did not investigate either of them for failing to intervene.

- c. **Byron Carter and L.W.:** On May 30, 2011, Officer Nathan Wagner fatally shot Byron Carter, Jr., a 20-year-old Black man. Carter was in a vehicle driven by L.W., a Black 16-year-old child, while exiting a tight parallel parking space downtown, just east of I-35, after 11:00 pm. Unbeknownst to Carter and L.W., Wagner and his partner were nearby on foot, and had been following Carter and L.W. surreptitiously and without suspecting the young men of any crime. L.W. heard Carter say, “go,” in a fearful tone, so he accelerated out of the parking space. Although there was no danger, Wagner fired his weapon five times into the driver’s side doors as the car drove away. Wagner’s shots wounded L.W. and killed Carter. Wagner’s partner did nothing to intervene and stop the shooting, even as the car drove away. In ensuing excessive force litigation, Judge Yeakel denied summary judgment to Wagner. Although neither officer was disciplined by APD, then-Police Monitor Margo Frasier and a Citizen Review Panel told the chief that the shooting was unjustified. APD never investigated Wagner’s partner for failing to intervene.

- d. **Peter Hernandez:** On June 7, 2012, at least three officers used excessive force against Pete Hernandez, whose only “crime” was exiting a Wal-Mart store. As Hernandez walked through the parking lot, an APD officer suddenly yelled from behind him to “stay,” and then, “get on the ground.” Confused, Hernandez stopped—he testified that all he heard was to “Move out of the way,” not “get on the ground.” Then, less than four seconds after the first command, Officer John Sikoski ordered his colleagues to “grab him.” Officer Jesus Sanchez executed a flying tackle into Hernandez, slamming him into the ground. Officer Robert Escamilla then stepped on Hernandez’s hand. The City found the officers did not violate any policies. (Albeit, without even investigating whether the officers failed to intervene.) Magistrate Judge Austin recommended denial of summary judgment on the excessive force claims against Sikoski, Sanchez, and Escamilla, and that recommendation was adopted by Judge Yeakel. A jury found Sanchez used excessive force, awarding Hernandez \$877,000 (later reduced on remittitur). APD never investigated any of the officers for failing to intervene to stop the initial use of force nor its escalation.
- e. **Hunter Pinney:** On December 20, 2013, APD officers Michael Nissen, Cassandra Langston, and Chance Bretches were sent to an apartment in search of Jason Brown, whom Williamson County said was involved in a domestic disturbance, to arrest Brown. Instead of Brown, the officers encountered Hunter Pinney, who lived at the apartment. The officers knocked on the door persistently and demanded that Pinney come out. When Pinney complied, he told the officers his name. Instead of letting Pinney re-enter the apartment he

had just voluntarily exited to get his ID and prove the officers were at the wrong address, the APD officers suddenly grabbed Pinney and, Nissen claimed, demanded that Pinney allow them to frisk him for weapons. When Pinney “began to tense up” and “pull away,” the officers escalated their use of force and ultimately Nissen struck Pinney with his knee and electrocuted Pinney with a TASER. Although APD officers charged Pinney with resisting arrest, those charges were dismissed and the City settled Pinney’s ensuing lawsuit against Nissen and the other officers. Nissen and the other officers were not disciplined for their uses of force or investigated for failing to intervene.

- f. **Jawhari Smith:** In March 2014, APD Sergeant Greg White shot Jawhari Smith, a young black man, after confronting Smith when Smith was holding a small BB gun. Smith honestly and immediately told White that the “pistol” was just a BB gun and held it up in his right hand over his head, according to White. Smith reported that he quickly dropped the BB gun on the ground. White disagreed, claiming Smith still kept his right hand holding the BB gun above his head. Nonetheless, instead of giving Smith time to comply, White shot Smith, though his patrol car audio recording shows White gave Smith less than two seconds to comply with his commands. APD did not discipline White, but the City paid Smith a settlement.
- g. **Grady Bolton:** On February 9, 2015, APD Officers Manuel Jimenez, Michael Nguyen, and Rolando Ramirez approached Grady Bolton after Bolton was told to leave a bar on 6<sup>th</sup> Street. Jimenez escalated the encounter by suddenly grabbing Bolton’s wrist, twisting it behind Bolton’s back, and then kicking out

Bolton's legs. Instead of intervening to stop Jimenez, Ramirez joined in the use of force, including by hitting Bolton in the neck. Next, Nguyen also did nothing to stop the force, instead joining and repeatedly kicking Bolton with knee strikes. In ensuing litigation by Bolton, Judge Sparks denied summary judgment to Jimenez, Nguyen, and Ramirez. APD never investigated the officers for failing to intervene.

- h. **Joseph Cuellar:** On February 15, 2015, Joseph Cuellar, who was intoxicated, encountered a “phalanx” of APD officers on horseback on 6<sup>th</sup> Street, while APD Detective Otho Deboise stood nearby. When Cuellar did not immediately yield to the horses, the officer riding ordered him to back away. Cuellar complied, but in a dancing motion. Cuellar then “danced” back towards one of the horses. Deboise reacted by advancing and grabbing Cuellar when he was one to three yards from the horse and throwing him to the ground. None of the other three officers intervened to stop Deboise or assist Cuellar. Deboise initially claimed that Cuellar had merely “stumbled” when pushed by the officer and fallen to the ground, but revised his report when a bystander’s cell phone footage revealed Deboise had brutally thrown Cuellar down. In ensuing litigation by Cuellar, Judge Sparks denied summary judgment on excessive force claims against Deboise on October 11, 2018. APD never investigated the other officers for failing to intervene.
- i. **Justin Scott:** On February 20, 2015, APD Officer Greg White (apparently the same officer who shot Jawhari Smith) tackled and repeatedly struck Justin Scott, who was only passively resisting—Scott argued with White before the

tackle, then “twisted and turned” on the ground. Judge Pitman denied summary judgment on January 7, 2019, and the Fifth Circuit dismissed a subsequent appeal. White was not disciplined for this use of force.

j. **Adrian Aguado:** On April 25, 2015, APD Officers Eric Copeland (apparently the same Officer who used excessive force on Carlos Chacon) and Mark Bergeson had ordered Adrian Aguado out of the back of Copeland’s patrol vehicle to reapply his handcuffs, which had slipped off one hand, when Copeland suddenly fired his TASER at Aguado without warning. Aguado had been complying with Copeland’s command to exit the vehicle and had not even put his second foot on the ground to exit the patrol vehicle when Copeland fired, causing Aguado to fall. As Bergeson stood by doing nothing, Copeland then “dropped his body weight onto” Aguado’s shoulder using his knee, then fired his TASER a second time. Copeland was disciplined for using objectively unreasonable force, while Bergeson was not even investigated for failing to intervene.

k. **Breaion King:** On June 15, 2015, Officer Bryan Richter used excessive force against Breaion King, a 120-pound Black woman that he had stopped for speeding. Richter hauled King from her seat, slammed her into a nearby vehicle, and then repeatedly knocked her onto the ground despite King’s minimal resistance and very small stature. Richter later falsely told fellow officers King tried to punch him. In denying Richter summary judgment, Judge Sparks concluded, “a reasonable jury could find Officer Richter’s use of force was clearly excessive and objectively unreasonable.” Tellingly, APD command

staff failed to take formal disciplinary action or even respond seriously to Richter's misconduct until after the civil lawsuit was filed. Thus, Judge Sparks also denied summary judgment as to the City on May 1, 2018, concluding that a reasonable jury could find the City's use of force, training, and discipline policies were inadequate, causing Richter's use of force against King, and that the City was deliberately indifferent to these known inadequacies.

- l. **Armando Martinez:** On August 27, 2015, APD Officers Christopher Van Buren and Daniel Jackson approached Armando Martinez, suspected of public urination, who was laying under a tree in a park just east of downtown Austin. Jackson ordered Martinez to "show me your hands," then Van Buren ordered, "stand up," "get off the ground," and "walk in front of that vehicle, or I'm going to tase you now." Martinez kept laying on the ground, and so, because Jackson did not tell him to wait, Van Buren fired at Martinez with his TASER four seconds later. Jackson agreed with APD investigators that he would not have used a TASER; Martinez was not preparing to fight, "just kind of sitting there." Jackson then handcuffed Martinez. EMS was called to remove the TASER barb, and they determined Martinez was suffering a hyperglycemic reaction that required him to be hospitalized. Despite the fact that Martinez was obviously never a threat to anyone and Van Buren audibly threatened to use a TASER anyway, Jackson was not investigated for failing to intervene.
- m. **Gregory Jackson:** On December 20, 2015, Gregory Jackson was attempting to cross to the north side of 6<sup>th</sup> Street with his party when officers were about to close the street. He encountered APD Officers Jason Jones and Brian Huckaby

on bicycles, among many other patrol officers. Jones' bike bumped into Jackson, they had an eleven-second conversation, then Jones suddenly grabbed Jackson to place him under arrest. Contrary to the officers' testimony, Jackson complied—or at least “did not actively resist.” Nonetheless, in seconds, Jones and Huckaby grabbed Jackson's arms and kicked him with their knees multiple times before escalating to punching his head and face. Video evidence revealed a large number of officers surrounded Jackson and assisted in the use of force, causing a facial fracture, concussion, and other head injuries. Many APD officers were present and could see Jackson was not resisting, but none of them intervened to stop the use of excessive force. Magistrate Judge Austin denied summary judgment for Jackson's excessive force claims against Jones and Huckaby. APD never investigated any of the officers for failing to intervene.

- n. **Jason Roque:** On May 2, 2017, APD Officer James Harvel shot at Jason Roque—whom Harvel knew to be suicidal—three times, including twice after Roque dropped his BB-gun and was stumbling away from the police, hitting and killing him with the third shot. Though four other APD officers were on the scene standing right next to Harvel watching him take one shot after another, none of them did anything to try to prevent Harvel from continuing to fire on Roque. In ensuing litigation by Roque's survivors, Judge Yeakel denied summary judgment on excessive force claims against Harvel. The Fifth Circuit affirmed. The City settled the matter for \$2,250,000. APD never investigated the officers who were standing right next to Harvel for failing to intervene and stop the shooting—particularly after Roque dropped the BB gun and fled.

- o. **Landon Nobles:** On May 7, 2017, APD Officers Richard Egal and Maxwell Johnson encountered twenty-four-year-old Landon Nobles on 6<sup>th</sup> Street. Johnson found Nobles with other APD officers, and Nobles ran when he saw Johnson approach. Egal intercepted the pursuit and pushed a bicycle into Nobles' path, causing Nobles to stumble and fall to the ground. Johnson and Egal testified at trial that they saw a gun in Nobles' hand, so they drew their own weapons, but another APD officer, Nobles' cousin, and two security guards testified that Nobles never had a gun in his hands. Egal and Johnson fired at Nobles five times, hit him three times, and killed him. A jury found a constitutional violation, rejected the qualified immunity defense, and awarded Nobles' family \$67,107,500 in damages. Neither Egal, Johnson, nor any of the APD officers present was disciplined for their conduct surrounding Nobles' death.
- p. **Joseph Figueroa:** On April 17, 2018, APD Officers Mario Aquino and Daniel McLeish stopped a person for walking against a pedestrian signal near 6<sup>th</sup> Street when Aquino decided to physically move a third person, Joseph Figueroa, who was standing against a nearby wall. Aquino pushed Figueroa's arm at the same time as he told him to move, prompting Figueroa to move but angrily tell the officer not to touch him. Instead of ignoring the compliant (and understandably annoyed) Figueroa, Aquino repeatedly taunted him, eventually being joined by McLeish who spoke up not to stop his fellow officer but to join the goading. Reacting to the incessant taunts, Figueroa moved toward the officers, so Aquino slammed him on the ground. Although the City temporarily suspended Aquino

for starting a completely unnecessary fight with a person who was just standing nearby, McLeish was never investigated for failing to intervene.

- q. **Justin Grant:** On July 4, 2018, Justin Grant had an argument with security at a downtown bar who refused to let him rejoin his party. Grant walked away, but APD officers Gadiel Alas and Corey Hale approached Grant from behind. Alas and Hale grabbed Grant without warning, then violently threw him to the ground. Once Grant was on the ground, Alas escalated further by electrocuting Grant with his TASER while Alas sat on top of Grant. Instead of intervening to stop Alas' excessive force, Hale then punched Grant in the face repeatedly. Alas then punched Grant in the face repeatedly as well. Neither Alas nor Hale were disciplined by APD.
- r. **Michael Yeager-Huebner:** On November 18, 2018, Michael Yeager-Huebner and his girlfriend were heading back to their hotel from 6<sup>th</sup> Street when four unidentified assailants attacked Yeager while he waited at a crosswalk. APD Officers Bradley Hoover and Timothy Skeen witnessed the assault, dispersed the assailants, and then followed Yeager to a nearby parking lot where they immediately threatened to electrocute him with a TASER. Then a third APD officer, Dusty Jester, sprinted over thirty yards to intentionally "surprise" tackle Yeager, pulling him to the ground, and then began to repeatedly punch him in the face. Instead of stopping Jester, Hoover and Skeen piled on—and called for backup, leading to a large mass of APD officers pummeling Yeager. Skeen testified in subsequent litigation that he would intervene to assist an officer who used unjustified force if their victim tried to defend themselves. Jester was given

an informal reprimand but no additional punishment. The City did not even investigate, much less discipline, Hoover nor Skeen.

- s. **Paul Mannie:** On March 28, 2019, numerous officers, including officers Chance Bretches (apparently the same officer who failed to intervene in the use of excessive force against Hunter Pinney) and Gregory Gentry, mercilessly punched and kicked Paul Mannie in the face while they had him pinned to the ground and he was not resisting. Although many officers were present, none of them intervened to stop the obviously excessive force. While APD decided not to discipline any of the officers—indeed, no one was even investigated for failing to intervene—Bretches was indicted for aggravated assault by a public servant on January 20, 2021.
- t. **Javier Ambler:** On March 28, 2019, Javier Ambler was prone on the pavement begging for help and telling officers “I can’t breathe.” APD Officer Michael Nissen (apparently the same officer who used excessive force on Hunter Pinney) was present and did nothing to help Javier Ambler. Instead, he assisted the deputies’ use of excessive force on Ambler and caused him to die at the scene. Despite knowing that Nissen was present while other officers were hurting Ambler, APD never investigated Nissen for not intervening.
- u. **Michael Ramos:** On April 24, 2020, Michael Ramos was unarmed and in his vehicle when APD Officer Christopher Taylor shot him dead. Although Officer Taylor was indicted for murder and Ramos was unarmed, APD has not disciplined Taylor.

- v. **Jason Gallagher:** On May 30, 2020, Jason Gallagher joined the Black Lives Matter/ George Floyd protests in downtown Austin. Despite Gallagher's non-violence, Officer John Siegel, without provocation, sprayed Gallagher in the face with pepper-spray, followed shortly behind by Officer Salvador Gonzalez-Galvan. When Gallagher turned away to wipe his eyes, Officer Bryan McCulloch shoved Gallagher down a concrete hill while he was effectively blinded by the OC spray, causing significant injury to Gallagher. None of the officers were disciplined. None were investigated for failing to intervene.
- w. **2020 Black Lives Matter/ George Floyd Protests:** In addition to the brutal assault on Jason Gallagher, dozens of other APD officers shot at non-violent demonstrators with kinetic projectiles fired from shotguns and launchers over the course of May 30 – June 1, 2020. Despite the extensive police presence at the demonstrations, including numerous officers who could have intervened to prevent demonstrators from being seriously injured, no bystander officers intervened to protect unarmed civilians. This failure to intervene and put a stop to the illegal, unconscionable, and unreasonable shooting left numerous innocent individuals at the protest with serious, life altering injuries. Not a single officer has been disciplined for the intentional firing of kinetic projectiles into crowds or the failure to intervene to stop their misuse during the protests, even though Chief Chacon and his predecessor Manley personally knew that shotguns and kinetic projectiles were being used inappropriately, dangerously, and against nonviolent people. More than twenty APD officers have since been indicted for assaulting peaceful protesters, including several for deadly conduct.

- x. **Armando Herrera-Amaro:** On December 1, 2020, APD officers Gadiel Alas (apparently the same officer who assaulted Justin Grant) and Alexander Khidre brutally tasered and hit an autistic, bipolar Hispanic young man for no justifiable reason. The force used by Officer Alas was excessive, unreasonable, and pure police brutality. Despite the egregious nature of the abuse, which was caught on video, another APD officer stood by and helped it happen. As a consequence, Amaro faced bogus charges for nearly two years before the County Attorney dismissed them. Tellingly, APD's leadership approved of Alas' misconduct and his fellow officer's decision to allow it to continue.
- y. **L.N.R.:** On June 23, 2021, APD Officer Nikolas Warren shot a fifteen year-old, unarmed girl who posed no danger to anyone. The girl had committed no crime, was not suspected of committing a crime, and yet was shot for walking forward instead of backwards. Rather than disciplining the officers involved, Chief Chacon approved and ratified the conduct of his officers.
- z. **James Johnson:** On August 22, 2021, James Johnson was brutally attacked by APD officer Brandon Salter who repeatedly punched him in the head after he had been taken to the ground, shattering his jaw. APD Officer Samuel Noble then fired his TASER on the unresisting Johnson. Neither Officer Salter nor Noble intervened in the other's use of force. APD Officer Alzola, who was under investigation at the time for failing to intervene in another use of excessive force, watched both uses of force but again failed to intervene. As is the pattern of the APD, none of the officers were disciplined despite the dangerous excessive force used against Johnson.

aa. **Raj Moonesinghe:** On November 15, 2022, Raj Moonesinghe was outside on his porch and worried that there was an intruder in his home. Rather than communicate calmly with Mr. Moonesinghe and deescalate the situation, APD Officer Daniel Sanchez shot and killed Mr. Moonesinghe without providing him any warning with which he could possibly comply. Upon information and belief, Chief Chacon has not disciplined Officer Sanchez for the shooting or for violating any APD policies.

68. As is shown by the extensive history above, the City of Austin fails to investigate and discipline officers for using excessive force, failing to de-escalate, and failing to intervene.

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

70. Further, APD's failings are particularly acute in the downtown area, also known as APD's “George” sector, where officers are known to use force at much higher rates and without justification.

71. In addition to the numerous examples of excessive force, failure to de-escalate, and failure to intervene described above by APD officers against Grady Bolton, Joseph Cuellar, Gregory Jackson, Landon Nobles, Joseph Figueroa, Justin Grant, and Michael Yeager-Huebner, the City's own reports indicates that its officers use force at an extraordinary rate downtown.

72. In fact, the City-commissioned Kroll Report found that the use of force rate in the George sector is 11 times higher than the next closest sector.

73. Upon information and belief, there are numerous other instances where APD officers policing in the downtown Austin “George” sector used excessive force, failed to de-escalate, and/or failed to intervene to stop excessive force by other APD officers.

74. Upon information and belief, the City has adopted policies and practices of encouraging its officers to rapidly escalate encounters with citizens downtown, encouraging grotesque uses of force, and failing to discipline officers when they commit these violent acts or fail to intervene to prevent or stop them.

**C. APD’S PATTERN OF EXCESSIVE FORCE IS ALSO EVIDENCED BY ITS TRAINING ACADEMY AND CULTURE OF VIOLENCE.**

75. Upon information and belief, at the time Defendant Officers Perez, Pierron, and Pastore completed their police training academy, the City operated a stress-oriented military-style police training academy where multiple cadets had resigned due to the toxic, abusive, and combative teaching methods that embraced intimidation tactics.

76. APD historically has been strongly reluctant to change the paramilitary nature of the Academy in any fundamental way, and even fired the staff hired to evaluate and make recommendations to change the training in recent years.

77. As such, the APD Academy utilizes or only recently stopped utilizing “teaching” techniques like yelling and screaming at cadets, and other humiliating tactics, which serve little purpose other than to instill a military-like, bootcamp atmosphere that was counterproductive to preparing officers to actually serve the community.

78. This combative attitude is a proximate cause of Defendant Perez, Pastore, and Pierron’s decisions to deploy unreasonable attacks on Louis.

79. In fact, APD's training reflected an 'us vs. them' mentality that often escalated encounters between police officers and the public—much like how the Defendant Officers' conduct in this case only served to escalate a confrontation for no reason.

80. According to reports, the Academy's paramilitary atmosphere was abusive to cadets, and encouraged them to abuse members of the public. Instructors relentlessly ridiculed and mocked cadets during physical training.

81. Cadets described how instructors frequently yelled and cursed at them, leading these cadets to believe the Academy would create police officers who were indifferent to the community.

82. A group of former cadets alleged that the Academy encouraged a culture of abuse towards citizens. One former cadet alleged that instructors told cadets that they would "punch them in the face" if they said they wanted to be police officers to help people.

83. Another instructor told cadets to "pick someone out of a crowd ... and ask yourself, 'how could I kill that person?'"

84. As a result, the message absorbed by the cadets was that the Austin community—including members like Louis—was the enemy.

85. This culture of APD's training academy reflects the culture of the department and impacted the mindset and approach to policing of every individual officer, including Defendants.

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

87. Apart from direct complaints about the training academy, APD also knew the results were disastrous.

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

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

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

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

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

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

94. In August 2016, then-APD Chief Art Acevedo admitted that APD officers “have this attitude of” falsifying reports about using force with “creative writing.”

95. Sadly, Chief Chacon has continued the pattern of failing to discipline numerous officers who filed reports with misleading or false information, likely contributing to Defendant Perez's ease with his own "creative writing" in the probable cause affidavit justifying the arrest of Louis.

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

97. As a result, APD officers like Defendants continued to unnecessarily escalate encounters with violence, and continued to fail to intervene to stop excessive force by their fellow officers.

98. In fact, this happened numerous times on video during the protests that occurred between May 29 and May 31, 2020. Though numerous crimes, including aggravated assault by a public servant and deadly conduct were apparent on video seen by Chief Chacon, the Chief purposefully and publicly claimed otherwise – effectively telling his officers that APD would not hold officers accountable for even obvious excessive force. Moreover, despite being made aware of serious, and likely criminal misconduct by officers, the Chief did not cause investigations of the alleged wrongdoing.

99. As a direct and proximate result of the City's policies and practices, Officers Perez, Pierron, and Pastore failed to de-escalate the encounter with Louis, used excessive force on Louis, and failed to intervene to stop any of the other officers from continuing to use excessive force on Louis.

#### **IV. CAUSES OF ACTION**

##### **A. FOURTH AND FOURTEENTH AMENDMENT EXCESSIVE FORCE BY DEFENDANTS PEREZ, PIERRON, AND PASTORE**

100. Plaintiff incorporates by reference the foregoing paragraphs in Section III.A and further alleges as follows:

101. Defendants Perez, Pierron, and Pastore, while acting under color of law, brutally attacked Louis, threw him into the ground headfirst, drove a knee into his torso and back, dislocated his shoulder, ground his face into the pavement, and otherwise used excessive force against Louis when Louis posed no danger to anyone or any animal.

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

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

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

105. As a direct and proximate result of Perez's, Pierron's, and Pastore's actions, Louis suffered and continues to suffer significant injuries.

106. Defendants Perez, Pierron, and Pastore were acting under color of law at all relevant times.

**B. FOURTH AND FOURTEENTH AMENDMENT BYSTANDER EXCESSIVE FORCE BY DEFENDANTS PEREZ, PIERRON, AND PASTORE**

107. Plaintiff incorporates by reference the foregoing paragraphs in Section III.A and IV.A and further alleges as follows:

108. Defendants Perez, Pierron, and Pastore, while acting under color of law, each failed to intervene while each of the other Defendants used excessive force without cause, and failed to intervene as bystanders to protect Plaintiff, in addition to using their own excessive force against Plaintiff.

109. Defendants Perez, Pierron, and Pastore each knew there was no possible justification for attacking Plaintiff, because they saw that Louis was walking with his arms at his side, not threatening anyone, and not attempting to flee, shortly before Perez attacked Plaintiff and slammed him to the ground. They further saw that Louis was subdued on the ground before they each used excessive force to turn him and re-pinned him to the ground face-down.

110. Defendants Perez, Pierron, and Pastore's failure to intervene to stop their fellow officers, when they were present at the scene, had the ability to do so, and failed to take reasonable measures to protect Plaintiff from each of the other officers' uses of excessive force, caused Louis to suffer serious injuries.

111. Nonetheless, Defendants Perez, Pierron, and Pastore did not stop any Defendant Officers' use of force at any point or make any attempt at de-escalation despite knowing the force was excessive and having sufficient time to stop it. Instead, Pierron and Pastore joined Perez in inflicting excessive force of their own. Each of the Defendant Officers' use of force was

objectively unreasonable in light of clearly established law, and directly and proximately caused Louis to suffer serious injuries.

112. Defendants Perez, Pierron, and Pastore were acting under color of law at all relevant times.

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

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

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

115. At all material times, the officers acted under color of state law, as agents of Defendant City of Austin.

116. At all material times, Defendant Officers Perez, Pierron, and Pastore were acting within the course and scope of their duties as City of Austin police officers at the time they assaulted Louis and failed to intervene to stop the assault.

117. Defendant City of Austin's policymaker for all matters related to the activities of the Austin Police Department was and still is Chief Joseph Chacon.

118. The City of Austin, had or ratified the following policies, practices, or customs in place when Defendant Officers Perez, Pierron, and Pastore attacked and injured Louis without justification and failed to intervene to stop the assaults committed by the other Defendant Officers:

- a. Failing to train officers in the proper measure of force to use, including when engaging with a non-violent individual;
- b. A pattern, practice, or custom of using, authorizing, and/or tolerating excessive force against non-violent individuals;

- c. A pattern, practice, or custom of officers' using force when it is not justified disproportionately against non-violent citizens in downtown Austin;
- d. Failing to adequately discipline officers who use excessive force;
- e. Failing to adequately supervise officers who use excessive force;
- f. Failing to train officers on the use of de-escalation techniques;
- g. A pattern, practice, or custom of failing to use de-escalation techniques, authorizing officers' failure to use de-escalation techniques, and/or tolerating officers' failure to use de-escalation techniques;
- h. A pattern, practice, or custom of officers' failing to use de-escalation techniques disproportionately when engaging with citizens in downtown Austin;
- i. Failing to adequately discipline officers who fail or refuse to use de-escalation techniques when engaging with citizens;
- j. Failing to adequately supervise officers who fail or refuse to use de-escalation techniques when engaging with citizens;
- k. Failing to train officers regarding their obligation to intervene as bystanders to stop fellow officers from using excessive force;
- l. A pattern, practice, or custom of officers failing to intervene as bystanders to stop fellow officers from using excessive force;
- m. Failing to discipline officers who do not intervene as bystanders to stop fellow officers from using excessive force;
- n. Failing to adequately supervise officers who do not intervene as bystanders to stop fellow officers from using excessive force;
- o. Failing to train or instruct officers about specific incidents it considers unreasonable, excessive force, or in violation of the Constitution; and
- p. Failing to supervise or discipline APD officers deployed in downtown Austin.

119. Perez, Pierron, and Pastore, Chief Chacon's subordinates, violated Louis's constitutional rights when Chief Chacon failed to supervise them by failing to train them on the proper measure of force to use against citizens, particularly but not limited to non-violent citizens found in downtown Austin, failing to train them on the use of de-escalation techniques, failing to

train them to intervene to stop excessive force, and failing to supervise officers to ensure they followed these obligations, and the other delineated policies, all of which proximately caused the violations of Louis's constitutional rights. Chief Chacon was deliberately indifferent to the known and obvious consequences of these policies, practices, training, and customs which he was aware of, authorized, and encouraged, rather than acting to correct them. Chief Chacon was actually aware of facts from which any reasonable policymaker could draw the inference that a substantial risk of serious harm and violations of constitutional rights existed, and actually drew that inference.

120. Chief Chacon was aware of the pattern of similar incidents that occurred before and after the officers assaulted Louis, although it was also apparent and obvious that a constitutional violation was a highly predictable consequence of the City's above delineated policies. Chief Chacon was specifically aware that his officers had violated the constitution by using excessive force and failing to intervene in each of the specific incidents of excessive force listed in this complaint, as well as in other thousands of other incidents reported by APD, and that no additional procedures, policies, training, or practices had been implemented that would resolve this ongoing risk of constitutional harm to citizens.

121. Likewise, Chief Chacon knew or should have known that failing to train his officers in the appropriate measure of force, the use of de-escalation techniques, and their obligations to stop other officers from using excessive force were particular omissions in the City's training program that would cause City employees to violate the constitutional rights of members of the public they encountered, like Louis. Nevertheless, though Chief Chacon knew of these obvious deficiencies, he chose to retain this dangerously flawed training program.

122. Rather, the Austin Police Department hierarchy and Chief Chacon ratified Officer Perez, Pierron, and Pastore's conduct, and continued to approve their mistreatment of Louis.

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

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

#### **D. DAMAGES**

125. Plaintiff Louis Flores seeks the following damages:

- a. Past and future lost wages and loss of earning capacity;
- b. Past and future physical pain;
- c. Past and future mental anguish;
- d. Past and future impairment;
- e. Past and future disfigurement;
- f. Past and future medical expenses;
- g. Attorneys' fees, including costs, expert fees, and attorneys' fees pursuant to 42 U.S.C. § 1988;
- h. Pre-judgment and post-judgment interest at the highest rates allowable under the law;

- i. All other compensatory and/or general damages to which Louis is entitled under state or federal law; and,
- j. Punitive damages in the highest amount allowed by law against Defendants Perez, Pierron, and Pastore only.

**V. JURY DEMAND**

126. Plaintiff respectfully requests a trial by jury.

**VI. PRAYER FOR RELIEF**

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

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

Dated: June 15, 2023.

Respectfully submitted,

**EDWARDS LAW**

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By /s/ Jeff Edwards

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**ATTORNEYS FOR PLAINTIFF**

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

**LOUIS FLORES,**  
*Plaintiff,*

v.

**FELIX PEREZ, JACKSON PIERRON,  
and JORGE PASTORE in their  
individual capacities, and the CITY OF  
AUSTIN,**  
*Defendants.*

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**CIVIL ACTION NO. 1:23-CV-673-RP**

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

TO THE HONORABLE JUDGE PRESIDING:

Defendant City of Austin (“City”) hereby files its Original Answer and Affirmative Defenses to Plaintiff’s Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the following:

**ORIGINAL ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiff’s Original Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment.<sup>1</sup>

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Original Complaint and therefore denies same.

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<sup>1</sup> Paragraph numbers in Defendant’s Answer correspond to the paragraphs in Plaintiff’s Original Complaint.

2. Defendant admits that on the date of this incident, Defendant Jackson Pierron was employed as a police officer with the Austin Police Department. Defendant denies the remaining allegations contained in Paragraph 2 of the Original Complaint.
3. Defendant admits that on the date of this incident, Defendant Gabriel Gutierrez was employed as a police officer with the Austin Police Department. Defendant denies the remaining allegations contained in Paragraph 3 of the Original Complaint.
4. Defendant admits that on the date of this incident, Defendant Luis Serrato was a police officer with the Austin Police Department. Defendant denies the remaining allegations contained in Paragraph 4 of the Original Complaint.
5. Defendant admits the allegations contained in Paragraph 5 of the Original Complaint.
6. Defendant admits the allegations contained in Paragraph 6 of the Original Complaint.
7. Defendant admits the allegations contained in Paragraph 7 of the Original Complaint.
8. Defendant admits that this Court has specific *in personam* jurisdiction over Defendants. Defendant denies the remaining allegations contained in Paragraph 8 of the Original Complaint.
9. Defendant admits the allegations contained in Paragraph 9 of the Original Complaint.
10. Defendant denies the allegations contained in Paragraph 10 of the Original Complaint.
11. Upon information and belief, Defendant admits the allegations contained in Paragraph 11 of the Original Complaint.
12. Upon information and belief, Defendant admits the allegations contained in Paragraph 12 of the Original Complaint.
- 13-60. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 13-60 of the Original Complaint and therefore denies same.

61-105. Defendant denies the allegations contained in Paragraphs 61-105 of the Original Complaint.

106. Defendant admits the allegations contained in Paragraph 106 of the Original Complaint.

107-111. Defendant denies the allegations contained in Paragraphs 107-111 of the Original Complaint.

112. Defendant admits the allegations contained in Paragraph 112 of the Original Complaint.

113-125. Defendant denies the allegations contained in Paragraphs 113-125 of the Original Complaint.

126. Paragraph 126 contains only the Plaintiff's request for a jury trial and thus no response is required of this Defendant.

127. Defendant denies the allegations contained in paragraph 127 of the Original Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. Defendant asserts the affirmative defense that Plaintiff failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiff.
4. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

**DEFENDANT’S PRAYER**

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

RESPECTFULLY SUBMITTED,

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

*/s/ H. Gray Laird III*

\_\_\_\_\_  
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Assistant City Attorney

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**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this 11<sup>th</sup> day of July, 2023.

**Via CM/ECF:**

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**ATTORNEYS FOR PLAINTIFF**

*/s/ H. Gray Laird III*

H. GRAY LAIRD III

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

LOUIS FLORES,  
*Plaintiff,*

v.

FELIX PEREZ, JACKSON PIERRON,  
and JORGE PASTORE in their  
individual capacities, and the CITY OF  
AUSTIN,  
*Defendants.*

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CIVIL ACTION NO. 1:23-CV-673-RP

**DEFENDANTS FELIX PEREZ, JACKSON PIERRON, AND JORGE PASTORE’S  
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF’S COMPLAINT**

TO THE HONORABLE JUDGE PRESIDING:

Defendants Felix Perez, Jackson Pierron and Jorge Pastore hereby file their Original Answer and Affirmative Defenses to Plaintiff’s Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the following:

**ORIGINAL ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants respond to each of the specific averments in Plaintiff’s Original Complaint as set forth below. To the extent that Defendants do not address a specific averment made by Plaintiff, Defendants expressly deny that averment.<sup>1</sup>

1. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Original Complaint and therefore deny same.

---

<sup>1</sup> Paragraph numbers in Defendants’ Answer correspond to the paragraphs in Plaintiff’s Original Complaint.

2. Defendants admit that at all relevant times, Felix Perez was a police officer with APD and that he was acting under color of law. Defendants deny the remaining allegations contained in Paragraph 2 of the Original Complaint.
3. Defendants admit that at all relevant times, Jackson Pierron was a police officer with APD and that he was acting under color of law. Defendants deny the remaining allegations contained in Paragraph 3 of the Original Complaint.
4. Defendants admit that at all relevant times, Jorge Pastore was a police officer with APD and that he was acting under color of law. Defendants deny the remaining allegations contained in Paragraph 4 of the Original Complaint.
5. Defendants admit the allegations contained in Paragraph 5 of the Original Complaint.
6. Defendants admit the allegations contained in Paragraph 6 of the Original Complaint.
7. Defendants admit the allegations contained in Paragraph 7 of the Original Complaint.
8. Defendants admit that this Court has *in personam* jurisdiction over the Defendants. Defendants deny the remaining allegations contained in Paragraph 8 of the Original Complaint.
9. Defendants admit the allegations contained in Paragraph 9 of the Original Complaint.
10. Defendants deny the allegations contained in Paragraph 10 of the Complaint.
11. Upon information and belief, Defendant admits the allegations contained in Paragraph 11 of the Original Complaint.
12. Defendants admit the allegations contained in Paragraph 12 of the Original Complaint.
- 13-19. Defendants deny the allegations contained in Paragraphs 13-19 of the Original Complaint.
20. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the Original Complaint and therefore deny same.

21-66. Defendants deny the allegations contained in Paragraphs 21-66 of the Original Complaint.

67-98. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 67-98 of the Original Complaint and therefore deny same.

99-105. Defendants deny the allegations contained in Paragraphs 99-105 of the Original Complaint.

106. Defendants admit the allegations contained in Paragraph 106.

107-111. Defendants deny the allegations contained in Paragraphs 107-111 of the Original Complaint.

112. Defendants admit the allegations contained in Paragraph 112 of the Original Complaint.

113-125. Defendants deny the allegations contained in Paragraphs 113-125 of the Original Complaint.

126. Paragraph 126 merely contains the Plaintiff's request for a jury trial and thus no response is required of the Defendants.

127. Defendants deny the allegations contained in Paragraph 127 of the Original Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Defendants assert the affirmative defense of qualified/official immunity for actions taken in the course and scope of their employment.

2. 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.

4. Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part

since Plaintiff's intentional acts were the proximate cause, or a proximate contributing cause, of his 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. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

### **DEFENDANTS' PRAYER**

Defendants Felix Perez, Jackson Pierron and Jorge Pastore 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 they are entitled under law or equity.

RESPECTFULLY SUBMITTED,

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

*/s/ H. Gray Laird III*

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**ATTORNEYS FOR DEFENDANTS FELIX  
PEREZ, JACKSON PIERRON AND JORGE  
PASTORE**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 11<sup>th</sup> day of July, 2023.

**Via CM/ECF:**

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