



“Sgt. Joseph” and APD Officers Jacob Beirowski “Beirowski”, Kyle Peterson “Peterson”, Robert Mattingly “Mattingly, and Luis Alberto Camacho, III. “Camacho”. Additionally, complaint names Chief of APD Police Brian Manley for obstruction of justice and APD Officers Julian Padro-Martin (#8243) and Christopher J. Knodel for wrongfully “*classifying*” Paul Cantu forcing front desk at Saint David’s South Austin to delete all identifiable information of Paul Cantu, including but not limited to driver’s license, name, job I.D. card; medical insurance information; clinical history, medical records; blood type; emergency and family contact information; interference with his proper Medical Treatment to ensure his death and to allow harvesting of Paul Cantu’s organs including corneas, spleen, liver, and tissue Detective Erin Truho (Special Unit Investigator) for interfering with the Certified Autopsy Records of Paul Cantu. City of Austin is cited for improper training of APD officers and racially profiling Hispanics and people with disabilities. Representatives from City of Austin Rey Arellano, Assistant City Manager and Farah C. Muscadin, Director of Austin Office of Police Oversight for failure to report, investigate, post complains in their websites and discrimination against Hispanics and people with Disabilities. The Travis County Medical Examiner’s Office and Dr. Vickie L. Willoughby are included for failure to report two serious incidents of use of Tasers or “non-lethal weapons” in the Certified Autopsy Report which are required to be reported by Federal Laws.

## II.

### THE PARTIES

- 2.1 Plaintiffs M. Patricia Cantu and Roberto Cantu (“the Cantus”) Plaintiffs reside in San Antonio, Texas. Paul Cantu’s surviving parents Roberto and M. Patricia Cantu (“The

Cantus”) are the parents and sole surviving heirs of Paul Andrew Cantu, decedent. No probate proceedings arose from Paul Cantu’s death, and none are necessary. The Cantus as Plaintiffs bring this lawsuit for excessive force and wrongful death against APD Chief of Police Brian Manley, APD “Sgt. Joseph”, Detective Erin Truho Special Unit Investigations and APD Officers Beirowski, Peterson, Mattingly, Camacho, Julian Padro-Martin (APD # 8243) Padro-Martin; and Christopher J. Knodel “Knodel”.

**2.2** Defendant the City of Austin is an entity which can be served at:

City Manager, \*Key Contact: Mr. Spencer Cronk

The City of Austin

City Manager

City Hall 301 W. 2<sup>nd</sup>, 3<sup>rd</sup> Floor

Austin, TX 78702

**2.3** Defendant Rey Arellano is Assistant City Manager of the City of Austin.

Mr. Ray Arellano can be served at:

City Manager, \*Key Contact: Mr. Spencer Cronk

The City of Austin

City Manager

City Hall 301 W. 2<sup>nd</sup>, 3<sup>rd</sup> Floor

Austin, TX 78702

**2.4** Defendant Farah C. Muscadin is the Director of the City of Austin Office of Police

Oversight. Ms. Musadin can be served at:

City Manager, \*Key Contact: Mr. Spencer Cronk

The City of Austin, City Manager

City Hall 301 W. 2<sup>nd</sup>, 3<sup>rd</sup> Floor

Austin, TX 78702

**OR:**

Farah C. Muscadin,

Director

Office of Police Oversight (OPO)

1520 Rutherford Lane

Austin, TX 78754

- 2.5** Defendant the Travis County Medical Examiner Office (TCMEO) is an entity which can be served at:

Travis County Medical Examiner's Office

Chief Administrative Office

7723 Springdale Road

Austin, Texas 78724

- 2.6** Defendant Dr. Vickie L. Willoughby, D.O, Deputy Medical Examiner is a Forensic Pathologist who works for The Travis County Medical Examiners' Office. Dr. Willoughby can be served at:

Travis County Medical Examiner's Office

Chief Administrative Office

7723 Springdale Road

Austin, Texas 78724

- 2.7** Chief of Police Brian Manley is the Chief of the Austin Police Department (APD) in Austin, Texas.

Chief Brian Manley can be served at:

Austin Police Department'

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

- 2.8 APD Sargent Michael Joseph, APD Officers Jacob Beirowski; Kyle Peterson; Robert Mattingly; Luis Alberto Camacho III; APD Julian Padro-Martin (#8243) and Christopher J. Knodle are individuals who can be served at:

Austin Police Department

South East Branch

404 Ralph Ablanado Dr,

Austin, TX 78748

**OR: ALL APD DETECTIVES SARGENT AND OFFICERS CAN BE SERVED AT;**

Austin Police Department'

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

- 2.9 Detective Erin Truho is a Special Investigation Unit (SUI). Detective Erin Truho can be served at:

Austin Police Department'

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**2.10** Defendant APD Sergeant Michael Joseph is an individual who can be served at:

Austin Police Department

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**OR**

Austin Police Department

South East Branch

404 Ralph Ablanado Dr,

Austin, TX 78748

**2.11** Defendant APD Officer Jacob Beirowki is an individual who can be served at:

Austin Police Department

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**OR**

Austin Police Department

South East Branch

404 Ralph Ablanado Dr,

Austin, TX 78748

**2.12** Defendant APD Officer Kyle Peterson is an individual who can be served at:

Austin Police Department

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**OR**

Austin Police Department

South East Branch

404 Ralph Ablanedo Dr,

Austin, TX 78748

**2.13** Defendant APD Officer Robert Mattingly is an individual who can be served at:

Austin Police Department

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**OR**

Austin Police Department

South East Branch

404 Ralph Ablanedo Dr,

Austin, TX 78748

**2.14** Defendant APD Officer Luis Alberto Camacho III is an individual who can be served at:

Austin Police Department

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**OR**

Austin Police Department

South East Branch

404 Ralph Ablanedo Dr,

Austin, TX 78748

APD Officers Julian Padro-Martin (#8243) (sic) is an individual who can be served at:

Austin Police Department

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**OR**

Austin Police Department

South East Branch

404 Ralph Ablanedo Dr,

Austin, TX 78748

**2.15** Christopher J. Knodle is an individual who can be served at:

Austin Police Department

Brian Manley Chief of the Austin Police Department (APD)

715 E. 8<sup>th</sup> Street

Austin, TX 78701

**OR**

Austin Police Department

South East Branch

404 Ralph Ablanedo Dr, Austin, TX 78748

**III.**  
**COMPLAINT**

- 3.1** At approximately 1:40 a.m. in the early morning of January 29, 2010, Sgt. Michael Joseph (“Sgt. Joseph”) found Paul Cantu in his wrecked car halfway down an embankment along Onion Creek off of East William Cannon Road. Paul Cantu had suffered convulsions or a seizure earlier before the shooting and texted his father stating his car, which was titled in Paul Cantu’s name and with a lien by Ally Bank, contrary to what was reported on television station KXAN the next morning and by APD police reports, was destroyed. Paul Cantu emerged from his car fully clothed and holding a cell phone and a flashlight. The accident took place at approximately 10:52 p.m. on Monday night, January 28, 2019.
- 3.2** Sgt. Joseph, pointing his gun at Paul Cantu, screamed at Paul confusing commands, and ordered him to drop to the ground which he did. Paul put the cell phone and flashlight to his side, explained to Sgt. Joseph that he did not have a gun, that Sgt. Joseph was the one with the gun, with Paul kneeling with both hands in the ground begged for his life.
- 3.3** Sgt. Joseph called for officer assistance on his radio while holding Paul Cantu at gun point. Sgt. Joseph refused to call hostage negotiators and or a mental health unit when he was asked, requesting instead a shield and a SWAT Team, ordering in advance the military-style execution of Paul Cantu.
- 3.4** Approximately fifty (50) APD officers arrived at the scene. At approximately 1:46 a.m. on January 29, 2019 Austin Police Department officer Kyle Peterson, (“Peterson”), with the permission of Sgt. Joseph, without giving the legally required verbal warning to Paul Cantu, shot Paul Cantu from behind his back and shot Paul Cantu’s lower left back with a taser or a “non-lethal weapon” for a prolonged time against Paul Andrew Cantu” who

posed no threat and was kneeling with both hands in the floor, caused his hands to move toward the sky, releasing whatever was misperceived or claimed to have in his hands, causing cardiac arrest, stiff jaw, and pulverized joints in both knees. Paul Cantu dropped to the ground. Based on one of several dash cam or body cam videos, Paul Cantu yelled loudly with excruciating pain and turned his torso to his left side and touched his lower back in agony. This was the first use of excessive and deadly force by the APD officers.

**3.5** At approximately 1:47 A.M. on January 29, 2019, within seconds after Peterson had fired the projectile on Paul Cantu's lower left back, APD officers Robert Mattingly ("Mattingly") and Luis Alberto Camacho III ("Camacho") shot at Paul Cantu 22 times with approximately 5-7 deadly bullets entering his body (2 shots to the back) killing him. From the previous less-than-lethal projectile, Paul Cantu had fallen to the ground face down. Mattingly shot the first bullet. Mattingly waited for a while. You can clearly see Paul had nothing in both hands. Mattingly shot 3-4 times more. That was intentional and premeditated use of deadly force. Camacho started shooting about 12-15 rounds. After the first shot, the first three to four bullets flipped Paul Cantu's body into the air and his body fell back to the ground with Paul Cantu facing up. Camacho continued shooting even while Paul Cantu lay mortally wounded on the ground. This was premeditated use of unnecessary and unjustifiable deadly force. Just before the time of the taser and shooting, Paul Cantu had nothing in his hands or within reach of where his body lay.

**3.6** While Paul lay dying at approximately 1:50:05 APD officer Jacob Beirowski ("Beirowki") approached Paul Cantu, conducted a "body search" looking for a gun and he found none.

- 3.7 Beirowski removed with his shears all of Paul Cantu's clothing leaving him completely naked in about 33-degree weather, bleeding to death in the dirt. Beirowski handcuffed Paul Cantu and proceeded to torture him with tasers in direct contact to his bare skin in his head, neck, face, forehead, testicles, buttocks, abdomen, hands, and arms as established in the photos from the Medical Examiner from Paul Cantu's autopsy.
- 3.8 Paul was physically and sexually assaulted by Beirowski and other APD officers. This was excessive intentional use of force and torture.
- 3.9 All, about 50 APD officers on the site took too long to call for an ambulance or EMS and no one intervened to STOP the brutality and use of deadly force.
- 3.10 The Cantus assert several causes of action against the APD Chief Brian Manley, a detective a sergeant and several officers; The City of Austin ("The City") Rey Arellano; Farah C. Muscadin Office of Police Oversight, the Travis County Medical Examiner's Office, and Dr. Vicky Willoughby ("Dr. Willoughby).

#### IV.

#### DISCOVERY

- 4.1 Plaintiffs intend to conduct discovery in accordance with the Court's scheduling order.

#### V.

#### JURISDICTION AND VENUE

- 5.1 This Court has subject matter jurisdiction over all of Plaintiffs' federal civil rights claims pursuant to 28 U.S.C. §1331. The Court also has jurisdiction over Plaintiffs' claim brought under 42 U.S.C. §1983, pursuant to 28 U.S.C. §1343 and under the Americans with Disabilities Act with respect to the Austin Police Department's Sergeant Michael Joseph and Police Officers Beirowki,, Camacho, and Mattingly failure to accommodate a person

with a disability in the course of the investigation and arrest for a crime committed by someone else, a white suspect, which caused Paul Andrew Cantu to suffer greater indignity, greater injury and ultimately death.

- 5.2.1** The events giving rise to the claims occurred in Travis County, Texas, in this district. Accordingly, this Court is the proper venue, pursuant to 28 U.S.C. § 1391(b)(2).

## VI

### FACTS

- 6.1** At approximately 10:22 P.M. On January 28, 2019, according to a video of the car chase and the first original Police Report, APD Officer Beirowski performed of a car chase of a suspect over a minor traffic violation: not coming to a full stop during a right turn. A review of that video established that the tires of the vehicle came to a stop so the decision to pursue was based on Beirowski harassing the suspect.
- 6.2** Beirowski did not see the suspect; and could not provide a clear description of the suspect nor the vehicle. In fact, Beirowski attempted to get that information from Paul Cantu's father in a telephone call to his father, Roberto Cantu that evening claiming that Mr. Roberto Cantu had been driving in Austin weaving in and out of traffic while drunk. When Cantu asked Beirowski the interior of the vehicle that Paul Cantu was purported to have driven, Beirowski's response was it was empty—that there was nothing inside the car. However since Paul Cantu was in the middle of move to permanent housing in Austin, the vehicle Paul Cantu drove that evening had clothing, baskets of clothing and small appliances in his car as he was supposed to have moved into a new dwelling that evening.
- 6.3** APD Officer Ricardo Medrano, "Medrano" who assisted Beirowski stated in his Original

Police report, which had taken place in an HEB parking lot, he reported:

*"As the driver passed me, I noticed that the driver appeared to be a white or light skinned male 40's-50's, wearing a black or dark colored baseball cap and white hairs ticking out from the sides of the baseball cap."*

**6.4** Medrano and a Dispatcher discussed this in a conversation which was caught on video.

They clearly stated that the suspect who evaded the car chase was a white male in his 40's-50's with lots of white hair and driving a different vehicle.

**6.5** The suspect did not stop and Beirowski decided not to chase him. But asked Medrano for the description of the suspect. Again, Medrano stated that:

*"the driver appeared to be a white or light skinned male 40's-50's, wearing a black or dark colored baseball cap and white hair sticking out from the sides of the baseball cap"*.

**6.6** At approximately 11:00 P.M. On January 28, 2019. APD Officer Beirowski, called Roberto Cantu ("Roberto Cantu") in his private cell phone. Beirowski first tried to frame Tax Attorney Roberto Cantu (Paul Cantu's father) of evading the car chase under the influence of alcohol or drugs, weaving in and out of traffic on IH-35 South and wanted to incarcerate him that night.

**6.7** Roberto Cantu (Paul Cantu's father) spoke with Beirowski for about one hour and was unable to convince him that he was not in Austin, Texas when the alleged car chase took place.

- 6.8** Concerned for her husband, Roberto Cantu, M. Patricia Cantu (Paul Cantu's mother) called Austin 911 and 311 and spoke with APD Officer Shelly Holmstrom ("Holmstrom"). We have yet to receive a recording of that 9-1-1 despite our request under the Texas Public Information Act.
- 6.9** M. Patricia Cantu (Paul Cantu's mother), asked Holmstrom if the call received by Roberto Cantu was legitimate and if the person making all those false accusations against Roberto Cantu was an Austin Police Officer.
- 6.10** Holmstrom verified for M. Patricia Cantu that the call was legitimate and that the person making the call was indeed an Austin Police Officer.
- 6.11** Holmstrom verified that Roberto Cantu (Paul Cantu's Father) had lunch with his son in Austin, Texas around noon and returned to San Antonio. Roberto Cantu arrived in San Antonio Texas at 3:30 pm; talked to some neighbors in person and clients over the phone. Hence, it was proven that Roberto Cantu could NOT have been the suspect who evaded the APD Car chase in Austin which according to Beirowski, had occurred in Austin, Texas around 10:30 P.M.
- 6.12** M. Patricia Cantu (Wife of Roberto Cantu and Paul Cantu's mother) reiterated to Holmstrom that her husband had not been in Austin at the time the supposed car chase took place and the car allegedly involved in the Austin Police Chase did not belong to Roberto Cantu NOR to Paul Cantu.
- 6.13** Furthermore, M. Patricia Cantu explained to Holmstrom that her son, Paul Cantu, had recently experienced seizures and volunteered to release his medical records as she had a Power of Attorney from her son. M. Patricia Cantu, informed Holmstrom Badge of the hospitals her son Paul Cantu had been treated.

- 6.14** Holmstrom called Dell Seton Hospital and verified that Paul Cantu was treated there. around January 24/19, was tested, and diagnosed with SEIZURES [A NEUROLOGICAL DISORDER] and released with papers advising him to see a neurologist. [Paul was killed before being able to see the specialist].
- 6.15** M. Patricia Cantu then asked if her son Paul Cantu was being charged with any crime and to read him his rights and be given the opportunity to call an attorney and remain silenced. She was told: NO. M. Patricia Cantu asked if her son had been taken to a prison: she was told NO. Ms. Cantu asked if there was a warrant for Paul Cantu's arrest or if APD had a warrant to search him and his car; she was told: NO.
- 6.16** M. Patricia Cantu asked if her son had been taken to a hospital or was being transported by an ambulance: She was told; No. M. Patricia Cantu asked Holmstrom where was her son Paul Cantu? Holmstrom stated; APD did not know.
- 6.17** Holmstrom instructed M. Patricia Cantu to file a "Request to Locate" from Beirowski.
- 6.18** The Cantus heard their son's Paul Cantu's voice while he was being interrogated by Beirowski. When confronted with this fact, Beirowski hung up the phone.
- 6.19** It was at that time that Roberto Cantu (Paul Cantu's father) noticed two previous texts his son Paul Cantu had sent him. The first one implied Paul Cantu had suffered a seizure and was treated or sought medical help at the Austin VA Outpatient clinic earlier. The second text stated his car was destroyed, but Paul could not give his precise location. He only mentioned the name of the street, ("Auburn Blaze") which was a residential street in a cul de sac in Austin, Texas.
- 6.20** Beirowski called back. M. Patricia Cantu informed both officers that her son Paul

suffered from severe asthma; was disabled and had  $\frac{1}{4}$  the lung capacity; suffered from chronic psoriasis; had Crohn's disease symptoms, and SEIZURES [a newly developed neurological syndrome, possibly caused by the medication for psoriasis COSENTYX; which caused him to stutter; faint; lose consciousness, may not be able to follow commands or carry a normal conversation; could be disoriented] that Paul Cantu had LOST 50 POUNDS, AND ALL HIS HAIR AND WAS GRAVELY ILL, WEAK AND DEBILITATED.

- 6.21** M. Patricia Cantu reluctantly complied to ask for a "Request to Locate" her son but warned both officers Holmstrom and Beirowski of the delicate health of her son Paul Andrew Cantu and requested he be treated carefully, to call EMS or an ambulance.
- 6.22** M. Patricia Cantu is disabled and was in a wheelchair in severe pain and immobile while awaiting decision to have double-knee joint replacement surgery when the critical incident happened. It was past midnight the Cantus, parents of Paul Cantu, were in San Antonio, Texas. The Cantus did not know the exact location of their son's Paul Cantu in Austin Texas.
- 6.23** Beirowski dissuaded Roberto Cantu from driving to Austin to try to find his son, Paul Cantu stating: "what are you going to do past midnight, in the dark, in the middle of winter, look in every alley and every corner?"
- 6.24** The last words of Beirowski to the Cantus were: "OUR LITTLE CHASE FOR YOUR SON IS OVER".
- 6.25** Beirowski, had pulled the Cantus' son Paul Cantu over, initiating an illegal traffic stop [or pushed him off the main roadway] at 10:25 PM. [In a press release from APD, Redacted, obtained through a FREEDOM OF INFORMATION REQUEST, Austin

Police Officer Jacob Beirowski Badge Number 7838 STATED THAT on January 28<sup>th</sup>, 2019, at approximately 22: 25 hours, I, Officer Beirowski #7838.... “I followed it [Paul’s car] to the intersection of E William Cannon Dr and S IH 35 SVRD NB and activated my emergency lights to initiate the traffic stop”.

- 6.26** Beirowski lied to the Cantus when he called them at about 11:00 P.M. Beirowski already had followed their son Paul Cantu and pushed him off the road and or already had physically and sexually attacked him, seized his money, then threatened Paul Cantu with incarceration and to incarcerate his father Roberto Cantu also. This was evidenced in a video shown to the Cantus on January 6, 2020 by the Travis County District Attorney’s Office Director of Civil Rights.
- 6.27** Beirowski knew that it was a different suspect, a white male driving a different vehicle who had evaded the APD car chase earlier. This was caught on video taken by Medrano and it was widely reported by Chief of Police Brian Manley in his media brief after the Officer Involved Shooting (OIS) of Paul Cantu and during interviews with KXAN and other media.
- 6.28** Late in the evening of January 28, 2019 at 10:30 p.m. according to a police report, APD Police Officer Jacob Beirowski, attempted to stop Paul Cantu’s vehile at the intersection of Slaughter Lane and the IH-35 access road heading north. He reportedly “believed” Paul Cantu was a person suspected of evading an officer earlier in the day, though Paul Cantu was confirmed to be driving a different vehicle than that of the evading vehicle. After the unfolding violence, the vehicle was found off the main roadway near 7900 E. William Cannon Drive, Austin, Texas, down an embankment. A radio call by Police

Office Medrano confirmed that the evading vehicle was that of George Charles Tom, and that Paul Cantu's license plates did not match those of the evading vehicle of Mr. Tom.

6.29 At approximately 1:40 a.m. in the early morning of January 29, 2010, Sgt. Michael Joseph ("Sgt. Joseph") found Paul Cantu in his wrecked car halfway down an embankment along Onion Creek off of E. William Cannon Rd..

6.30 Paul Cantu emerged from his car fully clothed and holding a cell phone and a flashlight.

6.31 Sgt. Joseph, pointing his gun at Paul Cantu, screamed at Paul confusing commands, and ordered him to drop to the ground which he did. Paul put the cell phone and flashlight to his side, explained to Sgt. Joseph that he did not have a gun, that Sgt. Joseph was the one with the gun; kneeling with both hands in the ground begged for his life.

6.32 After Sergeant Joseph arrived at the scene of Paul Cantu's car, which had been wrecked, Sgt. Joseph called other officers and the SWAT team to the scene. "Sgt. Joseph" refused to call hostage negotiators and or a mental health unit when he was asked; requesting instead a shield and a SWAT Team; ordering in advance the military-style execution of Paul Cantu.

6.33 Defendant Mattingly arrived at the scene moments before Camacho. He reported seeing Paul Cantu on the ground, on his hands and knees. Mattingly took a ballistic shield with him as "Sgt. Joseph" had instructed him to do so in advance and ordered Mattingly to "shoot him [Paul Cantu] straight at gun point."

6.34 Mattingly claimed to see Paul Cantu pointing "a gun" at his head [while it was a flashlight, one can clearly see light coming from it.] The gun that APD claimed to have found at the scene **had no light and it was brand new, never used] was found in the theretofore locked trunk of Paul's vehicle.** Many officers urged Paul Cantu to put "the

gun” down. However, there was enough lighting as 5 APD SUVs’ vehicles illuminated Paul Cantu, and Sgt. Joseph and multiple APD Police officers at the scene pointed their lights at Paul Cantu. Paul Cantu himself had a flashlight which he used to be able to climb out of the ditch his car ended up in the dark. Paul pointed this flashlight to himself. On information and belief, Mattingly stated Paul Cantu put down the firearm at a safe distance and remove his hand from it as he was ordered to do so.

**6.35** When Defendant Camacho arrived at the scene, Paul Cantu was already down on the ground with both his hands in the dirt. On information and belief, Camacho saw that Paul Cantu was not holding a firearm at this time. Moreover, Camacho changed his testimony several times producing conflictive reports. Right after his interview, at the scene after Camacho was read the safety questions. Camacho is heard on a video talking to a female who was his support system and telling her: *“All the suspect [Paul Cantu] had in his hands was a flashlight not a gun”*.

**6.36** Shortly thereafter, about 1:45 a.m. on January 29, 2019, Police Officer Kyle Peterson (“Peterson”) requested permission from Sergeant Joseph, to use a less-than-lethal weapon, stun gun or a taser, upon Paul Cantu, and in the presence and view of Defendants Camacho and Mattingly.

**6.37** APD officer Kyle Peterson, (“Peterson”) without warning, from the back used a taser or a “non-lethal weapon” for a prolonged time against Paul Andrew Cantu “Paul Cantu” who posed no threat and was kneeling with both hands in the floor, causing cardiac arrest; stiff jaw; and pulverized joints in both knees. This was use of excessive and deadly force.

**6.38** Based upon the video evidence shown in San Antonio, Texas by Travis County DA’s Civil Rights Director Dexter Gilford to Plaintiffs “The Cantus” on January 6, 2020 in the Bexar County Justice Center Paul Elizondo Tower Building Conference room, Paul Cantu was

struck with from the back, and without warning with projectile from a less-than-lethal weapon. Paul Cantu turned his upper body to the left, touched with his hand one injury yelled in excruciating pain, and experienced visible strong convulsions. Paul Cantu fell to the ground and anything that may have been perceived to be in Paul Cantu's hands, fell out of Paul Cantu's hands.

**6.39** On information and belief, the scene was sufficiently lit by surrounding light sources coming from at least five (5) APD SUV's and APD flashlights and APD guns all pointing their lights at Paul Cantu, furthermore Paul Cantu was holding a flashlight, and pointed his flashlight at himself. There were no obstructions to their vision, for Defendants to see Paul Cantu did not have a gun in his hands before he tried standing, as he was ordered to do. Defendants clearly saw that Paul Cantu did not have a gun in his hands when he began to stand up. On information and belief, they had ample time to see and understand that Paul Cantu was unarmed. Furthermore, Paul told them so repeatedly while kneeling with both hands on the dirt, begging for his life.

**6.40** When Paul Cantu tried to stand within seconds after he was tasered, Paul did not realize all joints in both knees had pulverized [according to X-Rays and Medical Records] as a direct cause of Peterson's prolonged use of a taser or "non-lethal".

**6.41** First both hands were raised showing there was nothing in both hands. Moreover, Paul lost his balance as both knees failed him. Hence, he moved both hands in a 90-degree angle holding both hands to propel his body to stand up and avoid falling into the inclined ditch and uneven terrain in the dark.

**6.42** This was a natural body reaction. It was a learned reaction Paul Cantu had learned while tending for his disabled mother M. Patricia Cantu who was on wheelchair waiting for a double-

knee operation. This was reported by Camacho and other APD Officers at the scene on official Police Records. It was also caught in a video taken by a civilian, Zoe Echeverria, which was shown to the Cantus by the Director of Civil Rights Mr. Dexter Gilford on January 6, 2020. To date, APD has failed to provide copies of the 11 cell phone videos taken by Zoe Echevarria, although these copies were ordered to be confiscated by Chief Manley.

**6.43** Sgt. Joseph instructed Robert Mattingly to shoot Paul Cantu before Paul even stood up, even though he had already granted Office Peterson to use the less-than-lethal weapon.

**6.44** Defendants Camacho and Mattingly shot about 21 rounds at Paul Cantu; there was one shot then a pause [YOU COULD CLEARLY SHOW PAUL HAD NOTHING IN BOTH HANDS] by Mattingly [a veteran who twice served in Afghanistan] followed by 4-5 deadly shots. Then Camacho shot approximately 12-15 shots--three shots to Paul Cantu's back, two shots to his fingers, one to his pelvis/abdomen. The Medical Examiner and attending physician at the hospital called two of the shots in the back as the flanks of Paul Cantu, but the photo from the funeral home shows the shots were in Paul Cantu's back.

**6.45** The type of guns used by Mattingly and Camacho were military-style weapons NOT EVEN USED IN COUNTRIES AT WAR! The impact of the military style guns was so strong that caused Paul Cantu's body to flip up into the air from the ground then fell back harshly.

**6.46** Defendants Camacho and Mattingly continued to shoot Paul Cantu even as he laid dying in the dirt, subsequently killing him.

**6.47** While Paul lay dying at approximately 1:50:05 APD officer Jacob Beirowski ("Beirowski") approached Paul Cantu, conducted a "body search" looking for a gun and he found none.

6.48 With his shears, Beirowski removed all of Paul Cantu's clothing leaving him completely naked in temperatures of the 30s weather with Paul Cantu bleeding to death in the dirt.

6.49 Beirowski handcuffed Paul Cantu, who was naked, mortally wounded and bleeding after being shot [22 times with eight deadly bullets entering his body].

6.50 Paul Cantu laid naked; bleeding to death **but still alive** when **Beirowski**,

Camacho and other Officers decided to inflict Paul Cantu extreme torture with tasers in direct contact to his bare skin. Paul Cantu was tasered in his head, neck, face, forehead, testicles, buttocks, abdomen; hands, and arms. This is evidenced by numerous Certified Forensic Photographs. This was excessive intentional use of force and torture. Camacho is heard in one video asking Beirowski: "*Are we going to taser him with all we got?*"

6.51 Paul Cantu was physically and sexually assaulted by Beirowsky and other APD officers. The physical assault and battery were documented in the Certified Autopsy Reports and In Certified Autopsy Photographs: you can see numerous bruises all over Paul Cantu's body. Furthermore, the X-Rays and medical records revealed broken bones in his arm. The torture with tasers was evidenced in numerous Isolated, labeled and numbered, Certified Forensic Photographs. This was excessive intentional use of force and torture.

6.52 In several videos, one can clearly see APD officers opened and searched Paul Cantu's car without a warrant. One APD officer yelled: "*I found a gun in the trunk*", but did not show it.

6.53 In ALL the videos, multiple APD officers can be seen diligently looking for a gun on the ground and they found none in an area the size of a football fields for about 8 to 10 hours according to tv and newscaster reports.

6.54 The APD Officers D took too long to call EMS. The first deadly injury [Taser which caused **cardiac arrest and stiff jaw impeding him to breath**] and pulverized joints in both knees occurred at 1:45 AM; the 22-gun shots with 5-8 penetrating bullets with no obvious exit

wounds at 1:47 A.M. The hospital was only 5 minutes away from where Paul was shot and rescued by EMS. Paul arrived at Saint David's South Austin Medical Center at approximately 2:13 A.M. OFFICIAL MEDICAL RECORDS PAUL ARRIVED APPROXIMATELY 28-30 MINUTES AFTER THE OFFICER INVOLVED SHOOTING (OIS). APD LEFT PAUL BLEEDING TO DEATH, NAKED AND MORTALLY WOUNDED IN THE DIRT FOR AN ESTIMATED 25 MINUTES. PAUL CANTU LOST AN ESTIMATED 5 LITERS OF BLOOD ACCORDING TO OFFICIAL MEDICAL RECORDS.

6.55 Several minutes after Paul Cantu was transported by EMS to Saint David's South Austin Medical Center Beirowski is heard on a video telling the officer who claimed he had found a gun in the trunk of Paul's car: "*Let's stage the scene.*"

6.56 It is the Cantu's firm belief that APD planted that gun in the scene after Paul Cantu was transported by EMS to Saint David's South Austin Medical Center. Moreover, the gun was never used by Paul Cantu. It was brand new. Paul Cantu tested negative for gun power. There were no fingerprints nor DNA of Paul Cantu in that gun. APD admitted only APD officers handled and tested that gun in the scene and there were scene pictures to prove it. The gun purported to be used by Paul Cantu was found with foliage above it as if the gun had been thrown in a sideways movement. The pattern of how the gun was found goes against the pattern of what may have been perceived as dropped vertically. It is an impossibility for grass and other foliage to grow over a gun that supposedly has been dropped from hands in the air.

6.57 Officers Mattingly and Camacho both tested positive for gun powder.

6.58 APD Officers Julia Padro-Martin (#8243) (sic) "Padro-Martin" and Christopher J. Knodel went to

Saint David's' South Austin Medical Center. Upon arrival all relevant identifiable information of Paul Cantu was provided to front desk staff at the Emergency Room. APD Officers had Paul Cantu's wallet in their hands and EMS staff gave a statement. Both officers wrongfully "*classified*" Paul Cantu and checking him in as a "John Doe" forcing front desk at Saint David's South Austin to delete all identifiable information of Paul Cantu, including but not limited to Paul Cantu's driver's license, name, job I.D. card; medical insurance card information; clinical history, medical records; blood type; emergency and family contact information to ensure his death. Paul was then listed as a "*homeless*"; "*Unemployed*". "*UNINSURED or not having Medical Insurance; NO FAMILY; NO EMERGENCY CONTACTS. NO BLOOD TYPE OR ALLERGIES [WHICH WERE LISTED IN HIS EMERGENCY MEDICAL CARD]. HIS MEDICAL HISTORY WAS DELETED SO WERE HIS KNOWN MEDICAL RECORDS. THIS WAS AN INTENTIONAL AND DELIBERATE ACTION TO IMPEDE PROPER MEDICAL TREATMENT AND CAUSE HIS DEATH.*

**6.59** "Padro-Martin" and Christopher J. Knodel interfered with the Critical Emergency Medical treatment of Paul Cantu, violated HIPPA rules; and his right to have an attempt to save his life. Paul had a private health insurance card which allowed him to receive emergency medical treatment, surgery, specialists, and any use of equipment needed to save his life. The APD officers had in their hands Paul Cantu's wallet containing his medical Insurance Card; and his emergency card with his blood type and allergies. APD had been sent in advance Paul Cantu's medical records and APD officers found Paul Cantu's discharged Papers from Dell Seton after he was diagnosed with seizures six days before . The Staff at front Desk reported all information upon arrival at the Emergency Room at Saint David's

South Austin Medical Center.

**6.60** “Padro -Martin and Christopher J. Knodel **FORCED** the front staff at the ER to **delete all his medical records health Insurance and identifiable information.** After Paul was then listed as a homeless, unemployed; with no health insurance and NO family. Paul was given the wrong plasma products during an emergency blood transfusion because There was no time to test his blood, while his blood type and allergies were listed in his emergency card which APD officers had in their hands yet forced the Staff at ER to delete.

**6.61** Additionally, the APD officers forced ER front desk to list Paul Cantu as HAVING NO MEDICAL INSURANCE while APD Officers had it in their hands! Paul was made to wait until approximately 3:00 AM to have his emergency surgery. The ER doctor after being told Paul Cantu was a “homeless” , “unemployed” with no health insurance stopped trying to safe his life after about 20 minutes.

**6.62** The ER doctor (Dr. Strong) then asked APD if she could harvest Paul Cantu’s Internal Organs for donor recipients. “Padro-Martin” and Christopher J. Knodel APPROVED AND GAVE PERMISSION TO THE ER DOCTOR TO HARVEST PAUL CANTU’S INTERNAL ORGANS, EYES FOR CORNEAS AND TISSUES.

**6.63** “Padro-Martin” and Christopher J. Knodle appropriated Paul Cantu’s body WITHOUT CONSENT trying to interfere with the autopsy and concealed the excessive and deadly force Paul Cantu suffered at the hands of APD OFFICERS. THEY GAVE PERMISSION TO THE ER DOCTOR TO HARVEST PAUL CANTU’S INTERNAL ORGANS, EYES AND TISSUES.

**6.64** THIS WAS DONE WITHOUT CONSENT. PAUL WAS NOT AN ORGAN

DONOR. APD OFFICERS “PADRO-MARTIN AND “KNODEL” KNEW THIS BECAUSE THEY HAD IN THEIR HANDS PAUL CANTU’S WALLET WITH HIS DRIVERS LICENCE, WHICH NUMBER WAS INITIALLY RECORDED WHEN PAUL CANTU WAS ADMITTED TO THE ER. PAUL CANTU ARRIVED AT THE ER UNCOUNCIUOS HE NEVER REGAINED COUNCIOUSNESS. PAUL CANTU DID NOT SIGN ANY FORMS AT SAINT DAVIDS’ SOUTH AUSTIN MEDICAL CENTER.

6.65 BY ORDERS OF APD OFFICERS “PADRO-MARTIN “AND KNODEL” HIS PARENTS “THE CANTUS” WERE NEVER CONTACTED NOR INFORMED OF HIS CRITICAL CONDITION AND DEATH WHILE AT SAINT DAVIDS’ SOUTH AUTIN MEDICAL CENTER. HENCE, “THE CANTUS” PAUL CANTU’S PARENTS AND NEXT OF KIN DID NOT GIVE PERMISSION FOR ORGAN HARVESTING EITHER.

6.66 “Padro-Martin” (sic) and “Knodel” gave specific orders to Social Services NOT TO CONTACT HIS FAMILY; or to provide any counseling or social services. In an egregious act of cruelty “Padro-Martin” and “Knodel” DID NOT AUTHORIZE THE CHAPLAIN TO PROVIDE LAST RITE PRAYERS TO THE DYING PAUL CANTU AND VOLUNTEERS WERE DENIED OF PROVIDING PRAYERS AND COMFORT TO THE DYING PATIENT PAUL CANTU. HIS PARENTS “THE CANTUS” WERE NEVER CONTACTED.

6.67 Paul Cantu DIED ALONE AFTER SUFFERING HORRENDOUS, VIOLENT

**AND INTENTIONAL INFLICTION OF EMOTIONAL, PHYSICAL, SEXUAL PAIN AND SUFFERENG AND TORTURE by APD OFFICERS.**

- 6.68 According to a Fax sent by EMS to Saint David's' South Austin Medical Center, which is now part of Paul Cantu's Permanent Medical Records "Beirowski" told the EMS first Responders that: "Paul Cantu was running naked after a body search and that the APD Officer's gun had been accidentally discharged". "Beirowski" listed five (5) gun shot wounds and gave EMS first responders Paul Cantu's Medical History.
- 6.69 EMS first responders noted that Paul Cantu was naked and suspected sexual assault. Paul Was bleeding profusely from his buttocks and the Medical Records at Saint David's' South Austin Medical Center documented an injury in his buttocks which was photographed during the autopsy. Paul Cantu did not suffer from hemorrhoids.
- 6.70 Per EMS first responders Paul Cantu was found 100 yards from the main roadway, naked wearing only socks in a supine position. **There were no pedestrians** in what EMS first responders described as a "grassy ditch" in a remote isolated location, and the critical incident happened very early in the morning, in the coldest night of the winter.
- 6.71 **Paul Cantu a weak and debilitated disabled patient weighting only 130 pounds Posed no threats to heavily armed Police Officers as there were about fifty (50) APD Officers at the site. Paul Cantu posed no threat to civilians as there were no pedestrians at the sight. Paul Cantu posed no threat to himself; was NOT a psychiatric patient and had NO CRIMINAL RECORDS, NO HISTORY OF VIOLENCE. NO HISTORY OF ATTEMPTED SUICIDE.**
- 6.72 Mr. Dexter Gilford, "Director of Civil Rights" from the Travis County District Attorney's office denied that Paul Cantu was found naked and that he was tasered.

There are videos and scene photographs which prove it. Mr. Dexter Gilford, "Director of Civil Rights Unit" from the Travis County District Attorney's Office suborned perjury from the EMS first responders' witnesses. **Before** Mr. Dexter Gilford investigated, we had their Report in writing. **After**, Mr. Dexter Gilford investigated the EMS first responders Stated that: "They do not remember what happened". They appeared to suffer from "collective amnesia". Nevertheless, their report was contemporaneous.

**6.73 By orders of Chief of Police Brian Manley the eleven (11) videos taken by a civilian "Zoe Echeverria" were appropriated by APD officers sent to her house. Ms. Echevarria lived close to where the OIS took place. She ran and took the videos capturing the entire Officer Involved Shooting of Paul Cantu. Zoe Echeverria's cell phone was also confiscated by APD as well.**

Mr. Dexter Gilford "Director of Civil Rights Unit" from the Travis County District Attorney's office showed "the Cantus" one video which proved Paul was unarmed during a meeting in San Antonio Texas on January 6, 2020.

To this date by orders of APD Chief Brian Manley, against his own Policies the **Raw videos** taken by Zoe Echeverria have not been released to the Cantus; nor the 911 and 311 calls the Cantus made and other important Police Records, despite numerous requests. This is obstruction of justice to impede The Cantus from filing a Lawsuit against APD. APD Chief Brian Manley is not transparent and tried to "cover-up" the wrongful death of Paul Cantu. APD Chief Brian Manley has been under investigation for Racially Profiling and discrimination and has been asked to resign by many members of City of Austin Counsel.

## VII

### CAUSES OF ACTION

#### **Claims Against the Austin Police Department**

##### **Excessive Force in Violation of the Fourteenth Amendment to the U.S. Constitution**

- 7.1 Plaintiffs incorporate the foregoing paragraphs as set forth above.
- 7.2 Acting under the color of state law Beirowski racially profiled Paul Cantu and chased him over a minor traffic violation [not coming to a full stop during a left turn] committed by a different white suspect driving a different car.
- 7.3 Acting under the color of state law Beirowski racially profiled Paul Cantu's father Roberto Cantu and falsely accused him of a crime he did not commit [evading an APD car chase under the influence of alcohol or drugs] and tried to incarcerate him. Knowing well it was a white male, driving a different car who was involved in the car chase.
- 7.4 Acting under the color of state law Sgt. Joseph racially profiled Paul Cantu and gave permission to Beirowski to chase him when Beirowski learned from Roberto Cantu that Paul Cantu was carrying \$2,000-\$4,000 cash to pay for the lease and deposit of a rental property. [Paul had lived permanently in Austin, Texas for only two weeks, was in intensive job training and had been in an out of hospitals. Hence Paul did not time to transfer his bank accounts.]
- 7.5 Acting under the color of state law Sgt. Joseph racially profiled Paul Cantu and gave permission to Beirowski to chase him when both learned that Paul Cantu was Hispanic disabled in his lung suffered from chronic psoriasis and was experiencing seizures, Chron's Disease, had lost 50 pounds, all his hair and was very ill and debilitated as a reaction to the medicine Cosentyx he was taking for psoriasis [an anaphylactic or allergic reaction.
- 7.6 Acting under the color of state law Sgt. Joseph pointed a gun at Paul Cantu when he found him in his

car and yelled at him to go to ground. Sgt. Joseph refused to believe Paul Cantu when he told Joseph that it was Joseph the one with a gun and that Paul was not going to hurt Joseph. Sgt. Joseph refused to render medical help to Paul Cantu even after Paul Cantu told him repeatedly; "I can't breathe".

7.7 At the time Sgt. Joseph gave APD Officer Peterson permission to use taser from the back and without warning at Paul Cantu, the now deceased Paul Cantu did not pose a threat to either Peterson, Sgt. Joseph, or Officers Camacho or Mattingly, or anybody else. Paul Cantu was on his knees digging in the dirt trying to hide his only proof: a cell phone or tablet he used to record his violent encounter with APD officers and text for help.

7.8 Peterson shot Paul Cantu in his lower left back with a projectile from a less-than-lethal weapon when Paul Cantu had nothing in his hands, he was begging for his life, in a fetal position with both hands on the ground.

7.9 Acting under color of state law, Defendants Camacho and Mattingly shot and killed 27-year-old Paul Cantu by the side of the road.

7.10 Defendants saw that Paul Cantu was not holding a weapon at the time they shot him, so they knew he did not pose an immediate risk to them or others, making their use of deadly force excessive, and violating Paul Cantu's constitutional right to be free from excessive force during an investigatory stop or arrest.

7.11 Defendants are not entitled to qualified immunity for wrongfully killing Paul Cantu because his right to be free from excessive force during an investigatory stop and or search was clearly established at the time, they killed him.

7.12 It was unreasonable for Defendants, who wore ballistic shields, and or were heavily armed with military style guns and other weapons at the scene of the shooting could believe that their respective lives were in danger and that they feared for their lives, within the meaning required by the Section 1983 statute for them to avail themselves of the claim of qualified immunity.

7.13 According to APD Official Reports and media releases there were an average of **fifty (50)** heavily armed APD officers at the scene. All had received intensive training on how to shoot and use all their weapons. It was unreasonable for Defendants Beirowski, Peterson, Sgt Joseph, Mattingly, and Camacho to believe that their respective lives were in danger and that they feared for their lives, within the meaning required by the Section 1983 statute for them to avail themselves of the claim of qualified immunity. When Paul Cantu [**one individual confronted by heavily armed 50 individuals**] was a disabled, fragile, vulnerable debilitated severely ill patient. And his Medical History and Medical Emergency had been broadcast by radio widely by dispatchers.

7.14 At the time of his violent and deadly encounter with APD Officers, during a Medical Emergency Paul Cantu was a severely asthmatic, disabled in his lung patient. Paul Cantu weighted only 130 pounds [like a cancer patient, Paul was immune suppressed taking strong anti-metabolites]. Paul was suffering from dehydration.

7.15 Paul Cantu had lost fifty (50) pounds and all his hair, was experiencing Irritable Bowel Syndrome or Chron's Disease, and Seizures [a neurological disorder which caused him to shake mildly, faint, loose conscience, experienced disorientation, unable to follow commands, or effectively communicate] as an adverse allergic or anaphylactic reaction to the medicine Cosentyx he had been prescribed for psoriasis.

7.16 Paul Cantu **one (1)** highly debilitated, skinny, ill disabled man could have been easily subdued without use of any non-lethal and lethal weapons by any of the heavily armed, physically fit **fifty (50) Police Officers** present on the scene. Therefore, it was unreasonable for Defendants Beirowski, Peterson, Sgt Joseph, Mattingly, and Camacho to believe that their respective lives were in danger and that they feared for their lives, within the meaning required by the Section 1983 statute for them to avail themselves of the claim of qualified immunity.

7.17 Furthermore, ALL Austin Police Department (APD) defendants Sergeant Michael Joseph and Police Officers Beirowki, Peterson Camacho, and Mattingly refused to hear and believe Paul Cantu's pleas for his life when he repeatedly yelled: "I can't breathe".

7.18 The APD officers searched Paul Cantu's car taking his cash, electronics, and documents, but left Paul Cantu's Dell Seton Hospital discharged Medical records in the front seat. Paul Cantu's asthma inhaler and medicines were in his front seat in CVS pharmacy bag. Rather than use this information to render medical aid to the patient APD officers labeled it "Drug Paraphernalia" to discredit and criminalize the victim.

7.19 It was premeditated homicide, as APD Beirowski and Sgt. Joseph gave orders and planned the military-style execution of Paul Cantu in advance, before Paul stood up, while he was on his knees pleading for his life with both hands on the dirt.

7.20 It was premeditated homicide, as APD Beirowski and Holmstrom received Paul Cantu's medical records and were briefed by M. Patricia Cantu of Paul Cantu's Clinical History, and his Medical Emergency in advance of the OIS when filed a "request to locate" and Sgt. Joseph as Beirowski supervisor overhead the conversation.

7.21 Hence, it was unreasonable for Defendants Beirowski, and Sgt Joseph, to believe that their respective lives were in danger and that they feared for their lives, within the meaning required by the Section 1983 statute for them to avail themselves of the claim of qualified immunity.

7.22 Paul Cantu was not warned beforehand by Police Officer Peterson that he was going to be hurt. Paul reacted to the less-than-lethal weapon projectile hitting his lower back by yelling very loud in pain, experienced heavy convulsions all over his body turning his torso, touching his back with an anguished look on his face before falling to the ground, and continued to not have any item or weapon in his hand.

7.23 Defendants failed to render aid to Paul Cantu, knowing well that Paul Cantu was severely asthmatic; disabled in his lung because M. Patricia Cantu his mother called to Austin 911 and 311 and released Paul Cantu's Clinical History and Medical records in advance to Beirowski and Holmstrom and this was announced by the dispatcher over the radio. Furthermore, Paul Cantu himself told Sgt. Joseph and the other officers: "I can't breathe" several times and

shivered in the coldest night of the winter.

7.24 Paul Cantu had a seizure [neurological syndrome] suffered injuries and his vehicle was totaled and undriveable. Mrs. Cantu's call to Austin 9-1-1 and Austin 3-11 two APD officers Holmstrong and Beirowski promised to carry out a welfare check on Paul Cantu and send Ambulance or EMS.

7.25 Upon their arrival at the crash site on the embankment, Defendants failed to render aid to Paul Cantu, as they knew that Paul suffered from asthma, had recently suffered a seizure, and was stranded with his car in a ditch totaled less than three hours before. This was based on the information previously provided by Plaintiff M. Patricia Cantu to Austin PD 911 and Austin 311 M. Patricia Cantu having sent that medical information to Austin PD, which they had in their hands and should have provided to anyone related to this case or matter. This information was widely reported and broadcasted through radio by dispatchers several times.

## VIII

### **FAILURE TO ACCOMMODATE FOR THE DISABILITY OF PAUL ANDREW CANTU IN THE MIDDLE OF THE INVESTIGATION AND ATTEMPTED ARREST ON JANUARY 29, 2019**

8.1 Mrs. Cantu, during her telephone call to APD 9-1-1 informed the APD call assistor that Paul Cantu was asthmatic, had suffered from convulsions recently, had a deflated lung, suffered from Crohn's disease, and had a neurological disorder for which he needed to see a neurologist.

8.2 Mrs. Cantu sent copies of Paul Cantu's medical records to establish that he had these medical conditions that rose to the level of a medical disability. Even the EMT's in the ambulance had copies of Paul Cantu's reports, which presumably had been forwarded by

APD as the Cantus had no way of knowing the fax number of the ambulance dispatched to pick up Paul Cantu in his grave condition.

8.3 The Austin Police Department and its officers had constructive notice of Paul Cantu's medical disability and that knowledge should be imputed to the officers that had found Paul Cantu at the scene of the accident or forwarded the medical disability information on Paul Cantu and the officers on duty, including Sgt. Michael Joseph, Officers Beirowski, Peterson, Camacho and Mattingly ignored what had been sent by either 9-1-1 or dispatch and did not offer any accommodation for Paul's medical disability.

8.4 The lack of the officers' regard for Paul Cantu's medical disability rose to the level of failure to accommodate and a direct violation of Title II of the Americans with Disabilities Act.

8.5 The Police Officers at the scene and specifically Bierowski or Sgt. Joseph had actual knowledge of Paul Cantu's medical disability.

8.6 Also, apparently the officers at the scene of Paul Cantu's shooting spoke to their Austin Police Union President Ken Casady as Mr. Casaday remarked in the KXAN video which appeared in a YouTube stated "(w)e don't know what kind of mental problems this man was having." With the statement of mental problems, the officers at the site of the shooting, Bierowski, Sgt Joseph and Captain Manley made no provision and apparently had no procedures to use in a crisis invention in an attempted arrest to account for accommodation with someone with a possible mental health condition which may have arisen when one is driving, has a car accident and the car is totaled, the temperature is in the thirty degree range, one has had convulsions and/or a seizure and an officer arrives yelling ,when the falsely accused cannot understand directions because of the loud yelling when the wind was blowing that evening and APD decides to shoot and kill because the officers claim to fear for their life and there are over 50 officers present.

8.7 The Police Officers cannot claim that they had no direct knowledge and had constructive knowledge of Paul Cantu's medical disability.

8.8

**Claims Against the City of Austin**

8.8 Plaintiffs assert a *Monell* claim that the City promulgated policies or practices that violated Paul Cantu's Fourth and Fourteenth Amendment rights, including, among others, inadequate training, racial profiling and discriminating against minority suspects such as Hispanics and people with disabilities like Paul Cantu by using unwarranted excessive force and deadly force at disproportionately higher rates. The Cantus (Plaintiffs) assert both a due process claim, and an equal protection claim. Bellow some samples [There are too numerous to cite here they will be compiled in an appendix] of numerous articles of the City of Austin being cited for inadequate training; racial profiling; discrimination against minorities and other policies or practices that violate the Fourth and Fourteenth Amendment rights:

*"The Defendants' APD Sergeant and Officers' training is consistent with such a fundamental misunderstanding of the law and generally accepted police practices regarding the use of deadly force, it would support a conclusion that the training provided by the Austin Police Department to its officer is dangerous and unreasonable."*

Jeffrey J. Noble. Expert Witness in Cases of Police Brutality and use of deadly force by APD officers.

Austin Police Officers are weaponized and militarized waging war against innocent civilians. Young Trainees and cadets of the Austin Police Academy have gone public to the denounce the culture of this organization which promotes violence, bigotry, racism, and hatred against minorities:

## **AUSTIN POLICE CADETS COMPLAINT ABOUT THE ACADEMY OF POLICE**

<https://www.youtube.com/watch?v=xAh3TpZsZWM>

**Austin police cadets injured in academy training**

<https://www.youtube.com/watch?v=xAh3TpZsZWM>

**Hear from cadets who allege abuse in Austin police training academy**

<https://www.youtube.com/watch?v=Ssz0Oy006Gc>

**APD Chief calls for changes to cadet training**

<https://www.youtube.com/watch?v=oeT16wRuOU4>

<https://www.youtube.com/watch?v=6VFxxqJ6akQ>

**Secret tape: Austin police chief angry over minority policing**

**APD violence against civilians during traffic stops: (The Austin Chronicle)**

**APD violence against civilians during traffic stops: (The Austin Chronicle)**

***Original post, Wednesday, April 10, 3:30 pm 2019:***

*When it comes to traffic stops, the Austin Police Department isn't looking so great right about now. Last week, The Atlantic, using numbers from Scott Henson's Grits for Breakfast blog, reported that APD officers are "more likely to use injury-causing force against drivers they pull over than any other large Texas jurisdiction."*

*From the 2018 data Henson compiled courtesy of the state's 2017 Sandra Bland act, 77 times out of every 10,000 APD traffic stops resulted in use of "injury-causing" force. Notably, of the 64 police departments and sheriff offices tracked, Austin had the third highest use of force rate, following Marshall PD (124) and Eagle Pass PD (105). Looking at only at other large jurisdictions, APD topped Houston's police department, which followed with 53 out of 10,000, then Denton PD with 42, and Corpus Christi at 24. (It should be noted that Fort Worth Police Department still has not reported its 2018 data and Dallas PD used force less than 1 time out of 10 k stops.) Additionally, Travis County Sheriff's Office only used force 7.82 stops out of 10 k.*

*Of the many components implemented by the Sandra Bland Act – named after the 28-year-old woman who died in police custody following a traffic stop and aggressive arrest in 2015 – requires police departments throughout the state to collect data on the use of force, Class C misdemeanor arrest rates, and arrests made for unpaid traffic tickets. (Henson noted in his March 9 blog that while the reports are identified as racial profiling reports because they're intended to document racial discrimination, they're also the "most detailed description we have of police activities at Texas traffic stops.") However, the cringe-worthy statistics identified by Henson were omitted from APD's racial profiling report submitted to Mayor Steve Adler and City Council via city memo on Feb. 27. Instead, the department focused only on racial profiling*

aspect, which showed that Hispanic drivers represented the majority of people searched (44%) after being pulled over, even though white drivers were pulled over at a higher rate (47%). Black drivers accounted for 14.5% of traffic stops but were searched 24.5% of the time.

APD's full report to the Texas Commission of Law Enforcement (which can be found [here](#)), tracks 119,320 traffic stops from 2018. Of those stops, "physical force resulting in bodily injury" was used a total of 921 times. The severity of injury remains undocumented. Additionally, 12,447 stops lead to a search, but contraband was only discovered in 3,662 of those searches – roughly a fourth of the time. Using these numbers, Henson also identified that in 2018 APD made 124 arrests out of every 10,000 stops for Class C Misdemeanors, which should be punishable with a fine and no jail time. Waco PD (with 451 arrests) topped the list, followed by League City (406), San Antonio (246), and Odessa (236).

Also tracked in Henson's spreadsheet, which analyzed data from 4.6 million traffic stops from 38 of the state's largest policing jurisdictions, is the number of arrests made for outstanding warrants for traffic tickets per 10,000 stops. Again, APD ranks in the top with 262 arrests per 10 k stops. Houston and El Paso arrested 104 folks out of 10 k on outstanding traffic tickets, while Beaumont PD made 336 arrests for every 10,000 stops and Longview PD topped the list with 473. Henson concluded that **"Austin PD stands out among the worst in each category ... The city has a reputation as liberal, but these data evidence quite authoritarian policing practices compared to other large Texas jurisdictions."**

### **Suit filed against Bastrop police officer alleges financial abuse of elderly woman**

By [Brandon Mulder](#)

[@brand4on](#)

Posted Jun 27, 2019 at 10:41 AM Updated Jun 27, 2019 at 10:41 AM

<https://www.statesman.com/news/20190627/suit-filed-against-bastrop-police-officer-alleges-financial-abuse-of-elderly-woman>

8.9 Plaintiffs rely on and seek to unseal several exhibits which will be submitted to the court before the trial for consideration including but not limited to TCOLE Training Records for all Defendants; TCOLE Training Curricula; Internal Affairs History of all Defendants; Auditor's Per Capita Rate of Fatal Shootings; Auditor's Per Capita Rate of MH Fatal Shootings; Washington Post Per Capita Rate of Fatal Shootings. Robert Mattingly's discharge papers from the military. The newspaper articles may be admitted showing that the City of Austin had notice of complaints of discriminatory policing and excessive use of force.

8.10

### **Claims Against the Travis County Medical Examiner Dr. Willoughby**

8.10 The Cantus name the Travis County Medical Examiner's Office and Dr. Nancy Willoughby "Dr. Willoughby" who performed the autopsy of their son Paul Cantu. Dr. Willoughby denied the rights of the Cantus as parents and next of kin to have an independent Forensic Pathologist Present and or a Forensic Pathologist present in the autopsy of their deceased Paul Cantu. However, Dr. Willoughby allowed a close colleague of the APD Officers to sit, observe the entire autopsy and dictate what could and could not be stated in the Certified Autopsy Report of Paul Cantu. The first excessive tasing of Paul Cantu, from the back without warning, was caught on video; APD officer Camacho stated it in his Official Interview and it was mentioned Kyle Peterson's Police Report. According to EMS and the permanent medical records from Saint David's' South Medical Center, this first tasing caused Cardiac arrest; stiff jaw [which impeded Paul to breath and be given an Oxygen Mask and or apply CPR] both deadly due to Paul Cantu's asthma and disability in his lung; it also pulverized Paul's joints in both knees [evidenced by X-Rays] which caused Paul to lose his balance and Paul raised both hands when ordered to stand up making it look as "*though he had a weapon*" in his hands according to Chief of Police Brian Manley. This first prolonged tasing caused Paul to experience strong convulsions. Both the lack of oxygen and the convulsions caused by this first taser may have contributed to Paul's disorientation, and inability to follow commands, because Paul had been recently diagnosed with a neurological disorder which caused mild seizures in which he fainted and lost consciousness. The Certified Forensic Photographs, which were identified; isolated and labeled clearly revealed taser prong injuries in Paul's forehead; electric shock burns consistent with a taser or stun gun applied directly to bare skin in his head, arms, hands and legs, testicles; buttocks and are too numerous to have

been ignored and taser "dots" markings were noticed all over his body. Yet Dr. Willoughby chose NOT TO REPORT both incidents of tasering by prolonged time in tasering and to torture Paul AFTER he had been shot; stripped of all his cloths; handcuffed and bleeding to death completely naked in the dirt. This according to the FBI is a "Federal felony offense". Because by federal Laws both the APD and the Travis County Medical Examiner who performed the autopsy must report the use of tasers or stunt guns and the injuries caused by these "*non-lethal weapons*", which have been scientifically proven to cause severe pain, permanent serious injuries, and death. Dr. Willoughby took possession of Paul Cantu's Body; the TCME Office twice threaten to cremate his body; delaying his Christian Burial for several days and Transportation to his hometown in San Antonio Texas. Dr. Willoughby sent the wrong file of a decedent to the funeral home and attempted to send the wrong body! The Cantus were then informed that the internal organs; eyes for corneas and tissues of their son Paul Cantu had been harvested and given up for prospective transplant recipients; this was done illegally, without consent. Paul Cantu was not an organ donor; he arrived unconscious at the Saint David's South Austin Medical Center did not sign any forms and never regained consciousness. The Cantus were never contacted.

- 8.11 The Cantus notified the F.B.I. and the embassy of the Country of Birth of Mrs. Cantu and had to fight to impede their son's cremation and to be able to transport his body for proper Christian Burial according to their cultural and religious beliefs. The TCME office appointed an attorney to impede the Cantus to obtain all records from the Autopsy of their son. It took one year and seven months for the Cantu's to finally obtained the Certified Autopsy Report; Diagrams; and Forensic Photographs. The organ donation

records were destroyed. The Cantus pressed for answers; they were stonewalled; harassed and threaten. Once again, Dr. Willoughby refused to answer questions [even against Policies of the TCME] and appointed an attorney who answered for her, denying any information.

## IX

### DAMAGES

- 9.1 As a result of Defendants' acts and omissions as set forth above, Plaintiffs have suffered actual damages in excess of the jurisdictional limits of this Court. Plaintiffs bring this lawsuit against Defendants for recovery of loss of companionship and society and Plaintiffs' mental anguish caused by the death of their only child and son Paul Cantu. Plaintiffs further bring suit on behalf of their deceased son Paul Cantu for the injuries he suffered prior to his death, including substantial physical pain and suffering and mental anguish Paul Cantu suffered prior to his death and costs of burial.
- 9.2 In their capacity as sole heirs to Paul Cantu's estate, Plaintiffs assert a survival claim on the estate's behalf. The estate has incurred damages including, but not limited to, conscious pain and suffering, and death.
- 9.3 In their individual capacities, Plaintiffs assert wrongful death claims on behalf of all statutory wrongful death beneficiaries. They suffered damages including, but not limited to, past and future mental anguish, loss of companionship, society, services, and affection of their son. Loss of the promise from their son to provide aid and comfort to his elderly parents the Cantus and disabled mother M. Patricia Cantu when his parents could no longer provide medical and other assistance to and for themselves,
- 9.4 Loss of income for the last two years from Tax Attorney Roberto Cantu's employment and projected loss of income in the future attributable to the post-traumatic stress syndrome due to

the killing and torture of his only child and son by the shooting officers. Loss of money in Tuition and fees for M. Patricia Cantu a PhD Candidate who had to postpone her PhD dissertation due to post-traumatic stress syndrome. Loss of future income even after obtaining her PhD due to post-traumatic stress disorder. Loss of income from what she would have been able to earn from having graduated sooner had Paul Cantu's death had not happened.

9.5 Loss of future income of Paul Cantu, who was very accomplished despite his disability. Paul was an honor graduate of Texas Tech University where he graduated with a B.A. in Mass Communication and Spanish. Paul had studied abroad in Spain and Portugal and was bilingual and learning a third language. Paul Cantu was a distinguished international violinist since he was only four years old. He was music ambassador for the United States in Germany, Austria, and the Check Republic. Paul Cantu had relocated to Austin Texas to apply to Law School and become an attorney like his father Tax Attorney and CPA Roberto Cantu.

9.6 Severe health problems including permanent disability, mobility and use of her hands by M. Patricia Cantu mother of Paul Cantu. Psoriasis and psoriatic arthritis are genetic illness aggravated by stress. M. Patricia Cantu has suffered tremendous amount of stress, and post-traumatic stress due to the violent death of her only child and son Paul Cantu.

9.7 The intentional infliction of physical pain, suffering, emotional pain and shock and life-threatening injuries [cardiac arrest; stiff jaw and pulverized joints in both knees] to Decedent Paul Andrew Cantu from the "non-lethal" projectile to Paul Cantu left lower back shot without warning from the back Police Officer Kyle Peterson ("Peterson") when Paul Cantu was on his knees at the time of Police Officer's Peterson's firing of the less than lethal projectile.

9.8 The intentional infliction of physical pain, suffering, emotional pain, and shock by use of deadly force inflicted upon Paul Cantu by Mattingly [a veteran who twice served in

Afghanistan] and Camacho who shot Paul Cantu an average of 22 gunshots in a premeditated military-style execution using military weapons not even allowed in third world countries at civil war.

9.9 The intentional infliction of torture by Beiroeski, Camacho and other unidentified APD Officers after Paul Cantu laid mortally wounded but still alive causing severe physical pain, suffering, and emotional pain. Beiroeski removed with his shears all of Paul Cantu's clothing leaving him completely naked in less than 33 degrees weather, bleeding to death in the dirt. Beiroeski handcuffed Paul Cantu and proceeded to torture him with tasers in direct contact to his bare skin in his head; neck; face; forehead; testicles; buttocks; abdomen; hands; and arms. This unnecessary; extremely violent and senseless premeditated torture would shock any normal person's conscience.

9.10 The severe physical assault and battery which caused broken bones; injuries and bruises all over Paul Cantu's body widely evidence in the Certified Autopsy Reports; Medical Records; Forensic Photographs is an unacceptable use of Police Brutality in a weak, debilitated and severely ill disabled young man.

9.11 The sexual assault perpetrated by Beiroeski and other APD officers evidenced by Medical Records and Forensic Photographs is disgusting and unacceptable. Especially considering that ALL the defendants were issued new military weapons right after the attack; went about their business as usual [despite supposedly being placed in "administrative leave" And continue to be free without any repercussions is a threat to the young men in Austin Texas. But specially to minorities Hispanics; people with disabilities and those with chronic and debilitating medical conditions.

**X**

**PUNITIVE DAMAGES**

**10.1** Defendants have acted with malice or reckless indifference to Paul Cantu and Plaintiffs' rights. Defendants, by engaging in the aforementioned acts and/or in authorizing and/or ratifying the aforementioned acts, engaged in willful, malicious, intentional, oppressive, and deadly conduct, and acted with willful and conscious disregard, or alternatively reckless disregard or indifference of the rights, welfare, and safety of Plaintiffs, therefore justifying the award of punitive and exemplary damages in an amount to be determined at trial. Therefore, Plaintiffs additionally bring suit for punitive damages and exemplary damages.

**XI**

**ATTORNEYS' FEES AND EXPERT FEES**

**11.1** A prevailing party may recover reasonable attorneys' fees, expert fees, and costs. Plaintiffs bring lawsuit for these fees from Defendants. Plaintiffs seeks all reasonable expert fees and attorneys' fees in this case, including preparation and trial of this lawsuit, post-trial, pre-appeal work, any appeal and post-judgment discovery and collection in the event execution on the judgment is necessary. Plaintiffs are entitled to litigation expenses including pursuant to 42 U.S.C. § 1988.

**XII**

**JURY DEMAND**

**12.1** Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs request a jury for all issues triable to a jury.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and, upon final trial, Plaintiff shave Judgment against Defendants, jointly and severally, as requested above, and as follows:

1. Judgment against Defendants for all damages alleged in this petition;
2. Interest before and after judgment at the highest rate provided by law, until paid;
3. Costs of suit;
4. Reasonable and necessary attorneys' fees and expert witness fees;
5. Punitive damages; and
6. Such other and further relief to which Plaintiffs may be justly entitled.

DATED: January 26, 2021

Respectfully submitted,

Roberto Cantu

Roberto Cantu, in his individual capacity  
[robcantulaw@gmail.com](mailto:robcantulaw@gmail.com)

Maria Patricia Cantu

M. Patricia Cantu, in her individual capacity  
[mpatriciacan2@gmail.com](mailto:mpatriciacan2@gmail.com)

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Texas Board of Legal Specialization

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**JAN 27 2021**

**CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY CLERK**

January 26, 2021

Via Fedex

RE: Complaint Filing Cantus v. APD Chief Manley, et al

Dear Sirs/Madams:

Enclosed for filing is the original complaint and the filing fee of \$402. We are filing pro se.

I have attached a copy of the first page of the complaint so you can stamp the filing date and return to us,

Thank you.

  
Robert Cantu

# FedEx®

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Extra <sup>138</sup> Urgent

6:30  
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1/27/21

ORIGIN ID: SMTA (210) 732-2688  
ROBERTO CANTU  
1032 W. WOODLAWN AVE  
SAN ANTONIO, TX 78201  
UNITED STATES US

SHIP DATE: 26 JAN 21  
ACTWGHT: 0.25 LB  
CAD: 1082010/NET4340

BILL SENDER

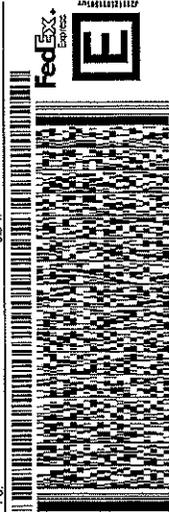
TO  
U.S. DISTRICT CLERK-WESTERN DIST.  
501 W. 5TH ST., SUITE 1100

AUSTIN TX 78701

REF:

(512) 916-5896

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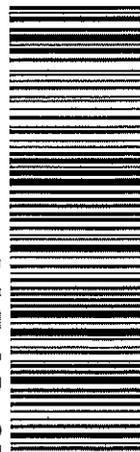


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DUPLICATE

Court Name: TEXAS WESTERN  
Division: 1  
Receipt Number: 100039566  
Cashier ID: dlewis  
Transaction Date: 01/28/2021  
Payer Name: LAW OFFICE OF ROBERTO CANTU

-----  
CIVIL FILING FEE- NON-PRISONER  
For: ROBERT CANTU  
Amount: \$402.00  
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PAPER CHECK  
Check/Money Order Num: 4204  
Amt Tendered: \$402.00  
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Total Due: \$402.00  
Total Tendered: \$402.00  
Change Amt: \$0.00

1:21-CV-84-LY

CANTU ET AL V AUSTIN POLICE  
DEPARTMENT ET AL

.....

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

M. PATRICIA CANTU and §  
ROBERTO CANTU, §  
*Plaintiffs,* §

v. §

AUSTIN POLICE DEPARTMENT §  
CHIEF OF AUSTIN POLICE §  
DEPARTMENT, BRIAN MANLEY; §  
DETECTIVE ERIN TRUHO (SUI); §  
SERGEANT MICHAEL JOSEPH; §  
OFFICERS JACOB BEIROWSKI, §  
ROBERT MATTINGLY, §  
LUIS ALBERTO COMACHO III, §  
KYLE PETERSON, JULIAN PADRO- §  
MARTIN #8243, CHRISTOPHER J. §  
KNODEL; THE CITY OF AUSTIN, §  
TEXAS REY ARELLANO, §  
ASSISTANT CITY MANAGER; §  
FARAH C. MUSCADIN, DIRECTOR, §  
OFFICE OF POLICE OVERSIGHT; §  
TRAVIS COUNTY MEDICAL §  
EXAMINER'S OFFICE DR. VICKIE L. §  
WILLOUGHBY, D.O. DEPUTY §  
MEDICAL EXAMINER §  
*Defendants.* §

CIVIL ACTION NO. 1:21-cv-00084-LY

**DEFENDANTS' MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants City of Austin, Brian Manley, Rey Arellano, Farah Muscadin, Erin Truho, Julian Padro-Martin and Christopher Knodel file this Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure as follows:

**I. NATURE OF THE LAWSUIT**

Plaintiffs bring this civil rights action as a result of injuries and damages they allege they sustained as the result of the death of their son, Paul Cantu, during an officer-involved shooting

near East William Cannon Road in Austin, Texas on January 29, 2019. Plaintiffs filed this lawsuit against the City and numerous City and Travis County officials alleging various constitutional violations under 42 U.S.C. §1983. (Doc. No. 1). In particular, Plaintiffs assert a *Monell* claim against the City alleging that the City's policies and practices of "inadequate training, racial profiling and discriminating against minority suspects" led to Cantu's death. They also assert claims against the former Chief of Police, Director of the Office of Police Oversight, and a detective and police officers who had no direct involvement with the officer-involved shooting.

For the reasons set forth below, the Court should dismiss all of Plaintiffs' claims against these Defendants since Plaintiff's allegations fail to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).

## **II. MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)**

In reviewing a motion to dismiss, the "court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotes and citations omitted). To overcome a motion to dismiss, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *see also Culberson v. Lykos*, 790 F.3d 608, 616 (5th Cir. 2015). A plaintiff's lawsuit will not survive a motion to dismiss if the facts pleaded do not raise the right to relief "above the speculative level," even if the facts are viewed in the light most favorable to the plaintiff. *Twombly*, 550 U.S. at 555. "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss."

*Taylor v. Books A Million*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *Fernandez–Montes v. Allied Pilots Ass’n*, 987 F.2d 278, 284 (5th Cir. 1993)).

### **III. PLAINTIFF’S SECTION 1983 CLAIMS AGAINST THE CITY SHOULD BE DISMISSED.**

#### **A. Insufficient Facts to Establish a Policy or Practice**

Contrary to federal pleading requirements, Plaintiffs failed to plead an express policy of the Austin Police Department that led to any of the alleged constitutional violations. It is well-settled that to bring a Section 1983 suit against a city, a plaintiff must allege the implementation or execution of a policy or custom that was officially adopted by the city. Specifically, “[a] plaintiff must identify: ‘(1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose ‘moving force’ is that policy or custom.’” *Valle v. City of Houston*, 613 F.3d 536, 541-42 (5th Cir. 2010) (quoting *Pineda v. City of Houston*, 291 F.3d 325, 328 (5th Cir. 2002)). Liability can attach only through “acts directly attributed to it through some official action or imprimatur.” *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009) (quoting *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001)) (internal quotations removed). *Respondeat superior* liability is insufficient to establish constitutional liability against a city. *See Monell v. Dep’t of Social Service of City of New York*, 436 U.S. 658 (1978).

Moreover, the Fifth Circuit has recently confirmed that to survive a motion to dismiss, a plaintiff’s *Monell* pleadings “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ratliff v. Aransas County*, 948 F.3d 281, 285 (5<sup>th</sup> Cir. 2020), quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In *Ratliff*, the Fifth Circuit affirmed the dismissal of the plaintiff’s *Monell* claim when the complaint failed to establish an official custom

or policy of excessive force because the only facts the plaintiff alleged with any specificity related to the incident which was the subject of the lawsuit. *Id.* “[T]o plead a practice so persistent and widespread as to practically have the force of law, [the plaintiff] must do more than describe the incident that gave rise to his injury.” *Id.*, quoting *Pena v. Rio Grande City*, 879 F.3d 613, 622 (5<sup>th</sup> Cir. 2018).

Plaintiffs cite several YouTube videos which discuss complaints made by Austin police cadets about the Austin Police Department’s Training Academy and two newspaper articles which purportedly discuss APD’s use of force rates during traffic stops. (Doc. 1, ¶¶ 8.8-8.9). Any argument that the subjects of these videos and articles constitutes a pattern tantamount to official policy fails. A plaintiff may show a “persistent, widespread practice of City officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Piotrowski*, 237 F.3d at 579 (quoting *Webster v. City of Houston*, 735 F.2d 838, (5<sup>th</sup> Cir. 1984) (en banc)). However, “[a]ctions of officers or employees of a municipality do not render the municipality liable under section 1983 unless they execute official policy as above defined.” *Id.*

Plaintiffs’ Complaint does not contain sufficient factual allegations to sustain such a claim. “A pattern requires similarity and specificity; ‘[p]rior indications cannot simply be for any and all ‘bad’ or unwise acts, but rather must point to the specific violation in question.’” *Peterson v. City of Fort Worth*, 588 F.3d 838, 851-52 (5<sup>th</sup> Cir. 2009)(quoting *Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 383 (5<sup>th</sup> Cir. 2005). A pattern sufficient to support a *Monell* claim cannot be established by previous bad acts of the municipality unless those bad acts are specific and similar to the violation in question. *Id.*; see also *Crawford v. Caddo Parish*

*Coroner's Office*, 2019 WL 943411, Feb. 25, 2019 (W.D. Louisiana)(Rule 12(b)(6) motion granted when plaintiff failed to allege specific facts to demonstrate policy or pattern of depriving African-Americans of fair and unbiased criminal procedures).

Here, Plaintiffs' conclusory allegations of a pattern or custom of "racial profiling and discriminating against minority suspects such as Hispanics and people with disabilities" contain no facts that are specific and similar to the violation in question. None of the alleged bad acts are specific and similar to the alleged violation in this case, i.e., the officers' use of deadly force on Cantu. Plaintiffs make no allegations that any alleged pattern or practice of APD consisted of prior bad acts which were specific and similar to the use of deadly force in this incident. Plaintiffs' Complaint fails to allege non-conclusory facts sufficient to establish an actual policy or custom of the Austin Police Department. As a result, this claim fails as a matter of law.

**B. Insufficient Facts to Establish Moving Force Causation**

Plaintiffs' Complaint alleges unconstitutional conduct by APD officers, but the Complaint fails to state a claim upon which relief can be granted since it fails to allege specific facts to support a claim that the officers acted pursuant to policies, practices, and customs of the City. The Complaint contains a number of specific factual allegations regarding the incident itself and the actions of the officers along with detailed facts about Cantu's death. The Plaintiffs also assert that the Austin Police Department fostered discriminatory policies and practices. The Complaint, however, does not contain any specific facts to support the Plaintiffs' claim that the alleged discriminatory policies and practices were the moving force of the alleged constitutional violation committed by the officers in this incident.

In order to hold a municipality liable under Section 1983 for the misconduct of one of its employees, a plaintiff must initially allege that an official policy or custom "was a cause in fact of

the deprivation of rights inflicted. *Spiller v. City of Texas City, Police Dept.*, 130 F.3d 162, 167 (5<sup>th</sup> Cir. 1997), quoting *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 525 (5<sup>th</sup> Cir. 1994). The description of a policy or custom and its relationship to the underlying constitutional violation, moreover, cannot be conclusory, it must contain specific facts. *Spiller*, 130 F.3d at 167.

In *Spiller*, the Fifth Circuit affirmed the trial court's dismissal under Fed. R. Civ. P. 12 (b)(6) of a plaintiff's §1983 claim against a municipality for the alleged wrongful arrest of the plaintiff for disorderly conduct. *Spiller*, 130 F.3d at 167. The plaintiff contended that the police department had policies of operating "in a manner of total disregard for the rights of African American citizens" and "engag[ing] in conduct toward African American citizens without regard to probable cause to arrest." *Id.* The Fifth Circuit found that the plaintiff's complaint failed to allege specific non-conclusory facts to demonstrate how these alleged policies were causally connected to the officer's alleged misconduct. *Id.*

The Plaintiffs in this case likewise fail to allege specific facts that demonstrate that the officers' alleged constitutional violation was caused by the City's alleged policy or custom of racially profiling or discrimination. Plaintiffs allege no specific, non-conclusory facts which demonstrate that bias or racism played any role in this incident much less was the moving force of the death of Cantu. Plaintiff's Complaint points to no action or statement of APD officers that demonstrates that any bias or racism of the Austin Police Department was the moving force of the officers' decision to use deadly force on Cantus. Plaintiffs' conclusory allegations of moving force causation are clearly insufficient to support a *Monell* claim. As a result, Plaintiffs' claim against the City fails as a matter of law.

### **C. Inadequate Training Policies.**

Plaintiffs also allege that the City had a policy or practice of inadequately training its police

officers. (Doc. 1, ¶ 8.8) Plaintiffs cite a conclusory statement by an expert witness evidently in an unrelated and unidentified case that APD's training is "dangerous and unreasonable." (Doc. 1, ¶8.8) Plaintiffs also rely again on YouTube videos discussing injuries to APD cadets at the Training Academy. (Doc. 1, ¶ 8.8)

"A municipality's culpability for a deprivation of right is at its most tenuous where the claim turns upon a failure to train." *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Failure-to-train claims require sufficient factual allegations to allow the court to draw the reasonable inference that: (1) the municipality's training procedures were inadequate; (2) the municipality was deliberately indifferent in adopting its training policy; and (3) the inadequate training policy directly caused the constitutional violation. *See Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010). Further, a failure to train claim cannot be based upon a single incident. Rather, a plaintiff must demonstrate "at least a pattern of similar incidents in which the citizens were injured . . . to establish the official policy requisite to municipal liability under section 1983." *Snyder v. Trepagier*, 142 F.3d 791, 798 (5th Cir. 1998) (quoting *Rodrigues*, 871 F.2d at 554-55).

For liability to attach based upon an inadequate training claim, the plaintiff "must allege with specificity how a particular training program is defective." *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5<sup>th</sup> Cir. 2005). With either a failure to train or failure to supervise claim, the plaintiff must show: "(1) the supervisor either failed to supervise or train the subordinate official; (2) a causal link exists between the failure to train or supervise and the violation of the plaintiff's rights; and (3) the failure to train or supervise amounts to deliberate indifference." *Goodman v. Harris County*, 571 F.3d 388, 395 (5<sup>th</sup> Cir. 2009); *Waters v. City of Hearne*, 2015 WL 10767483, (W.D. Tex. January 14, 2015)(insufficient allegations of inadequate training or policy of racially profiling ethnic minorities for purpose of investigative

stops).

Here, Plaintiffs have not included any specific, non-conclusory facts which support a claim for failure to train. The Complaint fails to identify an actual, specific training policy, describe any training procedures, and fails to provide *any* factual support to show a plausible conclusion that the City was indifferent to unconstitutional police action. Plaintiffs' Complaint contains no factual allegations regarding the City's existing training policies or the training or supervision provided to the officers involved in this incident. Similarly, the Complaint contains no facts regarding deliberate indifference in adopting its policies, and no facts that show that any such training directly caused the alleged constitutional violation. Therefore, this claim should be dismissed.

**IV. PLAINTIFFS' CLAIMS AGAINST MANLEY, ARELLANO, MUSCADIN, TRUHO, PADRO-MARTIN AND KNODEL SHOULD BE DISMISSED.**

As stated above, to overcome a motion to dismiss, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plaintiffs fail to plead enough facts regarding these Defendants' alleged liability to state a claim to relief that is plausible.

**A. Brian Manley**

The only factual allegations in the Complaint which address any conduct by former Police Chief Brian Manley are contained in Paragraph 6.73. There, Plaintiffs evidently allege that Chief Manley obstructed justice by ordering that videos of the incident taken by a witness not be released to the Plaintiffs. Plaintiffs also claim that 911 and 311 calls and other "important Police Records" have not been released pursuant to Manley's orders. (Doc. 1 ¶ 6.73) Plaintiffs offer no details of how they requested these items or how Manley's actions constitute an "obstruction of justice." Simply put, these alleged facts alone do not support a claim for relief under 28 U.S.C. §1983 and should be dismissed.

**B. Rey Arellano and Farah Muscadin**

Plaintiffs include City of Austin Assistant City Manager Rey Arellano and Director of Police Oversight Farah C. Muscadin as defendants but offer no allegations whatsoever to support a claim against them under 28 U.S.C. §1983. The only sentence in the entire Complaint which addresses Arellano and Muscadin is contained in introductory Paragraph 1.1 which states:

“Representatives from City of Austin Rey Arellano, Assistant City Manager and Farah C. Muscadin, Director of Austin Office of Police Oversight for failure to report, investigate, post complains [sic] in their websites and discrimination against Hispanics and people with Disabilities.” (Doc. 1, ¶ 1.1) The Complaint contains no specific facts at all about the actions of Arellano and Muscadin and provides no explanation of how Arellano and Muscadin allegedly violated Plaintiffs’ constitutional rights sufficient to support a claim under 28 U.S.C. §1983.

Accordingly, the claims against Arellano and Muscadin should be dismissed.

**C. Erin Truho**

Plaintiffs name Austin Police Department Detective Erin Truho as a defendant but allege no facts sufficient to state a claim for relief. The only mention of Truho in the Complaint is in the introductory paragraph which states: “...Detective Erin Truho (Special Unit Investigator) for interfering with the Certified Autopsy Records of Paul Cantu.” (Doc. 1, ¶ 1.1) The Complaint contains no specific facts at all about the actions of Truho and provides no explanation of how Truho allegedly violated Plaintiffs’ constitutional rights sufficient to support a claim under 28 U.S.C. §1983. Accordingly, the claims against Truho should be dismissed.

**D. Julian Padro-Martin and Christopher J. Knodel**

Plaintiffs assert that Officers Padro-Martin and Knodel interfered with Cantu’s medical treatment after he was taken to St. David’s South Austin Medical Center. Plaintiffs allege that

Padro-Martin and Knodel “interfered with the Critical Emergency Medical treatment of Paul Cantu, violated HIPPA rules; and his right to have an attempt to save his life.” (Doc. 1, ¶ 6.59) The Complaint is not clear as to exactly what the Plaintiffs allege Padro-Martin and Knodel did, but Plaintiffs evidently contend that Padro-Martin and Knodel failed to provide Cantu’s health insurance card to hospital staff. Plaintiffs also claim that after hospital personnel were unable to revive Cantu, Padro-Martin and Knodel gave the emergency room doctor permission to harvest Cantu’s organs and tissue for organ donation. (Doc. 1, § 6.62)

Plaintiffs appear to be asserting a Fourteenth Amendment claim for failure to protect or provide for the adequate medical needs of individuals in the Defendants’ custody. To sustain a cause of action under 28 U.S.C. §1983 for a failure to provide medical treatment, a plaintiff must establish that the defendants acted with deliberate indifference to serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04, 97 S. Ct. 285 (1976). Deliberate indifference requires a higher degree of fault than negligence, or even gross negligence. *Hare v. City of Corinth*, 74 F.3d 633, 650 (5<sup>th</sup> Cir. 1996). As the Fifth Circuit has stated: “To act with deliberate indifference, a state actor must know of and disregard an excessive risk to the victim’s health or safety. The state actor’s actual knowledge is critical to the inquiry. A state actor’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, does not rise to the level of deliberate indifference.” *McClendon v. City of Columbia*, 305 F.3d 314, 326 n. 8 (5<sup>th</sup> Cir. 2002).

Where a plaintiff claims deliberate indifference with respect to proper medical risk or care, courts require a showing that a defendant “refused to treat [an individual], ignored his complaints, intentionally treated him incorrectly, or engaged in similar conduct that would clearly evince a wanton disregard for any serious medical needs.” *Domino v. Texas Dep’t of*

*Criminal Justice*, 239 F.3d 752, 756 (5<sup>th</sup> Cir. 2001)(quoting *Johnson v. Treen*, 759 F.2d 1236, 1238 (5<sup>th</sup> Cir. 1985)).

Plaintiffs' allegations against Padro-Martin and Knodel are not sufficient to state a claim under 28 U.S.C. §1983 for a Fourteenth Amendment violation. First, Plaintiff's allegations are completely inconsistent. Plaintiffs initially state that when the officers arrived at the hospital, "all relevant identifiable information of Paul Cantu was provided to front desk staff at the Emergency Room." (Doc. 1, ¶6.58) Plaintiffs then nonsensically claim that somehow Padro-Martin and Knodel forced hospital staff to delete Cantu's information, and that since hospital staff no longer had Cantu's health insurance and other information, Cantu was given the "wrong plasma products" and the emergency room doctor "stopped trying to save his life after about 20 minutes." (Doc. 1, ¶6.60-6.61)

These allegations are insufficient to state a claim for the failure to provide for the adequate medical needs of Cantu. Plaintiffs fail to sufficiently allege that Officers Padro-Martin and Knodel acted with subjective deliberate indifference and that this deliberate indifference caused Cantu to receive inadequate medical treatment. Plaintiffs allege no facts which would establish that Padro-Martin and Knodel were in charge of Cantu's medical treatment at the hospital. This is not a case where the officers had a duty to monitor Cantu's medical condition and provide adequate medical care such as if Cantu had been in defendants' custody in a jail or at a police station. Instead, Cantu was under the care of hospital staff.

Moreover, Plaintiffs' allegation that Padro-Martin and Knodel had authority over Cantu's organs and tissues for donation purposes is inconsistent with Texas law. The Texas Anatomical Gift Act, *Tex. Transp. Code Ann.* §521.405, provides procedures for medical providers to follow regarding organ donation. Section 521.405(b) of the Act provides that if a patient is not an organ

donor, a hospital must advise the patient's representative of organ donation options. *Tex. Transp. Code Ann.* §521.405(b). If the hospital cannot locate the patient's representative or next of kin within four hours of death, then the **medical examiner** may permit the removal of organs and tissue for donation purposes. *Tex. Transp. Code Ann.* §521.405(b)(emphasis added). Thus, Padro-Martin and Knodel had no legal role in any decision to harvest Cantu's organs for donation. The legal authority for that decision rested with the medical examiner in consultation with hospital staff. Plaintiffs' allegations state no valid claim for relief under 28 U.S.C §1983. As a result, Plaintiffs' claims against Padro-Martin and Knodel should be dismissed.

### **PRAYER**

Defendants City of Austin, Brian Manley, Rey Arellano, Farah Muscadin, Erin Truho, Julian Padro-Martin and Christopher Knodel respectfully request that the Court grant this Motion to Dismiss and dismiss all claims against the Defendants with prejudice and with all costs assessed to the Plaintiffs.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird  
H. GRAY LAIRD III  
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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that on the 15th day of April, 2021, I served a copy of *Defendants City of Austin, Brian Manley, Rey Arellano, Farah Muscadin, Erin Truho, Julian Padro-Martin, and Christopher Knodel's Motion to Dismiss* on all parties in compliance with the Federal Rules of Civil Procedure.

**Via Email, U.S. First-Class & Certified Mail:**

M. Patricia Cantu

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**PLAINTIFFS PRO SE**

/s/ H. Gray Laird  
H. GRAY LAIRD

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

FILED

APR 28 PM 12:01

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_ 

M. PATRICIA CANTU and ROBERTO CANTU

Plaintiffs,

v.

Cause No. 1:21CV0084-LY \_\_\_\_\_

AUSTIN POLICE DEPARTMENT  
CHIEF OF AUSTIN POLICE  
DEPARTMENT, BRIAN MANLEY,  
DETECTIVE ERIN TRUHO (SUI)  
SERGEANT MICHAEL JOSEPH,  
OFFICERS JACOB BEIROWSKI,  
ROBERT MATTINGLY,  
LUIS ALBERTO CAMACHO III,  
, KYLE PETERSON, JULIAN PADRO-  
MARTIN #8243.  
CHRISTOPHER J. KNODLE,  
THE CITY OF AUSTIN, TEXAS,  
REY ARELLANO, ASSISTANT CITY  
MANGER.  
FARAH C. MUSCADIN, DIRECTOR  
OFFICE OF POLICE OVERSIGHT  
TRAVIS COUNTY MEDICAL  
EXAMINER'S OFFICE  
DR. VICKIE L. WILLOUGHBY, D. O.  
DEPUTY MEDICAL EXAMINER

Defendants.

**PLAINTIFFS RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

TO THE HONORABLE JUDGE LEE YEAKEL:

We the Plaintiffs, M. Patricia Cantu, and Roberto Cantu file this response in opposition to Defendants City of Austin, Brian Manley, Rey Arellano, Farah Muscadin, Erin Truho, Julian Pardo-Martin and Christopher Knodel Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure as follows:

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**I. NATURE OF THE LAWSUIT**

Plaintiffs bring this civil rights action as a result of injuries and damages caused by excessive force, torture, and premeditated homicide by military-style execution suffered by our only child and son Paul Cantu and we his surviving parents sustained before, during and after the Austin Police Department (APD) Officer-Involved Shooting (OIS) near East William Cannon Road in Austin, Texas on January 29, 2019. Our complaint names Chief of APD Police Brian Manley for obstruction of justice and APD Officers Julian Pardo-Martin (#8243) and Christopher J. Knodel for wrongfully “*classifying*” Paul Cantu forcing front desk at Saint David’s South Austin to delete all identifiable information of Paul Cantu, including but not limited to driver’s license, name, job I.D. card; medical insurance information; clinical history, medical records; blood type; emergency and family contact information; interference with his proper Medical Treatment to ensure his death. Detective Erin Truho (Special Unit Investigator) for interfering with the Certified Autopsy Records of Paul Cantu. City of Austin is cited for improper training of APD officers and racially profiling Hispanics and people with disabilities. Representatives from City of Austin Rey Arellano, Assistant City Manager and Farah C. Muscadin, Director of Austin Office of Police Oversight for failure to report, investigate, post complains in their websites and discrimination against Hispanics and people with Disabilities. The Travis County Medical Examiner’s Office and Dr. Vickie L. Willoughby are included for failure to report two serious incidents of use of Tasers or “non-lethal weapons” in the Certified Autopsy Report which are required to be reported by Federal Laws.

Plaintiffs continue to assert a *Monell* claim that the City promulgated policies or practices that violated Paul Cantu’s Fourth and Fourteenth Amendment rights, including, among others

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inadequate training, racial profiling and discriminating against minority suspects such as Hispanics and people with disabilities like Paul Cantu by using unwarranted excessive force and deadly force at disproportionately higher rates. The Cantus (Plaintiffs) assert both a due process claim, and an equal protection claim.

For the reasons stated herein we plead the Honorable Judge Lee Yeakel to deny Defendants' Motion to Dismiss:

For more than two (2) years the Austin Police Department (APD) and the City of San Antonio to this present date, **denied us all Original documents, 911 and 311 audio recordings of calls; unedited Original Police Reports; Raw videos [dash and body cam footage] of the Officer Involved Shooting (OIS) of our only child and son Paul Andrew Cantu ("Paul Cantu") which occurred in January 29/2019. Furthermore, the City of San Antonio denied us Training Curricula for APD Officers, TCOLE and the City Of San Antonio denied us Statistical Analysis of Effectiveness of Training of APD Officers; the specific APD Officers disciplinary records; criteria for hiring APD officers and screening methods. This was done long after both APD and the Travis County District Attorney's Office (TCDAO) finished their investigations. We the Plaintiffs filed several OPEN RECORDS AND FREEDOM OF INFORMATION REQUESTS. Yet APD DENIED US THE EVIDENCE IN ORIGINAL AND RAW FORM TO BE ADMISSIBLE IN A COURT OF LAW, and CITY OF SAN ANTONIO DENIED US ALL REQUESTED DATA. This is a violation of the own polices of APD, a violation of freedom of information, and/or open records laws in the State of Texas.**

**Furthermore, the Travis County Medical Examiner's Office (TCMEO) took more than one year and several months to release the Certified Autopsy Report; the Certified Forensic**

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**Pictures and other forensic records. They even appointed an Attorney to DENY US the certified Forensic Data.**

**The denial of all these Original and Raw evidence within a reasonable time is also a violation of our federal civil rights because as the parents and only survivors of the victim Paul Cantu, we have the right to address our grievances in a Federal Civil Rights Lawsuit. These impeded us to hire attorneys to represent us. We have the right to secure legal counsel.**

**It is clear that THE APD, the CITY OF AUSTIN, and the TCMEO were attempting to run the statute of limitations and preventing us to file a Federal Civil Rights Lawsuit and or obtain the evidence needed through Discovery by not releasing the original unedited raw data which is needed to be admissible in a court of law. Through this motion we Plaintiffs are asking the honorable Judge Lee Yeakel to allow us to obtain these documents through Discovery and grant us an extension to secure legal representation qualified in civil rights and actions under 42. U.S.C Section 1983.**

**Additionally, we are requesting to be allowed to make amendments to our original Complaint which was done Pro Se. We plead the honorable Judge Lee Yeakel to guide us or instruct us in what amendments need to be added to our original Federal Civil Rights Lawsuit until we find attorneys to represent us and defend us.**

‘Despite the Amended Complaint’s deficiencies, Plaintiff will be granted leave to amend it by filing a Second Amended Complaint. Federal Rule of Civil Procedure 15(a)(2) states, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave” and that “[t]he court should freely give leave when justice so requires.” “To accomplish the dual

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objectives of weeding out frivolous cases and keeping federal courts open to legitimate civil rights claims, courts should allow liberal amendment of civil rights complaints.””

**I, M. Patricia Cantum am the one writing these motions due to my husband’s being presently incapacitated. I acknowledge that I am NOT an Attorney [My background is in Microbiology, Health Sciences and Education]. All my statements and Laws are based on research. I do not include all my references due lack of space and document length restrictions. I tried citing the Laws as best as I can. English is my Second Language. I am a disabled individual, currently in a wheelchair and use rollator on limited bases. Under Americans with Disabilities Act (ADA) I respectfully request Disability Accommodations by means of extended time to answer or reply to motions. All the joints in both of my hands are fused. I have very limited use of my neck, hands, feet, hips and legs]. I rely on assisted software [such as Dragon] which converts voice to text. However, this software does not recognize my foreign accent and I need to make numerous edits. It takes me three times the amount it would take an able person to type a document. I did not drive to Austin, Texas on January 29/ 2019, to rescue my only child /son because I was in San Antonio Texas, suffering excruciating pain awaiting a double knee replacement surgery and the incident happened after midnight. After my only child/son’s extremely violent homicide, I was in emotional shock and currently suffering from Post-Traumatic Stress Disorder (PTSD). I could not get my double knee replacement surgery due to PTSD. I now face permanent disability. Both my husband and I are very weak, still recovering from COVID-19. My husband who was extremely traumatized due to our son’s violent homicide by APD**

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**Officers suffers now from PTSD and anxiety, is recovering from COVID-19 and a MINI-STROKE. We are both senior citizens.**

## II. **MOTION NOT TO DISMISS PURSUANT TO RULE 12(b)(6)**

While a court confronted with a Rule 12(b)(6) motion must accept the truth of all factual allegations in the complaint and must draw all reasonable inferences in favor of the non-movant, Gross v. German Found Indus. Initiative, 549 F.3d 605, 610 (3d Cir. 2008).

### **Information That the Court Considers in Evaluating a Rule 12(b)(6) Motion**

In evaluating a Rule 12(b)(6) Motion to Dismiss for failure to state a claim, a court may only consider the complaint, exhibits attached to the complaint, **matters of public record, and undisputable authentic documents if the complainant's claims are based upon those documents.** <https://www.njlawconnect.com/motion-to-dismiss-complaint-rule-12b6-new-jersey-federal-court/> Subject to the above exceptions.

**[For this reason, we Plaintiffs request Discovery, because APD, and City of Austin have consistently DENIED us even after several Freedom of information or Open records requests all ORIGINAL OR AUTHENTIC RECORDS].** See PBGC v. White Consolidated Industries, Inc., 998 F.2d 1192, 1196 (3d Cir. 1993); see also In re Burlington Coat Factory Sec. Lit., 114 F.3d 1410, 1426 (3d Cir. 1997) (a document forms the basis of a claim when it is “integral to or explicitly relied upon in the complaint” and such a document “may be considered without converting the motion to dismiss into one for summary judgment. If “matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.” Fed. R. Civ. P. 12(d). When a district court decides to convert a motion to dismiss into a motion for summary judgment, it must provide the parties “reasonable opportunity” to present all material relevant to a summary judgment motion. Fed. R.

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Civ. P. 12(b). The parties can take advantage of this opportunity only if they have “notice of the conversion.” Rose v. Bartle, 871 F.2d 331, 340 (3d Cir. 1989). The notice must be “unambiguous” and must “fairly apprise[ d]” the parties that the court intends to convert the motion. Id. at 341-42.

In general, “A motion to dismiss ‘is viewed with disfavor and is rarely granted.’” Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 498 (5th Cir. 2000) (quoting Kaiser Aluminum & Chem. Sales v. Avondale Shipyards, 677 F.2d 1045, 1050 (5th Cir. 1982)). When considering a motion to dismiss, plaintiff’s well-pled factual allegations are accepted as true and construed in the light most favorable to the plaintiff. Taylor, 296 F.3d at 378; Oliver, 276 F.3d at 740. **“The issue is not whether the plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim.”** Jones v. Greninger, 188 F.3d 322, 324 (5th Cir.1999) (per curiam) (citing Doe v. Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1401(5th Cir. 1996)). A claim should not be dismissed “unless the plaintiff would not be entitled to relief under any set of facts or any possible theory that he could prove consistent with the allegations in the complaint.” Id. (citing Vander Zee v. Reno, 73 F.3d 1365, 1368 (5th Cir. 1996)).

**III. PLAINTIFFS’ §1983 CLAIMS AGAINST THE CITY SHOULD NOT BE DISMISSED**

If you find that Plaintiffs were deprived of [our federal rights], [The City of Austin] is liable for that deprivation if [Plaintiffs] proves by a preponderance of the evidence that the deprivation resulted from [The City of Austin] official policy or custom caused the deprivation.

AFTER Discovery [Plaintiffs] will show that the violation resulted from [The City of Austin] official policy or custom.] “Official policy or custom” includes any of the following:

a rule or regulation promulgated, adopted, or ratified by City of Austin legislative body; a policy statement or decision that is officially made by [City of Austin] [policy-making

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official]; a custom that is a widespread, well-settled practice that constitutes a standard operating procedure of City of Austin; or inadequate training; inadequate supervision inadequate screening during the hiring process; failure to adopt a needed policy.

[M]unicipalities and other local government units [are] included among those persons to whom § 1983 applies.” *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690 (1978) (overruling in relevant part *Monroe v. Pape*, 365 U.S. 167 (1961)).

In addition to showing the existence of an official policy or custom, plaintiff must prove “that the municipal practice was the proximate cause of the injuries suffered.” *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990). “To establish the necessary causation, a plaintiff must demonstrate a ‘plausible nexus’ or ‘affirmative link’ between the municipality’s custom and the specific deprivation of constitutional rights at issue.” *Id.* (quoting *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985); and *Estate of Bailey by Oare v. County of York*, 768 F.2d 503, 507 (3d Cir.1985), *overruled on other grounds by DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989)); *see also Bielevicz*, 915 F.2d at 851 (holding that “plaintiffs must simply establish a municipal custom coupled with causation – i.e., that policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violations, and that this failure, at least in part, led to their injury”); *Carswell v. Borough of Homestead*, 381 F.3d 235, 244 (3d Cir. 2004) (“There must be ‘a direct causal link between a municipal policy or custom and the alleged constitutional deprivation.’”) (quoting *Brown v. Muhlenberg Township*, 269 F.3d 205, 214 (3d Cir. 2001) (quoting *Canton*, 489 U.S. at 385)). “As long as the causal link is not too tenuous, the question whether the municipal policy or custom proximately caused the constitutional infringement should be left to the jury.” *Bielevicz*, 915 F.2d at 851. “A sufficiently close causal link between ... a known but uncorrected

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custom or usage and a specific violation is established if occurrence of the specific violation was made reasonably probable by permitted continuation of the custom.” *Id.* (quoting *Spell v. McDaniel*, 824 F.2d 1380, 1391 (4th Cir. 1987)); see also *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572, 582 (3d Cir. 2004) (“The deficiency of a municipality’s training program must be closely related to the plaintiff’s ultimate injuries.”).

In the case of claims (such as failure-to-train claims) that require proof of deliberate indifference, evidence that shows deliberate indifference will often help to show causation as well.

The likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens’ rights could justify a finding that policymakers’ decision not to train the officer reflected “deliberate indifference” to the obvious consequence of the policymakers’ choice – namely, a violation of a specific constitutional or statutory right. The high degree of predictability may also support an inference of causation – that the municipality’s indifference led directly to the very consequence that was so predictable. *Board of County Com’rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 409-10 (1997)

In this case, there was a [statute] [ordinance] [regulation] that authorized the action which forms the basis for [plaintiffs’] claim. It is clear that a municipality’s legislative action constitutes government policy. “No one has ever doubted . . . that a municipality may be liable under § 1983 for a single decision by its properly constituted legislative body – whether or not that body had taken similar action in the past or intended to do so in the future – because even a single decision by such a body unquestionably constitutes an act of official government policy.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986). Likewise, if the legislative body delegates authority to a municipal agency or board, an action by that agency or board also

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constitutes government policy. *See, e.g., Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 660-61 & n.2 (1978) (describing actions by Department of Social Services and Board of Education of the City of New York); *id.* at 694 (holding that “this case unquestionably involves official policy”)

In discussing municipal liability, the Supreme Court has noted that city policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force ... can be said to be “so obvious,” that failure to do so could properly be characterized as “deliberate indifference” to constitutional rights. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 n.10 (1989).

In some cases, the question may arise whether a municipality can be held liable for failure to equip its officers with an alternative to deadly force. *See Carswell v. Borough of Homestead*, 381 F.3d 235, 245 (3d Cir. 2004) (McKee, J., dissenting in relevant part) (arguing that plaintiff had viable claim against municipality based on plaintiff’s contention that municipality’s “policy of requiring training only in using deadly force and equipping officers only with a lethal weapon, caused Officer Snyder to use lethal force even though he did not think it reasonable or necessary to do so”).

**IV. PLAINTIFFS’ CLAIMS AGAINST MANLEY, ARELLANO, MUSCADIN, TRUHO, PARDO-MARTIN AND KNODEL SHOULD NOT BE DISMISSED.**

In the plain terms of §1983, two – and only two – allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law.” *Gomez v. Toledo*, 446 U.S. 635, 640

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(1980); *see also, e.g., Groman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995) (“A prima facie case under § 1983 requires a plaintiff to demonstrate: (1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law.”).

**A. Brian Manley**

Plaintiffs contends that the then Chief of Austin Police Department (APD) Brian Manley, in his supervisory capacity of subordinates all APD Officers involved in the Officer Involved Shooting (OIS) of Paul Cantu, violated Plaintiff’s son Paul Cantu’s and Plaintiffs’ federal civil rights, and that Chief of APD Brian Manley should be liable for subordinates (APD Officers’) conduct. If you or the jury find that APD Officers who participated in the OIS or investigation of the OIS shooting of our son violated Plaintiffs’ son Paul Cantu’s federal civil rights, then you must consider whether Chief of APD Brian Manley caused the subordinates’ APD Officers’ conduct. The then Chief of APD Police Brian Manley, is not liable for such a violation simply because he was the supervisor of ALL APD officers named in this Lawsuit [subordinates]and participated in the OIS shooting of Paul Cantu or on the investigation of the OIS shooting.

To show that the then Chief of APD Police Brian Manley caused ALL APD officers named in this Lawsuit [subordinates] who participated in the OIS shooting of Paul Cantu or on the investigation of the OIS shooting [subordinates’] conduct, Plaintiffs **must show one** of three things:

First: The then Chief of APD Police Brian Manley [Supervisor] directed of ALL APD officers named in this Lawsuit [subordinates] who participated in the OIS shooting of Paul Cantu or on the investigation of the OIS shooting of Paul Cantu to take the action in question. **[Which was stated in an Official Police Report by one Police Officer]**

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Second: The then Chief of APD Police Brian Manley had actual knowledge of ALL APD officers named in this Lawsuit [subordinates'] who participated in the OIS shooting of Paul Cantu or on the investigation of the OIS shooting violation of Plaintiffs' rights and the then Chief of APD Police Brian Manley [supervisor] acquiesced in that violation [**Which we are affirming**]; or Third: then Chief of APD Police Brian Manley, with deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused the violation. [**Which we also affirm**]

Plaintiffs need not show that Brian Manley [supervisor] directly, with [his/her] own hands, deprived [Plaintiff's son and Plaintiffs'] of their rights. The law recognizes that a supervisor can act through others, setting in motion a series of acts by subordinates that the supervisor knows, or reasonably should know, would cause the subordinates to violate the plaintiff's rights. Thus, [plaintiffs] can show that [Brian Manley as supervisor] caused the conduct if [Plaintiffs] shows that [APD officers or subordinates] violated [plaintiff's son's or our] rights at Brian Manley's [supervisor's] direction.

Alternatively, the second way for [Plaintiffs] to show that [supervisor] is liable for APD Officers [subordinates'] conduct is to show that [supervisor] had actual knowledge of [subordinate's] violation of [plaintiff's] rights and that [supervisor] acquiesced in that violation. To "acquiesce" in a violation means to give assent to the violation. Acquiescence does not require a statement of assent, out loud: acquiescence can occur through silent acceptance. If you find that [supervisor] had authority over [subordinate] and that [supervisor] actually knew that [subordinate] was violating [plaintiff's] rights but failed to stop [subordinate] from doing so, you may infer that [supervisor] acquiesced in [subordinate's] conduct.

Finally, the third way for [plaintiff] to show that [supervisor] is liable for [subordinate's]

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conduct is to show that [supervisor], with deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused the conduct. [Plaintiffs] allege that Brian Manley [supervisor] should have [adopted a practice of transparency and accountability with surviving parents or next of kin of victims of Excessive and Deadly Force in OIS, releasing the RAW Videos, 911 and 311 calls, Official Police Records, Police Interview and other available Original Data, soon after the OIS, to allow surviving parents or next of kin to know what happened to their child or family member and give them the original data needed to secure Legal Counsel ]

To prove that [supervisor] is liable for [subordinate's] conduct based on [supervisor's] failure to [adopt that practice] [follow that policy], [plaintiff] must prove all of the following four things by a preponderance of the evidence:

First: [The existing custom and practice without [describe supervisor]] [the failure to follow the policy of [describe policy]] created an unreasonable risk of [describe violation]. Second: [Supervisor] was aware that this unreasonable risk existed.

Third: [Supervisor] was deliberately indifferent to that risk. *See, e.g., McKenna v. City of Philadelphia*, 582 F.3d 447, 460-61 (3d Cir. 2009) (upholding grant of judgment as a matter of law to defendants on supervisory liability claims and explaining that “[t]o be liable in this situation, a supervisor must have been involved personally, meaning through personal direction or actual knowledge and acquiescence, in the wrongs alleged”);] resulted from [supervisor's] failure to [adopt [describe supervisory practice]] [follow [describe policy]].

The Scope of *Iqbal's* holding is subject to dispute. Though dictum in *Iqbal* addresses Section 1983 claims, the holding concerns *Bivens* claims. Though *Iqbal* purports to outlaw “vicarious liability” in both types of cases, it cites *Monell* with approval and indicates no

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intent to displace existing doctrines of municipal liability (which are, in their conceptual structure, quite similar to the theories of supervisor liability and this Comment). And *Iqbal* itself concerned a type of constitutional violation – discrimination on the basis of race, religion and/or national origin – that requires a showing of “discriminatory purpose”; it is possible to read *Iqbal* as turning upon the notion that, to be liable for a subordinate’s constitutional violation, the supervisor must have the same level of scienter as is required to establish the underlying constitutional violation. On that reading, a claim that requires a lesser showing of scienter for the underlying violation – for example, a **Fourth Amendment excessive force claim** – might have different implications (for purposes of the supervisor’s liability) than a claim that requires a showing of purposeful discrimination for the underlying violation.

A supervisor incurs Section 1983 liability in connection with the actions of another only if he or she had “personal involvement in the alleged wrongs.” *Rode v. Dellarciprete*, 845 F.2d 1195, 14 1207 (3d Cir. 1988). In the Third Circuit,<sup>58</sup> “[p]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence.” *Id.*; *see also C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 173 (3d Cir. 2005) (“To impose liability on the individual defendants, Plaintiffs must show that each one individually participated in the alleged constitutional violation or approved of it.”); *Baker v. Monroe Tp.*, 50 F.3d 1186, 1194 (3d Cir. 1995) (noting that “actual knowledge can be inferred from circumstances other than actual sight”); *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572, 586 (3d Cir. 2004) (noting that “a supervisor may be personally liable under § 1983 if he or she participated in violating the plaintiff’s rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in his subordinates’ violations”); *Black v. Stephens*, 662 F.2d 181, 189 (3d Cir. 1981) (“**To hold a police chief liable under section 1983 for the**

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**unconstitutional actions of one of his officers, a plaintiff is required to establish a causal connection between the police chief's actions and the officer's unconstitutional activity.”).**

**B. Rey Arellano and Farah Muscadin Claims Should NOT be Dismissed**

To prove that [supervisor] is liable for [subordinate's] conduct based on [supervisor's] failure to [adopt that practice] [follow that policy], [plaintiff] must prove all of the following four things by a preponderance of the evidence:

First: [The existing custom and practice without [describe supervisory practice]] [the failure to follow the policy of [describe policy]] created an unreasonable risk of [describe violation].

Second: [Supervisor] was aware that this unreasonable risk existed.

Third: [Supervisor] was deliberately indifferent to that risk.

Fourth: [Subordinate's] [describe violation] resulted from [supervisor's] failure to [adopt [describe supervisory practice]] [follow [describe policy]]

Alternatively, the second way for [plaintiff] to show that [supervisor] is liable for [subordinate's] conduct is to show that [supervisor] had actual knowledge of [subordinate's] violation of [plaintiff's] rights and that [supervisor] acquiesced in that violation. To “acquiesce” in a violation means to give assent to the violation. Acquiescence does not require a statement of assent, out loud: acquiescence can occur through silent acceptance. If you find that [supervisor] had authority over [subordinate] and that [supervisor] actually knew that [subordinate] was violating [plaintiff's] rights but failed to stop [subordinate] from doing so, you may infer that [supervisor] acquiesced in [subordinate's] conduct.

Standards survive *Iqbal*, see, e.g., *McKenna v. City of Philadelphia*, 582 F.3d 447, 460-61 (3d Cir. 2009) (upholding grant of judgment as a matter of law to defendants on supervisory liability

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claims and explaining that “[t]o be liable in this situation, a supervisor must have been involved personally, meaning through personal direction *or actual knowledge and acquiescence*, in the wrongs alleged”); *Reedy v. Evanson*, 615 F.3d 197, 231 (3d Cir. 2010) *Marrakush Soc. v. New Jersey State Police*, 2009 WL 2366132, at \*31 (D.N.J. July 30, 2009).

Though dictum in *Iqbal* addresses Section 1983 claims, the holding concerns *Bivens* claims. Though *Iqbal* purports to outlaw “vicarious liability” in both types of cases, it cites *Monell* with approval and indicates no intent to displace existing doctrines of municipal liability (which are, in their conceptual structure, quite similar to the theories of supervisor liability discussed here and this). And *Iqbal* itself concerned a type of constitutional violation – discrimination on the basis of race, religion and/or national origin – that requires a showing of “discriminatory purpose”; it is possible to read *Iqbal* as turning upon the notion that, to be liable for a subordinate’s constitutional violation, the supervisor must have the same level of scienter as is required to establish the underlying constitutional violation. On that reading, a claim that requires a lesser showing of scienter for the underlying violation – **for example, a Fourth Amendment excessive force claim – might have different implications (for purposes of the supervisor’s liability) than a claim that requires a showing of purposeful discrimination for the underlying violation.**

In cases where the underlying constitutional violation requires a showing of purposeful discrimination, *Iqbal* thus appears to heighten the standard for supervisors’ liability even under the first of the three theories.

**C. Erin Truho**

etective Erin Truho gave the following statements in her **[EDITED]** Official Police Reports which we obtained from APD under Open Records. I present the following excerpts:

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On 1/29/19, while working as a detective for the Special Investigations Unit, I responded to South Austin Hospital, 901 W Ben White Blvd, to gain information in reference to an Officer-Involved Shooting (19-0290092). Upon arrival at the hospital, Officer Knodel #7855, advised the time of death was 0327, pronounced by Dr. Strong.

I met with Trauma Nurse, Eran Baggett, who had treated the decedent prior to his death. Baggett gave a preliminary defect count of 4 and advised the decedent had arrived with only socks on. Baggett personally removed the socks and left them in the Emergency Room. Baggett later located the socks and put them in a paper bag by the decedent.

On 1/30/19, I attended the autopsy of Paul Andrew Cantu at the Travis County Medical Examiner's Office, which was performed by Dr. Willoughby. Prior to beginning the autopsy, Dr. Willoughby advised that x-rays of the decedent showed there were at least three projectiles inside the decedent's body. I notified Dr. Willoughby that family said the decedent was gravely ill [REDACTED]

Prior to beginning the cutting of the body, extensive photographs were taken. The decedent had been operated on at South Austin Hospital and as a result, had wounds from the operating room: he was stitched up from body mid-line to under his left armpit and then vertically down the mid-line of his torso to near the top of his genitals. The decedent was naked, but had been placed in a body bag with hospital bedding. The hospital bedding was collected as evidence by ME personnel. In addition, routine collections were taken, such as GSR, hand swabs, fingernail clippings, hair clippings, fingerprints, and hand prints.

**D. Julian Pardo-Martin and Christopher K. Knodel**

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**D.1. Julian Pardo-Martin**

Affiant Pardo-Martin # 8243 [sic-APD misspelled Affiant's first name as "Padro". Hence, Plaintiffs now correct it. The APD officer named in our complaint is Julian Pardo- Martin # 8243].

According to the Affidavit sworn under oath to Detective Richard Faithful #2262 on January 29/2019, which we obtained under Open Records, Affiant Pardo-Martin # 8243. We include the following excerpts:

On January 29<sup>th</sup>, 2019 at 0209 hours, I, Officer Pardo-Martin 8243 was on duty as an Austin Police Officer. I was wearing a full police uniform and I was driving a fully marked police vehicle. I was working for the frank 800s night shift patrol unit. I was driving the vehicle that is usually assigned to a supervisor and was equipped with a ballistic shield.

As I was driving up I observed Sgt Josephs vehicle off of the road and at the base of a small hill. I observed another civilian vehicle parked in front of Sgt Josephs patrol vehicle. I did not see the subject that Sgt Joseph was out on.

Officer Mattingly arrived at the scene just in front of me and we were getting out of our cars simultaneously. As I was getting out of my vehicle I heard Sgt Joseph request a shield. I told Officer Mattingly to grab the shield from the back of my patrol vehicle and he did and then went up to where Sgt Joseph was.

I donned my plate carrier and grabbed my personal rifle which is approved by the department and started to move up towards Sgt Joseph. When I was doing this I observed multiple additional Officers next to Sgt Joseph. At the time I could only identify one of the officers as Officer Mattingly. As I was moving down the hill I could not tell were the suspect was. I believe there were about three officers in front of me in the line we formed.

As I got closer I observed the male outside of the car and I observed Officer Mattingly start to shoot the male. I could not tell if any other Officers were shooting. I do not recall hearing anything prior to Officer Mattingly shooting the suspect. The suspect is described as a; thin white male; wearing a maroon t-shirt type shirt and light colored shorts. I cannot recall what shoes he was wearing if any.

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I observed the male fall down onto the ground landing on his back. I then got 'online' with the other Officers. I pointed my rifle at the suspect and held lethal coverage on him. At this time another Officer (I do not know who it was) started to give verbal commands for the male to put his hands up. The male then put his hands on his chest/stomach area and I observed there was no weapon in his hand. I don't believe the suspect was saying anything but he was moving.

Once the vehicle was secure I placed latex gloves on. Once my gloves were on I assisted with medical care on the suspect. I observed at least three gun shots to the subject's chest and stomach and I observed the male was breathing. I placed occlusive dressings onto both of the chest wounds that I could see. The subject was then rolled over and I observed another gunshot wound to his back near his arm pit. I placed an occlusive dressing onto this wound. (The suspect was not saying anything at this time but had spittle coming out of his mouth.)

The subject was then rolled over to his back. I checked the male's pulse and did not feel one. I then started to do chest compressions on the male. The male used his arm and started to pull at my hand so I stopped chest compressions and checked his pulse again. I did feel a pulse for a brief time then it went away. Once I did not feel a pulse again I started chest compression. I was relieved from chest compressions by another officer and I moved over to the subjects head. I performed a jaw thrust on the male to open his air way. As I was doing this my plate carrier was getting in the way so Officer Driskill removed it along with my body camera. Officer Driskill then placed my body camera back onto me. I continued to hold the subject's head.

EMS arrived on scene and attached the subject to the heart monitor. EMS advised to stop chest compression and place the subject onto a Mega Mover. I assisted in rolling the subject over and onto the mega mover. Once the subject was on the Mega Mover I assisted in lifting him up and carrying him over to the ambulance stretcher.

Once on the stretcher EMS and Fire crews took over medical care.

I followed EMS to the hospital and was later relieved by Officer Knodel. I was then instructed to report to the SIU office to give this statement.

APD Pardo-Martin # 8243 's affidavit is extremely important along with the [edited] videos obtained under OPEN RECORDS from APD that captured his role in the OIS shooting and medical treatment of Paul Cantu. First it proves he was one of the APD officers present and active at the scene and his direct and personal participation, before, during and after the Officer Involved-Shooting of Paul Cantu. It proves APD Pardo-Martin # 8243 acted under the color of Law. APD Pardo-Martin # 8243 admitted to **pointing his own personal rifle at Paul Cantu**

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**and held lethal coverage on him.** APD Pardo-Martin # 8243 admitted he searched Paul Cantu's car without a warrant. He admitted he "*placed latex gloves on*" and "*assisted with Medical care of the suspect*" right after the Officer-Involved Shooting (OIS). There is incriminated evidence caught on video clearly audible that APD Pardo-Martin # 8243 may have had direct involvement in the torture of Paul Cantu after the OIS and as a minimum committed perjury in official government records; aided and abated in the physical assault, battery, tasing from the back without warning, pre-meditated military execution style of Paul Cantu [APD Pardo-Martin # 8243 was the one who told Mattingly to get the shield from APD Pardo-Martin # 8243's police supervisory vehicle]. And aided and abated APD Jacob Beirowski after Paul Cantu was shot from 15- 22 times with 7-8 deadly bullets in his body, in leaving Paul Cantu completely naked [except for socks] in 33-degree weather exposed to hypothermia and infection with complete disregard to Paul's life. APD Pardo-Martin # 8243 did not call for EMS.

APD Pardo-Martin # 8243 also stated he followed EMS to the Hospital. We plaintiffs affirm that APD Pardo-Martin # 8243 interacted front Desk personnel [As stated in Paul Cantu's permanent Medical Records; EMS and firemen records, faxes and statements, and front Desk Personnel; nurses and other medical personnel and staff at the Hospital] and "*Classified*" Paul Cantu.

We plaintiff established that the defendant acted with deliberate indifference to serious medical needs of Paul Cantu. And to avoid responsibility and accountability for his criminal actions APD Pardo-Martin # 8243 resigned from the APD.

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**D.2 Christopher K. Knodel**

APD # 7855 Christopher K. Knodel admitted in an Affidavit:

On Tuesday January 29, 2019 at approximately 02:15 I, Officer Knodel #7855, responded to 901 W Ben White Blvd SvrD Eb, at South Austin Hospital, in reference to a guard a suspect who had been involved in an officer involved shooting.

According to the Hospital's nurses Christopher K. Knodel removed and took the only identifiable piece of clothing his socks and guarded him the entire time, even after his death.

**V. PRAYER**

WHEREFORE, ALL OF THE ABOVE CONSIDERED. Plaintiffs remind the Honorable judge That Paul Cantu was never allowed by the Defendants to appear in front of a judge or juror. Paul Cantu a gravely ill and debilitated 27 year old Professional, Hispanic and disabled patient, with no previous criminal records nor even a traffic violation, during a Medical emergency was inflicted with unfair and unusual punishment, including death by military-style execution over a minor traffic violation committed by a white male. The Defendants became the judges, jurors, and executioners. We, The Plaintiffs M. Patricia Cantu, and Roberto Cantu pray that the Defendants' motion to dismiss be denied. That the Honorable Judge allow us to obtain all the original evidence, documentation, raw videos, and audio through Discovery; allow us to make amendments directed by the judge or court and sufficient time afterwards to secure attorneys to represent us. Plaintiffs pray that Defendants be cited to appear and answer herein, and, upon final trial, Plaintiff shave Judgment against Defendants, jointly and severally, as requested above, and as follows:

1. Judgment against Defendants for all damages alleged in this petition;
2. Interest before and after judgment at the highest rate provided by law, until paid;

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3. Costs of suit;

4. Reasonable and necessary attorneys' fees and expert witness fees.

DATED: April 28, 2021

RESPECTFULLY SUBMITTED,

M. Patricia Cantu & Roberto Cantu  
1032 W. Woodlawn Ave.  
San Antonio, Texas 78201  
Telephone (210) 732-2688  
Facsimile (210) 732-9380  
Email: mpatriciacan2@gmail.com  
PLAINTIFFS PRO SE

CERTIFICATE OF SERVICE

I certify that on the 28<sup>th</sup> day of April 2021, I served a copy of *Plaintiff's Response to Defendants, Brian Manley, Rey Arellano, Farah Muscadin, Erin Truho, Julian Padro-Martin, and Christopher Knodel's Motion to Dismiss* on all parties through their attorney in compliance with the Federal Rules of Civil Procedure.

Via Email, U.S. First-Class & Certified Mail

ANNE L. MORGAN CITY ATTORNEY  
MEGHAN RILEY, CHIEF, LITIGATION  
H. GRAY LAIRD III  
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ATTORNEYS FOR DEFENDANTS

/s/ M. Patricia Cantu  
M. Patricia & Roberto Cantu  
Plaintiffs' Pro Se



express policy of the Austin Police Department which was the moving force of the alleged constitutional violations. Plaintiffs' Response to the Motion to Dismiss likewise fails to explain why the *Monell* claim should not be dismissed.

Although the Plaintiffs cite a number of general legal standards for *Monell* claims in their response, they do not provide any factual support for their *Monell* claim. "[T]o plead a practice so persistent and widespread as to practically have the force of law, [the plaintiff] must do more than describe the incident that gave rise to his injury." *Id.*, quoting *Pena v. Rio Grande City*, 879 F.3d 613, 622 (5<sup>th</sup> Cir. 2018). Plaintiffs' response does not discuss the Complaint's scarce factual allegations of policies or practices of the City and provides no support for a claim that any policy or practice actually caused the Plaintiffs' son's injuries.

Plaintiffs allege no specific, non-conclusory facts which demonstrate that any policy of the Austin Police Department, or any alleged widespread practice of bias or racism in the department, played any role in this incident much less was the moving force of the death of Cantu. Plaintiff's Complaint points to no action or statement of APD officers that demonstrates that any bias or racism of the Austin Police Department was the moving force of the officers' decision to use deadly force on Cantu. Plaintiffs' conclusory allegations of moving force causation are clearly insufficient to support a *Monell* claim.

Likewise, Plaintiffs' response fails to demonstrate sufficient specific, non-conclusory facts which support a claim for failure to train. The response, like the Complaint, fails to identify an actual, specific training policy, describe any training procedures, and fails to provide *any* factual support to show a plausible conclusion that the City was indifferent to unconstitutional police action. Plaintiffs' Complaint contains no factual allegations regarding the City's existing training policies or the training or supervision provided to the officers involved in this incident.

Similarly, the Plaintiffs' response provides no facts regarding deliberate indifference in adopting its policies, and no facts that show that any such training directly caused the alleged constitutional violation. As a result, Plaintiffs' claim against the City fails as a matter of law.

**II. PLAINTIFFS' CLAIMS AGAINST MANLEY, ARELLANO, MUSCADIN, TRUHO, PADRO-MARTIN AND KNODEL SHOULD BE DISMISSED.**

**A. Brian Manley**

The only factual allegations in the Complaint which address any conduct by former Police Chief Brian Manley are contained in Paragraph 6.73. There, Plaintiffs evidently allege that Chief Manley obstructed justice by ordering that videos of the incident taken by a witness not be released to the Plaintiffs. Plaintiffs also claim that 911 and 311 calls and other "important Police Records" have not been released pursuant to Manley's orders. (Doc. 1 ¶ 6.73) Plaintiffs' response to the Motion to Dismiss offers no explanation of how Manley's actions constitute an "obstruction of justice" sufficient to state a claim for relief under 28 U.S.C. §1983.

Plaintiffs' response to the Motion to Dismiss appears to contain an adaptation of a jury instruction from another case in an effort to support a claim of inadequate supervision against Chief Manley. However, Plaintiffs' Complaint does not allege an inadequate supervision claim and contains no non-conclusory facts to support such a claim. As a result, the Plaintiffs' claims against Manley should be dismissed.

**B. Rey Arellano and Farah Muscadin**

As discussed in the Defendants' Motion to Dismiss, Plaintiffs include City of Austin Assistant City Manager Rey Arellano and Director of Police Oversight Farah C. Muscadin as defendants but offer no allegations whatsoever to support a claim against them under 28 U.S.C. §1983. The only sentence in the entire Complaint which addresses Arellano and Muscadin is contained in introductory Paragraph 1.1 which states: "Representatives from City of Austin Rey

Arellano, Assistant City Manager and Farah C. Muscadin, Director of Austin Office of Police Oversight for failure to report, investigate, post complains [sic] in their websites and discrimination against Hispanics and people with Disabilities.” (Doc. 1, ¶ 1.1) The Complaint contains no specific facts at all about the actions of Arellano and Muscadin and provides no explanation of how Arellano and Muscadin allegedly violated Plaintiffs’ constitutional rights sufficient to support a claim under 28 U.S.C. §1983.

Plaintiffs’ response to the Motion to Dismiss provides no support for their claims against Arellano and Muscadin either. Plaintiffs appear to discuss an inadequate supervision claim against Arellano and Muscadin, but fail to refer to any factual allegations in the Complaint to support an inadequate supervision claim. The Complaint does not make an inadequate supervision claim at all against Arellano and Muscadin, and as a result, the claims against Arellano and Muscadin should be dismissed.

**C. Erin Truho**

Plaintiffs name Austin Police Department Detective Erin Truho as a defendant but allege no facts sufficient to state a claim for relief. The only mention of Truho in the Complaint is in the introductory paragraph which states: “...Detective Erin Truho (Special Unit Investigator) for interfering with the Certified Autopsy Records of Paul Cantu.” (Doc. 1, ¶ 1.1)

Plaintiffs’ response to the Motion to Dismiss contains excerpts from Truho’s reports but provides no explanation of how Truho allegedly violated Plaintiffs’ constitutional rights sufficient to support a claim under 28 U.S.C. §1983. The excerpts cited by Plaintiffs state that while performing her duties as a detective with APD’s Special Investigations Unit, Truho met with the trauma nurse at the hospital and later attended Cantu’s autopsy. Yet, Plaintiffs do not explain how these actions constitute any constitutional violation sufficient to state a claim for relief under 28

U.S.C. §1983. Accordingly, the claims against Truho should be dismissed.

**D. Julian Padro-Martin and Christopher J. Knodel**

Plaintiffs assert in their Complaint that Officers Padro-Martin and Knodel interfered with Cantu's medical treatment after he was taken to St. David's South Austin Medical Center. Plaintiffs allege that Padro-Martin and Knodel "interfered with the Critical Emergency Medical treatment of Paul Cantu, violated HIPPA rules; and his right to have an attempt to save his life." (Doc. 1, ¶ 6.59)

Plaintiffs appear to be asserting a Fourteenth Amendment claim for failure to protect or provide for the adequate medical needs of individuals in the Defendants' custody. To sustain a cause of action under 28 U.S.C. §1983 for a failure to provide medical treatment, a plaintiff must establish that the defendants acted with deliberate indifference to serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04, 97 S. Ct. 285 (1976). Deliberate indifference requires a higher degree of fault than negligence, or even gross negligence. *Hare v. City of Corinth*, 74 F.3d 633, 650 (5<sup>th</sup> Cir. 1996).

Plaintiffs' response to the Motion to Dismiss cites excerpts from Padro-Martin's affidavit in which he described his role in attempting life-saving measures on Cantu following the incident. These excerpts, which are not contained in the Complaint, contain no facts which support the deliberate indifference element or, in general, a §1983 claim against Padro-Martin.

Similarly, Plaintiffs' response cites an excerpt from Officer Knodel's report which states that he guarded Cantu's body at the hospital and removed Cantu's socks. These allegations hardly constitute specific facts sufficient to state a claim under §1983 against Knodel.

Plaintiffs' allegations state no valid claim for relief against Padro-Martin and Knodel under 28 U.S.C §1983. As a result, Plaintiffs' claims against Padro-Martin and Knodel should be dismissed.

**PRAYER**

Defendants City of Austin, Brian Manley, Rey Arellano, Farah Muscadin, Erin Truho, Julian Padro-Martin and Christopher Knodel respectfully request that the Court grant their Motion to Dismiss and dismiss all claims against the Defendants with prejudice and with all costs assessed to the Plaintiffs.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird

H. GRAY LAIRD III

State Bar No. 24087054

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that on the 5th day of May, 2021, I served a copy of *Defendants City of Austin, Brian Manley, Rey Arellano, Farah Muscadin, Erin Truho, Julian Padro-Martin, and Christopher Knodel's Reply in Support of their Motion to Dismiss* on all parties in compliance with the Federal Rules of Civil Procedure.

**Via CM/ECF:**

M. Patricia Cantu

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Telephone: 210-776-5070

**PLAINTIFFS PRO SE**

/s/ H. Gray Laird

H. GRAY LAIRD



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

### **INTRODUCTION**

1.1 Defendants deny the allegations contained in Paragraph 1.1.

### **THE PARTIES**

2.1 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 2.1 of the Complaint and therefore deny same.

2.2. Defendants admit the allegations contained in Paragraph 2.2.

2.3 Defendants admit that Rey Arellano is an Assistant City Manager of the City of Austin. Defendants deny the remaining allegations contained in Paragraph 2.3.

2.4 Defendants admit that Farah C. Muscadin is the Director of Police Oversight for the City of Austin. Defendants deny the remaining allegations contained in Paragraph 2.4.

2.5 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 2.5 of the Complaint and therefore deny same.

2.6 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 2.6 of the Complaint and therefore deny same.

2.7 Defendants admit that on the date of the incident which is the subject of this lawsuit, Brian Manley was the Chief of Police for the City of Austin.

2.8 Defendants admit the allegations contained in Paragraph 2.8.

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

- 2.9. Defendants admit the allegations contained in Paragraph 2.9.
- 2.10 Defendants admit the allegations contained in Paragraph 2.10.
- 2.11 Defendants admit the allegations contained in Paragraph 2.11.
- 2.12 Defendants admit the allegations contained in Paragraph 2.11.
- 2.13 Defendants admit the allegations contained in Paragraph 2.13.
- 2.14 Defendants admit the allegations contained in Paragraph 2.14.
- 2.15 Defendants admit the allegations contained in Paragraph 2.15.

### **COMPLAINT**

- 3.1 Defendants deny the allegations contained in Paragraph 3.1.
- 3.2 Defendants deny the allegations contained in Paragraph 3.2.
- 3.3 Defendants deny the allegations contained in Paragraph 3.3.
- 3.4 Defendants deny the allegations contained in Paragraph 3.4.
- 3.5 Defendants deny the allegations contained in Paragraph 3.5.
- 3.6 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3.6 of the Complaint and therefore deny same.
- 3.7 Defendants deny the allegations contained in Paragraph 3.7.
- 3.8 Defendants deny the allegations contained in Paragraph 3.8.
- 3.9 Defendants deny the allegations contained in Paragraph 3.9.
- 3.10 Defendants deny the allegations contained in Paragraph 3.10.

### **DISCOVERY**

- 4.1 Defendants admit the allegations contained in Paragraph 4.1.

### **JURISDICTION AND VENUE**

- 5.1 Defendants admit that this Court has subject matter jurisdiction over these claims.  
Defendants deny the remaining allegations contained in Paragraph 5.1.
- 5.2.1 Defendants admit the allegations contained in Paragraph 5.2.1.

### **FACTS**

- 6.1 Defendants deny the allegations contained in Paragraph 6.1.
- 6.2 Defendants deny the allegations contained in Paragraph 6.2.
- 6.3 Defendants admit the allegations contained in Paragraph 6.3.
- 6.4 Defendants deny the allegations contained in Paragraph 6.4.
- 6.5 Defendants deny the allegations contained in Paragraph 6.5.
- 6.6 Defendants deny the allegations contained in Paragraph 6.6.
- 6.7 Defendants deny the allegations contained in Paragraph 6.7.
- 6.8 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.8 of the Complaint and therefore deny same.
- 6.9 Defendants deny the allegations contained in Paragraph 6.9.
- 6.10 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.11 of the Complaint and therefore deny same.
- 6.11 Defendants deny the allegations contained in Paragraph 6.11.
- 6.12 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.12 of the Complaint and therefore deny same.

- 6.13 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.13 of the Complaint and therefore deny same.
- 6.14 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.14 of the Complaint and therefore deny same.
- 6.15 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.15 of the Complaint and therefore deny same.
- 6.16 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.16 of the Complaint and therefore deny same.
- 6.17 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.17 of the Complaint and therefore deny same.
- 6.18 Defendants deny the allegations contained in Paragraph 6.18.
- 6.19 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.19 and therefore deny same.
- 6.20 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.20 of the Complaint and therefore deny same.
- 6.21 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.21 of the Complaint and therefore deny same.
- 6.22 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.22 of the Complaint and therefore deny same.
- 6.23 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.23 of the Complaint and therefore deny same.

- 6.24 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.24 of the Complaint and therefore deny same.
- 6.25 Defendants deny the allegations contained in Paragraph 6.25.
- 6.26 Defendants deny the allegations contained in Paragraph 6.26.
- 6.27 Defendants deny the allegations contained in Paragraph 6.27.
- 6.28 Defendants deny the allegations contained in Paragraph 6.28.
- 6.29 Upon information and belief, Defendants admit the allegations contained in Paragraph 6.29.
- 6.30 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.30 of the Complaint and therefore deny same.
- 6.31 Defendants deny the allegations contained in Paragraph 6.31.
- 6.32 Defendants deny the allegations contained in Paragraph 6.32.
- 6.33 Defendants deny the allegations contained in Paragraph 6.33.
- 6.34 Defendants deny the allegations contained in Paragraph 6.34.
- 6.35 Defendants deny the allegations contained in Paragraph 6.35.
- 6.36 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.36 of the Complaint and therefore deny same.
- 6.37 Defendants deny the allegations contained in Paragraph 6.37.
- 6.38 Defendants deny the allegations contained in Paragraph 6.38.
- 6.39 Defendants deny the allegations contained in Paragraph 6.39.
- 6.40 Defendants deny the allegations contained in Paragraph 6.40.
- 6.41 Defendants deny the allegations contained in Paragraph 6.41.

- 6.42 Defendants deny the allegations contained in Paragraph 6.42.
- 6.43 Defendants deny the allegations contained in Paragraph 6.43.
- 6.44 Defendants deny the allegations contained in Paragraph 6.44.
- 6.45 Defendants deny the allegations contained in Paragraph 6.45.
- 6.46 Defendants deny the allegations contained in Paragraph 6.46.
- 6.47 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.47 of the Complaint and therefore deny same.
- 6.48 Defendants deny the allegations contained in Paragraph 6.48.
- 6.49 Defendants deny the allegations contained in Paragraph 6.49.
- 6.50 Defendants deny the allegations contained in Paragraph 6.50.
- 6.51 Defendants deny the allegations contained in Paragraph 6.51.
- 6.52 Defendants deny the allegations contained in Paragraph 6.52.
- 6.53 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.53 of the Complaint and therefore deny same.
- 6.54 Defendants deny the allegations contained in Paragraph 6.54.
- 6.55 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.55 of the Complaint and therefore deny same.
- 6.56 Defendants deny the allegations contained in Paragraph 6.56.
- 6.57 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.57 of the Complaint and therefore deny same.
- 6.58 Defendants deny the allegations contained in Paragraph 6.58.
- 6.59 Defendants deny the allegations contained in Paragraph 6.59.

- 6.60 Defendants deny the allegations contained in Paragraph 6.60.
- 6.61 Defendants deny the allegations contained in Paragraph 6.61.
- 6.62 Defendants deny the allegations contained in Paragraph 6.62.
- 6.63 Defendants deny the allegations contained in Paragraph 6.63.
- 6.64 Defendants deny the allegations contained in Paragraph 6.64.
- 6.65 Defendants deny the allegations contained in Paragraph 6.65.
- 6.66 Defendants deny the allegations contained in Paragraph 6.66.
- 6.67 Defendants deny the allegations contained in Paragraph 6.67.
- 6.68 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.68 of the Complaint and therefore deny same.
- 6.69 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.69 of the Complaint and therefore deny same.
- 6.70 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.70 of the Complaint and therefore deny same.
- 6.71 Defendants deny the allegations contained in Paragraph 6.71.
- 6.72 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.72 of the Complaint and therefore deny same.
- 6.73 Defendants deny the allegations contained in Paragraph 6.73.

#### **CAUSES OF ACTION**

- 7.1 Defendants incorporate and adopt their responses to the previous paragraphs of the Complaint.
- 7.2 Defendants deny the allegations contained in Paragraph 7.2.

- 7.3 Defendants deny the allegations contained in Paragraph 7.3.
- 7.4 Defendants deny the allegations contained in Paragraph 7.4.
- 7.5 Defendants deny the allegations contained in Paragraph 7.5.
- 7.6 Defendants deny the allegations contained in Paragraph 7.6.
- 7.7 Defendants deny the allegations contained in Paragraph 7.7.
- 7.8 Defendants deny the allegations contained in Paragraph 7.8.
- 7.9 Defendants deny the allegations contained in Paragraph 7.9.
- 7.10 Defendants deny the allegations contained in Paragraph 7.10.
- 7.11 Defendants deny the allegations contained in Paragraph 7.11.
- 7.12 Defendants deny the allegations contained in Paragraph 7.12.
- 7.13 Defendants deny the allegations contained in Paragraph 7.13.
- 7.14 Defendants deny the allegations contained in Paragraph 7.14.
- 7.15 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 7.15 of the Complaint and therefore deny same.
- 7.16 Defendants deny the allegations contained in Paragraph 7.16.
- 7.17 Defendants deny the allegations contained in Paragraph 7.17.
- 7.18 Defendants deny the allegations contained in Paragraph 7.18.
- 7.19 Defendants deny the allegations contained in Paragraph 7.19.
- 7.20 Defendants deny the allegations contained in Paragraph 7.20.
- 7.21 Defendants deny the allegations contained in Paragraph 7.21.
- 7.22 Defendants deny the allegations contained in Paragraph 7.22.
- 7.23 Defendants deny the allegations contained in Paragraph 7.23.

- 7.24 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 7.24 of the Complaint and therefore deny same.
- 7.25 Defendants deny the allegations contained in Paragraph 7.25.
- 8.1 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 8.1 of the Complaint and therefore deny same.
- 8.2 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 8.2 of the Complaint and therefore deny same.
- 8.3 Defendants deny the allegations contained in Paragraph 8.3.
- 8.4 Defendants deny the allegations contained in Paragraph 8.4.
- 8.5 Defendants deny the allegations contained in Paragraph 8.5.
- 8.6 Defendants deny the allegations contained in Paragraph 8.6.
- 8.7 Defendants deny the allegations contained in Paragraph 8.7.
- 8.8 Defendants deny the allegations contained in Paragraph 8.8.
- 8.9 Defendants deny the allegations contained in Paragraph 8.9.
- 8.10 The allegations contained in Paragraph 8.10 do not appear to be addressed to these Defendants and therefore no response is required from these Defendants. To the extent that any allegations are directed to these Defendants, Defendants deny same.
- 8.11 The allegations contained in Paragraph 8.11 do not appear to be addressed to these Defendants and therefore no response is required from these Defendants. To the extent that any allegations are directed to these Defendants, Defendants deny same.

#### **DAMAGES**

- 9.1 Defendants deny the allegations contained in Paragraph 9.1.

- 9.2 Defendants deny the allegations contained in Paragraph 9.2.
- 9.3 Defendants deny the allegations contained in Paragraph 9.3.
- 9.4 Defendants deny the allegations contained in Paragraph 9.4.
- 9.5 Defendants deny the allegations contained in Paragraph 9.5.
- 9.6 Defendants deny the allegations contained in Paragraph 9.6.
- 9.7 Defendants deny the allegations contained in Paragraph 9.7.
- 9.8 Defendants deny the allegations contained in Paragraph 9.8.
- 9.9 Defendants deny the allegations contained in Paragraph 9.9.
- 9.10 Defendants deny the allegations contained in Paragraph 9.10.
- 9.11 Defendants deny the allegations contained in Paragraph 9.11.

**PUNITIVE DAMAGES**

- 10.1 Defendants deny the allegations contained in Paragraph 10.1.

**ATTORNEYS' FEES AND EXPERT FEES**

- 11.1 Defendants deny the allegations contained in Paragraph 11.1.

**JURY DEMAND**

- 12.1 Paragraph 12.1 is merely Plaintiffs' jury demand and thus no response is required of these Defendants.

**PLAINTIFFS' PRAYER FOR RELIEF**

As to the last unnumbered paragraph beginning: "WHEREFORE, PREMISES CONSIDERED...", Defendants deny the allegations of that paragraph and specifically deny that the Plaintiffs are entitled to any relief whatsoever of and from the Defendants.

**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 that Plaintiffs 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.
3. If applicable and subject to withdrawal, Defendants assert the affirmative defense of contributory negligence. If applicable and subject to withdrawal, Plaintiffs' claims are barred in whole or in part by Paul Cantu's contributory negligence. If applicable and subject to withdrawal, Paul Cantu, by his actions, failed to exercise ordinary care for his safety. If applicable and subject to withdrawal, His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.
4. If applicable and subject to withdrawal, Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part since Paul Cantu's acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.
5. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.
6. Defendants assert compensatory damages and the relief sought by Plaintiffs are not available under the ADA for allegations.
7. Defendants assert that Plaintiffs have not asserted a viable claim for or on behalf of a qualified person with a disability.

8. 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.
9. 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.
10. The City asserts that it is absolutely immune from punitive damages under 42 U.S.C. § 1983 pursuant to City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981).
11. If applicable and subject to withdrawal, The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's conduct.
12. Pleading further and in the alternative, Plaintiffs' injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.
13. If applicable and subject to withdrawal, Pleading further, alternatively, and by way of affirmative defense, Defendant would show that at the time and on the occasion in question, Decedent failed to use care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. If applicable and subject to withdrawal, Defendant invokes the comparative responsibility provision of the Texas Civil Practice & Remedies Code.
14. Defendant further pleads any fault to be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

15. Defendant asserts the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies code, and the due process clause of the United States Constitution.
16. To the extent Defendants did not address a specific averment made by Plaintiffs in the Complaint, Defendants expressly deny all such averments.

**DEFENDANTS' PRAYER**

Defendants, City of Austin (sometimes referred to as Austin Police Department or “APD”), and Officer Julian Padro-Martin and Officer Christopher J. Knodel, file pray that all relief requested by Plaintiffs 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 RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton, Jr.  
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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that on the 7th day of February, 2022, I served a copy of *Defendants City of Austin, Julian Padro-Martin, and Christopher J. Knodel's Answer and Affirmative Defenses to Plaintiffs' Original Complaint* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

**Via CM/ECF:**

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**ATTORNEY FOR PLAINTIFFS**

/s/ Monte L. Barton, Jr.  
MONTE L. BARTON, JR.



risk of serious harm existed, disregarding that risk, and that the delay resulted in substantial harm. Plaintiffs also assert ADA claims (Americans with Disabilities Act) against the City of Austin, directed against the Austin Police Department. Plaintiffs assert that the “lack of the officers' regard for Paul Cantu's alleged medical disability rose to the level of failure to accommodate and a direct violation of Title II of the Americans with Disabilities Act.”

Plaintiffs' decedent, Paul Cantu, died as a result of the injuries he received in an officer-involved shooting on January 29, 2019. Video evidence conclusively shows all relevant events. There is no genuine dispute as to any material fact and the Defendant Officers and City of Austin are entitled to judgment as a matter of law.

All of Plaintiffs' claims fail and should be dismissed with prejudice. All of the Defendant Officers' actions were objectively reasonable. None of Defendants actions were improper and no constitutional violation occurred. The application of Qualified Immunity bars this lawsuit against them. The same exigent circumstances apply to the Plaintiffs' ADA claims, and they should likewise be dismissed with prejudice. As for the claims for delayed medical care, the declarations of Officers Padro-Martin and Knodel are clear that neither of them possessed any critical medical information and neither of them did anything to impede medical care to Paul Cantu.

As clearly recorded and shown by the available video recordings, Paule Cantu was shot by Officers Mattingly and Camacho at approximately 1:47 AM after he first quickly stood up and pointed his handgun at Sergeant Joseph and Officer Mattingly (this is identified as 07:47:00Z on the individual officers' Body Worn Cameras [“BWC”] and 01:47:00 on the dashboard video [“DMAV”] from Sgt Joseph's patrol unit. Copies of the videos and extracted photo images are attached as exhibits, as noted below).

The Defendants deny the Plaintiffs' claims and maintain that Plaintiffs cannot meet their

considerable evidentiary burden to establish liability under 42 U.S.C. §1983 or the ADA.

## II. SUMMARY JUDGMENT EVIDENCE

Please take notice that the following Exhibits have been included with the separately filed Motion for Summary Judgment by Officers Michael Joseph, Jacob Beirowski, Robert Mattingly, Luis Camacho, and Kyle Peterson. Accordingly, The City of Austin and individual Defendant Officers, Padro-Martin and Knodel, hereby adopt and incorporate them by reference into this Motion for Summary Judgment.

- Exhibit 1 Declaration of Sgt Michael Joseph APD badge #4954,
- Exhibit 2 Declaration of Officer Luis Camacho APD badge #8512,
- Exhibit 3 Declaration of Officer Robert Mattingly APD badge #8564,
- Exhibit 4 Declaration of Officer Jacob Beirowski APD badge #7838,
- Exhibit 5 Declaration of Officer Kyle Peterson APD badge #8783,
- Exhibit 6 Declaration of Officer Julian Pardo-Martin APD badge #8243,
- Exhibit 7 Declaration of Officer Christopher Knodel APD badge #7855,
- Exhibit 8 BWC video Officer Luis Camacho,
- Exhibit 9 BWC video Officer Robert Mattingly,
- Exhibit 10 BWC video Sergeant Michael Joseph,
- Exhibit 11 BWC video Officer Jacob Beirowski,
- Exhibit 12 BWC video Officer Kyle Peterson,
- Exhibit 13 BWC video Officer Julian Pardo-Martin,
- Exhibit 14 DMAV video Sgt Michael Joseph,
- Exhibit 15 7 Photo images selected from DMAV (dashboard) video Sgt Joseph patrol unit:
  - Time - 01:40:52
  - Time - 01:41:19
  - Time - 01:45:04
  - Time - 01:46:43
  - Time - 01:47:07
  - Time - 01:47:07 (2nd image)
  - Time - 01:47:08

Exhibit 16 8 Photo images selected from BWC (body worn camera) video Sgt Joseph:

Time - 07:40:59Z  
Time - 07:41:03Z  
Time - 07:41:48Z  
Time - 07:42:18Z  
Time - 07:45:03Z  
Time - 07:45:04Z  
Time - 07:47:06Z  
Time - 07:47:07Z

Exhibit 17 8 Photo images selected from BWC (body worn camera) video Officer Camacho:

Time - 07:47:06Z  
Time - 07:47:07Z (1st image)  
Time - 07:47:07Z (2nd image)  
Time - 07:47:07Z (3rd image)  
Time - 07:47:07Z (4th image)  
Time - 07:47:07Z (5th image)  
Time - 07:47:08Z (1st image)  
Time - 07:47:08Z (2nd image)

### III. FACTS

On January 28, 2019, at approximately 10:25 pm (2225 hrs) Austin Police Department (APD) Officer Bierowski #7838 attempted to stop a vehicle for a traffic violation in the area of East William Cannon Drive and South IH-35. The driver of the vehicle evaded and fled eastbound on East William Cannon Drive. Officer Bierowski did not pursue the vehicle. [*Exhibit 4 - Beirowski Declaration*] About three hours later, on January 29, 2019, at 1:40 am, Sergeant Michael Joseph #4954 located the same vehicle approximately 100 feet north of the roadway, in a grassy field, in the 7900 block of East William Cannon Drive. As Sergeant Joseph drove up to the vehicle and stopped, Paul Cantu, the lone occupant, exited the driver's seat and pointed a handgun at Sergeant Joseph. [*see Exhibit 1 - Joseph Declaration; Exhibit 10 - BWC video Sgt. Joseph; Exhibit 14 - DMAV video Sgt. Joseph; Exhibit 15; Exhibit 16*]

Sergeant Joseph exited his patrol vehicle, requested backup officers, and negotiated with Cantu to drop his firearm. Over the next six minutes Sergeant Joseph talked to Cantu and continued

to give commands for him to drop the gun. [*see Exhibit 1 - Joseph Declaration; Exhibit 10 - BWC video Sgt. Joseph; Exhibit 14 - DMAV video Sgt. Joseph; Exhibit 15; Exhibit 16*] During the same time, several other officers arrived on scene to assist Sergeant Joseph. Two of the responding officers were Luis Camacho #8512 and Robert Mattingly #8564.

At 1:47 am, Cantu again pointed his handgun in the direction of Sergeant Joseph and Officer Mattingly. In response, Officer Camacho and Officer Mattingly fired multiple rounds from their respective APD issued handguns at Cantu. Officer Camacho fired at Cantu because he presented a lethal threat to other officers when he raised his handgun towards them. Officer Mattingly shot his weapon for his own safety and the safety of others when he saw Cantu was armed with a handgun pointing it toward Mattingly and Sgt. Joseph.

As clearly recorded and shown by the available video, after previously evading Officer Beirowski and refusing many requests by Sergeant Joseph and others to put down the gun, Cantu abruptly stood up and pointed his gun at Defendant officers Joseph and Mattingly. In response, Officer Camacho and Officer Mattingly fired their firearms at Cantu. Each of the Officers reasonably believed that Cantu posed a threat of serious harm to the officers or others. [*see Exhibit 1 - Joseph Declaration; Exhibit 10 - BWC video Sgt. Joseph; Exhibit 14 - DMAV video Sgt. Joseph; Exhibit 15; Exhibit 16*]; [*Exhibit 2 - Camacho Declaration; Exhibit 3 - Mattingly Declaration; Exhibit 8 - BWC video Officer Luis Camacho; Exhibit 9 - BWC video Officer Robert Mattingly; Exhibit 17*]

Other officers immediately secured the area and began emergency life saving efforts for Paul Cantu. No one used less lethal weapons, including Tasers or lasers, or otherwise physically assaulted Mr. Cantu. No one threatened him or took money from him. No one “staged the scene.” There is absolutely no evidence to support any of these allegations or any of the other claims of

wrongdoing that are alleged in the Plaintiffs' Complaint. Paul Cantu was transported to St. David's South Austin Medical Center by EMS. Officers Padro-Martin and Knodel were stationed to guard him at the hospital. They did not delay or interfere with medical treatment in any way. Mr. Cantu was pronounced deceased at approximately 3:07 am by an attending physician. [*Id.*; *see also*, *Exhibit 4 - Beirowski Declaration; Exhibit 5 - Peterson Declaration; Exhibit 6 - Pardo-Martin Declaration; Exhibit 7 - Knodel Declaration; Exhibit 11 - BWC video Officer Beirowski; Exhibit 12 - BWC video Officer Peterson; Exhibit 13 - BWC video Officer Pardo-Martin*]

### **Timeline of Events**

The following approximate timeline of relevant events is compiled from the exhibits referenced above. The audio recordings from the video cameras establish that officers requested and/or gave the command to "drop the gun," or variations of the same phrase, approximately 24 times over a six minute and twenty second period.

#### **January 28, 2019**

22:25:00 (10:25 PM) - Traffic stop initiated by Officer Beirowski. The driver (Cantu) of a black Chrysler automobile evades Officer Beirowski and is last seen driving eastbound on East William Cannon Drive.

#### **January 29, 2019**

01:40:00 - Sergeant Joseph located the black Chrysler off the roadway in the 7900 block of East William Cannon Drive. Cantu exited the driver's seat of the vehicle and pointed a handgun at Sergeant Joseph. Sergeant Joseph calls for officer assistance, and continues to talk to Cantu, offering assistance and requesting for him to put the gun down.

01:45:45 - Officer Camacho arrived on scene.

01:47:00 - Approximately when Officer Mattingly arrived at Sergeant Joseph's location with a ballistic shield and moved in front of Sergeant Joseph.

01:47:07 - Cantu rose from a kneeling to a standing position and pointed a handgun in the direction of Officer Mattingly and Sergeant Joseph.

01:47:08 - Officers Camacho and Mattingly fired multiple rounds at Cantu.

01:49:00 - Officers secure the scene and life saving measures begin.

01:58:00 - EMS arrived on scene.

02:05:00 - EMS transported Cantu to St. David's South Austin Medical Center (SAMC).

03:07:00 - Cantu pronounced deceased by Doctor Strong at SAMC.

**January 30, 2020**

Travis County District Attorney declined to prosecute any criminal charges related to this matter.

**Officer Julian Pardo-Martin #8243**

The Complaint makes several claims against Officer Pardo-Martin. They are denied and there is no evidence to support them. This is explained in his Declaration and the referenced documents [see Exhibit 6, incorporated herein by reference], and as clearly recorded and shown by his Body Worn Camera [see Exhibit 13 - BWC video Officer Pardo-Martin, incorporated herein by reference]. Officer Pardo-Martin states, in part:

3. On January 29, 2019, at 0209 hours (2:09 AM) I was on duty and responded to an APD radio request for assistance from Sgt Michael Joseph. I heard Sgt Joseph state that he was encountering a subject person (I later learned that his name was Paul Cantu) in a vehicle in the 7800 blk of E William Cannon Dr. A few moments later I heard Sgt Joseph state "32" via radio. I know through my training and experience as a police officer that "32" means gun. I then responded to the scene with lights and sirens. As I was on the way to the call I heard Sgt Joseph state that he needs more units on scene with him. I also heard Sgt Joseph state via radio that the subject had a gun to his head.

4. I arrived at the location along with other officers. I started to move towards Sgt Joseph. When I was doing this I observed multiple additional Officers next to Sgt Joseph. As I was moving down the hill I could not tell where the suspect was. I believe there were about three officers in front of me in the line we formed. After shots were fired, other officers and I moved on foot towards the suspect. He was on his back lying on the ground. As we approached the suspect I observed a black semi-automatic handgun on the ground near the suspect's head within arm's reach of the suspect.

5. I assisted with medical care. I observed at least three gunshots to the subject's chest and stomach and I observed that he was breathing. I placed occlusive dressings onto both of the chest wounds that I could see. The subject (Mr. Cantu) was then rolled over and I observed another gunshot wound to his back near his armpit. I placed an occlusive dressing onto this wound. Mr. Cantu was then rolled over to his back. I checked his pulse and did not feel one. I then started to do chest compressions. I was relieved from chest compressions by another officer and I moved over to his head. I opened his airway. As I was doing this my chest protection was getting in the

way so Officer Driskill removed it along with my body camera. Officer Driskill then placed my body camera back onto me. I continued to hold Mr. Cantu's head. EMS arrived on scene. I assisted in lifting him up and carrying him over to the ambulance stretcher. EMS and Fire crews took over medical care.

\*\*\*

8. I followed EMS to St. David's South Austin Hospital and remained stationed there standing guard in the hall outside of the hospital room until I was later relieved by Officer Knodel (AP #7855 - KNODEL, CHRISTOPHER). After being relieved by Officer Knodel, I went immediately to the police station and gave my statement and interview.

9. I prepared a statement setting out the events of my involvement. My narrative and complete statement is included as part of the Austin Police Department General Offense Report GO# 2019-290092. Copies of my narrative report and statement are attached to this Declaration as *Exhibit 1 (Pardo-Martin)*, including the pages COA 000114-115, COA 001131-1133.

10. I did not inform medical staff that Mr. Cantu was a "John Doe." I did not have his wallet containing his identification and a card with emergency medical information. I did not give permission to harvest Mr. Cantu's organs to anyone. I did not possess Mr. Cantu's driver's license. I did not delay Mr. Cantu's medical treatment at St. David's South Austin Medical Center by not providing his driver's license, insurance card, and emergency medical information card to staff. I did not possess any critical medical information regarding Mr. Cantu and I did not withhold any information from the medical personnel. I did not have any information about Mr. Cantu's blood type and allergies, and I certainly did not do anything to impede proper medical treatment and cause his unfortunate death.

...

### **Officer Christopher Knodel #7855**

The Complaint also makes several claims against Officer Knodel. They are denied and there is no evidence to support them. This is explained in his Declaration and the referenced documents [see Exhibit 7, incorporated herein by reference]. Officer Knodel states, in part:

2. On January 29, 2019, I was on duty and responded to an APD assignment at St. David's South Austin Hospital, 901 W Ben White Blvd, to guard a suspect (I later learned that his name was Paul Cantu) who had been involved in an officer involved shooting.

3. Upon arrival, I relieved Officer Pardo-Martin APD #8243 and guarded the suspect. I did not ever go to the scene of the shooting incident. I was not a witness to any part of it.

4. The suspect (Mr. Cantu) was tended to by medical personnel, but was later pronounced deceased at 03:27 by Dr. Strong. I then guarded the decedent until being relieved.

5. I prepared a statement setting out the events of my involvement. My narrative and complete statement is included as part of the Austin Police Department General Offense Report

GO# 2019-290092. A copy of my narrative report is attached to this Declaration as *Exhibit 1 (Knodel)*, including the pages COA 000107-108.

6. I did not discuss the suspect (Paul Cantu) with medical personnel. I did not inform medical staff that Mr. Cantu was a “John Doe.” I did not have his wallet containing his identification and a card with emergency medical information.

7. I did not give permission to harvest Mr. Cantu’s organs to anyone. I did not possess Mr. Cantu’s driver’s license. I did not delay Mr. Cantu’s medical treatment at St. David’s South Austin Medical Center by not providing his driver’s license, insurance card, and emergency medical information card to staff.

8. I did not possess any critical medical information regarding Mr. Cantu and I did not withhold any information from the medical personnel. I did not have any information about Mr. Cantu’s blood type and allergies, and I certainly did not do anything to impede proper medical treatment and cause his unfortunate death.

...

#### **IV. STANDARD OF REVIEW**

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

#### **V. ARGUMENT & AUTHORITIES**

##### **A. Plaintiffs’ ADA Claims Should be Dismissed.**

In their Complaint, Plaintiffs allege that APD and its officers failed to accommodate the disability of Paul Cantu, and thus violated Title II of the Americans with Disability Act.

[Complaint paragraph 8.3]. Mrs. Canto alleges that during a telephone call to APD 911 she stated

that Paul Cantu was asthmatic, had suffered from convulsions, had a deflated lung, Crohn's disease and a neurological disorder. [Complaint 8.1]. She claims that she sent copies of Paul Cantu's medical records to APD, and therefore APD and its officers had constructive notice of Paul Cantu's medical condition but failed to offer any accommodation. [Complaint paragraph 8.3]. The Plaintiffs allege that the lack of the officers' regard for Paul Cantu's medical disability rose to the level of failure to accommodate and is a direct violation of Title II of the Americans with Disabilities Act [Complaint paragraph 8.4]

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132 (1994). A “public entity” includes “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C. §12131(1)(B).

In *Hainze v. Richards*, the Fifth Circuit held that “Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, **prior to the officer's securing the scene and ensuring that there is no threat to human life.**” *Hainze v. Richards*, 207 F.3d 795, 801 (5<sup>th</sup> Cir. 2000)(emphasis added).

Law enforcement personnel conducting in-the-field investigations already face the onerous task of frequently having to instantaneously identify, assess, and react to potentially life-threatening situations. To require the officers to factor in whether their actions are going to comply with the ADA, in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents. While the purpose of the ADA is to prevent the discrimination of disabled individuals, we do not think Congress intended that the fulfillment of that objective be attained at the expense of the safety of the general public.

*Hainze*, 207 F.3d at 801.

As in *Hainze*, a claim under Title II is not available to the Plaintiffs under circumstances presented herein. When Officer Joseph came upon Paul Cantu, Cantu was holding a gun. This incident occurred near a neighborhood, thus presenting a danger to the APD officers on the scene as well as the public at large. The decision to shoot Paul Cantu occurred when he raised his gun at the officers, after repeatedly being told to put the gun down. The APD officer's actions were the result of a quick discretionary decision made in self-defense and for the safety of those at the scene. Requiring these officers to use less than reasonable force in defending themselves and others, or to hesitate to consider other possible actions in the course of making such split-second decisions, is not the type of "reasonable accommodation" contemplated by Title II. *Hainze*, 207 F.3d at 801-02. Therefore, Defendant is entitled to summary judgment as to the Plaintiffs' ADA claims as a matter of law.

**B. Plaintiffs' §1983 Claim against each of the Defendant Officers should be dismissed.**

Plaintiffs allege that the Defendant Officers are liable for violations of Paul Cantu's constitutional rights. The Plaintiffs' claims should be dismissed because the Defendant Officers did not violate Mr. Cantu's constitutional rights. In this case, the irrefutable facts as to whether Officer Pardo-Martin had Paul Cantu's wallet, insurance card, or any other forms of medical information are established by video. Clearly, he did not have any interaction with Mr. Cantu other than to perform CPR. Pardo-Martin did not have his wallet containing his identification and a card with emergency medical information. "[A] plaintiff's version of the facts should not be accepted for purposes of qualified immunity when it is 'blatantly contradicted' and 'utterly discredited' by video recordings." *Hanks v. Rogers*, 853 F.3d 738, 744 (5<sup>th</sup> Cir. 2017) (emphasis added). Moreover, a court need not rely on the "plaintiff's description of the facts where the record

discredits that description, but should instead consider ‘the facts in the light depicted in the videotape’.” *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011); citing *Scott v. Harris*, 550 U.S. 372, 381 (2007).

For the reasons set forth above and also as explained in the Declarations of each Defendant Officer, which are incorporated herein by reference, the Plaintiffs do not have a viable claim. Accordingly, summary judgment is proper as a matter of law.

**C. The Defendant Officers have Qualified Immunity**

Because Julian Padro-Martin, and Christopher Knodel have been sued, respectively, as individuals, they each assert the defense of qualified immunity. *See Salazar-Limon v. City of Houston*, 826 F.3d 272, 277 (5th Cir. 2016). Consequently, the burden is on Plaintiffs to prove sufficient facts showing the inapplicability of that defense.

Government officials performing discretionary functions generally are shielded from liability for civil damages in suits under § 1983 for constitutional violations insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.30 (1982); *Palmer v. Johnson*, 193 F.3d 346, 351 (5th Cir. 1999). “The Supreme Court has characterized the doctrine as protecting ‘all but the plainly incompetent or those who knowingly violate the law.’” *Cozzo v. Tangipahoa Parish Council-President Gov’t*, 279 F.3d 273, 284 (5th Cir. 2002) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

“An officer may be shielded from liability even if he is mistaken. Whether actions were objectively reasonable is a question of law.” *Evetv v. DETNTFF*, 330 F.3d 681, 688 (5th Cir. 2003). In this case, the Defendant Officers did not violate clearly established law but were in fact

following clearly established practices. The overwhelming weight of the evidence establishes that they are entitled to qualified immunity.

Plaintiffs do not have sufficient evidence to raise a genuine issue of material fact to demonstrate that Julian Padro-Martin, and Christopher Knodel do not have qualified immunity. “The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known.” *Modica v. Taylor*, 456 F.3d 174, 179 (5th Cir. 2006). Whether an individual is entitled to qualified immunity at the summary judgment stage is determined by following a two-part analysis. In one part of the analysis, the court must determine whether the facts, taken in the light most favorable to the party asserting the injury, show that the official violated a “clearly established” constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5th Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). In the other part of the analysis, the court must determine whether the official’s conduct was objectively reasonable in light of the clearly established law. *Saucier v. Katz*, 533 U.S. 194, 202 (2001), *overruled on the other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). In other words, courts look to whether “it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted.” *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). Thus, when a defendant asserts qualified immunity, the burden is on the plaintiff to produce evidence to pierce that immunity. *Atteberry v. Nocona General Hospital*, 430 F.3d 245, 253 (5th Cir. 2005).

“[P]olice officers are entitled to qualified immunity unless existing precedent ‘squarely governs’ the specific facts at issue.” *Kisela v. Hughes*, 584 U.S. \_\_\_\_, 138 S. Ct. 1148, 1153 (2018), quoting *Mullenix v. Luna*, 577 U.S. 7, 136 S. Ct. 305 (2015)(*per curiam*). “An officer ‘cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in the defendant’s shoes would have understood that he was violating it.” *Kisela*, 138 S. Ct. at 1153, quoting *Plumhoff v. Rickard*, 572 U.S. 765, 134 S. Ct. 2012 (2014). Plaintiffs can point to no cases that would have put Officers Julian Padro-Martin, and Christopher Knodel on notice that every reasonable officer in their position would have concluded that their actions in responding to the situation was a violation of Mr. Cantu’s clearly established rights. In summary, there is no constitutional violation in the way the defendants responded to this dramatic and very unfortunate crisis: Mr. Cantu evading arrest, disobeying clear and numerous commands to drop his gun, and then abruptly standing up and raising his weapon in a firing position at two officers, putting them in imminent danger of a lethal threat (and also, potentially, members of the general public in and about the nearby residential neighborhood). The officers responded appropriately by immediately securing the scene and providing lifesaving measures, and then accompanied EMS to the hospital where Officers Padro-Martin and Knodel stood watch as guards. None of the officers’ actions were a violation of Mr. Cantu’s constitutionally established rights.

**D. Plaintiffs’ Section 1983 claims Alleging Delayed Medical Treatment and Organ Donation against Officer Julian Padro-Martin and Officer Christopher J. Knodel Should be Dismissed.**

Plaintiffs have alleged that Defendant Officers Julian Padro-Martin and Christopher J. Knodel delayed Cantu’s medical treatment at St. David’s South Austin Medical Center by not providing his driver’s license, insurance card, and emergency medical information card to staff.

Dkt. 1 ¶ 6.58. Plaintiffs further allege that these officers chose not to provide Cantu's information to hospital staff "to impede proper medical treatment and cause his death." *Id.* Plaintiffs also allege that these officers gave permission to harvest Cantu's organs despite having his driver's license showing he was not an organ donor. *Id.* ¶ 6.64. There is no evidence that Officers Padro-Martin and Knodel were deliberately indifferent to the medical risk to Cantu, as required to state a claim under Section 1983, therefore, these Defendants are entitled to summary judgment as a matter of law.

As previously noted by this Court when considering Defendant Officers Padro-Martin and Knodel's motion to dismiss, medical care can constitute a constitutional violation if the official knows substantial risk of serious harm exists, disregards that risk, and the delay results in substantial harm. *Delaughter v. Woodall*, 909 F.3d 130, 140 (5th Cir. 2018); *Batyukova v. Doege*, No. 5:19-cv-00391-JKP, 2019 WL 5579547, at \*4 (W.D. Tex. Oct. 29, 2019) (citing *Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993)). To show a defendant acted with deliberate indifference to medical risk, a plaintiff must show that a defendant "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Domino v. Tex. Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001).

As explained above, neither Officer Padro-Martin nor Officer Knodel possessed critical medical information regarding Cantu that they deliberately withheld from the medical personnel. Neither officer knew at the time who Paul Cantu was, and did not possess any information regarding his health, and did not withhold any information from health care providers regarding Cantu's medical condition. They did not authorize anyone to harvest Paul Cantu's organs. Thus, there is no evidence that these officers were deliberately indifferent to Cantu's medical needs, as

required to support a Section 1983 claim against Officers Padro-Martin and Knodel. *Mendoza v. Lynaugh*, 989 F.2d 191, 193–94 (5th Cir. 1993). Accordingly, the City of Austin’s motion for summary judgment as to Officers Padro-Martin and Knodel should be granted as a matter of law.

**VI. PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin and Defendant Officers Padro-Martin and Knodel respectfully request that the Court grant their Motion for Summary Judgment and dismiss the Plaintiffs’ claims against it with prejudice with all costs assessed to the Plaintiffs. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

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KNODEL**

**CERTIFICATE OF SERVICE**

I certify that on the 30th day of November, 2022, I served a copy of *MOTION FOR SUMMARY JUDGMENT BY DEFENDANT CITY OF AUSTIN AND OFFICERS PADRO-MARTIN AND KNODEL* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

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MONTE L. BARTON JR.

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

ROBERT CANTU, et al.  
PLAINTIFFS,

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CIVIL CASE NO. 1:21-cv-00084DAE-  
SH

V.

CITY OF AUSTIN, et al.,  
DEFENDANTS,

PLAINTIFF’S RESPONSE TO DEFENDANTS JACOB BEIROWSKI, LUIS  
ALBERTO CAMACHO, III, MICHAEL JOSEPH, ROBERT MATTINGLY,  
KYLE PETERSON, CITY OF AUSTIN, TEXAS, CHRISTOPHER J.  
KNODEL, AND JULIAN PADRO -MARTIN’S MOTION FOR SUMMARY  
JUDGMENT [DKT 57 & 58] AND SUPPLEMENT ED MOTION FOR  
DISCOVERY PURSUANT TO RULE 56(d)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE DAVID A.  
EZRA,

Plaintiffs, Robert Cantu, et al., (“Plaintiffs”) file this their Response to  
Defendants’ Motion for Summary Judgment [DKT 57 & 58 ], and supplement its  
Motion for Discovery pursuant to Rule 56(d) [DKT 59] and state as follows:

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**Supplement to Rule 56(d) Motion [Dkt. ]**

Plaintiff have stated the specific evidence they are looking to obtain to respond to this Motion for Summary Judgment which includes the deposition testimony of the Defendants. The parties have been working to obtain dates and times to effectuate the depositions but have been unable to until after the Summary Judgment response was due. The deposition will uncover discoverable evidence including testimonies from facts witness that plaintiffs are unable to obtain anywhere. The evidence is material and necessary and would enable the Plaintiffs to defeat the Defendant's motion for Summary Judgment.

Testimony from APD defendants and employees or managers who would serve as 30(b)(6) witnesses based on the topics presented to the City of Austin;

The Defendants are not opposed since the Plaintiffs were not dilatory in pursuing discovery, but the parties had conflicting schedules that caused a barrier in securing dates for depositions.

Under Fed. R. Civ. P. 56(d), a party opposing a summary judgment may request that a district court delay ruling on the motion in order to obtain additional discovery, without which it cannot present facts essential to justify its opposition.

The United States Court of Appeals for the Fifth Circuit holds that the whole purpose of discovery in a case in which a motion for summary judgment is filed is to give the opposing party an opportunity to discover as many facts as are available and he considers essential to enable him to determine whether he can honestly file opposing affidavits.

Accordingly, this court should grant requests under Rule 56(d) since Plaintiffs, as non-movant, have been unable to obtain essential discovery in the form of key depositions to opposing summary judgment and relevant to the issues presented by the motion for summary judgment

### **Objection to Summary Judgment Evidence**

Exhibit	Objection
Exhibit 1 Declaration of Sgt Michael Joseph APD b #4954,	Hearsay unreliable selfserving
Exhibit 2 Declaration of Officer Luis Camacho APD badge #8512,	Hearsay unreliable selfserving
Exhibit 3 Declaration of Officer Robert Mattingly AP badge #8564,	Hearsay unreliable selfserving

Exhibit 4 Declaration of Officer Jacob Beirowski APD badge # 7838,	Hearsay, unreliable, self-serving
Exhibit 5 Declaration of Officer Kyle Peterson APD badge # 8783,	Hearsay, unreliable, self-serving
Exhibit 6 Declaration of Officer Julian Pardo-Martin APD badge # 8243,	Hearsay, unreliable, self-serving
Exhibit 7 Declaration of Officer Christopher Knodel APD badge # 7855,	Hearsay, unreliable, self-serving
Exhibit 8 BWC video Officer Luis Camacho,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 9 BWC video Officer Robert Mattingly,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 10 BWC video Sergeant Michael Joseph,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 11 BWC video Officer Jacob Beirowski,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 12 BWC video Officer Kyle Peterson,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 13 BWC video Officer Julian Pardo-Martin,	Objects to the extent that the evidence is not Complete or authenticated

Exhibit 14 DMAV video Sgt Michael Joseph,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 15 7 Photo images selected from DMAV (dashboard) video Sgt Joseph patrol unit:	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 16 8 Photo images selected from BWC (body worn camera) video Sgt Joseph:	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 17 8 Photo images selected from BWC (body worn camera) video Officer Camacho:	Objects to the extent that the evidence is not Complete or authenticated

### **Joseph's Initial Encounter and Interaction with Paul Cantu**

Joseph immediately understood that Paul was in distress and in grave danger of self harm. Paul Cantu only posed a threat of harm to himself and no other. Paul was experiencing suicidal ideations [Dkt. 58 Ex.8, 10, 14].

### **Use of Unreasonable and Excessive Force Against Paul Cantu**

Although Paul Cantu pose no risk of harm to officers or anyone else other than himself, Officers, including Camacho fired his gun at Paul Cantu in excess of 14 times. Ex. A. Even if Paul Cantu posed risk of threat to anyone on the scene and the threat ended after the first shot when Paul Cantu immediately fell limp to the ground from him standing position, pointing to his head right front officers, with no gun ever

pointing at anyone other than himself. Once the first bullet pierced his body he immediately collapsed to the ground. He no longer held anything in his hand, nor did he point anything at anyone, but Camacho and other officers continued to shoot at Paul Cantu. Camacho shoot at Paul eight additional times after the first bullet struck Paul Cantu. It is undisputed that fourteen rounds of bullets were directed at Paul Cantu and at minimum five bullets struck his body. Ex. A [Dkt 58 Ex. 10,14]

Paul Cantu was shot while the officers on the scene, Sgt. Joseph, Mattingly, and Camacho all had cover.

In fact, just prior to Paul Cantu standing to his feet from his kneeling position, Sgt. Joseph advised Camacho and the others on the radio that he was behind his squad car. [Dkt. 58 Ex. 8, 10, 14.] Mattingly was directly in front of Sgt. Joseph also standing behind Joseph's vehicle between the squad SUV's taillights. [Dkt. 58 Ex. 8, 10, 14.]

### **Disputed Material Facts Set Forth by Defendants**

Defendants falsely allege Paul Cantu pointed his handgun at Sergeant Joseph and Officer Mattingly. The defendants specifically cite particular points in their videos evidence "(this is identified as 07:47:00Z on the individual officers' Body Worn Cameras ['BWC'] and 01:47:00 on the dashboard video ['DMAV'] from Sgt Joseph's patrol unit." [Dkt 57 pg.2, Ex. 10 & 14]. The specific points clearly create a disputed fact issue exist since those points indicated by the data require a finder of fact to determine whether or not Paul Cantu pointing a weapon at officers or anyone. The

location of the two officers, Joseph and Mattingly, when Paul Cantu rose to his feet and Camacho began firing nine rounds of bullets at him first would have to be determined before determining that Paul Cantu pointed his weapon at the officers, they were facing a threat of harm and the use of force was reasonable.

Defendants falsely allege that on January 28, 2019 22:25:00 (10:25 PM) - Traffic stop initiated by Officer Beirowski. The driver (Cantu) of a black Chrysler automobile evades Officer Beirowski and is last seen driving eastbound on East William Cannon Drive.

[Dkt. 58 pg. 6]. *But see* Ex. C Beirowski BWC capturing the Dispatcher call, and Beirowski BWC that captured a call between Attorney Robert Cantu and himself accusing the senior citizen father of Paul Cantu of being the driver of the vehicle that evaded Officer Beirowski.

Defendants falsely allege that on January 29, 2019, at 1:40 am, Sergeant Michael Joseph #4954 located the same vehicle approximately 100 feet off the roadway, in a grassy field, in the 7900 block of East William Cannon Drive. [Dkt. 58] *But see* Ex. C This was not the same vehicle.

Defendants falsely allege. As Sergeant Joseph drove up to the vehicle and stopped, Paul Cantu, the lone occupant, exited the driver's seat and pointed a handgun at Sergeant Joseph. *But See* Ex 10 - BWC video Sgt. Joseph; Exhibit-10 MAV video Sgt. Joseph; Exhibit 15; Exhibit 16]

Defendants falsely allege that Officer Mattingly shot his weapon for his own safety and the safety of others when he saw Cantu was armed with a handgun pointing it toward Mattingly and Sgt. Joseph. ~~But See~~ Dkt 58, Ex, 8,9,10, 14.

Cantu abruptly stood up and pointed his gun at Defendant officers Joseph and Mattingly. ~~But See~~ Dkt 58, Ex, 8,9,10, 14.

Defendants falsely allege that in response, Officer Camacho and Officer Mattingly fired their firearms at Cantu. Each of the Officers reasonably believed that Cantu posed a threat of serious harm to the officers or others. ~~But See~~ Ex. D Photos of the Scene, Dkt 58 Ex 10- BWC video Sgt. Joseph; ~~Ex~~ - DMAV video Sgt. Joseph; ~~Ex~~ 15; Ex16]; Ex 8 - BWC video Officer Luis Camacho; ~~Ex~~ BWC video Officer Robert Mattingly. No one used less lethal weapons, including Tasers or lasers, or otherwise physically assaulted Mr. Cantu. ~~But see~~ Dkt 58 Ex 10- BWC video Sgt. Joseph; ~~Ex~~ - DMAV video Sgt. Joseph; ~~Ex~~ 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; ~~Ex~~ - BWC video Officer Robert Mattingly.

### Argument and Authority

#### *Summary Judgment Standard*

“Summary judgment is required ~~when~~ the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

law.” *Trent v. Wade*, 76 F.3d 368, 376 (5th Cir. 2015) (quoting FED. R. CIV. P. 56(a)). “A genuine dispute of material fact exists when the ‘evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” *Nola Spice Designs, LLC v. Haydel Enters., Inc.*, 783 F.3d 527, 536 (5th Cir. 2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “The moving party ‘bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.’” *Id.* (quoting *EEOC v. LHC Grp, Inc.*, 773 F.3d 688, 694 (5th Cir. 2014)); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)

#### ***Fourth Amendment Excessive Force Against Officer Camacho Mattingly***

Plaintiffs have presented sufficient evidence to raise factual issues as to whether Aaron's actions could reasonably have been interpreted to present any serious threat, let alone "threat of human life," and whether there was any need for the officer to "secur[e] the scene." See *id.* at 801 (11) (*Hainze v. Richardson*, 207 F.3d 795, 801 (5th Cir. 2000))

In viewing the evidence in the most favorable light of the non-movants, video evidence clearly show a material fact dispute as to whether Pau was an imminent threat to Joseph or Mattingly. There are undeniable reasons that should he was not and it should be left for a reasonable jury to decide. When Paul Cantu stood up from the

kneeling position and pointed to right he was shot in his left side of his body. He immediately collapsed to the ground. At all times, Mattingly, and Joseph were nestled behind Joseph SUV, and both can be viewed from the vantage point of Joseph's BWC. [Dkt. 58 Ex. 10, 14]. The shell projectiles show without question that Mattingly was shooting from the back right passenger rear of Joseph's SUV. Mattingly was not in position for Cantu to point his weapon at him as he was standing at the right back passenger side of the vehicle. Joseph declares that he was also behind the SUV and was protected, if Paul Cantu pointed in the direction of the SUV but he did not point in the direction of Joseph's SUV. See. Dkt. 17.

In *Moraisa* factual issue remained as to whether the decedent "pose[d] a threat to innocent parties," so the court found that the police "were not facing the type of pressurized situation that the Fifth Circuit seemed to be contemplating" and denied summary judgment. 2007 U.S. Dist. LEXIS 19619, 2007 WL 853811, at \*12. In *Spencer Dawson*, 2006 U.S. Dist. LEXIS 81743, 2006 WL 3253574 (N.D. Ill. Nov. 7, 2006), the court denied summary judgment because, although it was uncontested that the plaintiff was physically manifesting his anger when he was sprayed, there was a factual issue as to whether he was threatening anyone's safety. 2006 U.S. Dist. LEXIS 81743, [WL] at \*7. And in *Salinas v. City of New Braunfels*, 557 F. Supp. 2d 771 (W.D. Tex. 2006), the court denied the city's motion to dismiss because the deaf plaintiff alleged that the scene had been secure, that she had not posed a threat to the safety of the officers, and that she had requested and been denied an interpreter.

776; see also *Hogan v. City of Easton*, 2004 U.S. Dist. LEXIS 16189, 2004 WL 1836992, at \*7 n.3 (E.D.Pa. Aug. 17, 2004).

At least two officers on the scene were reasonable enough not to believe Paul as enough of a threat to shoot at the time he rose to his feet.

The reasonableness is to be determined from the perspective of the officer on the scene and not with "the 20-20 vision of hindsight." *Id.* at 625 (quoting *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 104 L. Ed. 2d.

Joseph was the officer who was on the scene from the inception of the seizure, when the other officers arrived, he was never placed in threat of imminent harm by Paul Cantu, and neither was Mattingly.

***Fourth Amendment Delay and Denial of Medical Care Against Camacho, Joseph, and Mattingly***

***Denial of Qualified Immunity is Required***

Qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 US. 800, 818 24 (1982).

“...A plaintiff can overcome a qualified immunity defense by showing ‘(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct.’ *Allen v. Cisneros*, 815 F.3d 239, 244 (5th Cir. 2016) (per curiam) (quoting *Ashcroft v. Iqbal*, 556 U.S. 731, 735 (2011)).”

**Camacho is not entitled to qualified immunity based on his objectively unreasonable unconstitutional actions to Paul Cantu’s rights that was clearly established on January 29, 2019**

Camacho shot Paul Cantu causing him to collapse to the ground although Paul Cantu did not pose a threat of harm to him or anyone else. Ex 10- BWC video Sgt. Joseph; Ex 14- DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8- BWC video Officer Luis Camacho; Ex 9- BWC video Officer Robert Mattingly

Although Paul Cantu did not pose a threat of harm at the time he was shot, he certainly was not a continuing threat to warrant Camacho to shoot at Paul eight additional times after he collapsed to the ground. Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9- BWC video Officer Robert Mattingly

Whether force was unreasonable is determined using a specific balancing test which considers “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting

arrest ..." Hill, 587 F.3d at 234, citing *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

Paul Cantu was not committing a crime when the defendants encountered him. He was not resisting arrest. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly]. Nonetheless, he was severely injured, had at least five gunshot wounds and was killed by APD officers lead by Camacho, who fired the first shot. He had at least three gunshot wounds identified by the officers who administered first aid on the scene. Ex. A.

To establish an excessive force claim, a plaintiff must show "(1) an injury (2) which resulted directly and only from the use of force that was excessive to the need and (3) the force used was objectively unreasonable." *Lockett v. New Orleans*, 607 F.3d 992, 999 (5th Cir. 2010)(citation and internal quotations omitted). Such force must be determined to be "clearly unreasonable." *Deville v. Marcantoni*, 567 F.3d 156, 167 (5th Cir. 2009). "an officer's subjective motivation and intent are irrelevant." *Carroll Cnty*, 587 F.3d 230, 234 (5th Cir. 2009) (citation omitted.).

Here Paul was injured by the bullets lodged by Mattingly and Camacho. Cantu did not point his weapon at anyone when he stood up, and Mattingly and Camacho's use of force was unnecessary and unreasonable.

Mattingly is not entitled to qualified immunity based on his objectively unreasonable unconstitutional actions to Paul Cantu's rights that was clearly established on January 29, 2019

According to Mattingly, he joined Camacho in shooting Paul Cantu after Cantu collapsed. [Dkt. 58. Ex. 8]. He admits to firing five rounds at Cantu, combining with Camacho's nine rounds totaling 13 rounds being fired at Paul Cantu while he was on the ground although Paul Cantu did not pose a threat of harm to him or anyone else.

Ex. D, *investigation Reports*

Paul never even attempted to rise back up after he was struck by the first bullet that struck him. Although Paul Cantu did not pose a threat of harm at the time he was shot, he certainly was not a continuing threat to warrant Camacho to shoot at Paul eight additional times after he collapsed to the ground. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly

"[A]n officer does not possess the unfettered authority to shoot someone because that person is carrying a weapon but is only entitled to do so when, based on a reasonable assessment, the officer or another person is threatened with the weapon." *Cole ex rel.*

*Richards v. Hutchinson*, 959 F.3d 1127 (8th Cir. 2020) (quoting *Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013)).

Paul Cantu was not committing a crime when the defendants encountered him. He was not resisting arrest. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly].

Whether force was unreasonable is determined using a case-specific balancing test which considers "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest ..." *Hill*, 587 F.3d at 234, citing *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

Nonetheless, he was severely injured, had at least three gunshot wounds and killed by APD officers lead by Camacho, who fired the first shot. He had at least five gunshot wounds identified by the officers who administered first aid on the scene. Ex A.

To establish an excessive force claim, a plaintiff must show "(1) an injury (2) which resulted directly and only from the use of force that was excessive to the need and (3) the force used was objectively unreasonable." *DeKett v. New Orleans City*, 607 F.3d 992, 999 (5th Cir. 2010)(citation and internal quotations omitted). Such force must be determined to be "clearly unreasonable." *Deville v. Marcano*, 567 F.3d 156, 167 (5th Cir. 2009). "an officer's subjective motivation and intent are irrelevant." *Carroll Cnty*, 587 F.3d 230, 234 (5th Cir. 2009) (citation omitted.).

Based on the actions described by Mattingly they were unreasonable. Paul never shot his gun and Mattingly fired five rounds at Cantu all after he was no longer a perceived threat, although he was never a threat. Even if he was the threat ceased when he collapsed to the ground after the first shot struck him. [Dkt. 58 Ex. 8, 9, 10, 14] Paul was hit by five rounds, according to the autopsy. Medial left side of the chest, approximately 49 cm below the top of the head and 7.5 cm to the left of the anterior midline; Left side of the abdomen, approximately 73 cm below the top of the head and 1.5 cm to the left of the anterior midline, Medial right abdomen, approximately 65.6 cm below the top of the head and 1.5 cm to the right of the anterior midline; Lateral left side of the back, approximately 41 cm below the top of the head and 23 cm to the left of the posterior midline; and, Posterior left second finger, approximately 72 cm below the top of the left shoulder at the lateral proximal

Phalange. Ex. *Autopsy Report*

As a result of the delay and denial of medical care, neither Jacob Beirowski, Joseph, Kyle Peterson, Christopher Knodel, or Julian ~~Mardo~~ are not entitled to qualified immunity based on their objectively unreasonable unconstitutional actions to Paul Cant's rights that was clearly established on January 29, 2019.

### *ADA Claims Against City of Austin*

The City of Austin discriminated against Paul Cantu based on his known disability and failed to reasonably accommodate him when he ~~was fail~~ train its officers to accommodate a person suffering from acute mental distress resulting in suicidal ideations, ~~and~~ chronic conditions his parents advised its officers that Paul Cantu was suffering from seizures, ~~the~~ tics, and Crohn's disease. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. According to the statute, "disability" means, "with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." at § 12102.

"[Q]ualified individual with a disability" means "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public ~~entity~~." § 12131(2).

"A 'public entity' includes 'any department, agency, special purpose district, or other instrumentality of a State or States or local government." *Hanize v. Richardson*, 2017 F.3d 795, 799 (5th Cir. 2010) (quoting 42 U.S.C. § 12131(1)(B)).

The language of Title II lacks the language of Section 504 of the Rehabilitation Act of 1973 *id* and "specifically provides that '[...]he remedies, procedures and rights' available under Section 504 shall be the same as those available under Title II." (quoting 42 U.S.C. § 12133). Accordingly, "Jurisprudence interpreting either section is applicable to both *id*."

"To establish a prima facie case of discrimination under the ADA, a plaintiff must demonstrate: (1) that he is a qualified individual within the meaning of the ADA; (2) that he is being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) that such exclusion of benefits, or discrimination is by reason of his disability." *Melton v. Dallas Area Rapid Transit*, 2011 F.3d 669, 677 (5th Cir. 2004).

Paul Cantu was undoubtedly suicidal and suffering from mental distress when Sgt. Joseph encountered him April 29, 2019. Paul Cantu located a quiet secluded place far from the residential street to contemplate his next move. Joseph discovered Paul Cantu at the secluded location with subject pointed to his head and he begged Paul not to hurt himself. I also heard Sgt Joseph state via radio that the subject had "put a gun to his head." [Dkt. 58 ERardøMartin Declaration]

Paul was in clear distress, as his very concerned parents, Dr. M. Cantu, and Attorney Robert Cantu reported to Beirowski. Other officers arrived but Joseph maintained the dialogue open and active with Paul Cantu to keep him calm and from harming himself but was not trained in de-escalation. Ex. B *Officer TCOLE Records*. Joseph recognized his distress but did not stop the other officers from shooting Paul Cantu, in fact he encouraged the illegal use of force. Ex. 58, Ex. 10, 14.

No officer, including Joseph was trained de-escalating a situation involving a suicidal person. Ex. *Officer TCOLE Records*

Conclusion and Prayer

For the Forgoing reasons plaintiff pray the court deny the Motion for summary judgment and grant the rule 56(d) motion.

Respectfully Submitted,

U. A. Lewis

/s/U. A. Lewis

The Lewis Law Group

State Bar No. 24076511

Federal ID: 1645666

PO Box 27353

Houston, Texas 77227

Counsel for Plaintiff

Myattorneyatlaw@gmail.com

CERTIFICATE OF CONFERENCE

Plaintiffs' counsel conferred with counsels for Defenant and stated he is unopposed to the Rule 56 (d).

CERTIFICATE OF SERVICE

I certify that on January 4, 2023, I served a true and correct copy of the proceeding Response to the Motion to Dismiss to all parties or counsel of record.

/ s/ U.A. Lewis

U.A. LEWIS

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

<b>ROBERT CANTU, et al.</b>	<b>§</b>	
<b>PLAINTIFFS,</b>	<b>§</b>	<b>CIVIL CASE NO. 1:21-cv-00084-DAE-</b>
	<b>§</b>	<b>SH</b>
<b>V.</b>	<b>§</b>	
	<b>§</b>	
<b>CITY OF AUSTIN, et al.,</b>	<b>§</b>	
<b>DEFENDANTS,</b>	<b>§</b>	

**PLAINTIFF’S RESPONSE TO DEFENDANTS JACOB BEIROWSKI, LUIS ALBERTO CAMACHO, III, MICHAEL JOSEPH, ROBERT MATTINGLY, KYLE PETERSON, CITY OF AUSTIN, TEXAS, CHRISTOPHER J. KNODEL, AND JULIAN PADRO-MARTIN’S MOTION FOR SUMMARY JUDGMENT [DKT 57 & 58] AND SUPPLEMENTED MOTION FOR DISCOVERY PURSUANT TO RULE 56(d)**

**TO THE HONORABLE UNITED STATES DISTRICT JUDGE DAVID A. EZRA,**

Plaintiffs, Robert Cantu, et al., (“Plaintiffs”) file this their Response to Defendants’ Motion for Summary Judgment [DKT 57 & 58 ], and supplement to its Motion for Discovery pursuant to Rule 56(d) Dkt 61 and state as follows:

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**EXHIBITS**

Exhibit A	Paul Cantu's Autopsy Report
Exhibit B	TCOLE Records
Exhibit C	Dkt. 58 Exhibit 11 BWC video Officer Jacob Beirowski,
Exhibit D	Investigation Reports and Photos
Exhibit E	Declaration Rule 56 (d)

**Supplement to Rule 56(d) Motion [Dkt. 61]**

Plaintiff have stated the specific evidence they are looking to obtain to respond this Motion for Summary Judgment which includes the deposition testimony of the Defendants. The parties have been working to obtain dates and times to effectuate the depositions but have been unable to until after the Summary Judgment response was due. The deposition will uncover discoverable evidence including testimonies from facts witness the plaintiffs are unable to obtain anywhere else. The evidence is material and necessary and would enable the Plaintiffs to defeat the Defendant's motion for Summary Judgment

Testimony from APD defendants and employees or managers who would serve as 30(b)(6) witnesses based on the topics presented to the City of Austin;

The Defendants are not opposed since the Plaintiffs were not dilatory in pursuing discovery, but the parties had conflicting schedules that caused a barrier in securing dates for depositions.

Under Fed. R. Civ. P. 56(d), a party opposing a summary judgment motion may request that a district court delay ruling on the motion in order to obtain additional discovery, without which it cannot present facts essential to justify its opposition.

The United States Court of Appeals for the Fifth Circuit holds that the whole purpose of discovery in a case in which a motion for summary judgment is filed is to give the opposing party an opportunity to discover as many facts as are available and he considers essential to enable him to determine whether he can honestly file opposing affidavits.

Accordingly, this court should grant requests under Rule 56(d) since Plaintiffs, as non-movant, have been unable to obtain essential discovery in the form of key depositions to opposing summary judgment and relevant to the issues presented by the motion for summary judgment

**Objection to Summary Judgment Evidence**

Exhibit	Objection
Exhibit 1 Declaration of Sgt Michael Joseph APD badge #4954,	Hearsay, unreliable, self-serving

Exhibit 2 Declaration of Officer Luis Camacho APD badge #8512,	Hearsay, unreliable, self-serving
Exhibit 3 Declaration of Officer Robert Mattingly APD badge #8564,	Hearsay, unreliable, self-serving
Exhibit 4 Declaration of Officer Jacob Beirowski APD badge #7838,	Hearsay, unreliable, self-serving
Exhibit 5 Declaration of Officer Kyle Peterson APD badge #8783,	Hearsay, unreliable, self-serving
Exhibit 6 Declaration of Officer Julian Pardo-Martin APD badge #8243,	Hearsay, unreliable, self-serving
Exhibit 7 Declaration of Officer Christopher Knodel APD badge #7855,	Hearsay, unreliable, self-serving
Exhibit 8 BWC video Officer Luis Camacho,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 9 BWC video Officer Robert Mattingly,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 10 BWC video Sergeant Michael Joseph,	Objects to the extent that the evidence is not Complete or authenticated

Exhibit 11 BWC video Officer Jacob Beirowski,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 12 BWC video Officer Kyle Peterson,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 13 BWC video Officer Julian Pardo-Martin,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 14 DMAV video Sgt Michael Joseph,	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 15 7 Photo images selected from DMAV (dashboard) video Sgt Joseph patrol unit:	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 16 8 Photo images selected from BWC (body worn camera) video Sgt Joseph:	Objects to the extent that the evidence is not Complete or authenticated
Exhibit 17 8 Photo images selected from BWC (body worn camera) video Officer Camacho:	Objects to the extent that the evidence is not Complete or authenticated

### **Joseph's Initial Encounter and Interaction with Paul Cantu**

Joseph immediately understood that Paul was in distress and in grave danger of self-harm. Paul Cantu only posed a threat of harm to himself and no others. Paul was experiencing suicidal ideations. [Dkt. 58 Ex. 8, 10, 14.]

### **Use of Unreasonable and Excessive Force Against Paul Cantu**

Although Paul Cantu pose no risk of harm to officers or anyone else other than himself, Officers, including Camacho fired his gun at Paul Cantu in excess of 14 times. Ex. A. Even if Paul Cantu posed risk of threat to anyone on the scene and the threat ended after the first shot when Paul Cantu immediately fell limp to the ground from him standing position, pointing to his head right front officers, with no gun ever pointing at anyone other than himself. Once the first bullet pierced his body he immediately collapsed to the ground. He no longer held anything in his hand, nor did he point anything at anyone, but Camacho and other officers continued to shoot at Paul Cantu. Camacho shoot at Paul eight additional times after the first bullet struck Paul Cantu. It is undisputed that fourteen rounds of bullets were directed at Paul Cantu and at minimum five bullets struck his body. Ex. A [Dkt 58 Ex. 10,14]

Paul Cantu was shot while the officers on the scene, Sgt. Joseph, Mattingly, and Camacho all had cover.

In fact, just prior to Paul Cantu standing to his feet from his kneeling position, Sgt. Joseph advised Camacho and the others on the radio that he was behind his squad car. [Dkt. 58 Ex. 8, 10, 14.] Mattingly was directly in front of Sgt. Joseph also standing behind Joseph's vehicle between the squad SUV's taillights. [Dkt. 58 Ex. 8, 10, 14.]

### **Disputed Material Facts Set Forth by Defendants**

Defendants falsely allege Paul Cantu pointed his handgun at Sergeant Joseph and Officer Mattingly. The defendants specifically pin cite particular points in their videos evidence "(this is identified as 07:47:00Z on the individual officers' Body Worn Cameras ['BWC'] and 01:47:00 on the dashboard video ['DMAV'] from Sgt Joseph's patrol unit." [Dkt 57, pg. 2, Ex. 10 & 14]. The specific points clearly create a disputed fact issue exist since those points indicated by the defendants require a finder of fact to determine whether or not Paul Cantu pointing a weapon at officers or anyone. The location of the two officers, Joseph and Mattingly, when Paul Cantu rose to his feet and Camacho began firing nine rounds of bullets at him first would have to be determined

before determining that Paul Cantu pointed his weapon at the officers, they were facing a threat of harm and the use of force was reasonable.

Defendants falsely allege that on January 28, 2019 22:25:00 (10:25 PM) - Traffic stop initiated by Officer Beirowski. The driver (Cantu) of a black Chrysler automobile evades Officer Beirowski and is last seen driving eastbound on East William Cannon Drive. [Dkt. 58 pg. 6]. *But see* Ex. C Beirowski BWC capturing the Dispatcher call, and Beirowski BWC that captured a call between Attorney Robert Cantu and himself accusing the senior citizen father of Paul Cantu of being the driver of the vehicle that evaded Officer Beirowski.

Defendants falsely allege that on January 29, 2019, at 1:40 am, Sergeant Michael Joseph #4954 located the same vehicle approximately 100 feet north of the roadway, in a grassy field, in the 7900 block of East William Cannon Drive.[Dkt. 58 pg. 4] *But see* Ex. C This was not the same vehicle.

Defendants falsely allege...As Sergeant Joseph drove up to the vehicle and stopped, Paul Cantu, the lone occupant, exited the driver's seat and pointed a handgun at Sergeant Joseph. *But See*. Ex 10 - BWC video Sgt. Joseph; Exhibit 14 - DMAV video Sgt. Joseph; Exhibit 15; Exhibit 16]

Defendants falsely allege that Officer Mattingly shot his weapon for his own safety and the safety of others when he saw Cantu was armed with a handgun pointing it toward Mattingly and Sgt. Joseph. *But See* Dkt 58, Ex, 8,9,10, 14.

Cantu abruptly stood up and pointed his gun at Defendant officers Joseph and Mattingly. *But See* Dkt 58, Ex, 8,9,10, 14.

Defendants falsely allege that in response, Officer Camacho and Officer Mattingly fired their firearms at Cantu. Each of the Officers reasonably believed that Cantu posed a threat of serious harm to the officers or others. *But see* Ex. D Photos of the Scene; Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly]

No one used less lethal weapons, including Tasers or lasers, or otherwise physically assaulted Mr. Cantu. *But see* Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly]

### **Argument and Authority**

#### ***Summary Judgment Standard***

“Summary judgment is required when ‘the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Trent v. Wade*, 776 F.3d 368, 376 (5th Cir. 2015) (quoting FED. R. CIV. P. 56(a)). “A genuine dispute of material fact exists when the

'evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Nola Spice Designs, LLC v. Haydel Enters., Inc.*, 783 F.3d 527, 536 (5th Cir. 2015) (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986)). "The moving party 'bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.'" *Id.* (quoting *EEOC v. LHC Grp., Inc.*, 773 F.3d 688, 694 (5th Cir. 2014)); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)

***Fourth Amendment Excessive Force Against Officer Camacho and Mattingly***

Plaintiffs have presented sufficient evidence to raise factual issues as to whether Aaron's actions could reasonably have been interpreted to present any serious threat, let alone "threat of human life," and whether there was any need for the officer to "secur[e] the scene." See *id.* at 801. (HN11) *Hainze v. Richards*, 207 F.3d 795, 801 (5th Cir. 2000)

In viewing the evidence in the most favorable light of the non-movants, video evidence clearly show a material fact dispute exist whether Paul was an imminent threat to Joseph or Mattingly. There are undeniable reasons that should he was not and it should be left for a reasonable jury to decide. When

Paul Cantu stood up from the kneeling position and pointed to right he was shot in his left side of his body. He immediately collapsed to the ground. At all times, Mattingly, and Joseph were nestled behind Joseph SUV, and both can be viewed from the vantage point of Joseph's BWC. [Dkt. 58 Ex. 10, 14]. The shell projectiles show without question that Mattingly was shooting from the back right passenger rear of Joseph's SUV. Mattingly was not in position for Cantu to point his weapon at him as he was standing at the right back passenger side of the vehicle. Joseph declares that he was also behind the SUV and was protected, if Paul Cantu pointed in the direction of the SUV but he did not point in the direction of Joseph's SUV. See. Dkt. 17.

In *Morais*, a factual issue remained as to whether the decedent "pose[d] a threat to innocent parties," so the court found that the police "were not facing the type of pressurized situation that the Fifth Circuit seemed to be contemplating in *Hainze*," and denied summary judgment. 2007 U.S. Dist. LEXIS 19619, 2007 WL 853811, at \*12. In *Spencer v. Dawson*, 2006 U.S. Dist. LEXIS 81743, 2006 WL 3253574 (N.D. Ill. Nov. 7, 2006), the court denied summary judgment because, although it was uncontested that the plaintiff was physically manifesting his anger when he was pepper-sprayed, there was a factual issue as to whether he was threatening anyone's safety. 2006 U.S. Dist. LEXIS 81743, [WL] at \*7. And in *Salinas v. City of New Braunfels*, 557 F. Supp. 2d 771 (W.D.

Tex. 2006), the court denied the city's motion to dismiss because the deaf plaintiff alleged that the scene had been secure, that she had not posed a threat to the safety of the officers, and that she had requested and been denied an interpreter. *Id.* at 776; see also *Hogan v. City of Easton*, 2004 U.S. Dist. LEXIS 16189, 2004 WL 1836992, at \*7 n.3 (E.D.Pa. Aug. 17, 2004).

At least two officers on the scene were reasonable enough not to believe Paul as enough of a treat to shoot at the time he rose to his feet.

The reasonableness is to be determined from the perspective of the officer on the scene and not with "the 20-20 vision of hindsight." *Id.* at 625 (quoting *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 104 L. Ed. 2d.

Joseph was the officer who was on the scene from the inception of the seizure, when the other officers arrived, he was never placed in threat of imminent harm by Paul Cantu, and neither was Mattingly.

***Fourth Amendment Delay and Denial of Medical Care Against Camacho, Joseph, and Mattingly***

***Denial of Qualified Immunity is Required***

Qualified immunity protects government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 24 (1982).

“...A plaintiff can overcome a qualified immunity defense by showing ‘(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct.’” *Allen v. Cisneros*, 815 F.3d 239, 244 (5th Cir. 2016) (per curiam) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)).

**Camacho is not entitled to qualified immunity based on his objectively unreasonable unconstitutional actions to Paul Cantu’s rights that was clearly established on January 29, 2019**

Camacho shot Paul Cantu causing him to collapse to the ground although Paul Cantu did not pose a threat of harm to him or anyone else. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly]

Although Paul Cantu did not pose a threat of harm at the time he was shot, he certainly was not a continuing threat to warrant Camacho to shoot at Paul eight additional times after he collapsed to the ground. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly]

Whether force was unreasonable is determined using a case-specific balancing test which considers "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest ..." Hill, 587 F.3d at 234, citing *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

Paul Cantu was not committing a crime when the defendants encountered him. He was not resisting arrest. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly]. Nonetheless, he was severely injured, had at least five gunshot wounds and was killed by APD officers lead by Camacho, who fired the first shot. He had at least three gunshot wounds identified by the officers who administered first aid on the scene. Ex. A.

To establish an excessive force claim, a plaintiff must show "(1) an injury

(2) which resulted directly and only from the use of force that was excessive to the need and (3) the force used was objectively unreasonable." *Lockett v. New Orleans City*, 607 F.3d 992, 999 (5th Cir. 2010)(citation and internal quotations omitted). Such force must be determined to be "clearly unreasonable." *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009). "an officer's subjective motivation and intent are irrelevant." *Hill v. Carroll Cnty.*, 587 F.3d 230, 234 (5th Cir. 2009) (citation omitted.).

Here Paul was injured by the bullets lodged by Mattingly, and Camacho. Cantu did not point his weapon at anyone when he stood up, and Mattingly, and Camacho use of force was unnecessary and unreasonable.

**Mattingly is not entitled to qualified immunity based on his objectively unreasonable unconstitutional actions to Paul Cantu's rights that was clearly established on January 29, 2019**

According to Mattingly, he joined Camacho in shooting Paul Cantu after Cantu collapsed. [Dkt. 58. Ex. 3]. He admits to firing five rounds at Cantu, combining with Camacho's nine rounds totaling 13 rounds being fired at Paul Cantu while he laid on the ground although Paul Cantu did not pose a threat of harm to him or anyone else. Ex. D, *investigation Reports* .

Paul never even attempted to rise back up after he was struck by the first bullet that struck him. Although Paul Cantu did not pose a threat of harm at the time he was shot, he certainly was not a continuing threat to warrant Camacho to shoot at Paul eight additional times after he collapsed to the ground. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly]. “[A]n officer does not possess the unfettered authority to shoot someone because that person is carrying a weapon but is only entitled to do so when, based on a reasonable assessment, the officer or another person is threatened with the weapon.” *Cole ex rel. Richards v. Hutchins*, 959 F.3d 1127 (8th Cir. 2020)(quoting *Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013)).

Paul Cantu was not committing a crime when the defendants encountered him. He was not resisting arrest. Dkt 58 Ex 10 - BWC video Sgt. Joseph; Ex 14 - DMAV video Sgt. Joseph; Ex 15; Ex 16]; Ex 8 - BWC video Officer Luis Camacho; Ex 9 - BWC video Officer Robert Mattingly].

Whether force was unreasonable is determined using a case-specific balancing test which considers "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest ..." *Hill*, 587 F.3d at 234, citing *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

Nonetheless, he was severely injured, had at least three gunshot wounds and killed by APD officers lead by Camacho, who fired the first shot. He had at least five gunshot wounds identified by the officers who administered first aid on the scene. Ex. A.

To establish an excessive force claim, a plaintiff must show "(1) an injury (2) which resulted directly and only from the use of force that was excessive to the need and (3) the force used was objectively unreasonable." *Lockett v. New Orleans City*, 607 F.3d 992, 999 (5th Cir. 2010)(citation and internal quotations omitted). Such force must be determined to be "clearly unreasonable." *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009). "an officer's subjective motivation and intent are irrelevant." *Hill v. Carroll Cnty.*, 587 F.3d 230, 234 (5th Cir. 2009) (citation omitted.).

Based on the actions described by Mattingly they were unreasonable. Paul never shot his gun and Mattingly fired five rounds at Cantu all after he was no longer a perceived threat, although he was never a threat. Even if he was the threat ceased when he collapsed to the ground after the first shot struck him. [Dkt. 58 Ex. 8, 9, 10, 14]

Paul was hit by five rounds, according to the autopsy. Medial left side of the chest, approximately 49 cm below the top of the head and 7.5 cm to the left of

the anterior midline; Left side of the abdomen, approximately 73 cm below the top of the head and 1.5 cm to the left of the anterior midline, Medial right abdomen, approximately 65.6 cm below the top of the head and 1.5 cm to the right of the anterior midline; Lateral left side of the back, approximately 41 cm below the top of the head and 23 cm to the left of the posterior midline; and, Posterior left second finger, approximately 72 cm below the top of the left shoulder at the lateral proximal

Phalange. Ex. A *Autopsy Report*.

As a result of the delay and denial of medical care, neither Jacob Beirowski, Joseph, Kyle Peterson, Christopher Knodel, or Julian Pardo-Martin are not entitled to qualified immunity based on their objectively unreasonable unconstitutional actions to Paul Cantu's rights that was clearly established on January 29, 2019.

### ***ADA Claims Against City of Austin***

The City of Austin discriminated against Paul Cantu based on his known disability and failed to reasonably accommodate him when he was failed to train its officers to accommodate a person suffering from acute mental distress resulting in suicidal ideations, and chronic conditions his parents advised its officers that Paul Cantu was suffering from, seizures, asthma, and Crohn's

disease. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. According to the statute, "disability" means, "with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." *Id.* at § 12102.

"[Q]ualified individual with a disability" means "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." *Id.* at § 12131(2).

"A 'public entity' includes 'any department, agency, special purpose district, or other instrumentality of a State or States or local government.'" *Hainze v. Richards*, 207 F.3d 795, 799 (5th Cir. 2010) (quoting 42 U.S.C. § 12131(1)(B)).

The language of Title II tracks the language of Section 504 of the Rehabilitation Act of 1973, *id.* and "specifically provides that '...[t]he remedies,

procedures and rights' available under Section 504 shall be the same as those available under Title II." *Id.* (quoting 42 U.S.C. § 12133). Accordingly, "Jurisprudence interpreting either section is applicable to both." *Id.*

"To establish a prima facie case of discrimination under the ADA, a plaintiff must demonstrate: (1) that he is a qualified individual within the meaning of the ADA; (2) that he is being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination is by reason of his disability." *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669, 671-72 (5th Cir. 2004).

Paul Cantu was undoubtedly suicidal and suffering from mental distress when Sgt. Joseph encountered him on April 29, 2019. Paul Cantu located a quiet secluded place far from the residential street to contemplate his next move. Joseph discovered Paul Cantu at the secluded location with an object pointed to his head and he begged Paul not to hurt himself. " I also heard Sgt Joseph state via radio that the subject had a gun to his head." [Dkt. 58 Ex. Pardo-Martin Declaration]

Paul was in clear distress, as his very concerned parents, Dr. M. Patricia Cantu, and Attorney Robert Cantu reported to Beirowski. Other officers arrived

but Joseph maintained the dialogue open and active with Paul Cantu to keep him calm and from harming himself but was not trained in de-escalation. Ex. B *Officer TCOLE Records*. Joseph recognized his distress but did nothing to stop the other officers from shooting Paul Cantu, in fact he encouraged the illegal use of force. Ex. 58, Ex. 10, 14.

No officer, including Joseph was trained on deescalating a situation involving a suicidal person. Ex. B *Officer TCOLE Records*

### **Conclusion and Prayer**

For the Forgoing reasons plaintiff pray the court deny the Motion for summary judgment and grant the rule 56 (d) motion.

Respectfully Submitted,  
U. A. Lewis  
/s/U. A. Lewis  
The Lewis Law Group  
State Bar No. 24076511  
Federal ID: 1645666  
PO Box 27353  
Houston, Texas 77227  
Counsel for Plaintiff  
Myattorneyatlaw@gmail.com

CERTIFICATE OF CONFERENCE

Plaintiffs' counsel conferred with counsels for Defendant and stated he is unopposed to the Rule 56 (d) to obtain discovery.

CERTIFICATE OF SERVICE

I certify that on January 4, 2023, I served a true and correct copy of the proceeding Response to the Motion to Dismiss to all parties or counsel of record.

/s/ U.A. Lewis

U.A. LEWIS



# TRAVIS COUNTY MEDICAL EXAMINER

## EX. A



J. KEITH PINCKARD, MD, PhD  
D-ABP, F-ABMDI  
CHIEF MEDICAL EXAMINER

### MEDICAL EXAMINER REPORT

PAUL ANDREW CANTU

**ME19-00531**

A postmortem examination was performed by Vickie L. Willoughby, DO, Deputy Medical Examiner, beginning at 1045 hours on January 30, 2019 at the Travis County Medical Examiner's Office, Austin, Texas.

Other persons present: Detective Erin Truho, Austin Police Department

### DECLARATION

The death of PAUL ANDREW CANTU was investigated by the Travis County Medical Examiner's Office under the statutory authority of the Travis County Medical Examiner.

I, Vickie L. Willoughby, DO, a board certified anatomic and forensic pathologist licensed to practice medicine in the State of Texas, do declare that I personally performed or supervised the tasks described in this Medical Examiner Report. It is only after careful consideration of all the data available to me at the time this report was finalized that I attest to the diagnoses and opinions stated herein.

Numerous photographs were obtained along the course of the examination. I have personally reviewed those photographs and attest that they are representative of findings reported in this document.

Should you have questions after review of this material, please feel free to contact me at the Travis County Medical Examiner's Office.

CANTU, Paul Andrew  
ME19-00531  
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**CAUSE OF DEATH STATEMENT**

**CAUSE OF DEATH**

GUNSHOT WOUNDS

**MANNER OF DEATH**

HOMICIDE

  
VICKIE L. WILLOUGHBY, DO

Deputy Medical Examiner

04-10-2019  
Date

CANTU, Paul Andrew  
ME19-00531  
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## **SUMMARY AND OPINION**

According to reports, this 27-year-old was shot by police officer(s) on January 29, 2019. He was taken to the hospital where he was pronounced despite resuscitation efforts. Therapeutic interventions included a left sided chest tube placement, left thoracotomy and an exploratory laparotomy. Bleeding was noted from the root of the mesentery and the retroperitoneum.

The autopsy examination demonstrated five gunshot wound. Four of the wounds were to the torso, and one to the right hand. Gunshot wound injuries included the left ribs, left lung, the vertebrae (thoracic and lumbar), thoracic spinal cord, small intestines, and pelvis. There was blood within the left chest cavity and the abdominal cavity.

The toxicology report shows presence of ketamine. Please see separate toxicology report. Review of medical records show that the decedent received ketamine during the hospital course.

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## EXTERNAL EXAMINATION

<b>Body length (inches, cm):</b>	69 175.3
<b>Body weight (pounds, kg):</b>	153 69.3
<b>Body mass index (kg/m<sup>2</sup>):</b>	22.6
<b>Development:</b>	Well-developed
<b>Stature:</b>	Well-nourished
<b>Age:</b>	Appears to be stated age
<b>Anasarca:</b>	Not present
<b>Edema localized:</b>	Not present
<b>Evidence of dehydration:</b>	Not present
<b>Skin:</b>	See Evidence of Injuries
<b>Scalp hair length:</b>	Stubble (very short)
<b>Scalp hair color:</b>	Black
<b>Eyes:</b>	Both eyes present
<b>Irides:</b>	Brown
<b>Corneas:</b>	Translucent
<b>Sclera/bulbar conjunctivae:</b>	White
<b>Palpebral conjunctiva:</b>	Translucent
<b>Facial petechiae:</b>	Not present
<b>Nose:</b>	Normally formed
<b>Ears:</b>	Normally formed
<b>Lips:</b>	Normally formed
<b>Facial hair:</b>	Stubble in the pattern of a mustache and beard
<b>Facial hair color:</b>	Black
<b>Maxillary dentition:</b>	Natural
<b>Mandibular dentition:</b>	Natural
<b>Condition of dentition:</b>	Good
<b>Neck:</b>	Unremarkable
<b>Trachea midline:</b>	Yes
<b>Chest development:</b>	Normal

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<b>Chest symmetrical:</b>	Yes
<b>Chest diameter:</b>	Appropriate
<b>Abdomen:</b>	Flat
<b>Anus:</b>	Unremarkable
<b>Back:</b>	Unremarkable
<b>Spine:</b>	Unremarkable
<b>External genitalia:</b>	Male
<b>Breast development:</b>	None
<b>Breast masses:</b>	None
<b>Right hand digits complete:</b>	Yes
<b>Left hand digits complete:</b>	Yes
<b>Right foot digits complete:</b>	Yes
<b>Left foot digits complete:</b>	Yes
<b>Extremities:</b>	Well-developed
<b>Muscle group atrophy:</b>	Not present
<b>Senile purpura:</b>	Not present
<b>Pitting edema:</b>	Not present
<b>Tattoos:</b>	None identified
<b>Cosmetic piercing:</b>	None identified
<b>Scars:</b>	Lower left abdomen
<b>Other:</b>	The hands are covered by paper bags

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## POSTMORTEM CHANGES

<b>Body temperature:</b>	Cool subsequent to refrigeration
<b>Rigor mortis:</b>	Fully fixed
<b>Livor mortis – color:</b>	Purple
<b>Livor mortis – fixation:</b>	Fully fixed
<b>Livor mortis – position:</b>	Posterior
<b>State of preservation:</b>	No decomposition
<b>Funerary Preparation(s):</b>	None
<b>Organ/tissue procurement:</b>	None

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## MEDICAL INTERVENTION

**Evidence of medical intervention:**

Several tubes are within the oral cavity; the endotracheal tube terminates within the trachea, the endogastric tube terminates within the stomach, and a narrow appearing tube terminates within the distal esophagus.

A sutured incision is upon the left side of the chest; there is an incision into the left 6<sup>th</sup> intercostal space.

A chest tube is within the left side of the chest.

A sutured incision is upon the midline of the abdomen; a surgical sponge is within the abdominal cavity.

Two vascular catheters are in the right antecubital fossa.

An elastic bandage is wrapped around the right antecubital fossa.

Needle puncture marks are upon the anterior right wrist.

The left antecubital fossa has a needle puncture mark with ecchymosis.

A vascular catheter and needle puncture marks are upon the left upper chest.

A urinary catheter is in the urethra.

**Injuries related to resuscitative attempts:** None

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## EVIDENCE OF INJURIES

*Conventions used in description of injuries:*

1. *The body is described in the Standard Anatomic Position. Reference is to this position only.*
2. *Clock-face references are from the perspective of the observer viewing the body in the Standard Anatomic Position, with the 12 o'clock position corresponding to the top of the head.*
3. *Injuries are numbered or lettered for reference purposes only and will occasionally correspond to labeled injuries in the autopsy photographs. This is arbitrary and does not correspond to any order in which they have been incurred or degree of severity.*

### **GUNSHOT WOUNDS:**

#### **GUNSHOT WOUND OF THE CHEST:**

ENTRANCE (labeled "A" in photographs):

Location: Medial left side of the chest, approximately 49 cm below the top of the head and 7.5 cm to the left of the anterior midline.

Wound: A 1.5 x 1.3 cm ovoid wound with a dried marginal abrasion along the 9 o'clock to 1 o'clock edge measuring up to 0.2 cm.

Stippling: None.

Muzzle Abrasion: None.

Soot: None.

Tissue Searing: None.

INJURY: The projectile perforates the skin, the left 7<sup>th</sup> rib anteriorly, the left hemidiaphragm, the left 9<sup>th</sup> rib laterally, the chest musculature and subcutaneous tissues of the lateral and posterior left chest and the skin of the lateral left aspect of the back.

ASSOCIATED INJURIES: The wound path is bloody and disrupted. The gunshot wound contributes to the approximate 200 ml of blood within the left chest cavity.

EXIT (labeled "E" in photographs):

Location: Lateral left side of the back, approximately 63 cm below the top of the head and 19 cm to the left of the posterior midline.

Wound: A 2 x 0.5 cm ovoid wound with a 0.8 x 0.3 cm contusion along the 5 o'clock to 7 o'clock edge of the wound. The 4:30 o'clock aspect of the wound has 1.5 cm laceration.

PROJECTILE: No projectile is recovered.

DIRECTION: Front to back, downward, right to left.

#### **GUNSHOT WOUND OF THE MEDIAL RIGHT ABDOMEN:**

ENTRANCE (labeled "B" in photographs):

Location: Medial right abdomen, approximately 65.6 cm below the top of the head and 1.5 cm to the right of the anterior midline.

Wound: 1 cm circular wound with a circumferential marginal abrasion measuring up to 0.3 cm greatest at the 9 o'clock to 1 o'clock edge of the wound.

Stippling: None.

Muzzle Abrasion: None.

Soot: None.

Tissue Searing: None.

INJURY: The wound path is bloody and disrupted. The projectile perforates the skin, small intestines, mesenteric fat; and the projectile subsequently superficially penetrates the L4-L5 lumbar disc.

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ASSOCIATED INJURIES: The projectile contributes to the approximate 200 ml of bloody fluid within the abdominal cavity.

EXIT: None.

PROJECTILE: A deformed jacketed bullet is recovered from the L4-L5 lumbar disc anteriorly.

DIRECTION: Front to back, slightly downward, slightly right to left.

**GUNSHOT WOUND OF THE ABDOMEN:**

ENTRANCE (labeled "C" in photographs):

Location: Left side of the abdomen, approximately 73 cm below the top of the head and 11.5 cm to the left of the anterior midline.

Wound: 2 x 1.5 cm ovoid wound with a beveled abrasion along the 10 o'clock to 2 o'clock aspect measuring 1.8 x 1 cm.

Stippling: None.

Muzzle Abrasion: None.

Soot: None.

Tissue Searing: None.

INJURY: The projectile perforates the skin, subcutaneous soft tissues, and the left ilium; the projectile subsequently penetrates the subcutaneous tissues of the left lower back.

ASSOCIATED INJURIES: The wound path is bloody and disrupted. Extending from the 5 o'clock edge of the wound is a 3 x 1 cm faint blue contusion with abrasions upon the skin surface. There is a faint blue contusion upon the skin of the back overlying the projectile. The gunshot wound contributes to the bloody fluid within the abdominal cavity.

EXIT: None.

PROJECTILE: A deformed jacketed bullet is recovered from the left lower back approximately 76 cm below the top of the head and 9.5 cm to the left of the posterior midline.

DIRECTION: Front to back, downward, left to right.

**GUNSHOT WOUND OF THE BACK:**

ENTRANCE (labeled "D" in photographs):

Location: Lateral left side of the back, approximately 41 cm below the top of the head and 23 cm to the left of the posterior midline.

Wound: The 1.5 x 0.8 cm ovoid wound has a circumferential marginal abrasion measuring out to 0.2 cm.

Stippling: None.

Muzzle Abrasion: None.

Soot: None.

Tissue Searing: None.

INJURY: The projectile perforates the skin, subcutaneous soft tissues and muscle, the left fourth rib laterally, the upper and lower lobes of the left lung; the projectile subsequently penetrates the 6<sup>th</sup> thoracic vertebra while lacerating the thoracic spinal cord.

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ASSOCIATED INJURIES: The wound path is bloody and disrupted. The gunshot wound contributes to the approximate 200 ml of blood within the left chest cavity, and there is approximately 25 ml of watery bloody fluid within the pericardial sac.

EXIT: There is no exit wound.

PROJECTILE: A deformed jacketed bullet is recovered from the right lateral transverse process of the T6 vertebrae.

DIRECTION: Left to right, back to front, downward.

**GUNSHOT WOUND OF THE LEFT HAND:**

ENTRANCE (labeled "G" in photographs):

Location: Posterior left second finger, approximately 72 cm below the top of the left shoulder at the lateral proximal phalange

Wound: 1.5 x 1 cm lacerated wound with multiple skin tears measuring up to 0.3 cm along the edges and an up to 0.2 cm peripheral abrasion along the 2 to 4 o'clock edge of the wound and at the 9:30 to 10:30 edge of the wound.

Stippling: None.

Muzzle Abrasion: None.

Soot: None.

Tissue Searing: None.

INJURY: The wound path is bloody and disrupted. The projectile perforates the skin, the subcutaneous tissues, and skin.

EXIT (labeled "F" in photographs):

Location: Anterior left second finger, approximately 71 cm below the top of the left shoulder at the lateral proximal phalange.

Wound: 1.5 cm lacerated wound with edges that neatly reapproximate.

PROJECTILE: None.

DIRECTION: Back to front, slightly upward, no significant right or left deviation.

**BLUNT FORCE INJURIES:**

Head/Neck:

The left side of the forehead has a 3.5 x 1.2 cm area of abrasions; there is associated focal subcutaneous hemorrhage.

The left side of the nose has 1.5 x 0.6 cm area of abrasions.

The medial left side of the chin has few up to 0.3 cm abrasions.

The lower lip mucosa has a 0.5 cm superficial abrasion.

TORSO:

The right buttock has a 0.2 cm scabbed abrasion.

EXTREMITIES:

The lateral right hand has a 6 x 5 cm purple contusion.

The left knee has a 1 x 0.8 cm dry yellow abrasion.

The right calf has a 3 x 2.5 cm gray contusion.

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## IMAGING/RADIOLOGY

A postmortem computed tomography (CT) scan was performed. Findings of forensic significance include:

1. Evidence of medical intervention.
2. Three radiodense projectiles are present: one upon the right paramedian of the 6<sup>th</sup> thoracic vertebra, one upon the fourth and fifth lumbar intervertebral disk anteriorly, and one of the subcutaneous tissues of the left lower back.
3. Fractures of the left ribs.
4. Air in the left chest cavity.
5. Fluid in the chest cavities; left side more than the right side.
6. Fracture of the left ilium.

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## INTERNAL EXAMINATION

### BODY CAVITIES

<b>Chest cavities examined:</b>	Yes
<b>Abdominal cavity examined:</b>	Yes
<b>See Evidence of Injuries:</b>	Yes
<b>See Evidence of Medical Intervention:</b>	Yes
<b>See Postmortem Changes:</b>	No
<b>Serosal surfaces:</b>	Smooth and glistening
<b>Body cavity adhesions:</b>	None present
<b>Fluid accumulation present:</b>	See Evidence of Injuries

### HEAD

<b>Brain examined:</b>	Yes
<b>See Evidence of Injuries:</b>	No
<b>See Evidence of Medical Intervention:</b>	No
<b>See Postmortem Changes:</b>	Yes
<b>Brain weight fresh (g):</b>	1620
<b>Reflected scalp and temporalis muscles</b>	See Evidence of Injuries
<b>Facial skeleton:</b>	No palpable fractures
<b>Calvarium:</b>	No fractures
<b>Skull base:</b>	No fractures
<b>Dura mater:</b>	Unremarkable and without masses
<b>Dural venous sinuses:</b>	Patent
<b>Leptomeninges:</b>	Thin and transparent
<b>Epidural hemorrhages/hematomas:</b>	Absent
<b>Subdural hemorrhages/hematomas:</b>	Absent
<b>Subarachnoid hemorrhages:</b>	Absent
<b>Cerebral hemispheres:</b>	Symmetrical
<b>Gyral and sulcal patterns:</b>	Unremarkable
<b>Gyral convolutions and sulci:</b>	Mild widening and flattening of gyri, and narrowing of sulci
<b>Uncal processes:</b>	Unremarkable
<b>Cerebellar tonsils:</b>	Unremarkable

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<b>Cranial nerves:</b>	Unremarkable
<b>Basilar arterial vasculature:</b>	Unremarkable
<b>Cerebral cortex:</b>	Unremarkable
<b>White matter:</b>	Unremarkable
<b>Corpus Callosum:</b>	Unremarkable
<b>Deep gray matter structures:</b>	Unremarkable
<b>Brainstem:</b>	Unremarkable
<b>Cerebellum:</b>	Unremarkable
<b>Other comments:</b>	None

#### Spinal Cord

<b>Spinal cord examined:</b>	Mid thoracic
<b>Spinal dura:</b>	See Evidence of Injury
<b>Spinal cord:</b>	See Evidence of Injury
<b>Other comments:</b>	None

#### Middle Ears

<b>Middle ears examined:</b>	No
<b>Tympanic membranes:</b>	Not examined
<b>Contents of ear canals:</b>	Not examined
<b>Other comments:</b>	None

#### NECK

<b>Neck examined:</b>	Yes
<b>See Evidence of Injuries:</b>	No
<b>See Evidence of Medical Intervention:</b>	No
<b>See Postmortem Changes:</b>	No
<b>Subcutaneous soft tissues:</b>	Unremarkable
<b>Strap muscles:</b>	Unremarkable
<b>Jugular veins:</b>	Unremarkable
<b>Carotid arteries:</b>	Unremarkable
<b>Tongue:</b>	Unremarkable
<b>Epiglottis:</b>	Unremarkable
<b>Hyoid bone:</b>	Unremarkable
<b>Larynx:</b>	Unremarkable
<b>Palatine tonsils:</b>	Not examined
<b>Other comments:</b>	

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### CARDIOVASCULAR SYSTEM

<b>Heart examined:</b>	Yes
<b>See Evidence of Injuries:</b>	Yes
<b>See Evidence of Medical Intervention:</b>	No
<b>See Postmortem Changes:</b>	No

### Heart

<b>Heart weight fresh (g):</b>	380
<b>Right coronary ostium position:</b>	Normal
<b>Left coronary ostium position:</b>	Normal
<b>Supply of the posterior myocardium:</b>	Right coronary artery
<b>Coronary artery stenosis:</b>	Right coronary ostium ~ No significant stenosis Right coronary artery ~ No significant stenosis Left coronary ostium ~ No significant stenosis Left mainstem coronary artery ~ No significant stenosis Left anterior descending coronary artery ~ No significant stenosis Left circumflex coronary artery ~ No significant stenosis
<b>Cardiac chambers:</b>	Unremarkable
<b>Tricuspid valve:</b>	Unremarkable
<b>Pulmonic valve:</b>	Unremarkable
<b>Mitral valve:</b>	Unremarkable
<b>Aortic valve:</b>	Unremarkable
<b>Right ventricular myocardium:</b>	No fibrosis, erythema, pathologic infiltration of adipose tissue or areas of accentuated softening or induration
<b>Left ventricular myocardium:</b>	No fibrosis, erythema, or areas of accentuated softening or induration
<b>Atrial septum:</b>	Probe patent foramen ovale
<b>Ventricular septum:</b>	Unremarkable
<b>Right ventricle free wall thickness (cm):</b>	0.3
<b>Left ventricle free wall thickness (cm):</b>	1.4
<b>Interventricular septal thickness (cm):</b>	1.4
<b>Other comments:</b>	None

### Aorta

<b>Aorta and major tributaries examined:</b>	Yes
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<b>Orifices of the major vascular branches:</b>	Patent
<b>Coarctation:</b>	Not present
<b>Vascular dissection:</b>	Not present
<b>Aneurysm formation:</b>	Not present
<b>Aortic atherosclerosis:</b>	Not present
<b>Other aortic pathology:</b>	Not present
<b>Other comments:</b>	None

#### Vena Cava

<b>Great vessels examined:</b>	Yes
<b>Vena cava and major tributaries:</b>	Patent

#### RESPIRATORY SYSTEM

<b>Lungs examined:</b>	Yes
<b>See Evidence of Injuries:</b>	Yes
<b>See Evidence of Medical Intervention:</b>	No
<b>See Postmortem Changes:</b>	No
<b>Right lung weight (g):</b>	360
<b>Left lung weight (g):</b>	340
<b>Upper and lower airways:</b>	Unobstructed and the mucosal surfaces are smooth and yellow-tan
<b>Pulmonary parenchyma color:</b>	Dark red-purple
<b>Pulmonary congestion and edema:</b>	Slight amounts of blood and frothy fluid
<b>Carbonaceous pigment:</b>	Not present
<b>Emphysematous changes:</b>	Not present
<b>Pulmonary trunk:</b>	Free of thromboemboli
<b>Pulmonary artery atherosclerosis:</b>	None
<b>Other comments:</b>	None

#### HEPATOBIILIARY SYSTEM

<b>Liver examined:</b>	Yes
<b>See Evidence of Injuries:</b>	No
<b>See Evidence of Medical Intervention:</b>	No
<b>See Postmortem Changes:</b>	No
<b>Liver weight (g):</b>	1360

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<b>Bile volume (mL):</b>	3 (Approximate)
<b>Hepatic parenchyma (color):</b>	Red-brown
<b>Hepatic parenchyma (texture):</b>	Unremarkable
<b>Hepatic vasculature:</b>	Unremarkable and free of thrombus
<b>Gallbladder:</b>	Unremarkable
<b>Gallstones:</b>	No
<b>Biliary tree:</b>	Unremarkable
<b>Other comments:</b>	None

### GASTROINTESTINAL SYSTEM

<b>Alimentary tract examined:</b>	Yes
<b>See Evidence of Injuries:</b>	Yes
<b>See Evidence of Medical Intervention:</b>	No
<b>See Postmortem Changes:</b>	No
<b>Stomach contents volume (mL):</b>	25 (Approximate)
<b>Stomach contents description:</b>	Light tan fluid
<b>Appendix:</b>	Unremarkable

### Esophagus

<b>Course:</b>	Normal course without fistulae
<b>Mucosa:</b>	Gray-white, smooth and without lesions
<b>Other comments:</b>	None

### Stomach

<b>Mucosa:</b>	Autolyzed
<b>Pylorus:</b>	Patent and without muscular hypertrophy
<b>Other comments:</b>	None

### Small Intestine

<b>Luminal contents:</b>	Partially digested food
<b>Mucosa:</b>	Duodenal mucosa unremarkable; remaining bowel mucosa not examined
<b>Caliber and continuity:</b>	See Evidence of Injury
<b>Other comments:</b>	None

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### Colon

**Luminal contents:** Unformed stool  
**Mucosa:** Rectal mucosa unremarkable; remaining colonic mucosa not examined  
**Caliber and continuity:** Appropriate caliber without interruption of luminal continuity  
**Other comments:** None

### Pancreas

**Form:** Normal tan, lobulated appearance  
**Other comments:** None

### GENITOURINARY SYSTEM

**Genitourinary system examined:** Yes  
**See Evidence of Injuries:** No  
**See Evidence of Medical Intervention:** No  
**See Postmortem Changes:** No

### Kidneys

**Right kidney weight (g):** 140  
**Left kidney weight (g):** 140  
**Kidney capsules:** Thin, semitransparent  
**Cortical surfaces:** Smooth  
**Cortices:** Normal thickness and well demarcated from the medullary pyramids  
**Calyces, pelves, and ureters:** Non-dilated and free of stones and masses  
**Other comments:** None

### Urinary bladder

**Urine volume (mL):** 0  
**Urine description:** Not applicable  
**Urinary bladder mucosa:** Gray-tan and smooth  
**Other comments:** None

### Male

**Testicle location:** Scrotal  
**Testicle size:** Unremarkable  
**Testicle consistency:** Homogeneous  
**Prostate gland size:** Unremarkable

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**Prostate gland consistency:** Homogeneous  
**Other comments:** None

#### RETICULOENDOTHELIAL SYSTEM

**Reticuloendothelial system examined:** Yes  
**See Evidence of Injuries:** No  
**See Evidence of Medical Intervention:** No  
**See Postmortem Changes:** No

#### Spleen

**Spleen weight (g):** 100  
**Spleen parenchyma:** Moderately firm  
**Spleen capsule:** Intact

#### Bone Marrow

**Color:** Red-brown, homogeneous and ample  
**Other comments:** None

#### Lymph nodes

**Regional adenopathy:** No adenopathy  
**Other comments:** None

#### Thymus

**Thymus weight (g):** Not applicable  
**Parenchyma:** Absent  
**Other comments:** None

#### ENDOCRINE SYSTEM

**Endocrine system examined:** Yes  
**See Evidence of Injuries:** No  
**See Evidence of Medical Intervention:** No  
**See Postmortem Changes:** No

#### Pituitary gland

**Size:** Normal  
**Other comments:** None

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**Thyroid gland**

**Thyroid gland position:** Normal  
**Thyroid gland size:** Normal  
**Thyroid gland parenchyma:** Normal  
**Other comments:** None

**Adrenal glands**

**Adrenal gland size:** Normal  
**Adrenal gland parenchyma:** Yellow cortices and gray medullae with the expected corticomedullary ratio  
**Other comments:** None

**MUSCULOSKELETAL SYSTEM**

**Musculoskeletal system examined:** Yes  
**See Evidence of Injuries:** Yes  
**See Evidence of Medical Intervention:** Yes  
**See Postmortem Changes:** No

**Bony framework:** See Evidence of Injuries  
**Supporting musculature:** See Evidence of Injuries  
**Subcutaneous soft tissues:** See Evidence of Injuries

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## **MICROSCOPY\***

### **SLIDE KEY**

- A. Epiglottis, tongue
- B. Heart, kidney, liver
- C. Small intestines, brain
- D. Lungs

\*Unless otherwise indicated, sections are stained only with hematoxylin and eosin (H&E). Some tissues are artifactually distorted during tissue processing.

### **MICROSCOPIC DESCRIPTION**

EPIGLOTTIS: No significant histopathology.

TONGUE: No significant histopathology.

HEART: No significant histopathology.

KIDNEY: No polarizable materials.

LIVER: No overt significant histopathology.

SMALL INTESTINE: Focal submucosal erythrocyte extravasation without significant inflammation.

BRAIN: No significant histopathology.

LUNGS: Focal areas of congestion and alveolar erythrocyte extravasation.

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## PROCEDURAL NOTES

### APPROACH TO AUTOPSY DISSECTION

<b>Rokitansky evisceration:</b>	Not performed
<b>Virchow evisceration:</b>	Performed
<b>Modified evisceration:</b>	Not performed
<b>Pericranial membrane removal:</b>	Not performed
<b>Anterior neck dissection:</b>	Performed
<b>Posterior neck dissection:</b>	Not performed
<b>Facial dissection:</b>	Not performed
<b>Vertebral artery dissection (in situ):</b>	Not performed
<b>Cervical spine removal:</b>	Not performed
<b>Layered anterior trunk dissection:</b>	Not performed
<b>Anterolateral rib arc dissection:</b>	Not performed
<b>Back dissection:</b>	Not performed
<b>Posterior rib arc dissection:</b>	Not performed
<b>Extremity soft tissue dissection:</b>	Left second finger
<b>Eye enucleation:</b>	Not performed
<b>Inner middle ear evaluation:</b>	Not performed
<b>Maxilla or mandible resection:</b>	Not performed
<b>Spinal cord removal (anterior):</b>	Mid thoracic cord
<b>Spinal cord removal (posterior):</b>	Not performed
<b>Other dissection(s):</b>	Left lower back

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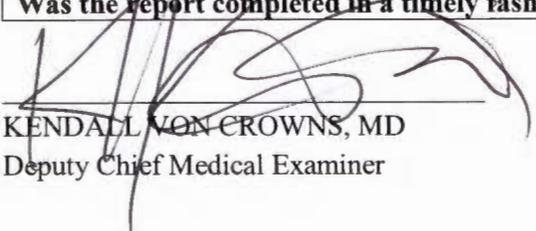
**QUALITY ASSURANCE REVIEW**

**ITEMS REVIEWED**

	YES	NO	N/A
Death investigation report	/		
Photographs	/		
Microscopic slides	/		
Toxicology report	/		
Other (specify):  Ct Scans	/		

**TECHNICAL AUDIT**

	YES	NO	N/A
Is the report independently reviewable?	/		
Are the descriptions of clothing and identifying marks and scars appropriate for the complexity of the case?	/		
Is the external description (without injuries) appropriately case specific?	/		
Are the descriptions of injury, if present, appropriate for the complexity of the case, and consistent with diagrams and photographs?	/		
Are the descriptions of injury, if present, organized in a logical and understandable sequence?	/		
Are the descriptions of natural disease, if present, organized in a logical and understandable sequence?	/		
Is the text clear and understandable without significant typographical and/or grammatical errors?	/		
Is the opinion logical and complete?	/		
Is the opinion readily understandable by the nonmedical reader?	/		
Are all the significant issues addressed in the opinion?	/		
Was the appropriate ancillary testing performed?	/		
Are the opinions reasonable?	/		
Is the cause of death reasonable?	/		
Is the manner of death reasonable?	/		
Was the report completed in a timely fashion?	/		

  
 KENDALL VON CROWNS, MD  
 Deputy Chief Medical Examiner

4.15.19  
 Date



**TRAVIS COUNTY OFFICE  
OF THE MEDICAL EXAMINER**

**J. KEITH PINCKARD, MD, PhD  
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Tel: (512) 854-9599 Fax: (512) 854-9044  
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**Toxicology Report**

ME 19-00531

Cantu, Paul Andrew

Pathologist : Dr. Vickie Willoughby

Date Completed : 3/22/2019

<u>Assay/Specimen</u>	<u>Substance</u>	<u>Result</u>	<u>Units</u>	<u>Method</u>
<b>ACID/NEUTRAL DRUGS</b>				
Blood, femoral		ND		GC/MS
<b>ALKALINE DRUGS</b>				
Blood, femoral	Ketamine	Detected		GC/MS
<b>ETHANOL/VOLATILES</b>				
Blood, hospital		ND		Headspace GC/FID
<b>IMMUNOASSAY</b>				
Blood, hospital	Amphetamine	ND		ELISA
Blood, hospital	Barbiturate	ND		ELISA
Blood, hospital	Benzodiazepine	ND		ELISA
Blood, hospital	Cocaine Metabolite	ND		ELISA
Blood, hospital	Fentanyl	ND		ELISA
Blood, hospital	Opiate	ND		ELISA
Blood, hospital	Oxycodone	ND		ELISA
Blood, hospital	Cannabinoid	ND		ELISA
<b>NOVEL PSYCHOACTIVE SUBSTANCES</b>				
Blood, femoral		ND		LC/MS/MS
<b>SYNTHETIC CANNABINOIDS</b>				
Blood, femoral		ND		LC/MS/MS

ND = None Detected      UFA = Unsuitable for Analysis

Comment:

  
Chief/Deputy Chief Toxicologist

  
Medical Examiner  
03/22/2019

**Texas Commission On Law Enforcement****Personal Status Report**

<b>Name</b>	<b>EX. B</b>	<b>STATUS</b>
LUIS A. CAMACHO III		

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	Hispanic	Male

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
	0	High School		
The University of Texas at San Antonio	121	Bachelor		
Total Higher Education Hours	<u>121</u>			
Total Higher Education Points	2420			
Total Military Training Hours	<u>0</u>			
Total	<u>2420</u>			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	12/18/2017		4 years, 3 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	4 years, 3 months
Total officer time	4 years, 3 months

**Award Information**

<b>Award</b>	<b>Type</b>	<b>Action</b>	<b>Action Date</b>
Peace Officer License	License	Granted	12/18/2017
Basic Peace Officer	Certificate	Certification Issued	5/7/2019
Intermediate Peace Officer	Certificate	Certification Issued	12/17/2019

**Academy History**

<b>Date</b>	<b>Institution</b>	<b>Course Title</b>
Completed 12/7/2017	Austin Police Academy	Basic Peace Officer Course (643)

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3344	Less Lethal Electronic Control Device Training	8/30/2021	12	Austin Police Academy	
3835	Tactical Trauma Care	5/6/2021	4	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/1/2021	0	Austin Police Academy	
3843	CIT-Update	2/4/2021	10	Austin Police Academy	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 2009-09
3322	Patrol Rifle	10/22/2020	40	Austin Police Academy	
3186	86th Legislative Session Legal Update	5/15/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	2/27/2020	0	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	2/20/2020	5	Austin Police Academy	
2055	Firearms	12/13/2019	10	Austin Police Academy	
4001	Mental Health Officer Training Course	12/5/2019	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3851	Breathalyzer / Intoxilyzer	11/15/2019	28	Texas Department of Public Safety LEA	
2055	Firearms	10/9/2019	10	Austin Police Academy	
		<b>Unit Hours</b>	<b>162</b>		

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2070	Accident Investigations	5/16/2019	20	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2047	Officer Survival/Weapon Retent	5/8/2019	20	Austin Police Academy	
3722	Peace Officer Field Training	3/24/2019	160	Austin Police Academy	Peace Officer Field Training
355	Annual Firearms Qualification 1701.355	2/5/2019	0	Austin Police Academy	
2045	Patrol Procedures	1/10/2019	4	Austin Police Academy	
3517	Suicide Prevention (not 3501)	1/10/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	1/9/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	1/8/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	1/8/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	1/7/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
1850	Crisis Intervention Training 40hr	12/6/2018	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
3304	Hostage and Barricade Suspect Situations	8/31/2018	8	Austin Police Academy	
3305	Active Shooter Response	8/17/2018	4	Austin Police Academy	
2178	S.F.S.T. Practitioner Update	8/2/2018	8	Austin Police Academy	
2040	Defensive Tactics	6/1/2018	3	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	4/23/2018	2	Austin Police Academy	
2040	Defensive Tactics	2/22/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/1/2018	0	Austin Police Academy	
2055	Firearms	2/1/2018	2	Austin Police Academy	
8158	Body Worn Camera	12/20/2017	2	Austin Police Academy	
3270	Human Trafficking	12/20/2017	4	Austin Police Academy	Human Trafficking
4068	Child Safety Check Alert List (Intermediate/Advanc	12/19/2017	1	Austin Police Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
2106	Crime Scene Investigation (Intermediate)	12/15/2017	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	12/14/2017	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
4065	Canine Encounters (Intermediate/Advance)	12/11/2017	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1033	Chapter 33 Rule Overview Exam	12/11/2017	0	TCOLE Online	
1000643	Basic Peace Officer Course (643)	12/7/2017	643	Austin Police Academy	82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators
2108	Arrest, Search, and Seizure (Intermediate)	11/28/2017	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
2107	Use of Force (Intermediate)	11/28/2017	12	Austin Police Academy	Use of Force (Intermediate)
3275	Missing and Exploited Children	11/27/2017	4	Austin Police Academy	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3836	Concealed Carry for Law Enforcement Officers	11/22/2017	8	Austin Police Academy	
3939	Cultural Diversity	11/21/2017	8	Austin Police Academy	Cultural Diversity (Intermediate)
3232	Special Investigative Topics	11/14/2017	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3845	CPR	10/31/2017	8	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3841	Crisis Intervention Training	10/5/2017	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
2067	S.F.S.T. Practitioner	9/15/2017	24	Austin Police Academy	
7887	Interacting with drivers deaf or hard of hearing	9/7/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	9/6/2017	4	Austin Police Academy	
			<b>Unit Hours</b>	1125	

09/01/2015 - 09/30/2017

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2067	S.F.S.T. Practitioner	9/15/2017	24	Austin Police Academy	
7887	Interacting with drivers deaf or hard of hearing	9/7/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	9/6/2017	4	Austin Police Academy	
2053	Baton (All)	8/3/2017	8	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	7/28/2017	40	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3344	Less Lethal Electronic Control Device Training	7/7/2017	8	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	6/29/2017	4	Austin Police Academy	
3807	TCIC/NCIC for Less than Full Access Operators	6/22/2017	8	Austin Police Academy	
3910	Sexual Harassment Recognition	5/31/2017	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	5/30/2017	0	Austin Police Academy	Personnel Orientation
		<b>Unit Hours</b>	<u>102</u>		
		<b>Total Hours</b>	<u><u>1389</u></u>		

**Total Hours**

<b>Total Career/Professional Hours</b>	2420
<b>Total TCOLE Course Hours</b>	1389
<b>Total Hours</b>	<u><u>3809</u></u>

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

**Texas Commission On Law Enforcement****Personal Status Report**

<b>Name</b>	<b>STATUS</b>
LUIS A. CAMACHO III	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	Hispanic	Male

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
	0	High School		
The University of Texas at San Antonio	121	Bachelor		
Total Higher Education Hours	<u>121</u>			
Total Higher Education Points	2420			
Total Military Training Hours	<u>0</u>			
Total	<u>2420</u>			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	12/18/2017		4 years, 3 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	4 years, 3 months
Total officer time	4 years, 3 months

**Award Information**

<b>Award</b>	<b>Type</b>	<b>Action</b>	<b>Action Date</b>
Peace Officer License	License	Granted	12/18/2017
Basic Peace Officer	Certificate	Certification Issued	5/7/2019
Intermediate Peace Officer	Certificate	Certification Issued	12/17/2019

**Academy History**

<b>Date</b>	<b>Institution</b>	<b>Course Title</b>
Completed 12/7/2017	Austin Police Academy	Basic Peace Officer Course (643)

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3344	Less Lethal Electronic Control Device Training	8/30/2021	12	Austin Police Academy	
3835	Tactical Trauma Care	5/6/2021	4	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/1/2021	0	Austin Police Academy	
3843	CIT-Update	2/4/2021	10	Austin Police Academy	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 2009-09
3322	Patrol Rifle	10/22/2020	40	Austin Police Academy	
3186	86th Legislative Session Legal Update	5/15/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	2/27/2020	0	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	2/20/2020	5	Austin Police Academy	
2055	Firearms	12/13/2019	10	Austin Police Academy	
4001	Mental Health Officer Training Course	12/5/2019	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3851	Breathalyzer / Intoxilyzer	11/15/2019	28	Texas Department of Public Safety LEA	
2055	Firearms	10/9/2019	10	Austin Police Academy	
		<b>Unit Hours</b>	<b>162</b>		

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2070	Accident Investigations	5/16/2019	20	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2047	Officer Survival/Weapon Retent	5/8/2019	20	Austin Police Academy	
3722	Peace Officer Field Training	3/24/2019	160	Austin Police Academy	Peace Officer Field Training
355	Annual Firearms Qualification 1701.355	2/5/2019	0	Austin Police Academy	
2045	Patrol Procedures	1/10/2019	4	Austin Police Academy	
3517	Suicide Prevention (not 3501)	1/10/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	1/9/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	1/8/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	1/8/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	1/7/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
1850	Crisis Intervention Training 40hr	12/6/2018	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
3304	Hostage and Barricade Suspect Situations	8/31/2018	8	Austin Police Academy	
3305	Active Shooter Response	8/17/2018	4	Austin Police Academy	
2178	S.F.S.T. Practitioner Update	8/2/2018	8	Austin Police Academy	
2040	Defensive Tactics	6/1/2018	3	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	4/23/2018	2	Austin Police Academy	
2040	Defensive Tactics	2/22/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/1/2018	0	Austin Police Academy	
2055	Firearms	2/1/2018	2	Austin Police Academy	
8158	Body Worn Camera	12/20/2017	2	Austin Police Academy	
3270	Human Trafficking	12/20/2017	4	Austin Police Academy	Human Trafficking
4068	Child Safety Check Alert List (Intermediate/Advanc	12/19/2017	1	Austin Police Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
2106	Crime Scene Investigation (Intermediate)	12/15/2017	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	12/14/2017	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
4065	Canine Encounters (Intermediate/Advance)	12/11/2017	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1033	Chapter 33 Rule Overview Exam	12/11/2017	0	TCOLE Online	
1000643	Basic Peace Officer Course (643)	12/7/2017	643	Austin Police Academy	82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators
2108	Arrest, Search, and Seizure (Intermediate)	11/28/2017	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
2107	Use of Force (Intermediate)	11/28/2017	12	Austin Police Academy	Use of Force (Intermediate)
3275	Missing and Exploited Children	11/27/2017	4	Austin Police Academy	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3836	Concealed Carry for Law Enforcement Officers	11/22/2017	8	Austin Police Academy	
3939	Cultural Diversity	11/21/2017	8	Austin Police Academy	Cultural Diversity (Intermediate)
3232	Special Investigative Topics	11/14/2017	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3845	CPR	10/31/2017	8	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3841	Crisis Intervention Training	10/5/2017	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
2067	S.F.S.T. Practitioner	9/15/2017	24	Austin Police Academy	
7887	Interacting with drivers deaf or hard of hearing	9/7/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	9/6/2017	4	Austin Police Academy	
			<b>Unit Hours</b>	1125	

09/01/2015 - 09/30/2017

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2067	S.F.S.T. Practitioner	9/15/2017	24	Austin Police Academy	
7887	Interacting with drivers deaf or hard of hearing	9/7/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	9/6/2017	4	Austin Police Academy	
2053	Baton (All)	8/3/2017	8	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	7/28/2017	40	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3344	Less Lethal Electronic Control Device Training	7/7/2017	8	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	6/29/2017	4	Austin Police Academy	
3807	TCIC/NCIC for Less than Full Access Operators	6/22/2017	8	Austin Police Academy	
3910	Sexual Harassment Recognition	5/31/2017	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	5/30/2017	0	Austin Police Academy	Personnel Orientation
<b>Unit Hours</b>			<u>102</u>		
<b>Total Hours</b>			<u><u>1389</u></u>		

**Total Hours**

<b>Total Career/Professional Hours</b>	2420
<b>Total TCOLE Course Hours</b>	1389
<b>Total Hours</b>	<u><u>3809</u></u>

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

**Texas Commission On Law Enforcement**

**Personal Status Report**

<b>Name</b>	<b>STATUS</b>
MICHAEL T. JOSEPH	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	White	Male

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
	128	Bachelor		
Total Higher Education Hours	<u>128</u>			
Total Higher Education Points	<u>2560</u>			
Total Military Training Hours	<u>0</u>			
Total	<u><u>2560</u></u>			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer	AUSTIN POLICE DEPARTMENT	Peace Officer License	6/27/2003		18 years, 9 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	18 years, 9 months
Total officer time	18 years, 9 months

**Texas Commission On Law Enforcement****Personal Status Report****Award Information**

<b>Award</b>	<b>Type</b>	<b>Action</b>	<b>Action Date</b>
Peace Officer License	License	Granted	6/25/2003
Basic Peace Officer	Certificate	Certification Issued	6/29/2004
Intermediate Peace Officer	Certificate	Certification Issued	10/3/2005
Basic Instructor Proficiency	Certificate	Certification Issued	5/10/2007
Advanced Peace Officer	Certificate	Certification Issued	6/10/2008
Master Peace Officer	Certificate	Certification Issued	6/9/2012

**Academy History**

<b>Date</b>	<b>Institution</b>	<b>Course Title</b>
Completed 12/9/2002	Austin Police Academy	Basic Peace Officer

**Courses Completed****09/01/2021 - 08/31/2023**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3341	Police K9 Training	10/22/2021	20	Austin Police Academy	
		<b>Unit Hours</b>	20		

**09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3341	Police K9 Training	8/12/2021	5	Austin Police Academy	
3341	Police K9 Training	8/5/2021	2	Austin Police Academy	
3341	Police K9 Training	7/22/2021	2	Austin Police Academy	
2055	Firearms	7/22/2021	3	Austin Police Academy	
3341	Police K9 Training	7/20/2021	3	Austin Police Academy	
3338	Law Enforcement Ambush Response	7/15/2021	5	Austin Police Academy	
3341	Police K9 Training	7/1/2021	2	Austin Police Academy	
3341	Police K9 Training	6/17/2021	3	Austin Police Academy	
3341	Police K9 Training	6/10/2021	2	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2019 - 08/31/2021

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3341	Police K9 Training	6/3/2021	2	Austin Police Academy	
3341	Police K9 Training	5/27/2021	2	Austin Police Academy	
4033	Drone Training	5/26/2021	16	Texas Police Association	
3314	ALERRT Terrorism Response Tactics - Active Shooter	5/20/2021	4	Austin Police Academy	
3341	Police K9 Training	5/20/2021	2	Austin Police Academy	
3341	Police K9 Training	5/13/2021	2	Austin Police Academy	
3341	Police K9 Training	5/6/2021	20	Austin Police Academy	
3341	Police K9 Training	4/29/2021	2	Austin Police Academy	
3341	Police K9 Training	4/29/2021	3	Austin Police Academy	
3341	Police K9 Training	4/28/2021	7	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/21/2021	0	Austin Police Academy	
3341	Police K9 Training	4/15/2021	2	Austin Police Academy	
3341	Police K9 Training	3/8/2021	3	Austin Police Academy	
3341	Police K9 Training	2/25/2021	2	Austin Police Academy	
4001	Mental Health Officer Training Course	11/19/2020	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3344	Less Lethal Electronic Control Device Training	11/12/2020	12	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	10/15/2020	6	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	10/14/2020	6	Austin Police Academy	
3186	86th Legislative Session Legal Update	5/12/2020	3	Austin Police Academy	86th Session State and Federal Law Update
2029	Tech. Interviewing & Interrog.	3/5/2020	5	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
355	Annual Firearms Qualification 1701.355	2/13/2020	0	Austin Police Academy	
			<b>Unit Hours</b>	166	

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3517	Suicide Prevention (not 3501)	8/1/2019	4	AUSTIN POLICE DEPARTMENT (Training Rosters)	
3038	Agency Operations (General)	8/1/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	7/31/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	7/30/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	7/30/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	7/29/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3751	Effective Leadership / Leadership Training	7/2/2019	3	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	3/22/2019	8	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/14/2019	0	Austin Police Academy	
3305	Active Shooter Response	10/26/2018	4	Austin Police Academy	
8158	Body Worn Camera	8/5/2018	2	Austin Police Academy	
2040	Defensive Tactics	6/21/2018	3	Austin Police Academy	
3185	85th Legislative Session Legal Update	6/17/2018	4	Austin Police Academy	85th Session State and Federal Law Update
6030	Tactical Vehicle Traffic Stops & Extractions	4/10/2018	2	Austin Police Academy	
2040	Defensive Tactics	2/5/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/25/2018	0	Austin Police Academy	
2055	Firearms	1/25/2018	2	Austin Police Academy	
			<b>Unit Hours</b>	65	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
355	Annual Firearms Qualification 1701.355	5/11/2017	0	Austin Police Academy	
2055	Firearms	5/11/2017	3	Austin Police Academy	
3341	Police K9 Training	4/13/2017	20	Austin Police Academy	
3823	Tactical Operators Training	3/1/2017	18	AUSTIN POLICE DEPARTMENT (Training Rosters)	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	2/23/2017	10	Austin Police Academy	
3184	84th Legislative Session Legal Update	1/17/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3258	Racial Profiling Update	7/22/2016	2	Austin Police Academy	
3340	Crowd Control	1/26/2016	4	Austin Police Academy	
3836	Concealed Carry for Law Enforcement Officers	1/21/2016	10	Austin Police Academy	
	<b>Unit Hours</b>		<b>71</b>		

**09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2055	Firearms	7/9/2015	1	Austin Police Academy	
2055	Firearms	6/30/2015	1	Austin Police Academy	
2055	Firearms	5/18/2015	1	Austin Police Academy	
3183	83rd Legislative Session Legal Update	1/31/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
3737	New Supervisor's Course	1/22/2015	80	Austin Police Academy	Cultural Diversity (Intermediate) New Supervisor's Required Training Special Investigative Topics (Intermediate)
2046	Driving	1/20/2015	4	Austin Police Academy	
3032	Basic Principles of Supervision	12/4/2014	10	Austin Police Academy	
2055	Firearms	11/13/2014	1	Austin Police Academy	
2047	Officer Survival/Weapon Retent	11/11/2014	10	Austin Police Academy	
2055	Firearms	10/31/2014	1	Austin Police Academy	
3835	Tactical Trauma Care	8/5/2014	4	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2055	Firearms	7/11/2014	1	Austin Police Academy	
2055	Firearms	6/20/2014	1	Austin Police Academy	
3305	Active Shooter Response	6/12/2014	2	Austin Police Academy	
2055	Firearms	5/27/2014	1	Austin Police Academy	
2095	Use of Force (Non-Intermediate Core Course)	4/16/2014	4	Austin Police Academy	
3404	Traffic Stops	4/15/2014	2	Austin Police Academy	
2055	Firearms	4/3/2014	1	Austin Police Academy	
62040	Defensive Tactics - Canine Encounters (Proprietary)	3/11/2014	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
2055	Firearms	11/18/2013	1	Austin Police Academy	
2055	Firearms	10/17/2013	1	Austin Police Academy	
2055	Firearms	9/20/2013	1	Austin Police Academy	
2046	Driving	9/16/2013	10	Austin Police Academy	
			<b>Unit Hours</b>	<b>146</b>	

**09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2055	Firearms	8/9/2013	1	Austin Police Academy	
4100	Information Technology (General)	7/30/2013	10	Austin Police Academy	
4100	Information Technology (General)	7/29/2013	10	Austin Police Academy	
2055	Firearms	7/12/2013	1	Austin Police Academy	
4052	Hearing Disabilities	6/24/2013	2	Austin Police Academy	
2055	Firearms	6/14/2013	1	Austin Police Academy	
2055	Firearms	5/9/2013	1	Austin Police Academy	
3182	82nd Legislative Session Legal Update	5/7/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
3132	Search Warrants (Writing)	5/3/2013	2	Austin Police Academy	
2055	Firearms	4/23/2013	1	Austin Police Academy	
3320	Terrorism & Homeland Security (General)	1/8/2013	8	Austin Police Academy	
2055	Firearms	11/27/2012	1	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
66703	FEMA NIMS Resource Management (FEMA IS-703a)	10/16/2012	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	10/15/2012	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
3300	Patrol/Tactical	10/11/2012	2	Austin Police Academy	
2055	Firearms	9/19/2012	1	Austin Police Academy	
2055	Firearms	8/24/2012	1	Austin Police Academy	
2053	Baton (All)	7/17/2012	10	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	5/11/2012	1	Austin Police Academy	
2016	Collection & Pres. of Evidence	4/27/2012	10	Austin Police Academy	
2055	Firearms	2/9/2012	5	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	1/27/2012	40	Austin Police Academy	
			<b>Unit Hours</b>	<b>118</b>	

**09/01/2009 - 08/31/2011**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
66300	FEMA Int. ICS Exp. Incident (Class Rm) (FEMA IS-30	6/21/2011	18	Austin Police Academy	
3181	81st Legislative Session Legal Update	3/22/2011	8	Austin Police Academy	State and Federal Law Update
3300	Patrol/Tactical	11/30/2010	2	Austin Police Academy	
3800	Technical/Specialized	10/5/2010	1	Austin Police Academy	
66200	FEMA ICSSingle Res/Initial Action Inc(FEMA IS-200)	6/10/2010	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
3700	Management/Supervision	2/18/2010	4	Austin Police Academy	
3400	Traffic	12/4/2009	4	Austin Police Academy	
3800	Technical/Specialized	10/16/2009	1	Austin Police Academy	
			<b>Unit Hours</b>	<b>41</b>	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2007 - 08/31/2009**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3200	Investigations	8/7/2009	1	Austin Police Academy	
3232	Special Investigative Topics	7/20/2009	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3200	Investigations	5/22/2009	32	Austin Police Academy	
3800	Technical/Specialized	5/21/2009	8	Austin Police Academy	
3200	Investigations	5/15/2009	32	Austin Police Academy	
3800	Technical/Specialized	5/15/2009	8	Austin Police Academy	
3939	Cultural Diversity	11/25/2008	10	Austin Police Academy	Cultural Diversity (Intermediate)
3300	Patrol/Tactical	11/11/2008	20	Austin Police Academy	
3700	Management/Supervision	6/24/2008	2	Austin Police Academy	
3700	Management/Supervision	6/5/2008	10	Austin Police Academy	
3800	Technical/Specialized	6/4/2008	2	Austin Police Academy	
2178	S.F.S.T. Practitioner Update	6/4/2008	8	Austin Police Academy	
2040	Defensive Tactics	6/3/2008	20	Austin Police Academy	
3100	LAW	3/29/2008	4	Austin Police Academy	
3702	Field Training Officer	9/6/2007	40	Austin Police Academy	
		<b>Unit Hours</b>	<b>205</b>		

**09/01/2005 - 08/31/2007**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3800	Technical/Specialized	5/7/2007	20	Austin Police Academy	
3100	LAW	2/22/2007	10	Austin Police Academy	
3910	Sexual Harassment Recognition	12/27/2006	1	Austin Police Academy	
3800	Technical/Specialized	12/6/2006	1	Austin Police Academy	
66100	FEMA Intro ICS (FEMA IS-100a)	11/12/2006	3	Austin Police Academy	
3800	Technical/Specialized	10/30/2006	1	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2005 - 08/31/2007**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3841	Crisis Intervention Training	10/11/2006	20	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3300	Patrol/Tactical	9/28/2006	32	Austin Police Academy	
2178	S.F.S.T. Practitioner Update	9/26/2006	8	Austin Police Academy	
3800	Technical/Specialized	8/1/2006	1	OTHER TRAINING	
3232	Special Investigative Topics	5/3/2006	4	Austin Police Academy	Special Investigative Topics (Intermediate)
66700	FEMA National ICS (FEMA IS-700a)	3/19/2006	3	Austin Police Academy	
2107	Use of Force (Intermediate)	2/8/2006	2	Austin Police Academy	Use of Force (Intermediate)
3322	Patrol Rifle	1/24/2006	16	Williamson County Sheriff's Office	
3807	TCIC/NCIC for Less than Full Access Operators	1/12/2006	2	Austin Police Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	12/1/2005	5	Austin Police Academy	
3300	Patrol/Tactical	10/8/2005	3	Austin Police Academy	
		<b>Unit Hours</b>	<b>132</b>		

**09/01/2003 - 08/31/2005**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3300	Patrol/Tactical	7/21/2005	2	Austin Police Academy	
3277	Identity Theft	6/18/2005	4	Austin Police Academy	Identity Theft (Intermediate)
3702	Field Training Officer	6/3/2005	40	Austin Police Academy	
1014	Basic Instructor Course	5/27/2005	40	Austin Police Academy	
3700	Management/Supervision	2/22/2005	1	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2003 - 08/31/2005**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3800	Technical/Specialized	8/5/2004	3	Austin Police Academy	
2178	S.F.S.T. Practitioner Update	6/29/2004	8	TEEX Central Texas Police Academy	
3300	Patrol/Tactical	5/6/2004	2	Austin Police Academy	
3300	Patrol/Tactical	5/1/2004	10	Austin Police Academy	
3400	Traffic	11/14/2003	80	Austin Police Academy	
		<b>Unit Hours</b>	<b>190</b>		

**09/01/2001 - 08/31/2003**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3300	Patrol/Tactical	8/28/2003	8	Austin Police Academy	
3800	Technical/Specialized	7/22/2003	4	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	6/27/2003	0	OTHER TRAINING	Personnel Orientation
101	Addendum Basic Peace Officer	6/9/2003	120	Austin Police Academy	
3257	Combined Asset Forfeiture and Racial Profiling	6/4/2003	6	Austin Police Academy	Asset Forfeiture (Intermediate) Racial Profiling (Intermediate)
2106	Crime Scene Investigation (Intermediate)	5/30/2003	23	Austin Police Academy	Crime Scene Investigation (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	5/28/2003	8	Austin Police Academy	
3232	Special Investigative Topics	5/20/2003	8	Austin Police Academy	Special Investigative Topics (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	5/19/2003	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
2067	S.F.S.T. Practitioner	5/16/2003	24	TEEX Central Texas Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	4/14/2003	32	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3939	Cultural Diversity	3/11/2003	8	Austin Police Academy	Cultural Diversity (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	2/17/2003	24	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
2107	Use of Force (Intermediate)	1/6/2003	30	Austin Police Academy	Use of Force (Intermediate)

**Texas Commission On Law Enforcement**

**Personal Status Report**

**Courses Completed**

09/01/2001 - 08/31/2003

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1000	Basic Peace Officer	12/9/2002	853	Austin Police Academy	Cultural Diversity (Mandate) Special Investigative Topic (Mandate)
		<b>Unit Hours</b>	<u>1172</u>		
		<b>Total Hours</b>	<u><u>2326</u></u>		

**Total Hours**

<b>Total Career/Professional Hours</b>	2560
<b>Total TCOLE Course Hours</b>	<u>2326</u>
<b>Total Hours</b>	<u><u>4886</u></u>

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

**Texas Commission On Law Enforcement****Personal Status Report**

<b>Name</b>	<b>STATUS</b>
ROBERT H. MATTINGLY	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	MultiCultural	Male

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
	0	High School		
Barstow Community College	3	College Credits		
Victor Valley College	3			
	<u>6</u>			
Total Higher Education Hours	<u>6</u>			
	<u>120</u>			
Total Higher Education Points	120			
Total Military Training Hours	<u>0</u>			
Total	<u>120</u>			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	12/18/2017		4 years, 3 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	4 years, 3 months
Total officer time	4 years, 3 months

**Award Information**

<b>Award</b>	<b>Type</b>	<b>Action</b>	<b>Action Date</b>
Peace Officer License	License	Granted	12/18/2017
Basic Peace Officer	Certificate	Certification Issued	5/7/2019
Intermediate Peace Officer	Certificate	Certification Issued	12/16/2021

**Texas Commission On Law Enforcement****Personal Status Report****Academy History**

	<b>Date</b>	<b>Institution</b>	<b>Course Title</b>
Completed	12/7/2017	Austin Police Academy	Basic Peace Officer Course (643)

**Courses Completed****09/01/2021 - 08/31/2023**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3904	Cultural Awareness	11/11/2021	12	Austin Police Academy	
3718	Advanced Field Training Officer	10/14/2021	40	Austin Police Academy	
			<b>Unit Hours</b>	52	

**09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3835	Tactical Trauma Care	5/6/2021	4	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/1/2021	0	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	12/10/2020	12	Austin Police Academy	
3186	86th Legislative Session Legal Update	8/5/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	2/27/2020	0	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	2/20/2020	5	Austin Police Academy	
3702	Field Training Officer	1/23/2020	40	Austin Police Academy	
			<b>Unit Hours</b>	64	

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3517	Suicide Prevention (not 3501)	8/29/2019	4	Austin Police Academy	
3038	Agency Operations (General)	8/29/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co)	8/28/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	8/27/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	8/27/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	8/26/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3322	Patrol Rifle	5/23/2019	20	Austin Police Academy	
3722	Peace Officer Field Training	3/24/2019	160	Austin Police Academy	Peace Officer Field Training
355	Annual Firearms Qualification 1701.355	1/22/2019	0	Austin Police Academy	
57016	Calibre Press Street Survival	1/15/2019	16	Combined Law Enforcement Asso. of Texas	
3305	Active Shooter Response	9/28/2018	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	9/27/2018	7	Austin Police Academy	
1850	Crisis Intervention Training 40hr	9/7/2018	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
2049	Report Writing - general	6/19/2018	10	Austin Police Academy	
2040	Defensive Tactics	6/1/2018	3	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	4/23/2018	2	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/23/2018	0	Austin Police Academy	
2055	Firearms	2/23/2018	2	Austin Police Academy	
2040	Defensive Tactics	1/22/2018	3	Austin Police Academy	
8158	Body Worn Camera	12/20/2017	2	Austin Police Academy	
3270	Human Trafficking	12/20/2017	4	Austin Police Academy	Human Trafficking
4068	Child Safety Check Alert List (Intermediate/Advanc	12/19/2017	1	Austin Police Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
2106	Crime Scene Investigation (Intermediate)	12/15/2017	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	12/14/2017	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
1033	Chapter 33 Rule Overview Exam	12/11/2017	0	TCOLE Online	
4065	Canine Encounters (Intermediate/Advance)	12/11/2017	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed**

09/01/2017 - 08/31/2019 \*

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1000643	Basic Peace Officer Course (643)	12/7/2017	643	Austin Police Academy	82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA 24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators
2107	Use of Force (Intermediate)	11/28/2017	12	Austin Police Academy	Use of Force (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	11/28/2017	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3275	Missing and Exploited Children	11/27/2017	4	Austin Police Academy	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3836	Concealed Carry for Law Enforcement Officers	11/22/2017	8	Austin Police Academy	
3939	Cultural Diversity	11/21/2017	8	Austin Police Academy	Cultural Diversity (Intermediate)
3232	Special Investigative Topics	11/14/2017	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3845	CPR	10/17/2017	8	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3841	Crisis Intervention Training	10/5/2017	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
7887	Interacting with drivers deaf or hard of hearing	9/14/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	9/13/2017	4	Austin Police Academy	
2067	S.F.S.T. Practitioner	9/8/2017	24	Austin Police Academy	
		<b>Unit Hours</b>	<b>1122</b>		

**09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
7887	Interacting with drivers deaf or hard of hearing	9/14/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	9/13/2017	4	Austin Police Academy	
2067	S.F.S.T. Practitioner	9/8/2017	24	Austin Police Academy	
2053	Baton (All)	7/27/2017	8	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	7/21/2017	40	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3344	Less Lethal Electronic Control Device Training	7/7/2017	8	Austin Police Academy	

**Texas Commission On Law Enforcement****Personal Status Report****Courses Completed****09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	6/30/2017	4	Austin Police Academy	
3807	TCIC/NCIC for Less than Full Access Operators	6/22/2017	8	Austin Police Academy	
3910	Sexual Harassment Recognition	5/31/2017	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	5/30/2017	0	Austin Police Academy	Personnel Orientation
		<b>Unit Hours</b>	<u>102</u>		
		<b>Total Hours</b>	<u><u>1340</u></u>		

**Total Hours**

<b>Total Career/Professional Hours</b>	120
<b>Total TCOLE Course Hours</b>	1340
<b>Total Hours</b>	<u><u>1460</u></u>

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

Dkt. 58 Exhibit 11 BWC video Officer  
Jacob Beirowski,

**EX. C**

EX. D





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POLICE

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POLICE





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

**ROBERT CANTU, et al.  
PLAINTIFFS,**

§  
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**CIVIL CASE NO.  
1:21-cv-00084-DAE-SH**

**V.**

**CITY OF AUSTIN, et al.,  
DEFENDANTS,**

DECLARATION<sup>1</sup>

I declare that the foregoing facts are true and correct and made with my personal knowledge. The records attached are true and correct copies of business records, including photographs and investigation reports delivered to me from the City of Austin and Travis County. My name is Dr. M. Patricia Cantu, Ph.D. my date of birth is [REDACTED] and my address is [REDACTED], located in Bexar \_\_\_\_\_ County, Texas, United States of America. I declare under penalty of perjury that the foregoing is true and correct. Executed in Bexar County, Texas on April 4, 2022.

M. Patricia Cantu

M. Patricia Cantu  
My name is Robert Cantu my date of birth is [REDACTED] my address is [REDACTED] [REDACTED] Bexar County, Texas, United States of America. I declare under penalty of perjury that the foregoing is true and correct. Executed in Bexar County, Texas on April 4, 2022.

Roberto Cantu

Robert Cantu  
<sup>1</sup> 28 U.S. CODE § 1746. Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)". (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)". CPRC Sec. 132.001. UNSWORN DECLARATION. (a) Except as provided by Subsection (b), an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law

# EX. E

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

**ROBERT CANTU, et al.**  
**PLAINTIFFS,**

§  
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§

**CIVIL CASE NO.**  
**1:21-cv-00084-DAE-SH**

**V.**

**CITY OF AUSTIN, et al.,**  
**DEFENDANTS,**

### DECLARATION<sup>1</sup>

I declare that the foregoing facts are true and correct and made with my personal knowledge. The FRCP Rule 56(d) discovery is necessary to respond and defeat the Defendants' motions for summary judgment. My name is U.A. Lewis my date of birth is [REDACTED], and my address is 99 deterring Houston, TX 77007, located in Harris County, Texas, United States of America. I declare under penalty of perjury that the foregoing is true and correct. Executed in Harris County, Texas.

  
\_\_\_\_\_

U.A. Lewis

<sup>1</sup> 28 U.S. CODE § 1746. Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)". (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)". CPRC Sec. 132.001. UNSWORN DECLARATION. (a) Except as provided by Subsection (b), an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law

# Exhibit 17

2019-01-29 T07:47:06Z  
AXON BODY 2 X81186921



2019-01-29 T07:47:07Z  
AXON BODY 2 X81186921



2019-01-29 T07:47:07Z  
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2019-01-29 T07:47:07Z  
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AXON BODY 2 X81186921



2019-01-29 T07:47:08Z  
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lawsuit should be dismissed with prejudice.

**Plaintiffs Fail to Raise a Fact Issue Under the Standard Mandated by the Supreme Court**

In *Kisela v. Hughes*, 138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018) the Supreme Court held that "police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." *Id.* at 1153. Here, Plaintiffs fail to cite a single precedent squarely governing the specific facts at issue. As set forth in the pending Motions for Summary Judgment [Doc #57] and [Doc #58], Plaintiffs cannot create a material issue of fact because Plaintiffs' proffered disputed facts are not relevant to the perception of the Defendant Police Officers at the time and do not create a material issue of fact.

**The Facts Argued by Plaintiffs are not Relevant.**

Plaintiffs seem to allege that summary judgment is not proper as to the Defendant Officers because the decedent, "Paul Cantu posed a threat of harm to himself and no others." [Doc 63, p.7]. But that is objectively incorrect. Plaintiffs' argument is mere speculation and conjecture and does nothing to create a material issue of fact in light of the clear and unequivocal evidence presented by Defendants in their motions.

The declarations and video evidence conclusively explain and show all relevant events. Paul Cantu was shot by Officers Mattingly and Camacho at approximately 1:47 AM after he first quickly stood up and pointed his handgun at Sergeant Joseph and Officer Mattingly (this is identified as 07:47:00Z on the individual officers' Body Worn Cameras ["BWC"] and 01:47:00 on the dashboard video ["DMAV"] from Sgt Joseph's patrol unit. Copies of the videos and extracted photo images are attached as exhibits to the pending Motions for Summary Judgment [Doc #57] and [Doc #58], and incorporated herein by reference.

The undisputed facts and circumstances in the early morning of January 29, 2019, establish that each of the Defendant Officers at the scene reasonably believed that Paul Cantu's actions placed other officers in imminent danger of serious bodily injury or death. When viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, the conduct and actions of all of the officers were objectively reasonable under the circumstances.

All of Plaintiffs' claims fail and should be dismissed with prejudice. All of the Defendant Officers' actions were objectively reasonable leading up to and at the time when they discharged their firearms, and the following events. Each of the Officers reasonably believed that the suspect posed a threat of serious harm to the officers or others. Neither the use of deadly force nor any of the subsequent emergency actions were excessive and no constitutional violation occurred. The application of Qualified Immunity bars this lawsuit against them. The same exigent circumstances apply to the Plaintiffs' ADA claims, and they should likewise be dismissed with prejudice. As for the claims for delayed medical care, the declarations of Officers Padro-Martin and Knodel are clear that neither of them possessed any critical medical information and neither of them did anything to impede medical care to Mr. Paul Cantu.

The Defendants deny the Plaintiffs' claims and maintain that Plaintiffs cannot meet their considerable evidentiary burden to establish liability under 42 U.S.C. §1983 or the ADA.

**The City of Austin is not liable to the Plaintiffs because the Officers inflicted no constitutional harm.**

Plaintiffs ignore the most obvious and most important fact regarding this incident, at the time of the shooting: the suspect, Paul Cantu, raised up and was pointing his gun in the direction of the officers after many clear warnings and commands and pleas to put the gun down. Thus, it was reasonable for the Defendant Officers to perceive that he posed an imminent threat of serious

bodily injury or death to individuals at the scene. As a result, the officers' actions were objectively reasonable. Since the officers did not inflict constitutional harm on Paul Cantu, Plaintiffs do not have a viable claim against the City, and summary judgment in favor of the City is proper as a matter of law.

**Plaintiffs' ADA Claims Should be Dismissed.**

In *Hainze v. Richards*, the Fifth Circuit held that "Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, **prior to the officer's securing the scene and ensuring that there is no threat to human life.**" *Hainze v. Richards*, 207 F.3d 795, 801 (5<sup>th</sup> Cir. 2000)(emphasis added).

Law enforcement personnel conducting in-the-field investigations already face the onerous task of frequently having to instantaneously identify, assess, and react to potentially life-threatening situations. To require the officers to factor in whether their actions are going to comply with the ADA, in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents. While the purpose of the ADA is to prevent the discrimination of disabled individuals, we do not think Congress intended that the fulfillment of that objective be attained at the expense of the safety of the general public.

*Hainze*, 207 F.3d at 801.

As in *Hainze*, a claim under Title II is not available to the Plaintiffs under circumstances presented herein. When Officer Joseph came upon Paul Cantu, Cantu was holding a gun. This incident occurred near a neighborhood, thus presenting a danger to the APD officers on the scene as well as the public at large. The decision to shoot Paul Cantu occurred when he raised his gun at the officers, after repeatedly being told to put the gun down. The APD officer's actions were the result of a quick discretionary decision made in self-defense and for the safety of those at the scene. Requiring these officers to use less than reasonable force in defending themselves and

others, or to hesitate to consider other possible actions in the course of making such split-second decisions, is not the type of “reasonable accommodation” contemplated by Title II. *Hainze*, 207 F.3d at 801-02. Therefore, Defendant is entitled to summary judgment as to the Plaintiffs’ ADA claims as a matter of law.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant Officers, Michael Joseph, Jacob Beirowski, Robert Mattingly, Luis Camacho, Kyle Peterson, Julian Padro-Martin, Christopher Knodel, and Defendant, City of Austin, Texas, respectfully request that the Court grant their respective Motions for Summary Judgment and dismiss the Plaintiffs’ claims against each of them with prejudice with all costs assessed to the Plaintiffs. Defendants further request any additional relief to which they, individually, may be entitled.

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

/s/ Monte L. Barton Jr.  
MONTE L. BARTON, JR.  
State Bar No. 24115616  
[monte.barton@austintexas.gov](mailto:monte.barton@austintexas.gov)  
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City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-2409  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANTS  
CITY OF AUSTIN, SERGEANT MICHAEL  
JOSEPH, OFFICERS JACOB BEIROWSKI,  
ROBERT MATTINGLY, LUIS ALBERTO  
CAMACHO III, KYLE PETERSON, JULIAN  
PADRO-MARTIN, AND CHRISTOPHER J.  
KNODEL**

**CERTIFICATE OF SERVICE**

I certify that on the 12th day of January, 2023, I served a copy of DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

**Via email:**

U.A. Lewis

State Bar No. 24076511

[Myattorneyatlaw@gmail.com](mailto:Myattorneyatlaw@gmail.com)

P.O. Box 27353

Houston, Texas 77227

Telephone: (713) 570-6555

Facsimile: (713) 581-1017

**ATTORNEY FOR PLAINTIFFS**

/s/ Monte L. Barton Jr.

MONTE L. BARTON JR.



Exhibit 9 BWC video Officer Robert Mattingly -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 10 BWC video Sergeant Michael Joseph -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 11 BWC video Officer Jacob Beirowski -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 12 BWC video Officer Kyle Peterson -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 13 BWC video Officer Julian Pardo-Martin -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 14 DMAV video Sgt Michael Joseph -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 15 7 Photo images selected from DMAV -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 16 8 Photo images selected from BWC (body worn camera) video Sgt Joseph -- Objects to the extent that the evidence is not Complete or authenticated.

Exhibit 17 8 Photo images selected from BWC (body worn camera) video Officer Camacho -- Objects to the extent that the evidence is not Complete or authenticated.

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The Defendants respectfully submit the attached DECLARATION OF CITY OF AUSTIN CUSTODIAN OF RECORDS, as Exhibit 1, and incorporate it herein. As explained in the Declaration, the videos, records, and information attached to Defendant Officers' Motion for Summary Judgment (Doc. 57) (and in particular Exhibits 8-14) are standard APD redacted versions

of the original videos, records, and information that are kept and maintained in the regular course of the City's Business through the Austin Police Department and were produced by the City of Austin in the course of this litigation. Any redactions to these videos are for the purposes of protecting license plate numbers, information displaced on in-car mobile computers, and nudity, in order to protect the dignity of the decedent. Nothing else was altered or redacted from these videos. These records were made by, or from information transmitted by, the City officials and employees with personal knowledge of the facts or events depicted therein, and it is the regular practice of the City of Austin through the Austin Police Department that such videos, information, and records are created at or near the time of each act, event, or condition depicted therein.

All Defendants are entitled to summary judgment as to all of Plaintiffs' claims of any sort. There are no issues for a jury to decide. Defendants renew their respective arguments from the pending Motions for Summary Judgment [Doc #57] and [Doc #58], fully incorporating them and the exhibits here by reference. The evidence is clear. There is no genuine dispute as to any material fact and all of the Defendants are entitled to judgment as a matter of law on all of plaintiffs' claims. Indeed, the uncontroverted declarations and video evidence conclusively explain and show the only relevant events. Plaintiffs' bald allegations to the contrary fail and this lawsuit should be dismissed with prejudice.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant Officers, Michael Joseph, Jacob Beirowski, Robert Mattingly, Luis Camacho, Kyle Peterson, Julian Padro-Martin, Christopher Knodel, and Defendant, City of Austin, Texas, respectfully request that the Court grant their respective Motions for Summary Judgment and dismiss the Plaintiffs' claims against each of them

with prejudice with all costs assessed to the Plaintiffs. Defendants further request any additional relief to which they, individually, may be entitled.

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

/s/ Monte L. Barton Jr.  
MONTE L. BARTON, JR.  
State Bar No. 24115616  
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[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-2409  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANTS  
CITY OF AUSTIN, SERGEANT MICHAEL  
JOSEPH, OFFICERS JACOB BEIROWSKI,  
ROBERT MATTINGLY, LUIS ALBERTO  
CAMACHO III, KYLE PETERSON, JULIAN  
PADRO-MARTIN, AND CHRISTOPHER J.  
KNODEL**

**CERTIFICATE OF SERVICE**

I certify that on the 28th day of March, 2023, I served a copy of the foregoing Supplement to DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

**Via email:**

U.A. Lewis

State Bar No. 24076511

[Myattorneyatlaw@gmail.com](mailto:Myattorneyatlaw@gmail.com)

P.O. Box 27353

Houston, Texas 77227

Telephone: (713) 570-6555

Facsimile: (713) 581-1017

**ATTORNEY FOR PLAINTIFFS**

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.

# **Exhibit 1**



Business through the Austin Police Department and were produced by the City of Austin in the course of this litigation:

- Exhibit 8:** Body-Worn Camera video (BWC) of Officer Luis Camacho (COA 002)
- Exhibit 9:** BWC of Officer Robert Mattingly (COA 003)
- Exhibit 10:** BWC of Sergeant Michael Joseph (COA 001)
- Exhibit 11:** BWC of Officer Jacob Beirowski (COA 005)
- Exhibit 12:** BWC of Officer Kyle Peterson (COA 006)
- Exhibit 13:** BWC of Officer Julian Pardo-Martin (COA 004)
- Exhibit 14:** Digital Mobile Automobile Video (DMAV) for Sgt. Michael Joseph (COA 943)

Any redactions to these videos are for the purposes of protecting vehicle licenses plates numbers, information displaced on in-car mobile computers, and nudity to protect the dignity of the decedent. Nothing else was altered or redacted from these videos.

4. These records were made by, or from information transmitted by, the City officials and employees with personal knowledge of the facts or events depicted therein, and it is the regular practice of the City of Austin through the Austin Police Department that such videos, information, and records are created at or near the time of each act, event, condition, depiction, or opinion depicted therein.

5. This Declaration is made in accordance with 28 U.S.C. § 1746, and I declare under the penalty of perjury that the foregoing is true and correct.

Executed in the County of Travis, Texas on March 27, 2023.

  
\_\_\_\_\_  
Gretchen Hemberger  
Administrative Supervisor  
DMAV/Body Worn Camera Unit  
Austin Police Department

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

**M. PATRICIA CANTU and  
ROBERTO CANTU,**  
*Plaintiffs*

v.

**AUSTIN POLICE DEPARTMENT,  
MICHAEL JOSEPH, JACOB  
BEIROWSKI, ROBERT  
MATTINGLY, LUIS ALBERTO  
CAMACHO, III, KYLE PETERSON,  
JULIAN PADRO-MARTIN, and  
CHRISTOPHER J. KNODEL,**  
*Defendants*

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**Case No. 1:21-CV-00084-LY-SH**

**ORDER**

Before the Court are Defendant Officers’ Motion for Summary Judgment (Dkt. 57); Motion for Summary Judgment by City of Austin and Defendants Padro-Martin and Knodel (Dkt. 58); Plaintiff’s Unopposed Amended Motion to Reconsider the Partial Granting of the Agreed Motion to Amend the Scheduling Order, filed March 29, 2023 (Dkt. 67); and the associated response and reply briefs.<sup>1</sup>

Under the original scheduling order, discovery closed on September 15, 2022, and the dispositive motions deadline was November 15, 2022. Dkt. 37. By Text Order entered November 10, 2022, the Court granted Defendants’ unopposed motion to reset the summary judgment deadline to November 30, 2022, and Defendants timely filed their motions for summary

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<sup>1</sup> On April 30, 2021, the District Court referred all motions in this case to the undersigned Magistrate Judge for resolution or Report and Recommendation, pursuant to 28 U.S.C. § 636(b), Federal Rule of Civil Procedure 72, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. Dkt. 23.

judgment that day. The Court then granted Plaintiffs' unopposed motion to file their response brief by January 4, 2023. *See* Text Order entered December 13, 2022.

Before Plaintiffs filed their response, on December 23, 2022, the parties filed an Agreed Motion to Amend Scheduling Order asking the District Court to extend the discovery deadline by 80 days – until March 13, 2023 – and the dispositive motion deadline to March 28, 2023. Dkt. 61. In the Agreed Motion, the parties stated that they had been unable to complete discovery, but “have been working diligently to coordinate depositions to allow the parties to prepare for trial, motions for summary judgment, and adequately respond to motions for summary judgment.” *Id.* at 1. The parties further stated: “Plaintiffs agree the defendants can amend the pending summary judgment after the deposition are conducted.” *Id.* While the Agreed Motion was pending, Plaintiffs filed a response to Defendants' summary judgment motions on January 5, 2023, in which they characterized the Agreed Motion as a motion for discovery under Rule 56(d). Dkt. 63 at 3.

By Text Order entered March 22, 2023, the District Court granted in part and denied in part the Agreed Motion, extending the dispositive motion deadline to March 28, 2023. Now, Plaintiffs again ask the Court to extend the discovery deadline by 80 days and defer considering Defendants' summary judgment motions. Dkt. 67 at 3. Plaintiffs state that they “have not had the opportunity to conduct key depositions, namely of the individuals on the shooting scene.” Dkt. 67 at 2. Defendants do not oppose the motion. Dkt. 67 at 4.

Rule 56(d) provides:

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

The Court finds that Plaintiffs have met their burden under Rule 56(d) for additional discovery. *See Xerox Corp. v. Genmoora Corp.*, 888 F.2d 345, 355 (5th Cir. 1989) (holding that party seeking additional discovery met burden where it outlined areas of discovery needed to respond to summary judgment motion); *Tillman v. Steadfast Ins. Co.*, No. 5:20-CV-1204-DAE, 2021 WL 1137241, at \*2 (W.D. Tex. Feb. 11, 2021) (granting Rule 56(d) motion where parties had not conducted discovery “to avoid the possibility of an improvident grant of summary judgment” and dismissing motion for summary judgment without prejudice to refiling). In addition, the parties have agreed that Defendants may amend their motions for summary judgment after further discovery, which will render the pending motions moot. The Court also finds that the parties have shown good cause to modify the current scheduling order under Rule 16(b)(4).

For these reasons, Defendant Officers’ Motion for Summary Judgment (Dkt. 57) and Motion for Summary Judgment by City of Austin and Defendants Padro-Martin and Knodel (Dkt. 58) are hereby **DISMISSED WITHOUT PREJUDICE** and Plaintiff’s Unopposed Amended Motion to Reconsider the Partial Granting of the Agreed Motion to Amend the Scheduling Order (Dkt. 67) is **GRANTED IN PART**. The parties shall complete all discovery by **June 20, 2023** and file any dispositive motions by **July 5, 2023**.

**SIGNED** on March 29, 2023.



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SUSAN HIGHTOWER  
UNITED STATES MAGISTRATE JUDGE



for delaying medical care by withholding critical information despite allegedly knowing substantial risk of serious harm existed, disregarding that risk, and that the delay resulted in substantial harm. Plaintiffs also assert ADA claims (Americans with Disabilities Act) against the City of Austin, directed against the Austin Police Department. Plaintiffs assert that the “lack of the officers' regard for Paul Cantu's alleged medical disability rose to the level of failure to accommodate and a direct violation of Title II of the Americans with Disabilities Act.”

Plaintiffs' decedent, Paul Cantu, died as a result of the injuries he received in an officer-involved shooting on January 29, 2019. Video evidence conclusively shows all relevant events. There is no genuine dispute as to any material fact and the Defendant Officers and City of Austin are entitled to judgment as a matter of law.

All of Plaintiffs' claims fail and should be dismissed with prejudice. All of the Defendant Officers' actions were objectively reasonable. None of Defendants actions were improper and no constitutional violation occurred. The application of Qualified Immunity bars this lawsuit against them. The same exigent circumstances apply to the Plaintiffs' ADA claims, and they should likewise be dismissed with prejudice. As for the claims for delayed medical care, the declarations of Officers Padro-Martin and Knodel are clear that neither of them possessed any critical medical information and neither of them did anything to impede medical care to Paul Cantu.

As clearly recorded and shown by the available video recordings, Paule Cantu was shot by Officers Mattingly and Camacho at approximately 1:47 AM after he first quickly stood up and pointed his handgun at Sergeant Joseph and Officer Mattingly (this is identified as 07:47:00Z on the individual officers' Body Worn Cameras [“BWC”] and 01:47:00 on the dashboard video [“DMAV”] from Sgt Joseph's patrol unit. Copies of the videos and extracted photo images are attached as exhibits, as noted below).

The Defendants deny the Plaintiffs' claims and maintain that Plaintiffs cannot meet their considerable evidentiary burden to establish liability under 42 U.S.C. §1983 or the ADA.

## II. SUMMARY JUDGMENT EVIDENCE

Please take notice that the following Exhibits have been included with the separately filed Motion for Summary Judgment by Officers Michael Joseph, Jacob Beirowski, Robert Mattingly, Luis Camacho, and Kyle Peterson. Accordingly, The City of Austin and individual Defendant Officers, Padro-Martin and Knodel, hereby adopt and incorporate them by reference into this Motion for Summary Judgment.

- Exhibit 1 Declaration of Sgt Michael Joseph APD badge #4954,
- Exhibit 2 Declaration of Officer Luis Camacho APD badge #8512,
- Exhibit 3 Declaration of Officer Robert Mattingly APD badge #8564,
- Exhibit 4 Declaration of Officer Jacob Beirowski APD badge #7838,
- Exhibit 5 Declaration of Officer Kyle Peterson APD badge #8783,
- Exhibit 6 Declaration of Officer Julian Pardo-Martin APD badge #8243,
- Exhibit 7 Declaration of Officer Christopher Knodel APD badge #7855,
- Exhibit 8 BWC video Officer Luis Camacho,
- Exhibit 9 BWC video Officer Robert Mattingly,
- Exhibit 10 BWC video Sergeant Michael Joseph,
- Exhibit 11 BWC video Officer Jacob Beirowski,
- Exhibit 12 BWC video Officer Kyle Peterson,
- Exhibit 13 BWC video Officer Julian Pardo-Martin,
- Exhibit 14 DMAV video Sgt Michael Joseph,
- Exhibit 15 7 Photo images selected from DMAV (dashboard) video Sgt Joseph patrol unit:
  - Time - 01:40:52
  - Time - 01:41:19
  - Time - 01:45:04
  - Time - 01:46:43
  - Time - 01:47:07
  - Time - 01:47:07 (2nd image)
  - Time - 01:47:08

Exhibit 16 8 Photo images selected from BWC (body worn camera) video Sgt Joseph:

Time - 07:40:59Z  
Time - 07:41:03Z  
Time - 07:41:48Z  
Time - 07:42:18Z  
Time - 07:45:03Z  
Time - 07:45:04Z  
Time - 07:47:06Z  
Time - 07:47:07Z

Exhibit 17 8 Photo images selected from BWC (body worn camera) video Officer Camacho:

Time - 07:47:06Z  
Time - 07:47:07Z (1st image)  
Time - 07:47:07Z (2nd image)  
Time - 07:47:07Z (3rd image)  
Time - 07:47:07Z (4th image)  
Time - 07:47:07Z (5th image)  
Time - 07:47:08Z (1st image)  
Time - 07:47:08Z (2nd image)

Exhibit 18 Declaration of City of Austin Custodian of Records [Dkt. 66-1]

### III. FACTS

On January 28, 2019, at approximately 10:25 pm (2225 hrs) Austin Police Department (APD) Officer Bierowski #7838 attempted to stop a vehicle for a traffic violation in the area of East William Cannon Drive and South IH-35. The driver of the vehicle evaded and fled eastbound on East William Cannon Drive. Officer Bierowski did not pursue the vehicle. [*Exhibit 4 - Beirowski Declaration*]. About three hours later, on January 29, 2019, at 1:40 am, Sergeant Michael Joseph #4954 located the same vehicle approximately 100 feet north of the roadway, in a grassy field, in the 7900 block of East William Cannon Drive. As Sergeant Joseph drove up to the vehicle and stopped, Paul Cantu, the lone occupant, exited the driver's seat and pointed a handgun at Sergeant Joseph. [*see Exhibit 1 - Joseph Declaration; Exhibit 10 - BWC video Sgt. Joseph; Exhibit 14 - DMAV video Sgt. Joseph; Exhibit 15; Exhibit 16*].

Sergeant Joseph exited his patrol vehicle, requested backup officers, and negotiated with Cantu to drop his firearm. Over the next six minutes Sergeant Joseph talked to Cantu and continued to give commands for him to drop the gun. [*see Exhibit 1 - Joseph Declaration; Exhibit 10 - BWC video Sgt. Joseph; Exhibit 14 - DMAV video Sgt. Joseph; Exhibit 15; Exhibit 16*]. During the same time, several other officers arrived on scene to assist Sergeant Joseph. Two of the responding officers were Luis Camacho #8512 and Robert Mattingly #8564.

At 1:47 am, Cantu again pointed his handgun in the direction of Sergeant Joseph and Officer Mattingly. In response, Officer Camacho and Officer Mattingly fired multiple rounds from their respective APD issued handguns at Cantu. Officer Camacho fired at Cantu because he presented a lethal threat to other officers when he raised his handgun towards them. Officer Mattingly shot his weapon for his own safety and the safety of others when he saw Cantu was armed with a handgun pointing it toward Mattingly and Sgt. Joseph.

As clearly recorded and shown by the available video, after previously evading Officer Beirowski and refusing many requests by Sergeant Joseph and others to put down the gun, Cantu abruptly stood up and pointed his gun at Defendant officers Joseph and Mattingly. In response, Officer Camacho and Officer Mattingly fired their firearms at Cantu. Each of the Officers reasonably believed that Cantu posed a threat of serious harm to the officers or others. [*see Exhibit 1 - Joseph Declaration; Exhibit 10 - BWC video Sgt. Joseph; Exhibit 14 - DMAV video Sgt. Joseph; Exhibit 15; Exhibit 16*]; [*Exhibit 2 - Camacho Declaration; Exhibit 3 - Mattingly Declaration; Exhibit 8 - BWC video Officer Luis Camacho; Exhibit 9 - BWC video Officer Robert Mattingly; Exhibit 17*].

Other officers immediately secured the area and began emergency life saving efforts for Paul Cantu. No one used less lethal weapons, including Tasers or lasers, or otherwise physically

assaulted Mr. Cantu. No one threatened him or took money from him. No one “staged the scene.” There is absolutely no evidence to support any of these allegations or any of the other claims of wrongdoing that are alleged in the Plaintiffs’ Complaint. Paul Cantu was transported to St. David’s South Austin Medical Center by EMS. Officers Padro-Martin and Knodel were stationed to guard him at the hospital. They did not delay or interfere with medical treatment in any way. Mr. Cantu was pronounced deceased at approximately 3:07 am by an attending physician. [*Id.*; *see also, Exhibit 4 - Beirowski Declaration; Exhibit 5 - Peterson Declaration; Exhibit 6 - Pardo-Martin Declaration; Exhibit 7 - Knodel Declaration; Exhibit 11 - BWC video Officer Beirowski; Exhibit 12 - BWC video Officer Peterson; Exhibit 13 - BWC video Officer Pardo-Martin*].

### **Timeline of Events**

The following approximate timeline of relevant events is compiled from the exhibits referenced above. The audio recordings from the video cameras establish that officers requested and/or gave the command to “drop the gun,” or variations of the same phrase, approximately 24 times over a six minute and twenty second period.

#### **January 28, 2019**

22:25:00 (10:25 PM) - Traffic stop initiated by Officer Beirowski. The driver (Cantu) of a black Chrysler automobile evades Officer Beirowski and is last seen driving eastbound on East William Cannon Drive.

#### **January 29, 2019**

01:40:00 - Sergeant Joseph located the black Chrysler off the roadway in the 7900 block of East William Cannon Drive. Cantu exited the driver’s seat of the vehicle and pointed a handgun at Sergeant Joseph. Sergeant Joseph calls for officer assistance, and continues to talk to Cantu, offering assistance and requesting for him to put the gun down.

01:45:45 - Officer Camacho arrived on scene.

01:47:00 - Approximately when Officer Mattingly arrived at Sergeant Joseph’s location with a ballistic shield and moved in front of Sergeant Joseph.

01:47:07 - Cantu rose from a kneeling to a standing position and pointed a handgun in the direction of Officer Mattingly and Sergeant Joseph.

01:47:08 - Officers Camacho and Mattingly fired multiple rounds at Cantu.

01:49:00 - Officers secure the scene and life saving measures begin.

01:58:00 - EMS arrived on scene.

02:05:00 - EMS transported Cantu to St. David's South Austin Medical Center (SAMC).

03:07:00 - Cantu pronounced deceased by Doctor Strong at SAMC.

### **January 30, 2020**

Travis County District Attorney declined to prosecute any criminal charges related to this matter.

### **Officer Julian Pardo-Martin #8243**

The Complaint makes several claims against Officer Pardo-Martin. They are denied and there is no evidence to support them. This is explained in his Declaration and the referenced documents [see Exhibit 6, incorporated herein by reference], and as clearly recorded and shown by his Body Worn Camera [see Exhibit 13 - BWC video Officer Pardo-Martin, incorporated herein by reference]. Officer Pardo-Martin states, in part:

3. On January 29, 2019, at 0209 hours (2:09 AM) I was on duty and responded to an APD radio request for assistance from Sgt Michael Joseph. I heard Sgt Joseph state that he was encountering a subject person (I later learned that his name was Paul Cantu) in a vehicle in the 7800 blk of E William Cannon Dr. A few moments later I heard Sgt Joseph state "32" via radio. I know through my training and experience as a police officer that "32" means gun. I then responded to the scene with lights and sirens. As I was on the way to the call I heard Sgt Joseph state that he needs more units on scene with him. I also heard Sgt Joseph state via radio that the subject had a gun to his head.

4. I arrived at the location along with other officers. I started to move towards Sgt Joseph. When I was doing this I observed multiple additional Officers next to Sgt Joseph. As I was moving down the hill I could not tell where the suspect was. I believe there were about three officers in front of me in the line we formed. After shots were fired, other officers and I moved on foot towards the suspect. He was on his back lying on the ground. As we approached the suspect I observed a black semi-automatic handgun on the ground near the suspect's head within arm's reach of the suspect.

5. I assisted with medical care. I observed at least three gunshots to the subject's chest and stomach and I observed that he was breathing. I placed occlusive dressings onto both of the chest wounds that I could see. The subject (Mr. Cantu) was then rolled over and I observed another gunshot wound to his back near his armpit. I placed an occlusive dressing onto this wound. Mr.

Cantu was then rolled over to his back. I checked his pulse and did not feel one. I then started to do chest compressions. I was relieved from chest compressions by another officer and I moved over to his head. I opened his airway. As I was doing this my chest protection was getting in the way so Officer Driskill removed it along with my body camera. Officer Driskill then placed my body camera back onto me. I continued to hold Mr. Cantu's head. EMS arrived on scene. I assisted in lifting him up and carrying him over to the ambulance stretcher. EMS and Fire crews took over medical care.

\*\*\*

8. I followed EMS to St. David's South Austin Hospital and remained stationed there standing guard in the hall outside of the hospital room until I was later relieved by Officer Knodel (AP #7855 - KNODEL, CHRISTOPHER). After being relieved by Officer Knodel, I went immediately to the police station and gave my statement and interview.

9. I prepared a statement setting out the events of my involvement. My narrative and complete statement is included as part of the Austin Police Department General Offense Report GO# 2019-290092. Copies of my narrative report and statement are attached to this Declaration as *Exhibit 1 (Pardo-Martin)*, including the pages COA 000114-115, COA 001131-1133.

10. I did not inform medical staff that Mr. Cantu was a "John Doe." I did not have his wallet containing his identification and a card with emergency medical information. I did not give permission to harvest Mr. Cantu's organs to anyone. I did not possess Mr. Cantu's driver's license. I did not delay Mr. Cantu's medical treatment at St. David's South Austin Medical Center by not providing his driver's license, insurance card, and emergency medical information card to staff. I did not possess any critical medical information regarding Mr. Cantu and I did not withhold any information from the medical personnel. I did not have any information about Mr. Cantu's blood type and allergies, and I certainly did not do anything to impede proper medical treatment and cause his unfortunate death.

...

### **Officer Christopher Knodel #7855**

The Complaint also makes several claims against Officer Knodel. They are denied and there is no evidence to support them. This is explained in his Declaration and the referenced documents [see Exhibit 7, incorporated herein by reference]. Officer Knodel states, in part:

2. On January 29, 2019, I was on duty and responded to an APD assignment at St. David's South Austin Hospital, 901 W Ben White Blvd, to guard a suspect (I later learned that his name was Paul Cantu) who had been involved in an officer involved shooting.

3. Upon arrival, I relieved Officer Pardo-Martin APD #8243 and guarded the suspect. I did not ever go to the scene of the shooting incident. I was not a witness to any part of it.

4. The suspect (Mr. Cantu) was tended to by medical personnel, but was later pronounced deceased at 03:27 by Dr. Strong. I then guarded the decedent until being relieved.

5. I prepared a statement setting out the events of my involvement. My narrative and complete statement is included as part of the Austin Police Department General Offense Report GO# 2019-290092. A copy of my narrative report is attached to this Declaration as *Exhibit 1 (Knodel)*, including the pages COA 000107-108.

6. I did not discuss the suspect (Paul Cantu) with medical personnel. I did not inform medical staff that Mr. Cantu was a “John Doe.” I did not have his wallet containing his identification and a card with emergency medical information.

7. I did not give permission to harvest Mr. Cantu’s organs to anyone. I did not possess Mr. Cantu’s driver’s license. I did not delay Mr. Cantu’s medical treatment at St. David’s South Austin Medical Center by not providing his driver’s license, insurance card, and emergency medical information card to staff.

8. I did not possess any critical medical information regarding Mr. Cantu and I did not withhold any information from the medical personnel. I did not have any information about Mr. Cantu’s blood type and allergies, and I certainly did not do anything to impede proper medical treatment and cause his unfortunate death.

...

#### **IV. STANDARD OF REVIEW**

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

#### **V. ARGUMENT & AUTHORITIES**

##### **A. Plaintiffs’ ADA Claims Should be Dismissed.**

In their Complaint, Plaintiffs allege that APD and its officers failed to accommodate the disability of Paul Cantu, and thus violated Title II of the Americans with Disability Act.

[Complaint paragraph 8.3]. Mrs. Canto alleges that during a telephone call to APD 911 she stated that Paul Cantu was asthmatic, had suffered from convulsions, had a deflated lung, Crohn's disease and a neurological disorder. [Complaint 8.1]. She claims that she sent copies of Paul Cantu's medical records to APD, and therefore APD and its officers had constructive notice of Paul Cantu's medical condition but failed to offer any accommodation. [Complaint paragraph 8.3]. The Plaintiffs allege that the lack of the officers' regard for Paul Cantu's medical disability rose to the level of failure to accommodate and is a direct violation of Title II of the Americans with Disabilities Act [Complaint paragraph 8.4]

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132 (1994). A “public entity” includes “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C. §12131(1)(B).

In *Hainze v. Richards*, the Fifth Circuit held that “Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, **prior to the officer's securing the scene and ensuring that there is no threat to human life.**” *Hainze v. Richards*, 207 F.3d 795, 801 (5<sup>th</sup> Cir. 2000)(emphasis added).

Law enforcement personnel conducting in-the-field investigations already face the onerous task of frequently having to instantaneously identify, assess, and react to potentially life-threatening situations. To require the officers to factor in whether their actions are going to comply with the ADA, in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents. While the purpose of the ADA is to prevent the discrimination of disabled individuals, we do not think Congress intended that the fulfillment of that objective be attained at the expense of the safety of the general public.

*Hainze*, 207 F.3d at 801.

As in *Hainze*, a claim under Title II is not available to the Plaintiffs under circumstances presented herein. When Officer Joseph came upon Paul Cantu, Cantu was holding a gun. This incident occurred near a neighborhood, thus presenting a danger to the APD officers on the scene as well as the public at large. The decision to shoot Paul Cantu occurred when he raised his gun at the officers, after repeatedly being told to put the gun down. The APD officer's actions were the result of a quick discretionary decision made in self-defense and for the safety of those at the scene. Requiring these officers to use less than reasonable force in defending themselves and others, or to hesitate to consider other possible actions in the course of making such split-second decisions, is not the type of "reasonable accommodation" contemplated by Title II. *Hainze*, 207 F.3d at 801-02. Therefore, Defendant is entitled to summary judgment as to the Plaintiffs' ADA claims as a matter of law.

**B. Plaintiffs' §1983 Claim against each of the Defendant Officers should be dismissed.**

Plaintiffs allege that the Defendant Officers are liable for violations of Paul Cantu's constitutional rights. The Plaintiffs' claims should be dismissed because the Defendant Officers did not violate Mr. Cantu's constitutional rights. In this case, the irrefutable facts as to whether Officer Pardo-Martin had Paul Cantu's wallet, insurance card, or any other forms of medical information are established by video. Clearly, he did not have any interaction with Mr. Cantu other than to perform CPR. Pardo-Martin did not have his wallet containing his identification and a card with emergency medical information. "[A] plaintiff's version of the facts should not be accepted for purposes of qualified immunity when it is 'blatantly contradicted' and 'utterly discredited' by video recordings." *Hanks v. Rogers*, 853 F.3d 738, 744 (5<sup>th</sup> Cir. 2017) (emphasis added). Moreover, a court need not rely on the "plaintiff's description of the facts where the record

discredits that description, but should instead consider ‘the facts in the light depicted in the videotape’.” *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011); citing *Scott v. Harris*, 550 U.S. 372, 381 (2007).

For the reasons set forth above and also as explained in the Declarations of each Defendant Officer, which are incorporated herein by reference, the Plaintiffs do not have a viable claim. Accordingly, summary judgment is proper as a matter of law.

**C. The Defendant Officers have Qualified Immunity**

Because Julian Padro-Martin, and Christopher Knodel have been sued, respectively, as individuals, they each assert the defense of qualified immunity. *See Salazar-Limon v. City of Houston*, 826 F.3d 272, 277 (5th Cir. 2016). Consequently, the burden is on Plaintiffs to prove sufficient facts showing the inapplicability of that defense.

Government officials performing discretionary functions generally are shielded from liability for civil damages in suits under § 1983 for constitutional violations insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.30 (1982); *Palmer v. Johnson*, 193 F.3d 346, 351 (5th Cir. 1999). “The Supreme Court has characterized the doctrine as protecting ‘all but the plainly incompetent or those who knowingly violate the law.’” *Cozzo v. Tangipahoa Parish Council-President Gov't*, 279 F.3d 273, 284 (5th Cir. 2002) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

“An officer may be shielded from liability even if he is mistaken. Whether actions were objectively reasonable is a question of law.” *Evetv v. DETNTFF*, 330 F.3d 681, 688 (5th Cir. 2003). In this case, the Defendant Officers did not violate clearly established law but were in fact

following clearly established practices. The overwhelming weight of the evidence establishes that they are entitled to qualified immunity.

Plaintiffs do not have sufficient evidence to raise a genuine issue of material fact to demonstrate that Julian Padro-Martin, and Christopher Knodel do not have qualified immunity. “The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known.” *Modica v. Taylor*, 456 F.3d 174, 179 (5th Cir. 2006). Whether an individual is entitled to qualified immunity at the summary judgment stage is determined by following a two-part analysis. In one part of the analysis, the court must determine whether the facts, taken in the light most favorable to the party asserting the injury, show that the official violated a “clearly established” constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5th Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). In the other part of the analysis, the court must determine whether the official’s conduct was objectively reasonable in light of the clearly established law. *Saucier v. Katz*, 533 U.S. 194, 202 (2001), *overruled on the other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). In other words, courts look to whether “it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted.” *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). Thus, when a defendant asserts qualified immunity, the burden is on the plaintiff to produce evidence to pierce that immunity. *Atteberry v. Nocona General Hospital*, 430 F.3d 245, 253 (5th Cir. 2005).

“[P]olice officers are entitled to qualified immunity unless existing precedent ‘squarely governs’ the specific facts at issue.” *Kisela v. Hughes*, 584 U.S. \_\_\_\_, 138 S. Ct. 1148, 1153 (2018), quoting *Mullenix v. Luna*, 577 U.S. 7, 136 S. Ct. 305 (2015)(*per curiam*). “An officer ‘cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in the defendant’s shoes would have understood that he was violating it.” *Kisela*, 138 S. Ct. at 1153, quoting *Plumhoff v. Rickard*, 572 U.S. 765, 134 S. Ct. 2012 (2014). Plaintiffs can point to no cases that would have put Officers Julian Padro-Martin, and Christopher Knodel on notice that every reasonable officer in their position would have concluded that their actions in responding to the situation was a violation of Mr. Cantu’s clearly established rights. In summary, there is no constitutional violation in the way the defendants responded to this dramatic and very unfortunate crisis: Mr. Cantu evading arrest, disobeying clear and numerous commands to drop his gun, and then abruptly standing up and raising his weapon in a firing position at two officers, putting them in imminent danger of a lethal threat (and also, potentially, members of the general public in and about the nearby residential neighborhood). The officers responded appropriately by immediately securing the scene and providing lifesaving measures, and then accompanied EMS to the hospital where Officers Padro-Martin and Knodel stood watch as guards. None of the officers’ actions were a violation of Mr. Cantu’s constitutionally established rights.

**D. Plaintiffs’ Section 1983 claims Alleging Delayed Medical Treatment and Organ Donation against Officer Julian Padro-Martin and Officer Christopher J. Knodel Should be Dismissed.**

Plaintiffs have alleged that Defendant Officers Julian Padro-Martin and Christopher J. Knodel delayed Cantu’s medical treatment at St. David’s South Austin Medical Center by not providing his driver’s license, insurance card, and emergency medical information card to staff.

Dkt. 1 ¶ 6.58. Plaintiffs further allege that these officers chose not to provide Cantu's information to hospital staff "to impede proper medical treatment and cause his death." *Id.* Plaintiffs also allege that these officers gave permission to harvest Cantu's organs despite having his driver's license showing he was not an organ donor. *Id.* ¶ 6.64. There is no evidence that Officers Padro-Martin and Knodel were deliberately indifferent to the medical risk to Cantu, as required to state a claim under Section 1983, therefore, these Defendants are entitled to summary judgment as a matter of law.

As previously noted by this Court when considering Defendant Officers Padro-Martin and Knodel's motion to dismiss, medical care can constitute a constitutional violation if the official knows substantial risk of serious harm exists, disregards that risk, and the delay results in substantial harm. *Delaughter v. Woodall*, 909 F.3d 130, 140 (5th Cir. 2018); *Batyukova v. Doege*, No. 5:19-cv-00391-JKP, 2019 WL 5579547, at \*4 (W.D. Tex. Oct. 29, 2019) (citing *Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993)). To show a defendant acted with deliberate indifference to medical risk, a plaintiff must show that a defendant "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Domino v. Tex. Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001).

As explained above, neither Officer Padro-Martin nor Officer Knodel possessed critical medical information regarding Cantu that they deliberately withheld from the medical personnel. Neither officer knew at the time who Paul Cantu was, and did not possess any information regarding his health, and did not withhold any information from health care providers regarding Cantu's medical condition. They did not authorize anyone to harvest Paul Cantu's organs. Thus, there is no evidence that these officers were deliberately indifferent to Cantu's medical needs, as

required to support a Section 1983 claim against Officers Padro-Martin and Knodel. *Mendoza v. Lynaugh*, 989 F.2d 191, 193–94 (5th Cir. 1993). Accordingly, the City of Austin’s motion for summary judgment as to Officers Padro-Martin and Knodel should be granted as a matter of law.

**VI. PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin and Defendant Officers Padro-Martin and Knodel respectfully request that the Court grant their Motion for Summary Judgment and dismiss the Plaintiffs’ claims against it with prejudice with all costs assessed to the Plaintiffs. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

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

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PADRO-MARTIN, AND CHRISTOPHER J.  
KNODEL**

**CERTIFICATE OF SERVICE**

I certify that on the 7th day of August, 2023, I served a copy of *MOTION FOR SUMMARY JUDGMENT BY DEFENDANT CITY OF AUSTIN AND OFFICERS PADRO-MARTIN AND KNODEL* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

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