Docket No. 22-1157

IN THE
SUPREME COURT OF THE UNITED STATES

CRAIG ROPER,
Petitioner,

v.

DE'ON L. CRANE, INDIVIDUALLY AND AS
THE ADMINISTRATOR OF THE ESTATE OF TAVIS M. CRANE
AND ON BEHALF OF THE STATUTORY BENEFICIARIES,
G.C., T.C., G.M., Z.C., A.C.,
THE SURVIVING CHILDREN OF TAVIS M. CRANE,
ALPHONSE HOSTON, AND THE CITY OF ARLINGTON,
Respondents.

APPLICATION FOR STAY OF DISTRICT COURT PROCEEDINGS PENDING DISPOSITION OF PETITION FOR A WRIT OF CERTIORARI

Norman Ray Giles
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
24 Greenway Plaza, Suite 1400
Houston, Texas 77046
(713) 659-6767

James T. Jeffrey, Jr.
Counsel of Record
LAW OFFICES OF JIM JEFFREY
3200 W. Arkansas Lane
Arlington, Texas 76016
(817) 261-3200

Attorneys for Petitioner

PARTIES TO THE PROCEEDING

Petitioner Craig Roper is a City of Arlington, Texas, police officer who was one of the Defendants-Appellees in the courts below.

The City of Arlington was one of the Defendants-Appellees in the Courts below, and in this Supreme Court of the United States separately filed a Petition for Writ of Certiorari in Case No. 22-1151.

Respondents are De'On L. Crane, individually and as the administrator of the estate of Tavis M. Crane and on behalf of the statutory beneficiaries, G.C., T.C., G.M., Z.C. and A.C., the surviving children of Tavis M. Crane; and Alphonse Hoston were Plaintiffs-Appellants in the Court of Appeals.

Z.C., individually, by and through her guardian Zakiya Spence, Dwight Jefferson, and Valencia Johnson were also Plaintiffs-Appellants in the courts below.

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TO THE HONORABLE JUSTICE SAMUEL ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

INTRODUCTION

Pursuant to 28 U.S.C. §§ 1651 and 2101(f) and Supreme Court Rule 23, Applicant Officer Craig Roper respectfully requests that this Court stay District Court proceedings in *De'on L. Crane, et al v. The City of Arlington, Texas and Craig Roper*, No. 4:19-CV-00091-P (N.D. Tex.), pending disposition of Officer Roper's Petition for Writ of Certiorari filed on May 25, 2023. Officer Roper's qualified immunity-based Petition for Writ of Certiorari seeks to reverse the Fifth Circuit's three Judge Panel decision which overturned the District Court's summary judgment dismissing all claims against Officer Roper pursuant to Officer Roper's qualified immunity motion for summary judgment. The District Court held that Officer Roper's use of deadly force did not violate Fourth Amendment standards when the District Court considered the summary judgment record – including video – which proved the following:

> "The scene was chaotic. Inside the car, [Officer]Roper used his left arm to wrestle Crane, and his right hand had his gun pressed against Crane's side. *Id.* at 144; Pl.'s MSJ App'x at 2. Roper threatened to kill Crane if he would not turn the car off. *Id.* During this struggle, Crane pressed the gas down, causing the car's engine to roar, tires to spin, and sending smoke up around the car. Def.'s MSJ App'x at 151. The following events occurred very quickly. As Officer Bowden started to run around the back of the car, the car launched into reverse, plowing over Bowden, and smashing into her police car. *Id.* Crane's car then changed gears and took off forward. *Id.* As it moved forward, the back of Crane's car visibly rises and falls as it runs over Bowden a second time. *Id.* As Crane's car continues down the street, an officer radios out, "officer down!" *Id.* Somewhere amidst this chaos, Roper point-blank shot Crane in the ribs."

Crane v. City of Arlington, 542 F.Supp.3d 510, 512 (N.D. Tex. 2021).

Despite these events a three Judge Panel of the Fifth Circuit reversed the District Court's summary judgment in favor of Officer Roper. *Crane v. City of Arlington*, 50 F.4th 453, 468 (5th Cir. 2022). The Fifth Circuit then denied *en banc* review, with 6 Judges dissenting from the denial. Although Judge Ho agreed that the dissenters and the District Court were correct, he voted to deny *en banc* review because without enough votes to require *en banc* review he had "… no desire to tilt at windmills". *Crane v. City of Arlington,* 60 F.4th 976, 978 (5th Cir. 2023). After the Fifth Circuit denied an unopposed Motion to Stay Mandate, the case was returned to the District Court.

The District Court concluded that because the Fifth Circuit did not stay its mandate, the District Court was required to proceed with the case. This was despite this Court's very recent decision, issued *after* the Fifth Circuit denied a stay of mandate herein, which granted a stay of district court proceedings pending determination of an interlocutory appeal of a district court's order denying an arbitration. *Coinbase v. Bielski*, 143 S.Ct. 1915 (June 23, 2023). In *Coinbase,* when issuing its order staying proceedings in the lower court, this Court did so by citing with approval decisions from four different Circuit Courts which all held that District Courts must automatically stay their proceedings while an interlocutory appeal of a denial of qualified immunity is ongoing. *Coinbase, Inc. v. Bielski*, 143 S.Ct. 1915, 1920-21 (June 23, 2023). Although the qualified immunity cases cited with approval and discussed in *Coinbase* all were in the context of interlocutory appeals of district courts' denials of qualified immunity, the fact that in this case the appellate proceedings are in the context of Plaintiffs' appeal of a district court's final summary

judgment which had granted a full dismissal of all claims based on Officer Roper's qualified immunity, is an even more compelling reason to apply the *Coinbase* analysis to this case to require a stay of the district court's proceedings.

The cases this Court cited with approval discussing district courts being required to automatically stay proceedings while the interlocutory appeal of a denial of qualified immunity is ongoing recognized that such a stay should be denied when a district court makes a determination that the qualified immunity appeal is frivolous. *See generally*, *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989) cited at *Coinbase*, 143 S.Ct. at 1920 n. 4. No Court and no Judge has stated that Officer Roper's qualified immunity position in the District Court or in the appellate proceedings is frivolous. In fact, the District Court originally upheld Officer Roper's qualified immunity based on a determination that he did not violate Fourth Amendment reasonableness standards. Counting the District Judge and six Judges on the Fifth Circuit Court, including (Judge Ho) who stated he would have affirmed the District Court if given the chance, seven federal Judges recognized Officer Roper's entitlement to qualified immunity[1].

Officer Roper herein explains that he meets all three conditions for issuance of a stay pursuant to 28 U.S.C. § 2101(f). *See Barnes v. E-Systems, Inc. Group Hospital Medical and Surgical*, 501 U.S. 1301, 1302 (1991). *First*, there must be a reasonable probability that certiorari will be granted. Seven federal judges (including District Judge Pittman and Circuit Judge Ho) would have ruled in favor of Officer Roper and

[1] Although Judge Richmond voted in favor of re-hearing the case *en banc*, she did not join the dissenting opinion written by Judge Oldham, so it is unclear as to whether Judge Richmond may have been an eighth federal judge who would have upheld Officer Roper's qualified immunity.

dismissed the case against him under a qualified immunity analysis. Judge Ho – who voted to deny *en banc* review because he does not believe in the futility of voting for *en banc* review when there are simply not enough votes at the Fifth Circuit to obtain such a review – discusses the ongoing inconsistency in the Fifth Circuit's treatment of qualified immunity – which he describes as a "disturbing and dangerous pattern"- as he clearly urges this Court to address. *Crane*, 60 F.4th at 978. Unfortunately, litigants, district judges, and the public cannot rely on any consistency in the outcomes of cases appealed to the Fifth Circuit Court, unless this Court intervenes to correct the Fifth Circuit's inconsistent treatment of qualified immunity, particularly in cases involving use of force in the context of fast-moving events in which some Fifth Circuit panels invoke an *obvious case* exception to the general requirement of precedent clearly prohibiting the force used.

Second, there is a significant possibility that the Judgment below will be reversed. As already stated, seven federal judges would have upheld Officer Roper's qualified immunity if given the opportunity to do so. *Third*, Officer Roper can show the likelihood of irreparable harm, assuming the correctness of his position, if the Fifth Circuit's Judgment is not stayed. In fact, the basis for this Court recognizing that a denial of qualified immunity is an appealable interlocutory order is based upon the recognition that qualified immunity is not just an immunity from liability but is also immunity from suit and trial which is irretrievably lost if a public official is erroneously put to trial. *Mitchell v. Forsyth*, 472 U.S. 511, 525-526 (1985); *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982). As more fully discussed below, the Crane

Respondents / Plaintiffs are now requesting depositions in the District Court proceedings.

STATEMENT OF THE CASE [2]

A. Brief Factual Summary

After another Arlington police officer made a traffic stop (Pet. App. 28a), the officer discovered that Crane did not possess a driver's license, and he was wanted for five warrants, including a warrant stemming from violating parole on an evading arrest charge (Pet. App. 5a, 28a). For several minutes, Crane repeatedly ignored commands to turn off and exit his car (Pet. App. 42a). After Crane stopped his passenger from complying with another officer's command to turn off the car (Pet. App. 29a), Arlington Police Officer Roper entered the back seat of Crane's vehicle behind Crane. Officer Roper pointed his handgun at Crane and warned him that if he did not turn off the car, Officer Roper would shoot (Pet. App. 29a-30a). As Officer Roper struggled with Crane, while hanging over the back of the driver's seat, Crane pressed on his car's accelerator, which caused the tires to spin and smoke and the engine to rev (Pet. App. 15a, 30a and 42a). According to the Opinion of the Judges dissenting from denial of rehearing *en banc*:

> "Officer Roper made a split-second decision to shoot a noncompliant driver (Crane) in the heat of a wrestling match just before Crane *twice ran over* another officer with his car. …

[2] On May 25, 2023, Officer Crane filed a Petition for Writ of Certiorari – Case No. 22-1157. That Petition provides a detailed Statement of the Factual Background of the case (Petition pp. 3-5) as well as a detailed summary of the procedural history (pp. 5-7). Because of this, the Statement of the Case contained in this Application will be brief. Citations in this Application to District Court filings will be indicated as "D. Ct. Doc. ___ p. ___" and will include the document number assigned by the Court's electronic case filing system and the page references will be as indicated in the document footers. Citations to Officer Roper's Petition Appendix will be abbreviated as "Pet. App. ___" followed by page number(s) of the Petition Appendix. Other materials included in the Appendix attached to this Application will be cited as "Appx. __" followed by the letter of the Appendix exhibit and the page number of the Appendix.

> "Officer Roper sensibly concluded that Crane was going to kill or seriously injure someone using a three-ton projectile – so he shot Crane. It's all on video. And if a picture is worth 1,000 words, query how much this video is worth" (Pet. App. 42a).

The Fifth Circuit's panel recognized that during these chaotic events Officer Roper was inside of the car with the door open so that if Crane had sped off Officer Roper could have fallen out and been seriously injured, and the panel even cited another Fifth Circuit case with similar facts involving another Arlington, Texas police officer in which the other panel found there was no Fourth Amendment violation when an officer shot a driver because the officer reasonably feared falling off a moving car could result in serious injuries (Pet. App. 15a) *citing Harmon v. City of Arlington*, 16 F.4th 1159, 1164 (5th Cir. 2021). Although Officer Roper and the backseat passenger disagreed over the exact timing of the shots during these few seconds, the District Court recognized that the shots were fired somewhere amidst this chaos, and that the Crane Plaintiffs failed to show that Officer Roper's use of force was clearly excessive under Fourth Amendment Standards "even under Crane's account of the shooting, where Roper shot Crane before the car went into reverse" (Pet. App. 33a). Despite all this, the Fifth Circuit's panel held that no officer was in imminent risk from Crane's car – including Officer Bowden who was twice run over amidst this chaos. (Pet. App 16a).

B. Procedural History Demonstrates Officer Roper's Compliance with Supreme Court Rule 23.3

1. Summary of Officer Roper's attempts to obtain stay

In accordance with Supreme Court Rule 23.3, Officer Roper's explanation of the procedural history of this matter demonstrates that he sought a stay of the Fifth

Circuit's mandate (Appx. A pp. 1a-22a) which was denied (Appx. B pp. 23a-24a). Thereafter, in the District Court proceedings, Officer Roper sought a stay pending this Court's determination of his Petition for Writ of Certiorari (Appx. C pp. 25a-40a), and after Respondents/Plaintiffs filed a Response in Opposition (Appx. D pp. 41a-50a), the District Court denied a stay of proceedings (Appx. E p. 51a).

2. The District Court dismissed all claims, but the Fifth Circuit reversed

The District Court granted Officer Roper's qualified immunity-based Motion for Summary Judgment after determining that whether considering Crane's account of the shooting or Officer Roper's account, Crane failed to show that Officer Roper's use of force was clearly excessive under Fourth Amendment standard (Pet. App. 33a). On appeal, although the three judge panel of the Fifth Circuit recognized the facts summarized above, the Panel concluded that the car – which it characterized as parked – did not pose an imminent risk to Officer Roper or the other two officers at the scene (Pet. App. 15a-16a), and therefore the Panel concluded there was a fact issue as to whether Officer Roper's use of deadly force was unreasonable under the Fourth Amendment.

Citing the general requirements for constitutionality of uses of force as stated in *Graham*, the Panel used an obvious case exception analysis and opined that the *Graham* excessive force factors clearly established the law governing Officer Roper's conduct and it was unnecessary to determine whether a body of relevant case law which considered similar facts would have placed Officer Roper on notice his actions were forbidden (Pet. App. 23a n. 72 *citing Graham v. Connor*, 490 U.S. 386 (1989)).

3. En banc review was denied – and the Fifth Circuit would not stay mandate

Officer Roper and the City of Arlington sought *en banc* review. Six judges voted in favor of rehearing, 10 voted against rehearing (Pet. App. 37a). Five of the judges voting for rehearing joined Judge Oldham's dissenting opinion (Pet. App. 42a-43a). Judge Ho stated he fully agreed with the dissenting judges and that he would have voted to affirm the District Court if he had been on the three-judge panel, but because there were not enough votes for *en banc* rehearing, Judge Ho concurred in denying *en banc* review because he had "no desire to tilt at windmills" (Pet. App. 40a *citing* *Cole v. Carson*, 935 F.3d 444 (5th Cir. 2019)).

Officer Roper and the City of Arlington timely filed an unopposed Motion to Stay Mandate (Appx. A, pp. 1a-22a). Although the Motion to Stay Mandate was unopposed, Judge Higginbotham, the Fifth Circuit Judge who authored the Panel Opinion, denied the Motion (Appx. B pp. 23a-24a).

4. Post remand proceedings in District Court

When mandate was returned to the District Court, Officer Roper informed the District Court and all parties of his intent to file a Motion to Stay proceedings pending his anticipated Petition for Writ of Certiorari (*see* Appx. H, p. 120a, Joint Status Report D. Ct. Doc. 99 p. 5 ¶8, filed April 13, 2023). The District Court issued a Scheduling Order with various deadlines and a trial date of May 6, 2024 (*see* Appx. I pp. 128a-129a , Scheduling Order D. Ct. Doc. 100 pp. 1-2).

On July 31, 2023 Officer Roper, joined by the City of Arlington, filed Defendants' Motion and Brief to Stay Proceedings Pending Determination of Writs of Certiorari to the Supreme Court (Appx. C pp. 25a-40a) (D. Ct. Doc. 125 & 125-1). The

District Court ordered an expedited response to the Motion to Stay Proceedings (D. Ct. Doc. 126). Respondents/Plaintiffs therefore filed a Response Opposing Motion to Stay (Appx. D pp. 41a-50a) (D. Ct. Doc. 127, 127-1, 128, 129, 129-1, 129-2 and 129-3). On August 9, 2023, the District Court issued an Order Denying Motion to Stay (Appx. E p. 51a) (D. Ct. Doc. 130). The District Court indicated it would not depart from the Fifth Circuit's decision to deny a stay of mandate. This is despite the Motion to Stay proceedings filed in the District Court citing this Court's newly issued *Coinbase* case. The *Coinbase* case was issued about 4 months after the Fifth Circuit denied Officer Roper's and the City of Arlington's Unopposed Motion to Stay Mandate (*see* D. Ct. Doc. 125 pp. 1-5).

Plaintiffs did not seek discovery after remand from the Fifth Circuit until after the District Court denied the Motion to Stay Pending the Petitions for Writ of Certiorari. (*see* e-mail correspondence, Appx. F pp. 52a-55a). Even then, because Plaintiffs had sought discovery so tardily in the face of looming deadlines for designation of experts and other matters, Plaintiffs themselves finally on August 15, 2023, filed a Motion to Extend Certain Scheduling Order Deadlines (D. Ct. Doc. 131). The District Court issued an electronic order on August 16, 2023 granting Plaintiffs' requested extension (D. Ct. Doc. 132). On August 25, 2023, Plaintiffs / Respondents served written discovery requests directed to the City of Arlington (*see* Appx. G 56a-79a Requests for Production to City; Appx. G 80a-92a Interrogatories to City; Appx. G 93a-107a Requests for Production to Officer Roper; Appx. G 108a-119a Interrogatories to Officer Roper). Thus, it is clear that without this Court's intervention, Officer Roper will be subject to discovery, pre-trial proceedings and

potentially trial before this Court's determination of his Petition for Writ of Certiorari which is based on his qualified immunity.

ARGUMENT

This Court has recognized the conditions that must be met before a single justice will issue a stay:

(1) There must be a reasonable probability that certiorari will be granted (or probable jurisdiction noted); (2) there must be significant possibility the Judgment below will be reversed; and (3) there must be a likelihood of irreparable harm if the Judgment is not stayed. *Barnes v. E-Systems, Inc. Group Hospital Medical and Surgical Insurance Plan*, 501 U.S. 1301, 1302 (1991). If a single justice issues a temporary stay and refers the matter to the entire court, the same three factors are applicable. *Indiana State Police Pension Trust v. Chrysler, LLC*, 556 U.S. 960 (2009). It appears there is some overlap between the first two factors.

I. REASONABLE PROBABILITY THE COURT WILL GRANT CERTIORARI TO REVIEW THE FIFTH CIRCUIT'S DENIAL OF OFFICER ROPER'S QUALIFIED IMMUNITY

This court has stated that the Plaintiff must carry the burden of making two showings in order to overcome a government official's qualified immunity. The Plaintiff must establish a violation of a constitutional right. The Plaintiff must also establish whether that right was clearly established at the time of the Defendant Official's alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). When analyzing the clearly established prong of qualified immunity, this Court has repeatedly admonished lower courts not to define clearly established law at too high a level of generality. *City of Tahlequah v. Bond*, 142 S.Ct. 9, 11 (2021)(*per curium*);

Rivas-Villegas v. Cortesluna, 142 S.Ct. 4, 8-9 (2021)(*per curium*). This rule is particularly important in excessive force cases. *City of Escondido v. Emmons*, 139 S.Ct. 500, 503 (2019).

> "Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. Use of excessive force is an area of the law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue."

Emmons, 139 S.Ct. at 503.

While this Court has also recognized that in an appropriate situation, clearly established law can be determined by an obvious case analysis, this court has also said that the obvious case analysis is reserved for the rare case. *District of Columbia v. Wesby*, 138 S.Ct. 577, 590 (2018). This Court has not applied the rare obvious case analysis in the context of fast-moving events when an officer must make a split-second decision as to whether to use force. But here, without explaining how this was the rare obvious case, the panel nevertheless used an obvious case analysis to determine that the law was clearly established by the broad rules of *Garner* and *Graham* (*Crane*, 50 F.4th at 466-467 (Pet. App. 21-23 n. 72)) relying on *Tennessee v. Garner*, 471 U.S. 1 (1985) and *Graham v. Connor*, 490 U.S. 386 (1989).

By using the rare obvious case analysis, the Fifth Circuit panel made the same error which the Fifth Circuit had made earlier in another case which this court corrected and reversed in *Mullenix v. Luna*, 577 U.S. 7, 16 (2015). The five Fifth Circuit judges who joined the opinion dissenting from denial of rehearing *en banc* squarely recognized that this Court requires that in split second excessive force cases

it is especially important to define clearly established law with specificity and not at a high level of generality. These dissenters likewise recognized that the majority had used the obvious case exception incorrectly to swallow this Court's *Mullenix* rule. And finally, these five dissenting Judges recognized that the obvious case analysis should be rare as this Court stated in *District Court of Columbia v. Wesby*, ___ U.S. ____, 138 S.Ct. 577, 590 (2018) (Pet. App. 42-43).

Although Judge Ho voted to deny rehearing *en banc* because it was futile to vote to grant rehearing without enough votes, and he does not believe in tilting at windmills, Judge Ho stated the dissent persuasively argues why the panel should have affirmed the District Court's summary judgment dismissing the case. Judge Ho stated he would have affirmed the dismissal if he had been a member of the panel (Pet. App. 38a). Because the Fifth Circuit has once again committed the same error which this Court corrected and reversed in *Mullenix*, and because the Fifth Circuit denied *en banc* review over the dissents of six judges and the criticism of Judge Ho, there is a reasonable probability that four justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction. *Indiana State Police Pension Trust v. Chrysler, LLC*, 556 U.S. 960 (2009).

II. SIGNIFICANT POSSIBLIITY THIS COURT WILL REVERSE THE FIFTH CIRCUIT

An Amicus Curiae Brief has been filed which powerfully supports both Officer Roper's Petition and the City of Arlington's Petition in Case No. 22-1151 (*See* Brief of Amici Curiae Texas Municipal League Intergovernmental Risk Pool, Texas Association of Counties, Texas Association of Counties Risk Management Pool, Combined Law Enforcement Associations of Texas, Texas Municipal Police

Association, Louisiana Municipal Association, National Association of Police Organizations, Texas Police Chief's Association, Mississippi Municipal League, and Mississippi Municipal Service Corporation).

On July 19, 2023, this Supreme Court requested Respondents / Plaintiffs file Responses to both Petitions for Writ of Certiorari. At this stage of proceedings, under Supreme Court Rule 16.1, the Supreme Court could have summarily denied both Petitions. Instead, this Supreme Court has requested a Response Brief to both Petitions. Generally, a Petition for Writ of Certiorari is not granted without this Court first requesting a Response Brief. (See Supreme Court Rules 15.1, 15.5 and 16.1). And finally, this Court has placed both Petitions on the Court's conference calendar for September 26, 2023. Judge Ho and the dissenting Fifth Circuit Judges apparently want this case reviewed by the Supreme Court because the Fifth Circuit Court will not rehear this case (or similar cases) *en banc*. Judge Ho concurred in denial of rehearing *en banc* despite agreeing that the dissent persuasively argues why the panel should have affirmed the District Court's dismissal of all claims, and Judge Ho further states that if he had been on the panel, he would have affirmed the District Court's dismissal (Pet. App. 38a), *Crane*, 60 F.4th at 977. Judge Ho explains the role of the judiciary in cases like the present and states:

> "that's because I firmly agree that it's not the job of the judiciary to second-guess split-second, life-and-death decisions made by police officers who act in a reasonable good faith manner to protect innocent law-abiding citizens from violent criminals."

(Pet. App. 38a). *Crane*, 60 F.4th at 977. Judge Ho's description of the role of the judiciary is consistent with this Court's long-established rules for analyzing whether a police officer has violated the Fourth Amendment's reasonableness requirement

when using force. Application of the reasonableness test requires careful attention to the facts and circumstances of each particular case taking into account a number of matters including whether the suspect poses an immediate threat to the safety of the officers or others and whether the suspect is actively resisting arrest or attempting to flee. *Graham*, 490 U.S. at 396. This Court squarely stated:

> "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation."

Graham, 490 U.S. at 396-97.

This Court has also made it clear that when applying the objective reasonableness standard of *Graham*, that even if an after the fact analysis determines that the officer may have used more force than was in fact needed, so long as the officer reasonably but mistakenly believed that the circumstances warranted the degree of force used, the officer complies with the Fourth Amendment reasonableness standards. *See Saucier v. Katz*, 533 U.S. 194, 205 (2001). This Court's requirements for analyzing whether there was even a violation of the Fourth Amendment Constitutional rights of the suspect requires careful attention to the specific facts confronting the officer. This Court has also recognized that when evaluating qualified immunity in excessive force cases, specificity is especially important because it is sometimes difficult for an officer to determine how the relevant legal doctrine (excessive force) applies to the situation the Officer confronts. *Emmons*, 139 S.Ct. at 503. Judge Ho and the dissenting Fifth Circuit Judges certainly understand this Court's requirements for analyzing the first prong of the qualified immunity analysis.

Judge Ho then expressed his disagreement with and frustration resulting from the Fifth Circuit's rejection of such concerns in case after case (Pet. App. 38a), *Crane*, 60 F.4th at 977. Judge Ho has repeatedly dissented from denial of rehearing *en banc* as he states his frustration with the Fifth Circuit Court's refusal to grant rehearing *en banc* which results in the Fifth Circuit:

> "… sow[ing] the seeds of uncertainty in our precedents – which grow into a briar patch of conflicting rules, ensnaring district courts and litigants alike."

(Pet App. 39a) *Crane*, 60 F.4th at 978.

Two days before the Fifth Circuit denied *en banc* review in the present case, Judge Ho dissented from denial of rehearing *en banc* in yet another case, and in doing so he carefully explained the Fifth Circuit Court's ongoing refusal to consistently apply the Fourth Amendment and qualified immunity standards in the context of police officers making split-second life-and-death decisions to stop violent criminals. Judge Ho stated:

> "We're also getting qualified immunity backwards. Just compare the denial of *en banc* rehearing here with some of our other recent *en banc* decisions.
>
> We grant qualified immunity to officials who trample on basic First Amendment rights—but deny qualified immunity to officers who act in good faith to stop mass shooters and other violent criminals. *Compare, e.g., Gonzalez*, 42 F.4th 487; *Morgan*, 659 F.3d 359 (granting qualified immunity to principal who prohibited students from expressing their faith while at school), *with Cole v. Carson*, 935 F.3d 444 (5th Cir. 2019) (*en banc*) (denying qualified immunity to police officers who took lethal action against a student who was about to shoot up his high school); *Winzer v. Kaufman County*, 940 F.3d 900 (5th Cir. 2019) (denying rehearing *en banc* in case against police department for lethal actions taken during active shooting incident).
>
> Accordingly, officers who punish innocent citizens are immune—but officers who protect innocent citizens are forced to stand trial. Officers

> who deliberately target citizens who hold disfavored political views face no accountability—but officers who make split-second, life-and-death decisions to stop violent criminals must put their careers on the line for their heroism. *But see Hoggard v. Rhodes*, —— U.S. ——, 141 S. Ct. 2421, 2422, 210 L.Ed.2d 996 (2021) (Thomas, J., respecting denial of cert.) ("But why should university officers, who have time to make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting?").
>
> Put simply, "we grant immunity when we should deny—and we deny immunity when we should grant." *Horvath v. City of Leander*, 946 F.3d 787, 795 (5th Cir._2020) (Ho, J., concurring in the judgment in part and dissenting in part). Indeed, ours is the rare circuit that has been summarily reversed by the Supreme Court for both wrongly granting *and* wrongly denying qualified immunity. *See Tolan v. Cotton*, 572 U.S. 650, 134 S.Ct. 1861, 188 L.Ed.2d 895 (2014), *summarily rev'g* 713 F.3d 299 (5th Cir. 2013); *Mullenix v. Luna*, 577 U.S. 7, 136 S.Ct. 305, 193 L.Ed.2d 255 (2015), *summarily rev'g* 773 F.3d 712 (5th Cir. 2014); *Taylor v. Riojas*, — U.S. ——, 141 S. Ct. 52, 208 L.Ed.2d 164 (2020), *summarily rev'g* 946 F.3d 211 (5th Cir. 2019)."

Gonzalez v. Trevino, 60 F.4th 906, 912-12 (5th Cir. 2023) (cited at Pet App. 39a), *Crane*, 60 F.4th at 977.

The Fifth Circuit's inconsistent opinions in the involving claims of excessive force involving split-second decisions made by police officers in the context of life-and-death decisions has sown "… the seeds of uncertainty in our precedents – which grow into a briar patch of conflicting rules, ensnaring District Courts and litigants alike" (Pet App. 39a and 43a), Judge Ho citing with approval and quoting Judge Oldham's dissenting opinion. *Crane*, 60 F.4th at 978, 979.

Judge Ho discussed the fact that two Fifth Circuit opinions reached different results, despite both cases involving video evidence of police officers firing shots at cars driving away from the officer but under circumstances when the officers both alleged they were close enough to the anticipated path of the automobile that the

officers theoretically could have been hit and badly injured. See Pet. App. 40a citing *Edwards v. Oliver*, 31 F.4th 925, 932-33 (5th Cir. 2022). In *Edwards*, Judge Ho's dissent from denial of qualified immunity cited the Fifth Circuit's recent case, *Irwin v. Santiago*, 2021 WL 4932988 at *1 n. 1 (5th Cir. 2021).

In *Irwin*, two police officers shot the driver of a car as he was leaving the scene of a traffic incident against their orders to stop. The vehicle approached but narrowly avoided one of the two officers, and as that vehicle passed by that officer, both officers shot the vehicle a total of five times inflicting two serious but non-fatal wounds on the driver. *Irwin*, 2021 WL 4932988 at *1.[3] In *Irwin*, Judge Dennis wrote that neither officer was positioned directly in front of or in the pathway of the vehicle, and the vehicle was slowly rolling forward near an officer when the two officers fired shots at the driver (*Irwin* at 1-2). When Judge Dennis carefully analyzed the particular facts in *Irwin*, he concluded that the material facts in the *Irwin* case were not sufficiently analogous to the facts of cases finding excessive force such that the two officers were on notice their conduct was unconstitutional. Notably, in *Irwin*, Judge Dennis did not use an obvious case analysis when he wrote his opinion – but two years later in the present *Crane* case, he joined in the obvious case analysis despite the present case having factual parallels to *Irwin*.

The Fifth Circuit issues inconsistent opinions. The same judges within the Circuit reached holdings which are inconsistent with each other and which use inconsistent methods of analysis in the context of split-second decisions made by

[3] Curiously, Judge Dennis wrote the *Irwin* opinion, and Judge Dennis was also on the three-judge panel which denied qualified immunity to Officer Roper in the present case. Thus, not only is the Fifth Circuit Court inconsistent from one panel to another, even Judges on the Fifth Circuit make holdings which appear inconsistent and cannot be readily harmonized.

officers who perceive they are involved in life-or-death situations. Judge Ho and the dissenting Judges cry out for the inconsistencies to be resolved – but only this Court can intervene to resolve the inconsistencies.

Because the Fifth Circuit Court in this case and other cases has not adhered to this Supreme Court's requirements for analyzing qualified immunity in the context of fast-moving life-or-death events where officers make split-second decisions, and this problem has continued even in the wake of *Mullenix*, this Court is likely to reverse the Fifth Circuit to correct its errors and once again instruct the Fifth Circuit as to the correct application of law in this context.

III. ABSENT A STAY, OFFICER ROPER WILL SUFFER IRREPARABLE HARM

A. District Court's Exercise of Jurisdiction Could Lead to Inconsistent Results

Officer Roper's Petition for Writ of Certiorari is based on his qualified immunity defense. Generally, the *Griggs* principle holds that a District Court should not exercise jurisdiction over those aspects of the case that are involved in the appeal. *Coinbase,* 143 S.Ct. at 1920 *citing Griggs v. Provident Consumer Discount Co.*, 549 U.S. 56, 58 (1982). How broadly a court defines aspects of the case on appeal depends on the nature of the appeal, and the legal issues of double jeopardy, sovereign immunity, and qualified immunity call for a broader reading of the *Griggs* jurisdictional transfer. This Court's *Coinbase* case recently recognized that in the context of an appeal involving qualified immunity, the entire case is involved in the appeal. *Coinbase*, 143 S.Ct. at 1920 n. 4. If the District Court continues to exercise jurisdiction over the case while Officer Roper's Petition for Certiorari is pending, Officer Roper could suffer irreparable harm in that the District Court could issue

rulings that prove to be inconsistent with this Court's eventual determination of the outcome of his qualified immunity.

B. District Court Proceedings Defeat the Purpose of Qualified Immunity

This Court has also recognized that irreparable harm can result to Officers if proceedings are allowed as to Defendants who did not or cannot assert immunity while the immune Defendants are litigating their qualified immunity in an appeal. *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009). This Court recognized the basic thrust of the qualified immunity doctrine is to free officials from the concerns of litigation, including avoidance of disruptive discovery. This Court rejected an argument that discovery for the Petitioners asserting qualified immunity in the Supreme Court could be deferred while pretrial proceedings continued for other Defendants who did not or could not assert qualified immunity. This is because while discovery as to other parties proceeds, it will prove necessary for any Supreme Court Petitioners and their counsel to participate in the process to ensure the case does not develop in a misleading or slanted way that causes prejudice to their position. Thus, even if the Petitioners in *Iqbal* were not yet subject to discovery orders, they would not be free from the burdens of discovery. *Iqbal*, 556 U.S. at 685-686.

But here, **without a Stay Order**, Officer Roper, who is petitioning the Supreme Court on the basis of his qualified immunity, not only will be subjected to litigation proceedings and discovery directed at him, but also will necessarily have to participate in any proceedings involving the Defendant City of Arlington. (Appx. F pp. 52a-55a, e-mail requesting depositions; and Appx. G pp. 56a-92a, written discovery requests directed to the City and Appx. G pp. 93a-119a, written discovery

requests directed to Officer Roper). In *Iqbal*, the Supreme Court recognized that allowing discovery directed at the individuals who were not petitioning on the basis of qualified immunity would defeat the purpose of qualified immunity for the Petitioners asserting qualified immunity in the Supreme Court. Here, the burden on the appealing Defendant Officer Roper is even greater – proceedings in the District Court are directed at Officer Roper even though he has not resolved his appeal and is petitioning to this Supreme Court. There is no doubt this factor is in favor of Officer Roper.

Officer Roper's Petition asserts there was no Fourth Amendment violation (Petition Case No. 22-1157 pp. 12-25). The City of Arlington's Petition also asserts there is no Fourth Amendment violation (Petition Case No. 22-1151 pp. 9-18). The Court had previously ruled that because Officer Roper did not violate the Fourth Amendment, the claims against the City of Arlington failed and should be dismissed. (D. Ct. Doc. 80 p.8). A Supreme Court ruling agreeing with the District Court that there was no Fourth Amendment violation would result in affirmance of the District Court's ruling which dismissed the claims against the City of Arlington. There is no doubt that this factor is also in favor of Officer Roper and the City of Arlington.

C. Issuance of a Stay Will Not Substantially Injure Other Parties

This Court recognizes that even when an application for a stay establishes all three factors in favor of the applicant, when the equities are weighed the Court might still decide to deny the stay. *Indiana State Police Pension*, 556 U.S. at 960; *Barnes*, 501 U.S. at 1305. Here, while Officer Roper will be irreparably harmed, the opposing parties will not be harmed.

Respondents / Plaintiffs are the only other parties to the proceedings. Imposing a stay and maintaining the stay for the period of time required to allow the Supreme Court to address the Petitions for Writ of Certiorari certainly will not substantially injure Plaintiffs. When such a stay was sought at the Fifth Circuit, Plaintiffs / Respondents did not at that time oppose the requested stay (Appx. A pp. 1a-22a).

D. Public Interest Favors a Stay

When considering exercise of its discretion as to granting a stay, if the Court weighs public interest as a factor, that will also favor Officer Roper. This Court need only look again to the Supreme Court's *Iqbal* and *Harlow* cases. In *Iqbal,* the Supreme Court again discussed the public policy reasons which exist as the basis for the qualified immunity defense. The basic thrust of the qualified immunity doctrine is to free officials from the concerns of litigation including avoidance of disruptive discovery. *Iqbal,* 556 U.S. at 684, *citing Siegert v. Gilley*, 500 U.S. 226, 236 (1991) (Kennedy J. concurring in judgment). This Court stated:

> "There are serious and legitimate reasons for this. If a government official is to devote time to his or her duties, and to the formulation of sound and responsible policies, it is counterproductive to require the substantial diversion that is intendent to participating in litigation and making informed decisions as to how it should proceed."

Iqbal, 556 U.S. at 684. The Fifth Circuit also recognized the important policy consideration supporting qualified immunity when it stated:

> "Qualified immunity represents a determination that 'the public interest may be better served by action taken with independence and without fear of consequences' and thus has been declared to be 'an entitlement not to stand trial or face the other burdens of litigation .... The entitlement is an *immunity from suit* ....' There is no public policy favoring arbitration agreements that is as powerful as that public interest in freeing officials from the fear of unwarranted litigation."

Weingarten Realty Investors v. Miller, 661 F.3d 904, 908-909 (5th Cir. 2011).[4]

Forty-one years ago in *Harlow*, this Court recognized that claims against public officials involve costs not only to Defendant officials, but to society as a whole. The societal costs include expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will dampen the ardor of all but the most resolute, or the most irresponsible public officials in the unflinching discharge of their duties. *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). These considerations were identified as a reason qualified immunity is the best obtainable accommodation of competing values. *Harlow*, 457 U.S. at 814. There is no doubt public interest favors a stay and this factor is in favor of Officer Roper.

Although the Crane Respondents / Plaintiffs here did not assert a claim that the traffic stop was itself pretextual, much less unconstitutional, the Panel opinion – without pleadings, briefing or argument to support the opinion, inexplicably looked to a news article and law review article as a basis to question this Supreme Court's unanimous landmark opinion in *Whren v. United States*, 517 U.S. 806, 810 (1996) which held that pretextual traffic stops are constitutionally permissible. *Crane*, 50 F.4th at 457-59 (Pet. App. 2a-4a). The City's Petition for Certiorari in Case No. 22-1151 demonstrates that the Panel's uninvited suggestion that *Whren* should be revisited is a serious challenge to federalism (*See* Petition in Case No. 22-1151 pp. 18-23). The Amici's Brief cites *Whren,* 517 U.S. at 810, which recognizes that

[4] This Court abrogated *Weingarten's* denial of a stay in the context of an interlocutory appeal of a district court's denial of arbitration. *Coinbase*, 143 S.Ct. at 1020 n. 3.

pretextual traffic stops are a "cornerstone of law enforcement practice". (Brief of Amici Curiae pp. 23-26). The three Judge Panel's challenge to this Supreme Court's established *Whren* decision creates uncertainty within the law enforcement profession as to a cornerstone of its practices. Resolving such uncertainty certainly is in the public interest. The public interest favors the City and Officer Roper. This Court has discretion to grant a stay, and Officer Roper hereby moves to impose a stay pending resolution of his Petition and the City of Arlington's Petition to the Supreme Court.

CONCLUSION

The application for a stay should be granted, and all proceedings in the District Court should be stayed while this Court determines the Petitions for Writ of Certiorari filed by Officer Roper (Case No. 1157) and the City of Arlington (Case No. 1151).

Respectfully submitted,

NORMAN RAY GILES
LEWIS BRISBOIS BISGAARD & SMITH, LLP
24 GREENWAY PLAZA, SUITE 1400
HOUSTON, TEXAS 77046

JAMES T. JEFFREY, JR.
Counsel of Record for Petitioner
LAW OFFICES OF JIM JEFFREY
3200 W. ARKANSAS LANE
ARLINGTON, TEXAS 76016
(817) 261-3200
jim.jeffrey@sbcglobal.net

September 1, 2023

Counsel for Petitioner Officer Roper

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CASE NO. 21-10644

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DE'ON L. CRANE, Individually and as the Administrator of the Estate of Tavis M. Crane and on behalf of the Statutory Beneficiaries, G.C., T.C., G.M., Z.C., and A.C, the surviving children of Tavis M. Crane; ALPHONSE HOSTON; DWIGHT JEFFERSON; VALENCIA JOHNSON; Z.C., Individually, by and through her guardian ZAKIYA SPENCE,

Plaintiffs - Appellants

VS.

CITY OF ARLINGTON, TEXAS; CRAIG ROPER,

Defendants - Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS – FORT WORTH DIVISION
CIVIL ACTION NO**.** 4:19-CV-00091-P

APPELLEES' UNOPPOSED MOTION TO STAY MANDATE PURSUANT TO RULE 41(d)

JAMES T. JEFFREY, JR.
State Bar No. 10612300
LAW OFFICES OF JIM JEFFREY
3200 W. Arkansas Lane
Arlington, Texas 76016
Phone (817) 261-3200
Fax (817) 275-5826
ATTORNEY FOR APPELLEE CRAIG ROPER

BAXTER W. BANOWSKY
Texas Bar no. 00783593
BANOWSKY, P.C.
12801 N. Central Expressway,
Suite 1700
Dallas, TX 75243
Phone (214) 871-1300
Fax (214) 871-0038
ATTORNEY FOR APPELLEE CITY OF ARLINGTON

NORMAN RAY GILES
Texas Bar No. 24014084
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
24 Greenway Plaza, Ste., 1400
Houston, TX 77046
Phone (713) 659-6767
Fax (713) 759-6830
ATTORNEY FOR APPELLEE
CRAIG ROPER

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TO THE HONORABLE COURT:

Pursuant to Fed. R. Civ. App. P. 41(d)(1), Appellees timely move to stay the Court's mandate pending Appellee's filing a Petition for Writ of Certiorari to the United States Supreme Court, and would show as follows:

I.
TIMELINESS OF MOTION

This Court's Order denying Appellee Craig Roper's and Appellee City of Arlington's Petition for Re-Hearing *En banc* was issued February 24, 2023. The Mandate is not scheduled to be issued pursuant to Fed. R. Civ. App. P. 41(d) and Fifth Circuit Fed. R. App. P. 41 I.O.P. until no earlier than eights days later, which is March 4, 2023 (a Saturday). Although there is not a specific deadline for filing a Motion to Stay Mandate, this Motion to Stay Mandate is timely and appropriate because it is filed before issuance of the Mandate. See generally, Fed. R. App. P. 41(d)(1) and Fifth Circuit Fed. R. App. P. 41 I.O.P. Appellees intend to file Petitions for Writ of Certiorari on or before 90 days after denial of the Petition for Re-hearing *En banc*.

II.
RULE 41(d)(1)'s SUBSTANTIAL QUESTION REQUIREMENT FRAMED BY SUPREME COURT RULE 10

To show that a Petition for Writ of Certiorari will present a substantial question within the meaning of Fed. R. App. P. 41(d)(1), Appellees refer to Supreme Court Rule 10 which states several considerations governing review on certiorari.

Supreme Court Rule 10 provides three guidelines (which are not controlling or fully measuring the Supreme Court's discretion but are some of the reasons) the Supreme Court considers when granting review on certiorari.

In their Petitions for Certiorari, Appellees intend to demonstrate that this Court's panel decision which stands after denial of the Petition for En Banc Rehearing, conflicts with Supreme Court precedent regarding analysis of the qualified immunity defense in at least several different ways. *First*, Appellees will assert that the Panel's decision does not properly apply the Supreme Court's required Fourth Amendment standards of reviewing the use of force under a totality of the circumstances, and applying an objectively reasonable standard taking into account fast moving events and split second actions. Graham v. Connor, 390 U.S. 386, 396 (1989).

Second, Appellee Officer Roper will assert that the panel decision, which used an "obvious case" analysis, departed from the Supreme Court's repeated requirement, particularly in the context of uses of force under fast moving circumstances, that clearly established law must be objectively analyzed taking into account the particular facts and circumstances involved. Brosseau v. Haugen, 543 U.S. 194, 196-197, 200 (2004); Mullenix v. Luna, 577 U.S. 7, 10 (2015).

Third, related to the second argument Appellee Officer Roper intends to present to the Supreme Court, Officer Roper will also assert that this Court's panel

decision decided important questions of federal law that have not been settled but should be settled by the Supreme Court regarding the "obvious case" analysis used by the panel. Crane v. City of Arlington, 50 F.4th 453, 467 (5th Cir. 2022). The Supreme Court has mentioned that an obvious case analysis might be used, but other than stating that it is the rare obvious case that can deviate from the well settled requirement that a court must consider the particular facts and circumstances, and whether controlling law has forbidden the officer's conduct under such circumstances, the Supreme Court has given little guidance.

As to the qualified immunity arguments which Officer Roper intends to assert, this case is in many respects procedurally similar to, and has some factual parallels with the Supreme Court's case which essentially adopted the views of dissenting Fifth Circuit Judge King, who analyzed the objective reasonableness component of the qualified immunity defense exactly as advocated by Officer Roper throughout these proceedings. See Mullenix v. Luna, 577 U.S. 7, 11 (2015). The Supreme Court went on in Mullenix to reject a general test for evaluating excessive force claims in the context of a qualified immunity analysis because the Supreme Court, citing Brosseau, again concluded that the officer in Mullenix was entitled to qualified immunity because none of the cases cited against him squarely governs the case involving the officer. See Mullenix, 577 U.S. at 13 citing Brosseau v. Haugen, 543 U.S. 194, 200-201 (2004).

Thus under a similar procedural posture, in a case involving use of deadly force to stop an actually fleeing driver in a vehicle (here Officer Roper unsuccessfully tried to prevent Crane from fleeing and harming others). In short, a little more than seven years ago the Supreme Court exercised its supervisory authority over this Court within the broad parameters of Supreme Court Rule 10, to address questions similar to the questions here.

Finally, the panel decision decided an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court. Specifically, the panel decision conflicts directly with the Supreme Court's unanimous decision in Whren v. United States, 517 U.S. 806 (1996) and even goes so far as to suggest Whren was wrongly decided.

III.
DISAGREEMENT BETWEEN JUDGES, AND THE INTEREST OF PROMINENT AMICI HIGHLIGHT THE IMPORTANT QUESTIONS

Amici Curiae Texas Municipal League Intergovernmental Risk Pool, Texas Association of Counties, Texas Association of Counties Risk Management Pool, Combined Law Enforcement Associations of Texas, Texas Municipal Police Association, Louisiana Municipal Association, and National Association of Police Organizations all joined in the Amici Curiae Brief supporting the Petition for En Banc Review. These Amici represent hundreds of organizations and entities in the State of Texas and Louisiana, thousands of individual members in Texas and

Louisiana, and the National Association of Police Organizations[1] represents over 1,000 police units and associations nationwide, which includes over 241,000 sworn officers and more than 50,000 citizens dedicated to fair and effective law enforcement. See Brief of Amici Curiae pp. 1-5. It is reasonably anticipated that some or all of these Amici, together with additional Amici, will support the Petitions for Certiorari which are going to be filed in this case.

Substantial questions exist as shown by six Circuit Judges and a District Judge stating that Officer Roper was entitled to qualified immunity.

District Judge Pittman considered the threat from Officer Roper's perspective at the moment of the threat and concluded that his use of deadly force did not violate Fourth Amendment standards because he reasonably believed Crane posed a threat of serious harm. Crane v. City of Arlington, 542 F.Supp.3d 510, 511-12, 514 (N.D. Tex. 2021).

Although Judge Ho voted to deny rehearing *en banc* because he stated doing so would be a futile exercise, Judge Ho states that if he had been a member of the panel, he would have affirmed the District Court's decision (Order Denying Petition for Rehearing *En banc*, Doc. 175-1 pp. 3, 5, Feb. 24, 2023).

[1] Not only is the National Association of Police Organizations a large nationwide group, but in Mullenix, the Supreme Court cited with approval an Amicus Curiae Brief submitted by the National Association of Police Organizations. See Mullenix v. Luna, 577 U.S. at 15, discussing the danger faced by officers if instead of firing shots the officers had used spike strips.

Six judges voted in favor of rehearing (Judges Richman, Jones, Smith, Duncan, Oldham, and Wilson). Five of those judges joined Judge Oldham's dissenting opinion which states that

> "Officer Roper sensibly concluded that Crane was going to kill or seriously injure someone using a three-ton projectile – so he shot Crane. It's all on video."

The Judges joining Judge Oldham's dissent relied on Mullenix v. Luna and criticized reliance on an "obvious case" exception which they stated swallows the Mullenix rule. See Dissent, Doc. 175-1 pp. 6-7, Feb. 24, 2023.

Judge Ho stated that the Court's granting a denial of qualified immunity is a disturbing and dangerous pattern that is confusing to citizens and police officers in our Fifth Circuit (Judge Ho's concurrence (Doc. 175-1 p. 4, Feb. 24, 2023). The Dissent, authored by Judge Oldham, asserts that it is imprudent for this Court to deny use of the Court's resources for *en banc* review of qualified immunity cases. District Judge Pittman has recently twice called out for this Court to clarify its precedent – pointing out apparently conflicting analysis by different panels of this Court when the panels considered this case and another panel considered a case arising from the use of force by another City of Arlington police officer. See Salinas v. Loud, 2022 WL 17669724*6 (N.D. Tex. Dec. 14, 2022) and Shanks v. City of Arlington, 2022 WL 17835509*2 (N.D. Tex. Dec. 21, 2022). Appellees will argue in their Petition for Writ of Certiorari that the decisions of this Court are confusing, and cry out for

the Supreme Court's exercise of its supervisory authority to bring uniformity to the decisions of this Circuit – which includes the State of Texas which has recently been determined to be the second most populous state in the country.

In short, seven judges in this Circuit (including the District Judge) agreed that Officer Roper's use of force did not violate Fourth Amendment standards when viewed objectively. Judge Richman voted in favor of rehearing, but did not join the dissenting opinion. In short, the positions of eight Judges in this Circuit (including District Judge Pittman) and prominent Amici, indicates this case has substantial questions that cry out for resolution by the Supreme Court.

IV.
SUBSTANTIAL QUESTION REGARDING APPLICABILTIY OF WHREN

The panel opens with a citation to the United States Supreme Court's decision in Whren v. United States, 517 U.S. 806 (1996). In Whren, the unanimous Court agreed that pretextual traffic stops are constitutionally permissible. The panel opinion further concedes that, for law enforcement across the country that properly rely on Whren, "pretextual stops have become a cornerstone of law enforcement practice." Crane v. City of Arlington, 50 F.4th 453, 458 (5th Cir. 2022). Despite that Whren is unquestionably controlling law, the panel opinion suggests it was wrongly decided. The panel decision is an open invitation to district courts to ignore Whren. This is particularly problematic in this case because Appellants never argued that the stop in question was pretextual and there is no evidence of pretext. The undisputed

recorded evidence demonstrates that the officer clearly had reasonable suspicion and even probable cause, to initiate a traffic stop. However, because pretext has never been an issue in this case, the panel decision's suggestion that Whren was wrongly decided was unaided by any briefing or argument by the parties to the case.

Instead, the panel decision relies on a law review article and newspaper articles, not part of the record, as if the facts asserted thereon are uncontested and relevant. Id. at fn. 2-4.

Similarly, the panel decision conflicts with this Court's opinion in Flores v. City of Palacios, 381 F.3d 391, 403 (5th Cir. 2004). In Flores, this Court held that claims of unlawful arrest are judged separately from claims of excessive use of force and under different standards. The panel opinion, however, conflates the issues of whether the stop was lawful and whether the force used was clearly excessive suggesting that a stop lawful under Whren might nevertheless result in Monell liability arising out of a subsequent use of force. Because the panel opinion so clearly conflicts with Whren, Appellees' petition will present a substantial question.

V.
SUBSTANTIAL QUESTION REGARDING THE OBVIOUS CASE ANALYSIS

The dissenting Judges made it clear that they thought the panel decision incorrectly used the rare "obvious case" exception when analyzing the clearly established law component of the qualified immunity defense (Document 175-1 pp.

6-7 citing District of Columbia v. Wesby, 138 S.Ct. 577, 590 (2018)). Judge Ho, who concurred in denying *en banc* review, stated "… I fully agree with the dissent." As the dissent recognized, the Supreme Court stated that the "obvious case" analysis should be a rare exception to the ordinary analysis of clearly established as stated by the Supreme Court in Mullenix (and many other cases) which requires consideration of the particular facts of a case and a determination of whether a Court considering sufficiently similar facts squarely determined that the officer's conduct was prohibited. Mullenix, 577 U.S. at 13.

The rare "obvious case" exception was not explained by the panel – and has not been explained in any detail by the Supreme Court. The closest the Supreme Court has come to providing some specific understanding of a rare "obvious case" is in U.S. v. Lanier, 520 U.S. 259, 270-71 (1997). In Lanier, the Supreme Court stated as an example of an obvious case that "[t]here has never been a Section 1983 case accusing welfare officials of selling foster children into slavery, it does not follow that if such a case arose the officials would be immune from damages [or criminal liability]." Lanier, 520 U.S. at 271. Lanier certainly did not involve fast moving or life-threatening circumstances, or split second decision making like the circumstances here involving Officer Roper, or the circumstances in which the Supreme Court has applied qualified immunity in the context of police officer's use

of force in the context of fast moving and potentially life threatening events. See Mullenix, 577 U.S. at 14-15.

In cases in which police officers have used force, the Supreme Court has consistently analyzed clearly established law by focusing on the particular facts of the case. In contrast, in Lanier which used the example of outrageously selling children into slavery, the Defendant seeking to obtain qualified immunity was a state judge who had been convicted of sexually assaulting his judicial employees and litigants. Lanier, 520 U.S. at 261. The Supreme Court looked to the civil court arena's analysis of clearly established law, and stated it was similar to the fair warning standard applicable in criminal case. But in Lanier, a Judge seeking to avoid criminal conviction for outrageous conduct, in the privacy of his chamber, which did not involve any life-threatening or fast-moving events, was found to have been given fair warning, under a standard the Supreme Court stated was no different than the clearly established immunity standard.

In a concurring opinion voting to deny rehearing *en banc* in another case, Judge Oldham rejected the "obvious case" exception to the clearly established law requirement. See Ramirez v. Guadarrama, 2 F.4th 506, 514-515 (5th Cir. 2021) – Judge Oldham's concurrence to denial of re-hearing *en banc*. In that concurring opinion, Judge Oldham recognized that the Supreme Court's recent application of an "obvious case" analysis involved particularly egregious facts, when there was no

evidence of necessity or exigency. Ramirez, 2 F.4th at 514 (Oldham concurring) citing Taylor v. Riojas, 141 S.Ct. 52, 53-54 (2020). Taylor involved an Eighth Amendment claim asserted by a prisoner challenging the conditions of his confinement based on an assertion that the jailers were deliberately indifferent to his health and safety by housing him in shockingly unsanitary and frigidly cold cells, covered nearly floor to ceiling in massive amounts of feces, in a cell equipped only with a clogged floor drain to dispose of bodily waste. Taylor, 141 S.Ct. at 53.

Using the "obvious case" analysis in Taylor, which in turn cited United States v. Lanier, the Supreme Court suggested that the rare "obvious case" analysis is available when there is no evidence that the officer's actions were compelled by any necessity or exigency. Judge Ho's concurring opinion here strongly suggest that the rare "obvious case" analysis should be applied in circumstances that do not involve split second life and death decisions. In contrast, Judge Ho asserts that officers who deliberately target citizens, who hold disfavored political views should be held accountable even in the face of an assertion of an immunity defense (Document 175-1 p. 4). In short such officers who act deliberately in non-exigent situations, without having to make split second life and death decisions, can be held accountable even in the face of qualified immunity – the type of situation in which it appears the "obvious case" analysis would be applicable. Against the background of the Supreme Court's slender description, and rare use of an "obvious case" analysis,

together with this Court's use of the "obvious case" analysis in a way that would be rejected by Judge Ho and the Judges joining in Judge Oldham's Ramirez dissent certainly presents a substantial question that would give the Supreme Court an opportunity to clarify when the obvious case analysis can apply and to further describe the contours of that analysis.

VI.
GOOD CAUSE EXISTS BASED UPON THIS COURT'S OWN PRECEDENT

All of the foregoing reasons constitute both a substantial question and good cause for a stay as required by Fed. R. App. P. 41(d). Officer Roper's Petition for Writ of Certiorari will be based on his qualified immunity defense, and until that process is complete, he has not had an opportunity to fully exhaust his qualified immunity defense. As explained below, good cause exists under Fed. R. App. P. 41(d) because the stay will recognize the substantive immunity to suit described below.

It is settled law that the qualified immunity defense is not merely a defense to liability, but is instead an immunity from suit. Carswell v. Camp, 54 F.4th 307, 310 (5th Cir. 2022) citing Pearson v. Callahan, 555 U.S. 223, 237 (2009). Furthermore, one of the most important benefits of the qualified immunity defense is protection from pre-trial discovery which is costly, time consuming and intrusive. Carswell, 54 F.4th at 310 citing Backe v. LeBlanc, 691 F.3d 645, 648 (5th Cir. 2012).

This Court's Carswell case rejected the earlier careful procedure that Fifth Circuit cases had followed, allowing narrowly tailored discovery while the qualified immunity defense was addressed. In doing so, this Court cited and applied Ashcroft v. Iqbal, 556 U.S. 662 (2009). See Carswell, 54 F.4th at 311-312. Furthermore, in Iqbal, the Supreme Court recognized that even if discovery is allowed as to non-immune defendants, that as discovery proceeds as to other parties, it will prove necessary for the defendants asserting immunity and their counsel to participate in the process to ensure the case does not develop in a misleading or slanted way causing prejudice to their position. Iqbal, 556 U.S. at 685-686.

In Carswell, this Court recognized the possibility that if a Plaintiff has overcome the immunity defense at the pleadings stage, such that a Motion to Dismiss has been overruled, then the District Court can limit discovery to the factual disputes relevant to whether qualified immunity applies, and the Defendant may then assert qualified immunity in a summary judgment motion. Carswell, 54 F.4th at 312. And here, that has already happened – the District Court denied dismissal at the pleadings stage (ROA.530-550). Thereafter the District Court ordered the parties to submit a joint proposed Amended Scheduling Order (ROA.691-693). In accordance with that order, the parties submitted a "Joint Proposed Bifurcated Scheduling Order" (ROA.694-698). The proposed Bifurcated Scheduling Order set Stage One for discovery on the qualified immunity issues (ROA.697). The District Court then

adopted a "Bifurcated Scheduling Order" (ROA.814-816). The Bifurcated Scheduling Order set a qualified immunity scheduling period of approximately five months (ROA.815). Despite being allowed five months to conduct discovery limited to the qualified immunity issues, Plaintiffs chose not to initiate any discovery as explained in Officer Roper's Brief supporting his Motion for Summary Judgment (ROA.825-827). In fact Officer Roper in detail explained, in a Motion to Strike the affidavit of witness Valencia Johnson, that Plaintiff not only conducted no discovery during the five months allowed for immunity discovery, but Plaintiff failed to cooperate in furnishing Ms. Johnson for deposition (ROA.1122-1126). In short, although Carswell recognizes – "*a la* Lion Boulos and its progeny" that discovery could be allowed limited to qualified immunity issues, Plaintiff was already afforded that opportunity, and declined to pursue qualified immunity discovery. Thus, having once been given the opportunity to do so, Plaintiff should not be allowed to pursue such discovery while Officer Roper pursues final determination of his qualified immunity defense by petitioning for writ of certiorari to the Supreme Court. Additionally, if discovery proceedings are allowed to go forward as to the City of Arlington while Officer Roper is pursuing final determination of his qualified immunity defense, he will be placed into the exact situation forbidden by Iqbal.

For all these reasons, good cause exists to stay the mandate until Officer Roper exhausts determination of his qualified immunity defense.

VII.
CONCLUSION AND REQUESTED RELIEF

Appellees Officer Roper and the City of Arlington timely present their Motion for Stay of Mandate pursuant to Rule 41(d)(1). Appellees show a substantial question and good cause for a stay. If Mandate is issued and the case is returned to the District Court for further proceedings, such action would deprive Officer Roper of his qualified immunity defense by subjecting him to further proceedings even though he is immune from suit. Furthermore, because determination of Officer Roper's qualified immunity defense as well as the claims against the City of Arlington will involve whether or not there was a Fourth Amendment violation in the first place, there is a substantial question and good cause for a stay as to the anticipated Petition for Writ of Certiorari that will be filed by the City of Arlington. Appellees therefore request a stay of issuance of the mandate.

Respectfully submitted,

/s/ James T. Jeffrey, Jr.
JAMES T. JEFFREY, JR.
State Bar No. 10612300
LAW OFFICES OF JIM JEFFREY
3200 W. Arkansas Lane
Arlington, Texas 76016
(817) 261-3200
Fax (817) 275-5826
ATTORNEY FOR APPELLEE CRAIG ROPER

/s/ Baxter W. Banowsky, by permission
BAXTER W. BANOWSKY
Texas Bar no. 00783593
BANOWSKY, P.C.
12801 N. Central Expressway,
Suite 1700
Dallas, TX 75243
Phone (214) 871-1300
Fax (214) 871-0038 **ATTORNEY FOR APPELLEE CITY OF ARLINGTON**

/s/ Norman Ray Giles, by permission
NORMAN RAY GILES
State Bar No. 24014084
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
24 Greenway Plaza, Ste. 1400
Houston, Texas 77046
(713) 659-6767
Fax (713) 759-6830
ATTORNEY FOR APPELLEE
CRAIG ROPER

CERTIFICATE OF CONFERENCE

The undersigned certifies that he has exchanged emails with Appellants' attorney Thad Spaulding on March 2, 2023 and conferred by phone on March 2, 2023 regarding the request for a stay of mandate. Mr. Spaulding advised that Appellants do not oppose a stay of the mandate.

So certified on this 2nd day of March, 2023.

/s/ James T. Jeffrey, Jr.
JAMES T. JEFFREY, JR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via CM/ECF System and/or by certified mail, return receipt requested, on the 2nd day of March, 2023, to:

Thad Spalding
DURHAM, PITTARD & SPALDING, LLP
P.O. Box 224626
Dallas, TX 75222

Daryl K. Washington
WASHINGTON LAW FIRM
325 N. St. Paul, Suite 3950
Dallas, TX 75201

/s/ James T. Jeffrey, Jr.
ATTORNEY FOR APPELLEE
CRAIG ROPER

CERTIFICATE OF COMPLIANCE

The undersigned certifies this brief complies with 5th Circuit Rule 32.3 and the typed-volume limitations of FED. R. APP. P. 27(d)(2)(A).

1. Exclusive of the exempted portions in 5th Cir. R.32.2, the Motion contains **3,515** words.

2. Pursuant to the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), the Motion has been prepared in proportionally spaced typeface using:

Software Name and Version: **Adobe Acrobat 2015 & Word 2013**

In (Typeface Name and Font Size): **Times Roman 14**

THE UNDERSIGNED UNDERSTANDS A MATERIAL MISREPRESENTATION IN COMPLETING THIS CERTIFICATION MAY RESULT IN THE COURT'S STRIKING THE BRIEF AND IMPOSING SANCTIONS AGAINST THE PERSON SIGNING THE BRIEF.

/s/ James T. Jeffrey, Jr.
JAMES T. JEFFREY, JR

Appendix b

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 07, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-10644 Crane v. City of Arlington
USDC No. 4:19-CV-91

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

Ms. Nastasha Anderson
Mr. Baxter Banowsky
Mr. Norman Ray Giles
Mr. James Thomas Jeffrey Jr.
Ms. Laura Dahl O'Leary
Mr. Thad D. Spalding
Mr. Daryl Kevin Washington
Mrs. Shelby Jean White
Ms. Cynthia Jane Withers

Appendix b

United States Court of Appeals for the Fifth Circuit

No. 21-10644

DE'ON L. CRANE, *Individually and as the Administrator of* THE ESTATE OF TAVIS M. CRANE *and on behalf of the Statutory Beneficiaries*, G. C., T. C., G. M., Z. C., and A. C., *the surviving children of* TAVIS M. CRANE; ALPHONSE HOSTON; DWIGHT JEFFERSON; VALENCIA JOHNSON; Z. C., *Individually*, *by and through her guardian Zakiya Spence*,

Plaintiffs—Appellants,

versus

CITY OF ARLINGTON, TEXAS; CRAIG ROPER,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CV-91

ORDER:

IT IS ORDERED that the Appellee's motion to stay of the mandate pending petition for writ of certiorari is DENIED.

Patrick E. Higginbotham

PATRICK E. HIGGINBOTHAM
United States Circuit Judge

Appendix c

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L. CRANE, et al	§	
	§	CIVIL ACTION NO.
v.	§	4:19-CV-00091-P
	§	
CITY OF ARLINGTON, et al	§	

DEFENDANTS' MOTION AND BRIEF TO STAY PROCEEDINGS PENDING DETERMINATIONS OF WRITS OF CERTIORARI TO THE SUPREME COURT

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UNITED STATES DISTRICT COURT
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v.	§	4:19-CV-00091-P
	§	
CITY OF ARLINGTON, et al	§	

DEFENDANTS' MOTION AND BRIEF TO STAY PROCEEDINGS PENDING DETERMINATIONS OF WRITS OF CERTIORARI TO THE SUPREME COURT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants Officer Craig Roper and the City of Arlington, and move for a stay of proceedings as follows:

I. OVERVIEW

This Motion is authorized pursuant to 28 U.S.C. § 2101(f) which allows a stay to be granted by the Judge of the Court rendering the Judgment which is subject to review by the Supreme Court on Writ of Certiorari. This Motion was discussed in the lawyers' face to face meeting on April 6, 2023 and Defendant Roper advised the Court in the April 13, 2023 "Joint Scheduling Conference Report" (Doc. 99 p. 5 ¶ 8) that once Defendant had filed a Petition for Writ of Certiorari in the Supreme Court, he would file this Motion. As explained and demonstrated herein, both Officer Roper and the City of Arlington have separately filed Petitions for Writ of Certiorari (Apx. pp. 2-51 and pp. 52-86), the Petitions are supported by substantial Amici Curiae briefing (Apx. pp.87-123), and the Supreme Court has ordered Plaintiffs to respond to both of the pending Petitions for Writ of Certiorari (Apx. pp. 126-127). Although Supreme Court Rule 23.3 authorizes a justice of the Supreme Court to grant a stay of proceedings, Rule 23.3 also requires the party to explain attempts to obtain the stay relief from the lower courts. Thus, the present Motion is required to be filed in this Court. Although Defendants' "Appellees' Unopposed Motion to Stay Mandate

Pursuant to Rule 41(d)" filed in the Fifth Circuit Court March 2, 2023, pending the anticipated Petitions for Writ of Certiorari was denied by the Fifth Circuit Court on March 7, 2023, the denial was done without explanation, and was issued almost four months prior to a June 23, 2023 Supreme Court ruling which has a clear analysis requiring the granting of a stay in this case. *See* Coinbase Inc. v. Bielski, 143 S.Ct. 1915, 599 U.S. ___ (June 23, 2023). In Coinbase, the Supreme Court looked to and cited with approval procedures developed by several Circuits which require District Courts to automatically stay their proceedings while an interlocutory appeal is ongoing to challenge a District Court's denial of assertions of qualified immunity or double jeopardy. Coinbase, 143 S.Ct. at 1920 n. 4. Whether this Court looks only to the Coinbase analysis – which will mandate a stay – or whether this Court looks to the Fifth Circuit's Weingarten[1] case which has a more detailed analysis (which Coinbase has called into question at least in the context of arbitration proceedings), this Court must grant a stay of proceedings pending determination of the Petitions for Writ of Certiorari.

II. SUPREME COURT'S COINBASE ANALYSIS MANDATES A STAY OF ENTIRE CASE

In Coinbase, the Supreme Court dealt with the question of whether the District Court must stay its pre-trial and trial proceedings while an interlocutory appeal is ongoing when the District Court has denied a Motion to Compel Arbitration. Coinbase, 143 S.Ct. 1918. In determining whether such a stay was mandatory, the Supreme Court considered statutes specifically applicable to arbitration proceedings, which authorized interlocutory appeals, but which did not expressly address whether a District Court must stay pre-trial and trial proceedings while such an interlocutory appeal was ongoing. Coinbase, 143 S.Ct. at 1919.

[1] *See* Coinbase, 143 S.Ct. at 1920 n. 3 *citing* Weingarten Realty Investors v. Miller, 661 F.3d 904, 907-910 (5th Cir. 2011).

The Supreme Court stated that its own earlier case – which resulted in the "Griggs" principle resolved the case. The Supreme Court's Griggs principle states that any appeal, including an interlocutory appeal "divests the District Court of its control over those aspects of the case involved in the appeal". Coinbase, 143 S.Ct. at 1919 *citing* Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). When analyzing the aspects of the case involved in the appeal, in the context of a denial of a Motion for Arbitration, the Supreme Court concluded that because the question on appeal is whether the case belongs in arbitration or instead in the District Court, the entire case is essentially involved in the appeal. Coinbase, 143 S.Ct. at 1919 *citing* Griggs, 459 U.S. at 58.

In reaching that conclusion, the Supreme Court looked to procedures developed by several Circuits addressing what it referred to as "analogous contexts of qualified immunity and double jeopardy, wherein the District Courts were required to automatically stay their proceedings while an interlocutory appeal as to those defenses were ongoing." Coinbase, 143 S.Ct. at 1920. It is also significant to recognize that the Supreme Court called into question the Fifth Circuit's case which held there was no automatic entitlement to a stay of proceedings when there was an ongoing appeal concerning denial of arbitration. *See* Coinbase, 143 S.Ct. at 1920 n. 3 *citing* Weingarten, 661 F.3d at 907-910. It is clear that Weingarten has now been abrogated by Coinbase, at least in the context of a denial of arbitration. In Weingarten, the Fifth Circuit had used a narrow application of Griggs and concluded that there was no automatic stay when there was a pending appeal regarding denial of arbitration. Instead, the Fifth Circuit required an elaborate balancing procedure in the context of denial of arbitration. Thus, Coinbase has abrogated the Fifth Circuit's rule which would deny an automatic stay of proceedings pending interlocutory appeals of the denial of arbitration.

It is important to recognize that Weingarten itself recognized that in the context of an

interlocutory appeal regarding a denial of qualified immunity, the immunity defense was an entitlement not to stand trial or face the other burdens of litigation – which is an entitlement to immunity from suit. Weingarten, 661 F.3d at 910. In Weingarten the Fifth Circuit went on to say that there was no public policy favoring arbitration agreements that is as powerful as the public interest in freeing officials from the fear of unwarranted litigation, which is a basis for qualified immunity. Because of that strong public policy recognized by the Fifth Circuit in Weingarten, the Fifth Circuit stated that its rationale against an automatic stay of proceedings pending an interlocutory appeal of denial of arbitration did not amount to a sufficient analog to qualified immunity cases. Not only did the Supreme Court call into question the Weingarten holding as to arbitration proceedings, but the Supreme Court went on to recognize that several circuits have considered whether such a stay pending appeal of denials of arbitration is warranted "in the analogous contexts of qualified immunity and double jeopardy". In that context the Supreme Court recognized that District Courts in those Circuits are required to automatically stay their proceedings while an interlocutory appeal is ongoing as to denials of qualified immunity or double jeopardy defenses. Coinbase, 143 S.Ct. at 1920 n. 4 *citing*: Chuman v. Wright, 960 F.2d 104, 105 (5th Cir. 1992); Yates v. Cleveland, 941 F.2d 444, 448-449 (6th Cir. 1991); Apostol v. Gallion, 870 F.2d 1335, 1338 (7th Cir. 1989); Stewart v. Donges, 915 F.2d 572, 575-576 (10th Cir. 1990).

In short, applying the Griggs rule, the Supreme Court clearly approved of the analysis that an appeal involving the qualified immunity defense divests the District Court of its control over those aspects of the case involved in the appeal. This is because the party asserting qualified immunity is asserting an entitlement not to face the burdens of litigation and not to stand trial – which is an immunity from suit. Weingarten, 661 F.3d at 910; Griggs, 459 U.S. at 58; Coinbase, 143 S.Ct. 1920-1921. Thus, under the Griggs principle, the entire case is involved in the appeal

according to the Supreme Court's analysis in Coinbase.

Defendants anticipate in advance that the Plaintiffs may argue that because the City cannot and is not asserting a qualified immunity defense, the proceedings should not be stayed as to the City. However, the Supreme Court has also addressed and resolved that question to mandate a complete stay. *See* Ashcroft v. Iqbal, 556 U.S. 662, 685-686 (2009). In Iqbal, the Supreme Court squarely stated that allowing discovery or pre-trial proceedings to be deferred for the parties asserting qualified immunity while allowing pre-trial proceedings to continue for other defendants defeats the purpose and protections of qualified immunity as to the parties who have asserted that defense. The Supreme Court recognizes that as proceedings including discovery as to other parties go forward it would prove necessary for the parties asserting qualified immunity and their counsel to participate in the process to ensure the case does not develop in a misleading or slanted way that causes prejudice to their position. Therefore, even if the parties asserting qualified immunity are not yet themselves subject to discovery orders and proceedings, they would not be free from the burdens of litigation. Therefore, the entire case should be stayed until Officer Roper's qualified immunity defense has been resolved by the Supreme Court Iqbal, 556 U.S. at 685-686; accord Carswell v. Camp, 54 F.4th 307, 313-14 (5th Cir. 2022).

For these reasons, all proceedings must be stayed as to both Officer Roper and the City of Arlington.

III. ALTERNATIVELY, THE WEINGARTEN FACTORS FAVOR A STAY

As explained above, Defendants contend that the Supreme Court's recent Coinbase decision's interpretation of the Griggs principle mandates a stay in this case pending resolution of at least Officer Roper's Petition for Writ of Certiorari. If however this Court disagrees, then the factors previously recognized by the Fifth Circuit all weigh in favor of a stay of proceedings.

The Fifth Circuit itself has recognized that a stay in the District Court is within the District Court's discretion pending appellate proceedings. *See* Weingarten Realty Investors v. Miller, 661 F.3d 904, 910 (5th Cir. 2011). The Weingarten case was in the context of whether a stay should be granted pending resolution of appeal issues involving entitlement to an arbitration. An important part of the analysis in Weingarten was discussion of the legal debate on how appeals transfer jurisdiction from the District Court to the appellate court such that the aspects of the case involved in the appeal should not be adjudicated in the District Court while the appeal is pending. Weingarten, 661 F.3d at 908, *citing* Griggs v. Provident Consumer Discount, 459 U.S. 56, 58 (1982).

The Weingarten case further recognized that certain legal issues including double jeopardy, sovereign immunity, and qualified immunity call for a broader reading of the Griggs jurisdictional transfer. And because the Fifth Circuit recognized that arbitration agreements are distinguishable from such legal issues (double jeopardy, sovereign immunity and qualified immunity), this was in part a reason for the Fifth Circuit's decision to affirm the District Court's denial of the stay that was sought in that case. Weingarten, 661 F.3d at 909-910. When the Fifth Circuit discussed the District Court's discretion to grant a stay of proceedings, the Fifth Circuit pointed to the 4-factor test in Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

> "(1) Whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other parties interested in the proceedings; and (4) whether public interest [favors a stay]"

Weingarten, 661 F.3d at 910, quoting Hilton, 481 U.S. at 776. Proper analysis of the four Hilton factors demonstrate this Court should reinstate the stay.

A. Defendants Make a Strong Showing They Are Likely to Succeed on the Merits

In their respective Petitions for Writ of Certiorari, Officer Roper and the City both

demonstrate a strong showing they are likely to succeed on the merits. (*See* Roper's Petition for Writ of Certiorari, Apx. pp. 2-51.) (*See* the City's Petition for Writ of Certiorari, Apx. pp. 52-86).

Although a majority of the Fifth Circuit denied en banc rehearing, six Circuit Judges voted to rehear the case en banc (Richman, Jones, Smith, Duncan, Oldham, and Wilson). Judge Oldham wrote a forceful dissent to denial of en banc rehearing, and was joined in the dissent by Judges Jones, Smith, Duncan and Wilson. *See* Order denying en banc rehearing at Crane v. City of Arlington, 60 F.4th 976, 978 (5th Cir. 2023). Although Judge Ho voted with the majority to deny rehearing en banc, he stated that if he had been on the three Judge panel that heard the appeal, he would have voted to affirm this District Court's summary judgment which dismissed all claims. Judge Ho explained that he fully agreed with the six Judges who voted to rehear the case en banc, but because a majority of the Fifth Circuit Court again denied rehearing of a panel decision denying qualified immunity, he had "no desire to tilt at windmills" by joining the dissenters who would not have enough votes to cause en banc review, and therefore Judge Ho joined the majority that voted to deny rehearing en banc. Crane, 60 F. 4th at 978. Counting this District Court and Judge Ho, along with the five Judges who squarely joined in the dissent written by Judge Oldham, seven federal Judges state that all claims against both defendants should have been dismissed.

At the Petition for Writ of Certiorari stage, an Amicus Curiae Brief has been filed which powerfully supports both Officer Roper's Petition and the City's Petition (*See* Apx. pp. 87-123 Brief of Amici Curiae Texas Municipal League Intergovernmental Risk Pool, Texas Association of Counties, Texas Association of Counties Risk Management Pool, Combined Law Enforcement Associations of Texas, Texas Municipal Police Association, Louisiana Municipal Association, National Association of Police Organizations, Texas Police Chief's Association, Mississippi Municipal League, and Mississippi Municipal Service Corporation).

As explained above, on July 19, 2023, the Supreme Court requested Plaintiffs file Responses to both Petitions for Writ of Certiorari (Apx. pp. 126-127). At this stage, under Supreme Court Rule 16.1, the Supreme Court could have summarily denied the Petitions. Instead, the Supreme Court has requested a Response Brief to both Petitions. Generally, a Petition for Writ of Certiorari is not granted without the Supreme Court first requesting a Response Brief. (See Supreme Court Rules 15.1, 15.5 and 16.1). And finally, the Supreme Court has placed both Petitions on the Court's conference calendar for September 26, 2023 (*See* dockets from both proceedings Apx. pp. 126-127). Both Defendants clearly have made a strong showing they are likely to succeed on the merits, the first Hilton factor.

B. Officer Roper and the City Will be Irreparably Injured Absent a Stay

Officer Roper's Petition for Writ of Certiorari is based on his qualified immunity defense. The Fifth Circuit recognized that how broadly a court defines aspects of the case on appeal depends on the nature of the appeal, and that legal issues of double jeopardy, sovereign immunity, and qualified immunity call for a broader reading of the Griggs jurisdictional transfer. Weingarten, 661 F.3d at 909-910. The Supreme Court agrees that in the context of an appeal involving qualified immunity, the entire case is involved in the appeal. Coinbase, 143 S.Ct. at 1920 n. 4.

The Supreme Court recognizes that irreparable harm can result to Officers if proceedings are allowed as to Defendants who did not or cannot assert immunity while the immune Defendants are litigating their qualified immunity in an appeal. Iqbal, 556 U.S. 662 at 684. The Supreme Court recognizes the basic thrust of the qualified immunity doctrine is to free officials from the concerns of litigation, including avoidance of disruptive discovery. The Supreme Court rejected an argument that discovery for the Petitioners asserting qualified immunity in the Supreme Court could be deferred while pretrial proceedings continued for other Defendants. This is because while

discovery as to other parties proceeds, it would prove necessary for the Supreme Court Petitioners and their counsel to participate in the process to ensure the case does not develop in a misleading or slanted way that causes prejudice to their position. Thus, even if the Petitioners in Iqbal were not yet subject to discovery orders, they would not be free from the burdens of discovery. Iqbal, 556 U.S. at 685-686.

But here, **without a Stay Order**, Officer Roper, who is petitioning the Supreme Court on the basis of his qualified immunity, not only will be subjected to litigation proceedings and discovery directed at him, but also will necessarily have to participate in any proceedings involving the Defendant City of Arlington. In Iqbal, the Supreme Court recognized that allowing discovery directed at the individuals who were not petitioning on the basis of qualified immunity would defeat the purpose of qualified immunity for the Petitioners asserting qualified immunity in the Supreme Court. Here, the burden on the appealing Defendant Officer Roper is even higher – proceedings in this District Court would be directed at Officer Roper even though he has not resolved his appeal and is petitioning to the Supreme Court. There is no doubt the second Hilton factor is in favor of Officer Roper.

Officer Roper's Petition asserts there was no Fourth Amendment violation (Apx. pp. 25-38). The City of Arlington's Petition also asserts there is no Fourth Amendment violation (Apx. pp. 72-81). This Court had previously ruled that because Officer Roper did not violate the Fourth Amendment, the claims against the City of Arlington failed and should be dismissed. (Doc. 80 p.8). A Supreme Court ruling agreeing with this District Court that there was no Fourth Amendment violation would result in affirmance of this Court's ruling which dismissed the claims against the City of Arlington. There is no doubt that the second Hilton factor is also in favor of the City of Arlington.

C. Issuance of a Stay Will Not Substantially Injure Other Parties

Plaintiffs are the only other parties to the proceedings. Imposing a stay and maintaining the stay for the period of time required to allow the Supreme Court to address the Petitions for Writ of Certiorari certainly will not substantially injure Plaintiffs. Moreover, as demonstrated in the July 26, 2023, filing of the Defendants' Emergency Motion to Continue Deadline to Conduct Mediation (Doc. 122), the Plaintiffs have not even resolved issues as to the authority of De'on Crane to pursue claims on behalf of the minors, the paternity of six of eight minors has not been shown by any record evidence, and the relationship of Alphosne Hoston to decedent has not been established. A stay of proceedings would afford Plaintiffs additional time to address these matters in state court proceedings which should have been addressed prior to or at the time suit was filed. The third Hilton factor is in favor of both of the Defendants.

D. Public Interest Favors a Stay

The fourth factor is in favor of Officer Roper, and this Court need only look again to the Supreme Court's Iqbal and Harlow cases. In Iqbal, the Supreme Court again discussed the public policy reasons which exist as the basis for the qualified immunity defense. The basic thrust of the qualified immunity doctrine is to free officials from the concerns of litigation including avoidance of disruptive discovery. Iqbal, 556 U.S. at 684, *citing* Siegert v. Gilley, 500 U.S. 226, 236 (1991) (Kennedy J. concurring in judgment). The Supreme Court stated:

> "There are serious and legitimate reasons for this. If a government official is to devote time to his or her duties, and to the formulation of sound and responsible policies, it is counterproductive to require the substantial diversion that is intendent to participating in litigation and making informed decisions as to how it should proceed."

Iqbal, 556 U.S. at 684. The Fifth Circuit also recognized the important policy consideration supporting qualified immunity when it stated:

> "Qualified immunity represents a determination that 'the public interest may be better served by action taken with independence and without fear of consequences' and thus has been declared to be 'an entitlement not to stand trial or face the other burdens of litigation .... The entitlement is an *immunity from suit* ....' There is no public policy favoring arbitration agreements that is as powerful as that public interest in freeing officials from the fear of unwarranted litigation."

Weingarten, at 661 F.3d at 908-909.

Forty-one years ago in Harlow, the Supreme Court recognized that claims against public officials involve costs not only to Defendant officials, but to society as a whole. The societal costs include expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will dampen the ardor of all but the most resolute, or the most irresponsible public officials in the unflinching discharge of their duties. Harlow v. Fitzgerald, 457 U.S. 800, 814 (1982). These considerations were identified as a reason qualified immunity is the best obtainable accommodation of competing values. Harlow, 457 U.S. at 814. There is no doubt public interest favors a stay and the fourth Hilton factor is in favor of Officer Roper.

Although the Crane Plaintiffs here did not assert a claim that the traffic stop was itself unconstitutional, the Panel opinion – without pleadings, briefing or argument to support the opinion, looked to a news article and law review article as a basis to question the Supreme Court's opinion in Whren v. United States, 517 U.S. 806, 810 (1996) which held that pretextual traffic stops are constitutionally permissible. Crane, 2022 WL 4592035 * 1-2 (5th Cir. 2022). The City's Petition for Certiorari demonstrates that the Panel's uninvited suggestion that Whren should be revisited is a serious challenge to federalism (Apx. pp. 81-86). The Amici's Brief cites Whren, 517 U.S. at 810, which recognizes that pretextual traffic stops are a "cornerstone of law enforcement practice". (Apx. pp. 119-122). The Panel's challenge to the Supreme Court's established Whren decision creates uncertainty within the law enforcement profession as to a cornerstone of its

practices. Resolving such uncertainty certainly is in the public interest. The fourth Hilton factor also favors the City. This Court has discretion to grant a stay, and Defendants hereby move to impose a stay pending resolution of Defendants' appeals to the Supreme Court.

IV. CONCLUSION & PRAYER

For the above reasons, this Court should grant a stay of all proceedings pending the Supreme Court's disposition of the two pending Petitions for Writ of Certiorari.

Respectfully submitted,

/s/ Baxter W. Banowsky, by permission

Baxter W. Banowsky
State Bar No. 00783593
BANOWSKY, P.C.
12801 N. Central Expressway, Suite 1700
Dallas, TX 75243
(214) 871-1300
Email: bwb@banowsky.com

- and –

/s/ Cynthia Withers, by permission

Cynthia Withers
State Bar No.
CITY OF ARLINGTON
City Attorney's Office
MS 63-0300
P.O. Box 90231
Arlington, TX 76004-3231
(817) 459-6878
Email: cynthia.withers@arlingtontx.gov
ATTORNEYS FOR DEFENDANT CITY OF ARLINGTON

/s/ James T. Jeffrey, Jr.

JAMES T. JEFFREY, JR.
State Bar No. 10612300
LAW OFFICES OF JIM JEFFREY
3200 W. Arkansas Lane
Arlington, Texas 76016
(817) 261-3200
Fax (817) 275-5826

-and –

By: */s/ Norman Ray Giles, by permission*

Norman Ray Giles
Norman.Giles@lewisbrisbois.com
State Bar No. 24014084
OF COUNSEL:
LEWIS BRISBOIS BISGAARD & SMITH, LLP
24 Greenway Plaza, Suite 1400
Houston, Texas 77046
(832) 460-4637
(713) 759-6830 (fax)
ATTORNEYS FOR DEFENDANT CRAIG ROPER

CERTIFICATE OF CONFERENCE

On July 27, 28 and 29, 2023, the undersigned exchanged detailed emails with Plaintiff's lawyers Mr. Daryl Washington, Mr. Thad Spaulding, and Ms. Shelby White discussing this motion and explaining the reliance on the new Supreme Court case Coinbase Inc. v. Bielski along with furnishing a copy of that case. On July 28, 2023, the undersigned answered Mr. Spaulding's questions about the Court in which this Motion would be filed and whether a complete stay was sought. Mr. Spaulding stated that because the Defendants seek a full stay – including a stay of mediation, Plaintiffs are opposed to the Motion. It is therefore submitted to the Court for a determination.

__/s/*James T. Jeffrey, Jr.*__
JAMES T. JEFFREY, JR.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this has been served on counsel of record for all parties by certified mail, return receipt requested on this 31st day of July, 2023.

__/s/*James T. Jeffrey, Jr.*__
JAMES T. JEFFREY, JR.

Appendix d

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L. CRANE, Individually and as the Administrator of the Estate of TAVIS M. CRANE and on behalf of the statutory beneficiaries, G.C., T.C., G.M., Z.C., A.C., C.C., T.J. and T.C., JR., the surviving children of Tavis M. Crane, ALPHONSE HOSTON, DWIGHT JEFFERSON, VALENCIA S. JOHNSON, and Z.C., individually, by and through her guardian, ZAKIYA SPENCE,	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:19-CV-00091-P
v.	§	
	§	JURY TRIAL DEMANDED
THE CITY OF ARLINGTON, TEXAS, and CRAIG ROPER,	§	
Defendants.	§	

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION AND BRIEF TO STAY PROCEEDINGS PENDING DETERMINATIONS OF WRITS OF CERTIORARI TO THE SUPREME COURT

Plaintiffs, De'On L. Crane, as Administrator of the Estate of Tavis M. Crane, deceased, and on behalf of all statutory wrongful death beneficiaries of Tavis M. Crane, including G.C., T.C., G.M., Z.C., A.C., C.C., T.J. and T.C., Jr., the surviving children of Tavis M. Crane, and Alphonse Hoston, individually as the biological father of Tavis M. Crane, file this Response to the Defendants' Motion to Stay Proceedings Pending Determinations of Writs of Certiorari to the Supreme Court.

I. Reasons the Stay Should be Denied

Nearly four months after they first threatened to seek a stay of these proceedings, after compelling discovery from the Plaintiffs and getting so close to a scheduled mediation that Defendants had to file an "emergency" motion to postpone it, Defendants now ask this Court to stay the entire proceedings, including the mediation. This stay has nothing to do with the estate administration issue that prompted the need to delay mediation. Rather, the requested stay of the entire case is based solely on the fact that both Defendants filed petitions for writs of certiorari with the United States Supreme Court. Defendants are not entitled to a stay.

First, Defendants already asked the Fifth Circuit to stay this case for this same reason when they moved to stay the mandate. The Fifth Circuit denied that request. This Court is bound by that mandate, and these Defendants are bound by the Fifth Circuit's ruling on their motion to stay. The mandate rule requires that the motion to stay be denied.

Even so, a stay is not authorized. Defendants claim that their motion is authorized by 28 U.S.C. § 2101(f). They are wrong. Section 2101(f) only allows such relief to be granted by the Fifth Circuit or a justice of the Supreme Court. *See Powe v. Deutsche Bank Nat'l Trust Co.*, No. 4:15-CV-00661-ALM-CAN, 2019 WL 7630996, at *3-4 (E.D. Tex. Dec. 20, 2019). Moreover, by its express terms, section 2101(f) only applies to final judgments. *See Ohio Citizens for Resp. Energy, Inc. v. Nuclear Regulatory Com'n*, 479 U.S. 1312 (1986) (Scalia, J.). Section 2101(f) therefore does not support the relief Defendants seek.

Ultimately, a stay of any non-final order is actually a request for a writ of injunction under the All Writs Act. *See Ohio Citizens,* 479 U.S. at 1313. Defendants have not made such a request, but even if they did, it demands a significantly higher justification than that described in section 2101(f) cases, and Defendants fail to make that showing either. As such, a stay is not appropriate here and the motion should be denied.

II. Background.

Following the grant of summary judgment in favor of Officer Roper, the Fifth Circuit reversed and remanded the case to this Court for further proceedings on September 30, 2022. *See Crane v. City of Arlington, Tex.,* 50 F.4th 453 (5th Cir. 2022). Defendants moved for rehearing and rehearing en banc. Those motions were denied on February 24, 2023. *See Crane v. City of Arlington, Tex.,* 60 F.4th 976 (5th Cir. 2023). Defendants asked the Fifth Circuit to stay the mandate pending petitions for writ of certiorari, and the Fifth Circuit denied that motion on March 7, 2023. (App. 1-22, 23). Accordingly, on March 15, 2023, the Fifth Circuit's judgment was certified and issued as its mandate, which provided, in pertinent part, that the case was "REMANDED to the District Court for further proceedings in accordance with the opinion of [the Fifth Circuit]." (App. 24-25).

The next day, this Court ordered the parties to meet, confer, and prepare a joint report, which the parties prepared and submitted to the Court on April 13, 2023. (Doc. 91). In that Joint Scheduling Conference Report, the parties proposed a full day mediation and agreed on an August 31, 2023 deadline to conduct mediation. (Doc. 99 at 6, ¶ 12). Consistent with that proposal, this Court ordered the parties to mediate with the

Honorable Paul Stickney no later than August 31, 2023. (Doc. 100 at 3, ¶ 5). The parties scheduled an August 3, 2023 mediation with Judge Stickney and began working towards that goal.

Defendants even sought to compel discovery from Plaintiffs during this time regarding the paternity of the deceased, Tavis Crane, and some of the minor children-plaintiffs, and the status of the probate proceeding and the appointment of an administrator of Tavis Crane's estate. (Doc. 104). The Magistrate Judge, Hal Ray, Jr., granted Defendants' motion to compel and Plaintiffs produced documents pursuant to that order. (Doc. 121). The parties even sought leave to amend their complaint and answers consistent with the Court's scheduling order deadline to do so. (Docs. 107, 108, 114).

As the scheduled mediation approached, a representative of Tavis Crane's estate had not yet been appointed.[1] Defendants filed an "emergency" motion to extend the deadline to mediate, which this Court granted on July 26, 2023, extending the deadline to conduct mediation until such time as a representative of the Estate of Tavis Crane is appointed, and the parties cancelled the August 3, 2023 mediation. (Doc. 124). Five days later, on July 31, 2023, after seeking and obtaining discovery they felt they needed first, Defendants filed this Motion to Stay. That motion, which has nothing to do with the estate

[1] Since then, the heirs have all consented to Tavis's father, Alphonse Hoston, serving as the representative of the Estate.

representation issue, is based solely on the Defendants' petitions for certiorari. The Defendants' motion should be denied.

III. Argument & Authorities

A. The mandate rule prohibits a stay of this case.

When their petitions for rehearing and rehearing en banc were denied, Defendants asked the Fifth Circuit to stay its mandate pursuant to Federal Rule of Appellate 41(d). That motion, like this one, was based exclusively on Defendants' intent to file—and the merit of—petitions for writs of certiorari to the United States Supreme Court. (App. 5-16). The Fifth Circuit denied that motion and issued its Judgment as mandate, remanding the case to this Court for further proceedings. (App. 23, 24-25).

The stay requested by Defendants would violate that mandate. It is well-established that a district court has no power or authority to deviate from the mandate issued by an appellate court. *In re Time Warner Cable Inc.*, 470 Fed. Appx. 389, 390 (5th Cir. May 18, 2012). When an appellate court remands an appeal for further proceedings, the district court must implement both the letter and spirit of the mandate. *See In re AF Moore & Assocs., Inc.*, 974 F.3d 836, 840 (7th Cir. 2020); *Conner v. Cleveland Cty., N.C.*, No. 1:18-cv-00002-MR-DLH, 2022 WL 4476739, at *2 (W.D. N.C. Sept. 26, 2022); *Dalton v. Town of Silver City*, No. 17-1143, 2021 WL 3403645, at *1 (D. N.M. Aug. 8, 2021); *U.S. v. Lentz*, 352 F. Supp. 2d 718, 720 (E.D. Va. 2005).

The mandate remanding the case to this Court is clear, and the Fifth Circuit made it especially clear when it denied Defendants' motion to stay it. To obtain a stay in the Fifth Circuit, Defendants were required to show that they intended to file a petition for

certiorari that presents a substantial question and that there is good cause for the delay. Fed. R. App. P. 41(d)(1). This required Defendants to show:

> a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court's decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed.

Baldwin v. Maggio, 715 F.2d 152, 153 (5th Cir. 1983) (quoting *Barefoot v. Estelle,* 463 U.S. 880, 895 (1983)); *see also In re AF Moore & Assocs., Inc.*, 974 F.3d at 840 ("It is movant's burden to demonstrate (1) a reasonable probability of succeeding on the merits (meaning both that the Court will grant certiorari and that the Court will reverse) and (2) irreparable injury absent a stay."). The Fifth Circuit heard and rejected these arguments. In doing so, it necessarily rejected Defendants' arguments that this case involves a substantial question with a likelihood of success at the Supreme Court or that there would be irreparable harm to Defendants if the case were not stayed. This Court is bound by that decision and should not disturb it. Accordingly, on this basis alone, the motion should be denied.

B. Section 2101(f) does not apply here and does not authorize this Court to stay this case.

Defendants claim their motion is authorized by 28 U.S.C. § 2101(f). (Doc. 125 at 4). Section 2101(f) provides, in relevant part:

> In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable a party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court…

"The great majority of courts have interpreted the phrase 'the court rendering the judgment or decree' under 28 U.S.C. § 2101(f) to be a reference to the United States Court of Appeals." *Powe v. Deutsche Bank Nat'l Trust Co.,* No. 4:15-CV-00661-ALM-CAN, 2019 WL 7630996, at *3 (E.D. Tex. Dec. 20, 2019) (quoting *William A. Graham Co. v. Haughey,* 794 F. Supp. 2d 566, 568 (E.D. Pa. 2011)).

> "This interpretation makes sense not simply because of the statutory language, but also in light of the standard for granting a stay. This involves a two-step process in which the court first determines whether a balance of equities and the risk of irreparable injury favor a stay. If so, then the court must determine whether it is likely that the Supreme Court would grant certiorari."

Id. (quoting *Studiengesellschaft Kohle, mbH v. Novamont Corp.,* 578 F. Supp. 78, 80 (S.D.N.Y. 1983)). It is, therefore, not for this Court to pass on the likelihood that the ruling of a higher court will be accepted for review by the Supreme Court; that function is more appropriately the role of the court of appeals or the Supreme Court, as section 2101(f) contemplates. *Id.* (citing *Studiengesellschaft Kohle, mbH,* 578 F. Supp. At 80).

Moreover, section 2101(f) only applies to final judgments, not an interlocutory order like the one the Fifth Circuit entered remanding this case to this Court for further proceedings. "It is clear … that, even though certiorari review of interlocutory orders of federal courts is available … it is only execution and enforcement of *final* orders that is stayable under § 2101(f)." *Ohio Citizens,* 479 U.S. at 1313. Accordingly, this Court lacks the authority to grant the stay under the authority Defendants rely upon and their motion should be denied for this reason as well.

C. Defendants have not shown a valid basis to stay these proceedings.

Ultimately, the only authority that would allow the Defendants to ask for a stay is the same authority that a Supreme Court justice would apply when asked to stay a non-final ruling pending a certiorari petition, which is the All Writs Act.[2] *Doe I v. Exxon Mobile Corp.*, No. 01-1357 (LFO/AK), 2007 WL 9865914, at *1 (D. D.C. Dec. 19, 2007) (citing *Ohio Citizens*, 479 U.S. at 1313). Relief under the All Writs Act, however, "demands a significantly higher justification than described" in 2101(f) cases. *Id.* at *2.

"[I]njunctive relief under the All Writs Act is to be used 'sparingly and only in the most critical and exigent circumstances.'" *Id.* (quoting *Brown v. Gilmore*, 533 U.S. 1301, 1303 (2001) and *Ohio Citizens*, 479 U.S. at 1313). "Such an injunction is appropriate only if the 'legal rights at issue are indisputably clear.'" *Id.* Defendants have not demonstrated how the circumstances here are critical or exigent, or that the legal rights of these Defendants are anything but indisputably clear. Thus, even assuming this Court had the

[2] Defendants' reliance on *Coinbase, Inc. v. Bielski*, 599 U.S. ---, 143 S.Ct. 1915 (2023), and *Weingarten Reality Investors v. Miller*, 661 F.3d 904 (5th Cir. 2011), is misplaced. Aside from the substantive differences—both involve appeals from the denial of motions to compel arbitration—the procedural posture of both cases make them inapplicable here. Both involve stays pending a statutorily-permitted appeal to the intermediate Circuit Court of Appeals. *Coinbase* simply resolved what had previously been unclear—that a district court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing. *Compare Coinbase, Inc.*, 143 S.Ct. at 1921 ("[t]he *Griggs [v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982)] rule requires that a district court stay its proceedings while the interlocutory appeal on the question of arbitrability is ongoing.") *with Weingarten Realty Investors v. Miller*, 661 F.3d at 908-09, 910 (refusing to recognize automatic stay in appeals from the denial of a motion to compel arbitration and instead analyzing discretionary stay under four-factor test in *Hilton v. Braunskill*, 481 U.S. 770 (1987)). But, whether mandatory or discretionary, neither *Coinbase* nor *Weingarten Realty* answer the question posed by the Defendants here, which is whether they are entitled to a stay of this case pending the Supreme Court's disposition of their petitions for writ of certiorari. A petition for certiorari to the Supreme Court is a different animal entirely from a statutorily-authorized interlocutory appeal to a circuit court of appeals. One is a matter of right; the other is matter of the Supreme Court's discretion. As addressed above, a different standard applies to a request for a stay in this context, which is not addressed by *Coinbase, Inc.* or *Weingarten Realty.*

authority to stay this case, Defendants have not made the requisite showing to support it.

IV. Prayer

For these reasons, Plaintiffs respectfully request that this Court deny Defendants' Motion to Stay Proceedings Pending Determinations of Writs of Certiorari to the Supreme Court, and grant Plaintiffs such other relief to which they may be justly and equitably entitled.

Respectfully submitted,

By: */s/ Thad D. Spalding*

Daryl K. Washington
State Bar No. 24013714
WASHINGTON LAW FIRM, PC
325 N. St. Paul St., Suite 3950
Dallas, Texas 75201
Telephone: (214) 880-4883
Facsimile: (214) 751-6685

and

Thad Spalding
State Bar No. 00791708
tspalding@dpslawgroup.com
Shelby J. White
State Bar No. 24084086
swhite@dpslawgroup.com
DURHAM, PITTARD & SPALDING, LLP
P.O. Box 224626
Dallas. Texas 75222
214-946-8000
214-946-8433 fax
ATTORNEYS FOR PLAINTIFFS

Certificate of Service

I hereby certify that on **August 8, 2023**, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

Baxter W. Banowsky
bwb@banowsky.com
Banowsky, P.C.
12801 N. Central Expressway., Ste. 1700
Dallas, Texas 75243

James T. Jeffrey, Jr.
jim.jeffrey@sbcglobal.net
Law Offices of Jim Jeffrey
3200 West Arkansas Lane
Arlington, Texas 76016
Attorney for Defendant, Craig Roper

Cynthia Withers
cynthia.withers@arlingtontx.gov
City of Arlington
City Attorney's Office
Mail Stop #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231
Attorneys for Defendant, City of Arlington

/s/ Thad D. Spalding
Thad D. Spalding

Appendix e

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L CRANE, ET AL.,

Plaintiffs,

v. **No. 4:19-cv-0091-P**

CITY OF ARLINGTON TEXAS, ET AL.,

Defendants.

ORDER

Before the Court is Defendants' Motion to Stay (ECF No. 125). Defendants contend that this case should be stayed pending a decision on their petitions for writs of certiorari to the Supreme Court. ECF No. 125. Plaintiffs responded, contending that Defendants erred in their characterization of the authority which they argue either mandates or supports a stay of this case. ECF No. 128.

A lower court must implement the letter and spirit of the appellate court's mandate. *United States v. Lee*, 358 F. 3d 315, 321 (5th Cir. 2004); *In re Time Warner Cable, Inc.*, 470 Fed. Appx. 389, 390 (5th Cir. 2012) (noting that the appellate court had "serious concerns" about the district court's deviation from their mandate when it entered a stay of proceedings on remand). In implementing a mandate, the district court must take into account the appellate court's opinion and the circumstances it embraces. *Lee*, 358 F.3d at 321.

Here, the face of the Fifth Circuit's judgment clearly "remand[s] to the District Court for further proceedings." ECF No. 129-3 at 2–3. And the Fifth Circuit has already denied a stay that Defendants pursued on the same basis as they do on remand at this Court. ECF Nos. 129-1 at 5–16, 129-2 at 2. This Court will not depart from that decision.

Accordingly, Defendants' Motion to Stay (ECF No. 125) is **DENIED.**

SO ORDERED on this **9th day of August 2023.**

Mark T. Pittman

MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE

Appendix f

From: dwashington@dwashlawfirm.com <dwashington@dwashlawfirm.com>
Sent: Monday, August 14, 2023 8:29 PM
To: Baxter W. Banowsky <bwb@banowsky.com>; Jim Jeffrey <jim.jeffrey@sbcglobal.net>; 'Cynthia Withers' <Cynthia.Withers@arlingtontx.gov>
Cc: Thad Spalding <tspalding@dpslawgroup.com>; Shelby White <swhite@dpslawgroup.com>
Subject: Re: Depositions

Baxter, we will put you down as opposed to the Motion to Extend the four deadlines we proposed. We are unable to conduct depositions sooner due to yours and Jim's schedules yet you are opposed to a brief extension.

Jim, please provide us with your position on the brief joint extension we are proposing. Thanks.

Daryl K. Washington
Washington Law Firm, P.C.
325 N. St. Paul, Suite 3950
Dallas, Texas 75201
214-880-4883 - direct dial
214-751-6685 - direct fax
dwashington@dwashlawfirm.com
www.dwashlawfirm.com

Appendix f

From: Baxter W. Banowsky <bwb@banowsky.com>
Sent: Monday, August 14, 2023 6:30 PM
To: dwashington@dwashlawfirm.com <dwashington@dwashlawfirm.com>; Jim Jeffrey <jim.jeffrey@sbcglobal.net>; 'Cynthia Withers' <Cynthia.Withers@arlingtontx.gov>
Cc: Thad Spalding <tspalding@dpslawgroup.com>; Shelby White <swhite@dpslawgroup.com>
Subject: RE: Depositions

Dayl:

Jim is right that August is not good for me. I am headed out of the Country Thursday and won't be back until the end of the month. However, September is fine. We are working on getting you September dates for those witnesses under our control and last known contact info for the others, to the extent you do not already have it, asap.

We will have to dig a little to identify the training officer(s). I assume there could be multiple people that trained Officer Roper on various topics. Is there a type of training you are particularly interested in, like use of force, or do you want anyone who every trained Officer Roper on any subject?

I do not see a reason to extend any of the pretrial deadlines.

Baxter W. Banowsky

Banowsky, P.C.
12801 N. Central Expy
Suite 1700
Dallas, Texas 75243
(214) 871-1300
(214) 871-1440 (direct)
(214) 871-0038 (fax)
www.banowsky.com

From: dwashington@dwashlawfirm.com <dwashington@dwashlawfirm.com>
Sent: Monday, August 14, 2023 5:39 PM
To: Baxter W. Banowsky <bwb@banowsky.com>; Jim Jeffrey <jim.jeffrey@sbcglobal.net>; 'Cynthia Withers' <Cynthia.Withers@arlingtontx.gov>
Cc: Thad Spalding <tspalding@dpslawgroup.com>; Shelby White <swhite@dpslawgroup.com>
Subject: Re: Depositions

Baxter, we will need the training supervisor who oversaw the training of Roper prior to the incident in question.

I will get you a list of topics for the 30(b)(6) rep.

In the meantime, can you get a list of the officers who are not under your control?

Finally, Jim indicated that August and September are not good for you all so we provided you with a proposed extension of certain scheduling order deadlines. Can you give us your positions? We've confirmed that the proposal was received by each of you. Please advise.

Daryl K. Washington
Washington Law Firm, P.C.
325 N. St. Paul, Suite 3950
Dallas, Texas 75201
214-880-4883 - direct dial
214-751-6685 - direct fax

dwashington@dwashlawfirm.com
www.dwashlawfirm.com

From: Baxter W. Banowsky <bwb@banowsky.com>
Sent: Monday, August 14, 2023 5:13 PM
To: dwashington@dwashlawfirm.com <dwashington@dwashlawfirm.com>; Jim Jeffrey <jim.jeffrey@sbcglobal.net>; 'Cynthia Withers' <Cynthia.Withers@arlingtontx.gov>
Cc: Thad Spalding <tspalding@dpslawgroup.com>; Shelby White <swhite@dpslawgroup.com>
Subject: RE: Depositions

Daryl:

Not all of these witnesses are within the City's control. We are working to get deposition dates for the ones that are still employed by the City. With respect to those who are not, to the extent that we have not already done so, we will get you last known contact information.

With respect to the "training supervisor," I need more information on who it is you are wanting to depose. Can you be more specific on which "training supervisor" you are referring to?

With respect to a 30(b)(6) witness, I will need a list of 30(b)(6) topics in order to identify the witness(es) and determine availability.

I look forward to your response.

Baxter W. Banowsky

Banowsky, P.C.
12801 N. Central Expy
Suite 1700
Dallas, Texas 75243
(214) 871-1300
(214) 871-1440 (direct)
(214) 871-0038 (fax)
www.banowsky.com

From: dwashington@dwashlawfirm.com <dwashington@dwashlawfirm.com>
Sent: Thursday, August 10, 2023 11:17 PM
To: Jim Jeffrey <jim.jeffrey@sbcglobal.net>; 'Cynthia Withers' <Cynthia.Withers@arlingtontx.gov>; Baxter W. Banowsky

Appendix f

<bwb@banowsky.com>
Cc: Thad Spalding <tspalding@dpslawgroup.com>; Shelby White <swhite@dpslawgroup.com>
Subject: Depositions

Jim and Cynthia,

We need to schedule the following depositions. Please advise of dates to depose.

1. Craig Roper
2. Elise Bowden
3. Chief Will Johnson
4. City 30(b)(6) rep.
5. Training Supervisor
6. Barry G. Dickey
7. Sgt. Clayton Taylor
8. Sgt. Lewis Coggeshall
9. Eddie Johnson

Thanks.

Daryl K. Washington
Washington Law Firm, P.C.
325 N. St. Paul, Suite 3950
Dallas, Texas 75201
214-880-4883 - direct dial
214-751-6685 - direct fax
dwashington@dwashlawfirm.com
www.dwashlawfirm.com

Appendix g

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L. CRANE, Individually and as the Administrator of the Estate of TAVIS M. CRANE and on behalf of the statutory beneficiaries, G.C., T.C., G.M., Z.C., A.C., C.C., T.J. and T.C., JR., the surviving children of Tavis M. Crane, ALPHONSE HOSTON, DWIGHT JEFFERSON, VALENCIA S. JOHNSON, and Z.C., individually, by and through her guardian, ZAKIYA SPENCE,	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:19-CV-00091-P
v.	§	
	§	JURY TRIAL DEMANDED
THE CITY OF ARLINGTON, TEXAS, and CRAIG ROPER,	§	
Defendants.	§	

PLAINTIFF DE'ON L. CRANE'S FIRST REQUEST FOR PRODUCTION TO DEFENDANT CITY OF ARLINGTON

TO: Defendant, City of Arlington, by and through its attorney of record, Cynthia Withers, City of Arlington, City Attorney's Office, Mail Stop #63-0300, P.O. Box 90231, Arlington, Texas 76004-3231.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff De'On L. Crane hereby serves this First Set of Request for Production on Defendant the City of Arlington and requests written responses within thirty (30) days of service.

Respectfully submitted,

By:*/s/ Daryl K. Washington*

Daryl K. Washington
State Bar No. 24013714
WASHINGTON LAW FIRM, PC
325 N. St. Paul St., Suite 3950
Dallas, Texas 75201
Telephone: (214) 880-4883
Facsimile: (214) 751-6685

and

Thad Spalding
State Bar No. 00791708
tspalding@dpslawgroup.com
Shelby J. White
State Bar No. 24084086
swhite@dpslawgroup.com
DURHAM, PITTARD & SPALDING, LLP
P.O. Box 224626
Dallas. Texas 75222
214-946-8000
214-946-8433 fax

ATTORNEYS FOR PLAINTIFFS

Appendix g

Certificate of Service

I hereby certify that on **August 28, 2023**, I served the foregoing discovery to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

Baxter W. Banowsky
bwb@banowsky.com
Banowsky, P.C.
12801 N. Central Expressway., Ste. 1700
Dallas, Texas 75243

James T. Jeffrey, Jr.
jim.jeffrey@sbcglobal.net
Law Offices of Jim Jeffrey
3200 West Arkansas Lane
Arlington, Texas 76016
Attorney for Defendant, Craig Roper

Cynthia Withers
cynthia.withers@arlingtontx.gov
City of Arlington
City Attorney's Office
Mail Stop #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231
Attorneys for Defendant, City of Arlington

/s/ Daryl K. Washington
Daryl K. Washington

Appendix g

I.

INSTRUCTIONS

1. If you are withholding any documents, provide the following information:

    a. A general description of each document being withheld, including (i) the date of such document; (ii) the identity of the author(s), the addressee(s), and any other person(s) who have received the documents; (iii) the type of document, *e.g.*, letter, memoranda, etc.; and (iv) a general description of the subject matter of the document.
    b. The privilege or exemption being claimed as to each document that is being withheld and the basis for asserting it.
    c. The location or depository of each document in question.

2. If the attorney-client privilege is being claimed, please state:
    a. The name of the attorney and the name of the client; and
    b. The date the attorney-client relationship was established.

3. In the event of a conflict, these instructions do not supersede the requirements stated in the Federal Rules of Civil Procedure.

4. If you have any uncertainty about the scope or interpretation of any of these Requests, you should either (a) interpret the items as broadly as possible, or (b) seek clarification from the undersigned Attorney.

5. The singular shall include the plural, and the plural the singular, whenever the effect of doing so is to increase the information responsive to these Requests for Production.

6. If any documents from which you would have derived information for these requests have been lost, discarded, or destroyed, the document so lots, discarded or destroyed should be identified as completely as possible including, without limitation, the following information: date of disposal, manner of disposal, reason of disposal, person authorizing the disposal and person disposing of the document.

7. If any document herein requested is claimed by you not to be in your possession, custody or control, then you are directed to identify (a) the nature of the document, (b) the name, address and telephone number of any person who has or may have possession, custody or control of such demanded item, and (c) whether and how you presently have access to the document and can obtain a duplicate of it.

8. The selection of documents from files and other sources shall be performed in such a manner as to ensure that the file or other source from which a document is obtained may be identified.

9. Documents attached to other documents or other materials shall not be separated unless sufficient records are kept to permit reconstruction of the grouping.

10. If you contend that any documents which would otherwise be responsive are being withheld due to a claim of privilege, including, but not limited to, attorney-client privilege, the work product doctrine, the expert consulting privilege, and the trial preparation privilege, then each such document shall be identified in writing. To identify these withheld documents requires that the precise reason for withholding the document be identified, and that the document be described with particularity so that the Plaintiff may assess the applicability of claimed privileges. In order to enable the Plaintiff to assess whether the claimed privilege applies, please identify the type of document, the author(s), recipient(s), the authors or recipients who are attorneys, title of documents, and a reasonable description of the document's contents that, without revealing the privileged information, still enables you to generally assess whether the claimed privilege applies.

11. You are instructed to produce all documents in your possession, custody or control. A document is deemed to be within your control if you have ownership, possession or custody of the document or a copy thereof, or you have the right to secure the document or a copy thereof.

12. When answering and responding to these discovery requests, you are requested to furnish all information available to you, your attorneys, investigators or any other person acting on your behalf and not merely such information as is known by your own personal knowledge. If you cannot answer or respond in full after exercising due diligence to secure the information, answer or respond to the extent possible, specifying the reason or reasons for your inability to answer or respond to the remainder.

13. If you do not understand or need clarification of a specific request, please contact the undersigned using the contact information below.

14. To the extent precise and complete information cannot be furnished, such information as is available should be supplied, together with an estimate of the precise and complete information. Where such an estimate is given, the method employed in making the estimate should be described.

15. If any of these requests cannot be answered in full, answer to the extent possible, specifying the reasons for your inability to answer the remainder and stating the substance of your knowledge, information or belief, concerning the subject matter of the unanswered portion.

16. These requests are continuing in nature and responses thereto should be amended, if, subsequent to the date of service of such responses, you obtain additional relevant information.

17. Any and all responsive data or information that exists in electronic or magnetic form must be produced. Such information should be printed out and produced in a readable form in Microsoft Word and Microsoft Excel format and/or produced on computer or magnetic disk in Microsoft Word format, Microsoft Excel format, or however it is kept in the usual course of business, along with the codes, programs and/or programming instructions and other materials necessary to use and access the magnetic or electronic data or information.

18. Unless otherwise indicated, the time period covers by these Requests is from January 1, 2010, to the present and to the conclusion of any trial of this lawsuit.

Appendix g

II.
DUTY TO SUPPLEMENT

Under the Federal Rules of Civil Procedure, you are under a duty to supplement your answers to the Requests that are incomplete or incorrect when made. Furthermore, you are under a duty to reasonably amend your responses if you obtain information indicating that a response either (1) was incorrect or incomplete when made; (2) additional information within your knowledge has not been made known to Plaintiff during the discovery process; and (3) although correct and complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading.

III.
DEFINITIONS

1. "Control" shall mean the person or persons requested to produce documents herein who have the right to secure the document, or a copy thereof, from another person or public entity or private entity which has actual, physical possession of the original document.

2. "Custody" shall mean the actual possession, custody or control, or constructive possession, custody or control and includes, but is not limited to, any documents contained in any filing or recordation system, manual or electronic, maintained by Defendant, or contained in any person or entity's filing or recordation system as to which Defendant has the right to compel that person to produce the necessary document.

3. "Plaintiff" means De'On L. Crane ("Crane"), Individually and as the surviving mother of Tavis Crane, deceased, and, as the context requires, includes her agents, representatives, affiliates, predecessors, successors, and persons acting or purporting to act on her behalf or under her control.

4. "Defendant," "you" or "your" or "Roper" means Craig Roper and includes your agents, partners, associates, employees, representatives, affiliates, predecessors, successors and persons acting or purporting to act on Your behalf or under your control.

5. "Complaint" and or "lawsuit" means the original complaint and all subsequent amendments thereto filed in the Northern District of Texas, Fort Worth Division, styled *De'on Crane, et al. v. The City of Arlington, Texas, et al,* Cause no. 4:19-CV-00091-P.

6. "City" means City of Arlington, Texas and all of its agents, employees, representatives, and individuals or entities acting or purporting to act on its behalf.

7. "Persons" as used herein includes natural persons, general partnerships, limited partnerships, joint ventures, associations, corporations, governmental agencies, departmental units or subdivisions thereof, and any other form of business entity or associations, as the case may be.

8. "Document" or "Documents" shall mean both drafts and final versions of any written, typed, printed, recorded, graphic or photographic matter, or sound productions, however

produced or reproduced, including copies, computer or data processing inputs or outputs in whatever form, or any means of electronic storage of information. These include, but are not limited to, all letters, e-mails, text messages, telegrams, cables, wires, notes, studies, memoranda, accounts, emails, opinions, translations, charts, graphics, brochures, instruction sheets, advertisements, articles, excerpts, invoices, ledgers, books, publications, diagrams, statements, drafts, transcripts, agreements, contracts, minutes, records, diaries, voice recordings, journals, logs, work papers, manuals, calendars, governmental forms, computer or data processing inputs or printouts, microfiche or microfilm, videotapes, recordings, statistical compilations, slides, photographs, negatives, motion pictures or other film, samples or other physical objects of whatever nature, whether originals or reproductions, now or formerly in the possession, custody access or control of you or any servant, employee, agent, representative or affiliate of yours. The term "documents" also includes every copy where the copy is not an identical reproduction of the original or where the copy contains any commentary, marginal comment or any notations that may not appear in the original.

18. "Lawsuit" refers to all claims, crossclaims, counterclaims and defenses, whether now asserted or asserted hereafter by amendment, supplement or otherwise, of the parties in the above-styled and numbered cause.

19. "Incident in Question" refers to the incident that took place on February 1, 2017, when Arlington Police Officer Craig Roper's use of excessive and deadly force resulted in the death of Tavis Crane. The incident is referred to in more detail in the Plaintiffs' Complaint filed in this Lawsuit.

11. "Correspondence" shall mean telephone communications, electronic mail, and items received by mail or fax.

12. "Incidents" include but is not limited to, Officer Involved Shootings, citizen complaints against Arlington Police Officers, discipline of officers and excessive force claims against Arlington Police Officers.

13. The terms "relating" or "evidencing" or "pertaining" or any derivation thereof shall mean and include any and all documents relating to, pertaining to, or evidencing the requested material or information, in whole or in part, or containing or reflecting the information requested. "Relating," "evidencing," or "pertaining" or any derivation thereof also shall mean and include any and all documents that tend to support or to disprove any allegations set out in that pleading, or that constitute, comprise, identify, refer to, or deal with the subject matter of the allegation.

14. The word "communication" means any transfer, attempted transfer or request for a transfer of information between persons.

15. The word "and" shall mean "and/or."

16. The word "or" shall mean "and/or."

17. The plural of any word used in these Requests shall include the singular and the singular includes the plural.

18. The masculine gender of any word used in these Requests shall include the feminine and the neuter.

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FIRST SET OF REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce any documents you relied on or referred to in any way in answering the Plaintiff's First Set of Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

Please produce any and all Arlington police reports and supplemental reports pertaining to the Incident in Question including, but not limited to, the original incident and arrests report; all supplemental reports; all internal investigation reports, all internal memorandums.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

Please produce any and all audio/video recordings, including body cams and/or dash cams, pertaining to the incident in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

Please produce any written or typed statements, including memorandums, produced by Arlington Police Officer Craig Roper concerning the incident in question made at the request of any ranking officer of the Arlington Police Department.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

Please produce any written or typed statements, including memorandums, produced by any Arlington Police officers concerning the incident in question made at the request of any ranking officer of the Arlington Police Department.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 6:

Please produce all dispatched radio transmissions to any Arlington Police Department sworn officer related to the incident in question from the original call for service up to and including, when all police officers cleared the location.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

Please produce all car-to-car radio transmission between Arlington Police Officers who were involved in the incident in question from the original call for service until the officers cleared the location.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

Please produce all training received by Arlington Police Officer Craig Roper while employed with the Arlington Police Department including, but not limited to, the State of Texas Basic POST police academy; Field Training Officer (FTO); POST certified seminars; Department of Justice Training Bulletins; In-Service Training.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

Please produce all department evaluations of Officer Craig Roper including his FTO evaluations.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

Please produce all Internal Affairs Investigations involving Officer Craig Roper while employed with the Arlington Police Department.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 11:

Please produce Arlington Police Department's Policy Manual in effect during Craig Roper's employment with the Arlington Police Department up to the day of the incident as it pertains to the following subjects:

a. Code-3 runs
b. Handling disturbance calls for service
c. General use of Force
d. Use of Force Continuum
e. Use of Deadly Force
f. Use of Taser Weapons
g. De-escalation of Force
h. Report Writing
i. Duties of a Field Sergeant
j. Duty of personnel to familiarize themselves with Policy Manual
k. Entering a Residence
l. Investigating a Crime
m. Body Cams

REQUEST FOR PRODUCTION NO. 12:

Please produce all documents supporting, discussing or concerning one or more of the facts, events, claims or other matters alleged in the Answer filed by you.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13:

Please produce all documents constituting, discussing, reflecting or concerning communications, including, but not limited to, conversations and correspondence between you or any of your representatives or attorneys, and the parties in this matter, concerning, in whole or in part, one or more of the facts, events, claims or other matters alleged in the pleadings filed in this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14:

Please produce all written communications between you and the parties to this lawsuit regarding the incident made the basis of this suit.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 15:

Please produce all reports you sent to any third parties regarding the incident made the basis of this suit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16:

Please produce any documentation of legal actions, excluding this case, filed against Craig Roper for the use of excessive and/or deadly force, police brutality from the years 2015 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17:

Please produce any documentation of legal action, excluding this case, filed against you for claims of excessive and/or deadly force and failure to train occurring from the years 2015 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18:

Please produce all statements from witnesses referring to the incident in question involving Tavis Crane.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19:

Please produce your police logs of any communication concerning the incident made the basis of this lawsuit.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 20:

Please produce color copies of all photographs, copies of any videotapes, tape recordings, and tapes of radio transmissions in your possession, custody, and/or control regarding the incident in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21:

Please produce any and all memoranda, reports, or other writings relating to the City of Arlington's investigation of Craig Roper in connection with the incident made the basis of this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22:

Please produce all documents in your custody that show, discuss, explain, and illustrate the policies, customs, and procedures regarding the arrest and provision of medical care to persons detained by the officers, agents, and employees of the City of Arlington Police Department.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23:

Please produce all documents in your custody that were prepared as a result of any internal or other investigation of Tavis Crane's death and all documents showing any actions taken by the City of Arlington Police Department against Roper as a result of the incident in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24:

Please produce all documents, including reports made and statements taken or received by you regarding your interview with Craig Roper.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 25:

Please produce copies of all emails and text messages between you and Craig Roper concerning the incident made the basis of this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26:

Please produce copies of all e-mails, facsimile, text messages, voice mails, personal notes, and electronic communications in your custody concerning Craig Roper and/or this incident made the basis of this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27:

Please produce any and all memoranda and records relating to the discipline of Defendant Officer Craig Roper by any governmental agency from the years 2015 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28:

Please produce any and all documents, reports, or memoranda relating to prior allegations of dishonesty, fabrication, and/or falsifying evidence and police reports against Defendant Officer Craig Roper from the years 2015 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29:

Please produce any and all memoranda, reports, or other writings relating to the City of Arlington's investigation of the incident made the basis of this lawsuit.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 30:

Please produce any and all police memoranda, documents, circulars, bulletins, manuals, policies and procedures, and general orders of any kind prepared by the City of Arlington that indicate the amount of force that is permissible in arresting an individual in situations encountered by Craig Roper.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31:

Please produce any and all police memoranda, documents, circulars, bulletins, manuals, policies and procedures, and general orders of any kind prepared by the City of Arlington that authorizes the entry of a suspect's vehicle to make an arrest in situations like the incident in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32:

Please produce any and all documents relating to the employment of Craig Roper, including background investigations, prior employment, and drug testing.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33:

Please produce any and all documents that show disciplinary actions taken by the City of Arlington or any third party against your agents and/or employees for use of excessive force, and/or racial profiling from the years of 2010 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34:

Please produce any documentation of complaints made against Defendant Craig Roper for the use of excessive force and/or deadly force occurring from 2015 to present.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 35

Please produce copies of all arrest reports from the years 2005 to the present documenting injuries sustained by African Americans and Latinos in their dealings with a Arlington Police Officer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36

Please produce copies of documents and/or reports evidencing Arlington Police Department's officer involved shootings from the years 2005 to present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 37:

Please produce copies of all phone records pertaining to the incident made the basis of this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 38:

Please produce copies of the resume for Craig Roper.

RESPONSE:

REQUEST FOR PRODUCTION NO. 39:

All written reports of inspection, tests, writings, drawings, graphs, charts, recordings or opinions of any expert who has been used for consultation and whose work product forms a basis either in whole or in part of the opinions of an expert who is to be called as a witness.

RESPONSE:

REQUEST FOR PRODUCTION NO. 40:

Produce any and all documents relating or referring to all payments made by you in connection with any and all expert testimony, investigation, or report preparation in use of

force/excessive force civil rights litigation for any expert who has been used for consultation and whose work product forms a basis either in whole or in part of the opinions of an expert who is to be called as a witness in this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 41:

Produce all papers, articles, or any other treatises or anything written by any expert who has been used for consultation and whose work product forms a basis either in whole or in part of the opinions of an expert who is to be called as a witness in this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 42:

Produce a copy of all expert reports generated by your expert witness, who is to be called as a witness in this case, in use of force/excessive for civil rights litigation over the past five (5) years.

RESPONSE:

REQUEST FOR PRODUCTION NO. 43:

Produce all documents and/or a list relating to or referring to any cases where your expert witness, who is to be called as a witness in this case, have been disqualified or limited by a court in the scope of his/her testimony in use of force/excessive force civil rights litigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 44:

Produce all documents and/or a list relating to or referring to any cases where your expert witness, who is to be called as a witness in this case, have been disqualified or limited by a court in the scope of his/her testimony in use of force/excessive force civil rights litigation.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 45:

All communications between you (or your attorneys) and any expert who may be called upon by you to testify on your behalf, including all letters, facsimile transmissions, correspondence, electronic mail (e-mail), instant messages, reports, and memoranda. (This request also applies to any communications between you and any consulting expert whose opinions or impressions have been reviewed by any expert whom you may call to testify as any expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 46:

All documents containing the factual observations, tests, supporting data, calculations, opinions, and mental impressions of each expert who you may call to testify as an expert witness by deposition, affidavit, or at trial. (This request applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinions or impressions have been reviewed by an expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 47:

All documents relied upon by any expert who you may call to testify as an expert witness by deposition, affidavit, or at trial that relate to or form the basis of the mental impressions and opinions held by such expert. (This request applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by an expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 48:

All reports and documents prepared by, reviewed by, or provided to an expert who may be called upon by you to testify by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert whom the Plaintiff may call to testify as an expert witness by

deposition, affidavit or at trial .) The Plaintiff specifically requests all drafts and preliminary reports made by your experts in connection with this litigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 49:

A copy of the most recent curriculum vitae from each expert witness whom you may call to testify by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 50:

A copy of all reports, journal articles, books, letters expressing opinion and/or beliefs, or any other document which contains a professional and/or expert opinion or belief, for which each and every expert witness whom you may call to testify on your behalf has authored, co-authored, edited, or contributed to a peer-review. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by an expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 51:

A copy of all deposition transcripts or transcripts of trial testimony from each expert who you may call as an expert witness by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 52:

All models, photographs, videotapes, audiotapes, compilations of data, and other tangible things prepared by or provided to any expert who may be called upon by you to testify by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert who you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 53:

A list of all cases (including case names, cause number, state, court and date of testimony) in which each expert witness whom you may call as an expert witness by deposition, affidavit, or at trial has testified, either by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinions or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 54:

All invoices, billing statements, or other evidence of charge from any expert who may be called upon by you to testify by deposition, affidavit or at trial. (This request also applies to any consulting expert whose opinions or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 55:

Produce all original DOCUMENT(S) to be copied that RELATE to YOUR contention that Craig Roper did not violate Arlington Police Department's Policy when he shot and killed Tavis Crane.

RESPONSE:

REQUEST FOR PRODUCTION NO. 56:

Please produce copies of all resumes for each police officer involved with the incident made the basis of this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 57:

The complete procedures, directives, regulations, rules, special and general orders and policy manuals in place on the date of the incident for the Arlington Police Department.

RESPONSE:

REQUEST FOR PRODUCTION NO. 58:

A complete, certified, unedited and un-redacted copy of any and all documents regarding or otherwise related to the incident, generated by or on behalf of the Arlington Police Department. This request includes, but is not limited to: statements and/or interviews of witnesses, Roper, the Plaintiffs, the decedent, family members or friends of the decedent, any police officers or other persons; narrative summaries; chronologies; law enforcement reports; investigation reports; video or audio footage; supplemental reports or other supplements; correspondence; electronic communications; memoranda; notes; photographs of the plaintiffs; photographs of the defendant; photographs of the scene; sketches; diagrams; blueprints; maps; results of scientific tests; and any other documents relating to the investigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 59:

The complete Arlington Police Department policies and procedures for crime scene investigations, including but not limited to, the collection of evidence in cases of wounded or fatally wounded persons in police involved incidents or police uses of force.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 60:

Any and all documents regarding training videos, tapes, bulletins, alerts, memorandums, communications, seminars, policies, directives, regulations, rules, general and special orders, and procedures put forth by Arlington Police Department concerning the use of and/or discharging one's duty and/or service weapon in the field or otherwise.

RESPONSE:

REQUEST FOR PRODUCTION NO. 61:

Any and all documents regarding training videos, tapes, bulletins, alerts, memorandums, communications, seminars, policies, directives, regulations, rules, general and special orders, and procedures put forth by Arlington Police Department concerning identifying a threat, the use of force, and the use of deadly force.

RESPONSE:

REQUEST FOR PRODUCTION NO. 62:

Any and all use of force reports, sworn reports, case reports, arrest reports, case supplementary reports, or reports of any kind generated by Defendant Roper or referencing Defendant Roper from the time of his date of hire to the present date where he is alleged to have used deadly force or provided medical aid to a subject, regardless of the outcome of said reports.

RESPONSE:

REQUEST FOR PRODUCTION NO. 63:

Any and all documents referring to or relating in any way to injuries or deaths of individuals who Defendant Craig Roper has used force on, whether on-duty or off-duty.

RESPONSE:

REQUEST FOR PRODUCTION NO. 64:

Any and all reports, medical records, records, and/or documents of any kind in your possession regarding Tavis Crane.

RESPONSE:
REQUEST FOR PRODUCTION NO. 65:

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Any and all complaints from the general public or the Arlington Police Department, including civilian employees, regarding Roper or any other entity including: any and all administrative complaints regarding or notices to Arlington Police Department for allegations of improper police conduct or violation of police regulations regarding Roper; any documents regarding any civil lawsuits filed against Roper; and any investigations or disciplinary actions regarding Roper.

RESPONSE:

REQUEST FOR PRODUCTION NO. 66:

Any and all documents and/or records of the liability claims made and/or lawsuits filed against city of Arlington, the Arlington Police Department, and/or any employee of the Arlington Police Department that involve claims of excessive use of force, discharging a firearm, and/or civil rights violations for the past ten (10) years prior to service of this request, including but not limited to, the disposition made of each such claim and lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 67:

Any and all documents and/or records of any and all disciplinary action taken or declined to be taken against Arlington Police Department officers, employees or agents that involve claims of excessive use of force, discharging a firearm, and/or civil rights violations for the past ten (10) years prior to service of this request, including but not limited to the disposition made of each such disciplinary action, non-disciplinary action, findings of review panels, coaching, mediation and/or termination.

RESPONSE:

If any documents, statements, recordings, or videos requested are no longer in existence, state whether it (a) is missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) has been otherwise disposed of, and in each instance explain the circumstances surrounding the reason for and manner of such disposition and state the date or approximate date thereof.

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If any documents, statements, recordings, or videos called for in this request has been destroyed intentionally at any time during the past ten years, such documents, statements, recordings, or videos should be identified, and the reasons and date of its destruction noted.

If any documents, statements, recordings, or videos called for in this request are not produced because of claim of privilege, work product or trade secret, those documents, statements, recordings, or videos should be fully described along with a statement of why they are not being produced.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L. CRANE, Individually and as the Administrator of the Estate of TAVIS M. CRANE and on behalf of the statutory beneficiaries, G.C., T.C., G.M., Z.C., A.C., C.C., T.J. and T.C., JR., the surviving children of Tavis M. Crane, ALPHONSE HOSTON, DWIGHT JEFFERSON, VALENCIA S. JOHNSON, and Z.C., individually, by and through her guardian, ZAKIYA SPENCE,	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:19-CV-00091-P
v.	§	
	§	JURY TRIAL DEMANDED
THE CITY OF ARLINGTON, TEXAS, and CRAIG ROPER,	§	
Defendants.	§	

PLAINTIFF DE'ON CRANE'S FIRST SET OF INTERROGATORIES TO DEFENDANT CITY OF ARLINGTON

TO: Defendant, City of Arlington, by and through its attorney of record, Cynthia Withers, City of Arlington, City Attorney's Office, Mail Stop #63-0300, P.O. Box 90231, Arlington, Texas 76004-3231.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff De'on L. Crane hereby serves this her First Set of Interrogatories on Defendant City of Arlington and requests written responses within thirty (30) days of service.

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Respectfully submitted,

By:*/s/ Daryl K. Washington*

Daryl K. Washington
State Bar No. 24013714
WASHINGTON LAW FIRM, PC
325 N. St. Paul St., Suite 3950
Dallas, Texas 75201
Telephone: (214) 880-4883
Facsimile: (214) 751-6685

and

Thad Spalding
State Bar No. 00791708
tspalding@dpslawgroup.com
Shelby J. White
State Bar No. 24084086
swhite@dpslawgroup.com
DURHAM, PITTARD & SPALDING, LLP
P.O. Box 224626
Dallas. Texas 75222
214-946-8000
214-946-8433 fax

ATTORNEYS FOR PLAINTIFFS

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Certificate of Service

I hereby certify that on **August 28, 2023**, I served the foregoing discovery to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

Baxter W. Banowsky
bwb@banowsky.com
Banowsky, P.C.
12801 N. Central Expressway., Ste. 1700
Dallas, Texas 75243

James T. Jeffrey, Jr.
jim.jeffrey@sbcglobal.net
Law Offices of Jim Jeffrey
3200 West Arkansas Lane
Arlington, Texas 76016
Attorney for Defendant, Craig Roper

Cynthia Withers
cynthia.withers@arlingtontx.gov
City of Arlington
City Attorney's Office
Mail Stop #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231
Attorneys for Defendant, City of Arlington

/s/ Daryl K. Washington
Daryl K. Washington

Appendix g

INSTRUCTIONS FOR ANSWERING

1. You shall answer these personally or shall choose one or more of your proper employees, officers, or agents to answer the Interrogatories, and the employee, officer or agent shall furnish such information as is known or available to the organization.

2. Where an Interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.

3. You are reminded that all answers must be made separately and fully and then at incomplete or evasive answer is a failure to answer.

4. Where the word "accident" is used, it refers to the incident which is the basis of this lawsuit unless otherwise specified.

2. When used in these Interrogatories, the phrases "Defendant", "individual in question", "you", or any synonym thereof are intended to and shall embrace and include, in addition to Defendant, individually, Defendant's attorneys, agents, servants, employees, representatives, private investigators, insurance adjusters, and all others who are in possession of, in control of, or may have obtained information for or on behalf of Defendant.

3. Throughout these Interrogatories, wherever Defendant is requested to identify a communication of any type and such communication was oral, the following information should be furnished with regard to each such communication:

   a) By whom it was made, and to whom;

   b) The date upon which it was made;

   c) Who else was present when it was made;

   d) Whether it was recorded or described in any writing of any type and, if so, identification of each such writing in the manner indicated in #7 below.

4. Throughout these Interrogatories, wherever Defendant is requested to identify a communication, letter, document, memorandum, report, or record of any type and such communication was written, the following information should be furnished:

   e) A specific description of its nature (e.g., whether it is a letter, a memorandum, etc.);

   f) By whom it was made and to whom it was addressed;

   g) The name and address of the present custodian of the writing or, if not known, the name and address of the present custodian of a copy thereof.

5. Throughout these Interrogatories, wherever Defendant is requested to identify a person, the following information should be furnished;

h) The person's full name;

i) His or her present home and business address and telephone number at each address;

j) His or her occupation; and

k) His or her place of employment.

6. Please insert your answers in the space provided below each Interrogatory. Should you need additional space, please attach extra sheet(s). Unless otherwise specified, all information requested pertains to the incident mentioned in the Complaint occurring on September 11, 2021.

DEFINITIONS

1. "Control" shall mean the person or persons requested to produce documents herein who have the right to secure the document, or a copy thereof, from another person or public entity or private entity which has actual, physical possession of the original document.

2. "Custody" shall mean the actual possession, custody or control, or constructive possession, custody or control and includes, but is not limited to, any documents contained in any filing or recordation system, manual or electronic, maintained by Defendant, or contained in any person or entity's filing or recordation system as to which Defendant has the right to compel that person to produce the necessary document.

3. "Plaintiff" means De'On L. Crane ("Crane"), Individually and as the surviving mother of Tavis Crane, deceased, and, as the context requires, includes her agents, representatives, affiliates, predecessors, successors, and persons acting or purporting to act on her behalf or under her control.

4. "Defendant," "you" or "your" or "Roper" means Craig Roper and includes your agents, partners, associates, employees, representatives, affiliates, predecessors, successors and persons acting or purporting to act on Your behalf or under your control.

5. "Complaint" and or "lawsuit" means the original complaint and all subsequent amendments thereto filed in the Northern District of Texas, Fort Worth Division, styled *De'on Crane, et al. v. The City of Arlington, Texas, et al*, Cause no. 4:19-CV-00091-P.

6. "City" means City of Arlington, Texas and all of its agents, employees, representatives, and individuals or entities acting or purporting to act on its behalf.

7. "Persons" as used herein includes natural persons, general partnerships, limited partnerships, joint ventures, associations, corporations, governmental agencies, departmental units or subdivisions thereof, and any other form of business entity or associations, as the case may be.

8. "Document" or "Documents" shall mean both drafts and final versions of any written, typed, printed, recorded, graphic or photographic matter, or sound productions, however

produced or reproduced, including copies, computer or data processing inputs or outputs in whatever form, or any means of electronic storage of information. These include, but are not limited to, all letters, e-mails, text messages, telegrams, cables, wires, notes, studies, memoranda, accounts, emails, opinions, translations, charts, graphics, brochures, instruction sheets, advertisements, articles, excerpts, invoices, ledgers, books, publications, diagrams, statements, drafts, transcripts, agreements, contracts, minutes, records, diaries, voice recordings, journals, logs, work papers, manuals, calendars, governmental forms, computer or data processing inputs or printouts, microfiche or microfilm, videotapes, recordings, statistical compilations, slides, photographs, negatives, motion pictures or other film, samples or other physical objects of whatever nature, whether originals or reproductions, now or formerly in the possession, custody access or control of you or any servant, employee, agent, representative or affiliate of yours. The term "documents" also includes every copy where the copy is not an identical reproduction of the original or where the copy contains any commentary, marginal comment or any notations that may not appear in the original.

9. "Lawsuit" refers to all claims, crossclaims, counterclaims and defenses, whether now asserted or asserted hereafter by amendment, supplement or otherwise, of the parties in the above-styled and numbered cause.

10. "Incident in Question" refers to the incident that took place on February 1, 2017, when Arlington Police Officer Craig Roper's use of excessive and deadly force resulted in the death of Tavis Crane. The incident is referred to in more detail in the Plaintiffs' Complaint filed in this Lawsuit.

11. "Correspondence" shall mean telephone communications, electronic mail, and items received by mail or fax.

12. "Incidents" include but is not limited to, Officer Involved Shootings, citizen complaints against Arlington Police Officers, discipline of officers and excessive force claims against Arlington Police Officers.

13. The terms "relating" or "evidencing" or "pertaining" or any derivation thereof shall mean and include any and all documents relating to, pertaining to, or evidencing the requested material or information, in whole or in part, or containing or reflecting the information requested. "Relating," "evidencing," or "pertaining" or any derivation thereof also shall mean and include any and all documents that tend to support or to disprove any allegations set out in that pleading, or that constitute, comprise, identify, refer to, or deal with the subject matter of the allegation.

14. The word "communication" means any transfer, attempted transfer or request for a transfer of information between persons.

15. The word "and" shall mean "and/or."

16. The word "or" shall mean "and/or."

17. The plural of any word used in these Requests shall include the singular and the singular includes the plural.

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18. The masculine gender of any word used in these Requests shall include the feminine and the neuter.

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FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Please state in detail who made the decision not to discipline Craig Roper in connection with the Incident in Question.

ANSWER:

INTERROGATORY NO. 2:

Please state in detail if Defendant Roper violated any policies of the City of Arlington when he entered the vehicle through the passenger's side, grab Tavis around his neck and subsequently shot and killed Tavis.

ANSWER:

INTERROGATORY NO. 3:

Have you obtained any statements, whether recorded or in writing, regarding any of the issues in this lawsuit? If so, please provide the name, business address and telephone number, employer, and occupation of each person taking any such statements; the present location or custodian of any such statements; the dates on which any such statements were taken; and the name, address and telephone number and employer of each person who has provide any such statement.

ANSWER:

INTERROGATORY NO. 4:

If you contend that Defendant Craig Roper's use of deadly force was justified, please set forth specifically why.

ANSWER:

INTERROGATORY NO. 5:

Identify all persons who have, whom you believe to have, knowledge of facts concerning, supporting or disputing one or more of the facts, events, claims or other matters alleged in the answer that you filed. Please include a statement of their knowledge of facts concerning the incident in question.

ANSWER:

INTERROGATORY NO. 6:

Have you obtained any statements, whether recorded or in writing, regarding any of the issues in this lawsuit? If so, please provide the name, business address and telephone number, employer, and occupation of each person taking any such statements; the present location or custodian of any such statements; the dates on which any such statements were taken; and the name, address and telephone number and employer of each person who has provide any such statement.

ANSWER:

INTERROGATORY NO. 7:

Please set forth specifically Your understanding as to why Defendant Roper shot and killed Tavis Crane. Please set forth specifically each such reason, duty and/or law authorizing such.

ANSWER:

INTERROGATORY NO. 8:

Please set forth specifically and in detail exactly what Craig Roper told you about the incident in question.

ANSWER:

INTERROGATORY NO. 9:

Please set forth specifically and in detail what Tavis Crane did to justify Defendant Roper's use of deadly force. Please include how you reached that conclusion.

ANSWER:

INTERROGATORY NO. 10:

Please state in detail if Defendant Roper was placed on administrative leave pending the criminal investigation. If not, please explain your reason why he's not.

ANSWER:

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INTERROGATORY NO. 11:

Have you heard or do you know about any statement or remark made by or on behalf of any party to this lawsuit, other than yourself, concerning any issue in this lawsuit? If in the affirmative, please state:

a. The name and address of each person who made the statement or statements;
b. The name and address of each person who heard it; and
c. The date, time, place, and substance of each statement.

ANSWER:

INTERROGATORY NO. 12:

Please identify all officers who completed reports concerning this incident. Include in your answer:

a. The name of said individuals who filed reports;
b. The number of reports filed by each officer; and
e. The date on which these reports were filed.

ANSWER:

INTERROGATORY NO. 13:

Please identify any transcripts taken of any oral statements given by you or any other officer regarding the incident described in the Complaint.

ANSWER:

INTERROGATORY NO. 14:

Identify the person or persons in charge of investigating complaints or allegations of officers' misconduct while Officer Roper was employed as an officer with the Arlington Police Department.

ANSWER:

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INTERROGATORY 15:

Describe defendant's contention how Tavis Crane's injuries occurred on the night of the incident made the basis of this lawsuit.

ANSWER:

INTERROGATORY 16:

If an internal investigation was conducted by the city of Arlington or any other agency regarding the incident in question, describe any reports that were issued or any actions that were taken as a result of the investigation.

ANSWER:

INTERROGATORY 17:

Identify any crime-scene photographs, reports, or other materials that resulted from the incident made the basis of this lawsuit.

ANSWER:

INTERROGATORY 18:

Please state whether Defendant Roper unholstered, pointed, discharged, fired or otherwise used an authorized or issued firearm from the Arlington Police Department at the time of the incident.

ANSWER:

INTERROGATORY 19:

Please state whether Roper has ever been the subject of a civilian complaint or allegations of misconduct, whether on-duty or off-duty, including but not limited to civil lawsuits. If so, for each complaint or allegation, state:

a. When the complaint/allegation was made;

b. The name and address of each complainant;

c. Describe in detail the allegations of each complaint/allegation;

d. Whether the Arlington Police Department or another entity investigated the

complaint. If so, give the name, badge number, and position of each individual involved in the investigation.

e. Describe in detail how each investigation was conducted and what its ultimate result was.

f. If a suit was filed in court, provide the court in which the suit was initiated, the name and address of the attorney for each party, and describe the results of the suit.

INTERROGATORY 20:

Please state whether Roper has ever been alleged to have committed or been investigated for or charged with a violation of the disciplinary code of the Arlington Police Department or any other law enforcement agency, or otherwise been the subject of any internal investigation, on or off duty? If so, state:

a. The dates on which each investigation or charge occurred;

b. The section of the disciplinary code alleged to have been violated and/or the subject of the investigation; and

c. The result of each charge and/or investigation, including any finding, recommendation and whether a reprimand, coaching or any form of discipline was requested or implemented.

ANSWER:

INTERROGATORY 21:

Please state whether any Arlington Police Department member has been the subject of a civilian complaint, including civil lawsuits regarding their use of deadly force including but not limited to a firearm. If so, for each complaint, state:

a. When the complaint was made;

b. The name and title of the individual against whom the complaint was brought;

c. The name and address of each complainant;

d. Describe in detail the allegations of each complaint;

e. Whether the Arlington Police Department or another entity investigated the complaint. If so, give the name, badge number, and position of each individual involved in the investigation.

f. Describe in detail how each investigation was conducted and what its ultimate

result was.

g. If a suit was filed in court, provide the court in which the suit was initiated, the name and address of the attorney for each party, and describe the results of the suit.

ANSWER:

INTERROGATORY 22:

Please state the number of civilians who have been shot by Arlington Police Department officers and deputies for the ten years preceding the shooting of Tavis Crane, and for each, state the full name of the victim, full name and badge number of each officer involved in the shooting, place where the shooting occurred, and whether the victim was killed or wounded.

ANSWER:

INTERROGATORY 23:

Please state and identify which policies and procedures for the Arlington Police Department regarding discharging firearms and use of deadly force were in effect on February 1, 2017.

ANSWER:

INTERROGATORY 24:

Please state the number of Arlington Police Department officers who have reported using deadly force, including but not limited to use of a firearm, for the ten years preceding the death of Tavis Crane, and for each, state the full name of the subject, full name and badge number of each officer involved, place where the incident occurred, and whether the victim was killed or injured.

ANSWER:

INTERROGATORY 25:

Please state in detail whether Officer Roper's decision to enter Tavis Crane's vehicle pursuant to policy and the training he received from the APD.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L. CRANE, Individually and as the Administrator of the Estate of TAVIS M. CRANE and on behalf of the statutory beneficiaries, G.C., T.C., G.M., Z.C., A.C., C.C., T.J. and T.C., JR., the surviving children of Tavis M. Crane, ALPHONSE HOSTON, DWIGHT JEFFERSON, VALENCIA S. JOHNSON, and Z.C., individually, by and through her guardian, ZAKIYA SPENCE,	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:19-CV-00091-P
v.	§	
	§	JURY TRIAL DEMANDED
THE CITY OF ARLINGTON, TEXAS, and CRAIG ROPER,	§	
Defendants.	§	

PLAINTIFF'S DE'ON L. CRANE'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT CRAIG ROPER

TO: Defendant, Craig Roper, by and through his attorney of record, James T. Jeffrey, Jr., Law Offices of Jim Jeffrey, 3200 West Arkansas Lane, Arlington, Texas 76016.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff De'On L. Crane hereby serves this First Set of Request for Production on Defendant Craig Roper and requests written responses within thirty (30) days of service.

These requests for Production of Documents are being propounded on the grounds that each is relevant to the subject matter of this action or is reasonably calculated to lead to the discovery of admissible evidence.

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Respectfully submitted,

By:*/s/ Daryl K. Washington*

Daryl K. Washington
State Bar No. 24013714
WASHINGTON LAW FIRM, PC
325 N. St. Paul St., Suite 3950
Dallas, Texas 75201
Telephone: (214) 880-4883
Facsimile: (214) 751-6685

and

Thad Spalding
State Bar No. 00791708
tspalding@dpslawgroup.com
Shelby J. White
State Bar No. 24084086
swhite@dpslawgroup.com
DURHAM, PITTARD & SPALDING, LLP
P.O. Box 224626
Dallas. Texas 75222
214-946-8000
214-946-8433 fax
ATTORNEYS FOR PLAINTIFFS

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Certificate of Service

I hereby certify that on **August 28, 2023**, I served the foregoing discovery to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

Baxter W. Banowsky
bwb@banowsky.com
Banowsky, P.C.
12801 N. Central Expressway., Ste. 1700
Dallas, Texas 75243

James T. Jeffrey, Jr.
jim.jeffrey@sbcglobal.net
Law Offices of Jim Jeffrey
3200 West Arkansas Lane
Arlington, Texas 76016
Attorney for Defendant, Craig Roper

Cynthia Withers
cynthia.withers@arlingtontx.gov
City of Arlington
City Attorney's Office
Mail Stop #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231
Attorneys for Defendant, City of Arlington

/s/ Daryl K. Washington
Daryl K. Washington

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INSTRUCTIONS FOR REQUEST FOR PRODUCTION

DOCUMENT REQUESTED: The request set out below ("Requests") call for documents in Defendants actual or constructive possessions, custody, control or care, including, but not limited to, those documents in the actual or constructive possessions, custody, control or care, of any lawyer, agent, or other representative of Defendant. If after providing the Responses and Production called for by these Requests, Defendant become aware of any documents called for by the Request which was not previously provided, Defendant is requested to promptly provide a copy of that document to Plaintiff's Attorneys.

DOCUMENT WITHHELD: If any document is withheld under a claim of privilege or other protection, as to aid the Court and the parties hereto in determining the validity of the claim of privilege or other protection, Defendant is requested to provide the following information with respect to each withheld document:

1. The identity of the person(s) who prepared the document, who signed it, and over whose name it was sent or issued;
2. The identity of the person(s) to whom the document was directed;
3. The nature and substance of the document with sufficient particularity to enable the Court and Plaintiff or Counsel to identify the document;
4. The date of the document;
5. The identity of the person who has custody of, or control over, the document and each copy thereof;
6. The identity of each person to whom a copy of the document was furnished;
7. The number of pages of the documents;
8. The basis on which any privilege or other protection is claimed; and

9. Whether any non-privilege matter is included in the document.

PARTIAL PRODUCTION: If Defendant objects to a particular Request, or any portion of any Request, Defendant must produce all documents called for but not subject to the objection. Whenever a document is not produced in full, describe, to the best of Defendant's knowledge, information, and belief and with as much particularity as possible, those portions of the document which are not produced.

ORDERLY RESPONSE: Plaintiff requests Defendant produce the documents called for herein either as they are kept in the usual course of Defendant's affairs, or organize them in such a manner as will facilitate their identification with the particular Request(s) to which the documents are responsive.

These Requests shall be deemed continuing and supplemental answers shall be required if you directly or indirectly obtain further information after your initial response as provided by Fed. R. Civ. P. Rule 26(e).

Each Request solicits all information obtainable by Defendant from Defendant's attorneys, investigators, agents, employees and representatives. If you answer a Request on the basis that you lack sufficient information to respond, describe any and all efforts you made to inform yourself of the facts and circumstances necessary to answer or respond.

DEFINITIONS

1. "Control" shall mean the person or persons requested to produce documents herein who have the right to secure the document, or a copy thereof, from another person or public entity or private entity which has actual, physical possession of the original document.

2. "Custody" shall mean the actual possession, custody or control, or constructive possession, custody or control and includes, but is not limited to, any documents contained in any filing or recordation system, manual or electronic, maintained by Defendant, or contained in any person or

entity's filing or recordation system as to which Defendant has the right to compel that person to produce the necessary document.

3. "Plaintiff" means De'On L. Crane ("Crane"), Individually and as the surviving mother of Tavis Crane, deceased, and, as the context requires, includes her agents, representatives, affiliates, predecessors, successors, and persons acting or purporting to act on her behalf or under her control.

4. "Defendant," "you" or "your" or "Roper" means Craig Roper and includes your agents, partners, associates, employees, representatives, affiliates, predecessors, successors and persons acting or purporting to act on Your behalf or under your control.

5. "Complaint" and or "lawsuit" means the original complaint and all subsequent amendments thereto filed in the Northern District of Texas, Fort Worth Division, styled *De'on Crane, et al. v. The City of Arlington, Texas, et al,* Cause no. 4:19-CV-00091-P.

6. "City" means City of Arlington, Texas and all of its agents, employees, representatives, and individuals or entities acting or purporting to act on its behalf.

7. "Persons" as used herein includes natural persons, general partnerships, limited partnerships, joint ventures, associations, corporations, governmental agencies, departmental units or subdivisions thereof, and any other form of business entity or associations, as the case may be.

8. "Document" or "Documents" shall mean both drafts and final versions of any written, typed, printed, recorded, graphic or photographic matter, or sound productions, however produced or reproduced, including copies, computer or data processing inputs or outputs in whatever form, or any means of electronic storage of information. These include, but are not limited to, all letters, e-mails, text messages, telegrams, cables, wires, notes, studies, memoranda, accounts, emails, opinions, translations, charts, graphics, brochures, instruction sheets, advertisements, articles, excerpts, invoices, ledgers, books, publications, diagrams, statements, drafts, transcripts, agreements, contracts, minutes, records, diaries, voice recordings, journals, logs, work papers, manuals, calendars, governmental forms, computer or data processing inputs or printouts, microfiche or microfilm, videotapes, recordings, statistical compilations, slides, photographs, negatives, motion pictures or other film, samples or other physical objects of whatever nature, whether originals or reproductions, now or formerly in the possession, custody access or control of you or any servant, employee, agent, representative or affiliate of yours. The term "documents" also includes every copy where the copy is not an identical reproduction of the original or where the copy contains any commentary, marginal comment or any notations that may not appear in the original.

6. "Lawsuit" refers to all claims, crossclaims, counterclaims and defenses, whether now asserted or asserted hereafter by amendment, supplement or otherwise, of the parties in the above-styled and numbered cause.

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7. "Incident in Question" refers to the incident that took place on February 1, 2017, when Arlington Police Officer Craig Roper's use of excessive and deadly force resulted in the death of Tavis Crane. The incident is referred to in more detail in Plaintiffs' Complaint filed in this Lawsuit.

11. "Correspondence" shall mean telephone communications, electronic mail, and items received by mail or fax.

12. "Incidents" include but is not limited to, Officer Involved Shootings, citizen complaints against Arlington Police Officers, discipline of officers and excessive force claims against Arlington Police Officers.

13. The terms "relating" or "evidencing" or "pertaining" or any derivation thereof shall mean and include any and all documents relating to, pertaining to, or evidencing the requested material or information, in whole or in part, or containing or reflecting the information requested. "Relating," "evidencing," or "pertaining" or any derivation thereof also shall mean and include any and all documents that tend to support or to disprove any allegations set out in that pleading, or that constitute, comprise, identify, refer to, or deal with the subject matter of the allegation.

14. The word "communication" means any transfer, attempted transfer or request for a transfer of information between persons.

15. The word "and" shall mean "and/or."

16. The word "or" shall mean "and/or."

17. The plural of any word used in these Requests shall include the singular and the singular includes the plural.

18. The masculine gender of any word used in these Requests shall include the feminine and the neuter.

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REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO.1:

Produce any and all original DOCUMENT(S) pertaining to communication between YOU and the Arlington Police dispatch on the day of the incident.

REQUEST FOR PRODUCTION NO.2:

Produce all original DOCUMENT(S) that RELATE to YOUR contention that YOU did not violate Arlington Police Department Policy when YOU shot and killed Tavis Crane.

REQUEST FOR PRODUCTION NO.3:

Any and all original DOCUMENT(S) relating to YOUR social medial posts, messages, status updates, or comments that relate or regard SPD, any current or former employee of SPD, or your most recent petition, including but not limited to:

a. All content from your Facebook account that is obtainable by using "Download my Data on Facebook" feature.

b. All your Facebook, LinkedIn, Instagram, Twitter.com, SnapChat, Google + posts, comments, messages, or "tweets" that related to or regard the SAPD, any current or former employee of the Company, or your most recent pleading.

REQUEST FOR PRODUCTION NO.4:

Produce all original DOCUMENT(S) (including but not limited to) emails, text messages, notes), recordings or photographs mentioning, reflecting, regarding, or relating to any conversations, correspondence, meetings, discussions, interviews, telephone calls, or contact between you and any employee, former employee, representative or agent of the Arlington Police Department concerning or relating in any manner directly or indirectly with the subject matter of your most recent pleading.

REQUEST FOR PRODUCTION NO.5:

Produce all original DOCUMENT(S) (including but not limited to) emails, text messages, notes), recordings or photographs mentioning, reflecting, regarding, or relating to any conversations, correspondence, meetings, discussions, interviews, telephone calls, or contact between you and any governmental agency, person, entity, state, local or federal, dealing in any manner, directly or indirectly with the allegations in your most recent pleading.

REQUEST FOR PRODUCTION NO.6:

Produce all original DOCUMENT(S) to be copied (including but not limited to) emails, text messages, notes), recordings or photographs mentioning, reflecting, regarding, or relating to any conversations, correspondence, meetings, discussions, interviews, telephone calls, or contact between you and any person or entity, public or private, dealing in any manner with the allegations contained in your most recent pleading other than your attorneys.

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REQUEST FOR PRODUCTION NO.7:

Produce all original DOCUMENT(S) regarding or relating to witness statements in connection with the incident.

REQUEST FOR PRODUCTION NO.8:

Please produce any and all original DOCUMENT(S) that evidence YOUR Involvement in prior officer involved shootings of a suspect.

REQUEST FOR PRODUCTION NO.9:

Please produce any and all original DOCUMENT(S) that evidence prior internal complaints against YOU.

REQUEST FOR PRODUCTION NO.10:

Please produce any and all original DOCUMENT(S) that evidence prior disciplinary action taken against YOU by the Arlington Police Department.

REQUEST FOR PRODUCTION NO. 11:

Please produce any and all Arlington police reports and supplemental reports pertaining to the incident including, but not limited to, the original incident and arrest report; all supplemental reports; all internal investigation reports, all internal memorandums.

REQUEST FOR PRODUCTION NO. 12:

Please produce any and all audio/video recordings pertaining to the incident in question.

REQUEST FOR PRODUCTION NO. 13:

Please produce any written or typed statements, including memorandums, produced by YOU concerning the incident made at the request of any ranking officer of the Arlington Police Department.

REQUEST FOR PRODUCTION NO. 14:

Please produce any written or typed statements, including memorandums, produced by any Arlington Police detective concerning the incident made at the request of any ranking officer of the Arlington Police Department.

REQUEST FOR PRODUCTION NO. 15:

Please produce all dispatched radio transmissions to any Arlington Police Department from the original call for service up to and including when all police officers cleared the location.

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REQUEST FOR PRODUCTION NO. 16:

Please produce all car-to-car radio transmission between Arlington Police Officers who were involved in the incident from the original call for service until the officers cleared the location.

REQUEST FOR PRODUCTION NO. 17:

Please produce all training received by YOU while employed with the Arlington Police Department including, but not limited to, the State of Texas Basic POST police academy; Field Training Officer (FTO); POST certified seminars; Department of Justice Training Bulletins; In-Service Training.

REQUEST FOR PRODUCTION NO. 18:

Please produce all department evaluations of YOU including YOUR FTO evaluations.

REQUEST FOR PRODUCTION NO. 19:

Please produce all Internal Affairs Investigations involving YOU while employed with the Arlington Police Department.

REQUEST FOR PRODUCTION NO. 20:

Please produce all documents supporting, discussing or concerning one or more of the facts, events, claims or other matters alleged in the Answer filed by you.

REQUEST FOR PRODUCTION NO. 21:

Please produce all documents constituting, discussing, reflecting or concerning communications, including, but not limited to, conversations and correspondence between you or any of your representatives or attorneys, and the parties in this matter, concerning, in whole or in part, one or more of the facts, events, claims or other matters alleged in the pleadings filed in this lawsuit.

REQUEST FOR PRODUCTION NO. 22:

Please produce all written communications between you and the parties to this lawsuit regarding the incident made the basis of this suit.

REQUEST FOR PRODUCTION NO. 23:

Please produce all written communications between you and the other named defendant to this lawsuit.

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REQUEST FOR PRODUCTION NO. 24:

Please produce all reports you sent to any third parties regarding the incident made the basis of this suit.

REQUEST FOR PRODUCTION NO. 25:

Please produce any documentation of legal actions, excluding this case, filed against YOU for the use of excessive and/or deadly force, police brutality, racial profiling and racism occurring from the years 2015 to the present.

REQUEST FOR PRODUCTION NO. 27:

Please produce all statements of witnesses referring to the incident in question.

REQUEST FOR PRODUCTION NO. 28:

Please produce your police logs of any communication concerning the incident made the basis of this lawsuit.

REQUEST FOR PRODUCTION NO. 29:

Please produce color copies of all photographs, copies of any videotapes, tape recordings, and tapes of radio transmissions in your possession, custody, and/or control regarding the incident.

REQUEST FOR PRODUCTION NO. 30:

Please produce any and all memoranda, reports, or other writings relating to the City of Arlington's investigation of YOU in connection with the incident made the basis of this lawsuit.

REQUEST FOR PRODUCTION NO. 31:

Please produce all documents in your custody that show, discuss, explain, and illustrate the policies, customs, and procedures regarding the arrest and provision of medical care to persons detained by the officers, agents, and employees of the City of Arlington Police Department.

REQUEST FOR PRODUCTION NO. 32:

Please produce copies of all e-mails, facsimile, text messages, voice mails, personal notes, and electronic communications in your custody concerning the incident made the basis of this lawsuit.

REQUEST FOR PRODUCTION NO. 33:

Please produce any and all of YOUR training records from the beginning of YOUR employment with the City of Arlington to the present.

REQUEST FOR PRODUCTION NO. 34:

Please produce any and all memoranda and records relating to the discipline of YOU by any governmental agency from the years 2010 to the present.

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REQUEST FOR PRODUCTION NO. 35:

Please produce any and all memoranda, reports, or other writings relating to the City of Arlington's investigation of the incident made the basis of this lawsuit.

REQUEST FOR PRODUCTION NO. 36:

Please produce any and all police memoranda, documents, circulars, bulletins, manuals, policies and procedures, and general orders of any kind prepared by the City of Arlington that indicate the amount of force that is permissible in arresting an individual in situations as you encountered with Tavis Crane.

REQUEST FOR PRODUCTION NO. 37:

Please produce copies of your phone records (business and personal), including text messages, for the periods February 1, 2017 to October 28, 2017.

REQUEST FOR PRODUCTION NO. 38:

Please produce any and all documents relating to YOUR employment, including background investigations, prior employment, and drug testing.

REQUEST FOR PRODUCTION NO. 39:

Please produce copies of all phone records pertaining to the incident made the basis of this lawsuit.

REQUEST FOR PRODUCTION NO. 40:

All written reports of inspection, tests, writings, drawings, graphs, charts, recordings or opinions of any expert who has been used for consultation and whose work product forms a basis either in whole or in part of the opinions of an expert who is to be called as a witness.

REQUEST FOR PRODUCTION NO. 41:

Produce any and all documents relating or referring to all payments made by you in connection with any and all expert testimony, investigation, or report preparation in use of force/excessive force civil rights litigation for any expert who has been used for consultation and whose work product forms a basis either in whole or in part of the opinions of an expert who is to be called as a witness in this case.

REQUEST FOR PRODUCTION NO. 42:

Produce all papers, articles, or any other treatises or anything written by any expert who has been used for consultation and whose work product forms a basis either in whole or in part of the opinions of an expert who is to be called as a witness in this case.

REQUEST FOR PRODUCTION NO. 43:

Produce a copy of all expert reports generated by your expert witness, who is to be called as a witness in this case, in use of force/excessive for civil rights litigation over the past five (5)

years.

REQUEST FOR PRODUCTION NO. 44:

Produce all documents and/or a list relating to or referring to any cases where your expert witness, who is to be called as a witness in this case, have been disqualified or limited by a court in the scope of his/her testimony in use of force/excessive force civil rights litigation.

REQUEST FOR PRODUCTION NO. 45:

Produce all documents and/or a list relating to or referring to any cases where your expert witness, who is to be called as a witness in this case, have been disqualified or limited by a court in the scope of his/her testimony in use of force/excessive force civil rights litigation.

REQUEST FOR PRODUCTION NO. 46:

All communications between you (or your attorneys) and any expert who may be called upon by you to testify on your behalf, including all letters, facsimile transmissions, correspondence, electronic mail (e-mail), instant messages, reports, and memoranda. (This request also applies to any communications between you and any consulting expert whose opinions or impressions have been reviewed by any expert whom you may call to testify as any expert witness by deposition, affidavit, or at trial.)

REQUEST FOR PRODUCTION NO. 47:

All documents containing the factual observations, tests, supporting data, calculations, opinions, and mental impressions of each expert who you may call to testify as an expert witness by deposition, affidavit, or at trial. (This request applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinions or impressions have been reviewed by an expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

REQUEST FOR PRODUCTION NO. 48:

All documents relied upon by any expert who you may call to testify as an expert witness by deposition, affidavit, or at trial that relate to or form the basis of the mental impressions and opinions held by such expert. (This request applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by an expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

REQUEST FOR PRODUCTION NO. 49:

All reports and documents prepared by, reviewed by, or provided to an expert who may be called upon by you to testify by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert whom the Plaintiffs may call to testify as an expert witness by deposition, affidavit or at trial.) The Plaintiff specifically request all drafts and preliminary reports made by your experts in connection with this litigation.

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REQUEST FOR PRODUCTION NO. 50:

A copy of the most recent curriculum vitae from each expert witness whom you may call to testify by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

REQUEST FOR PRODUCTION NO. 51:

A copy of all reports, journal articles, books, letters expressing opinion and/or beliefs, or any other document which contains a professional and/or expert opinion or belief, for which each and every expert witness whom you may call to testify on your behalf has authored, co-authored, edited, or contributed to a peer-review. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by an expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

REQUEST FOR PRODUCTION NO. 52:

A copy of all deposition transcripts or transcripts of trial testimony from each expert who you may call as an expert witness by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

REQUEST FOR PRODUCTION NO. 53:

All models, photographs, videotapes, audiotapes, compilations of data, and other tangible things prepared by or provided to any expert who may be called upon by you to testify by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinion or impressions have been reviewed by any expert who you may call to testify as an expert witness by deposition, affidavit, or at trial.)

REQUEST FOR PRODUCTION NO. 54:

A list of all cases (including case names, cause number, state, court and date of testimony) in which each expert witness whom you may call as an expert witness by deposition, affidavit, or at trial has testified, either by deposition, affidavit, or at trial. (This request also applies to any expert who has been consulted by you, but whom you do not expect to call as an expert witness at trial, if the consulting expert's opinions or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

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REQUEST FOR PRODUCTION NO. 55:

All invoices, billing statements, or other evidence of charge from any expert who may be called upon by you to testify by deposition, affidavit or at trial. (This request also applies to any consulting expert whose opinions or impressions have been reviewed by any expert whom you may call to testify as an expert witness by deposition, affidavit, or at trial.)

Appendix g

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L. CRANE, Individually and as the Administrator of the Estate of TAVIS M. CRANE and on behalf of the statutory beneficiaries, G.C., T.C., G.M., Z.C., A.C., C.C., T.J. and T.C., JR., the surviving children of Tavis M. Crane, ALPHONSE HOSTON, DWIGHT JEFFERSON, VALENCIA S. JOHNSON, and Z.C., individually, by and through her guardian, ZAKIYA SPENCE,	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:19-CV-00091-P
v.	§	
	§	JURY TRIAL DEMANDED
THE CITY OF ARLINGTON, TEXAS, and CRAIG ROPER,	§	
Defendants.	§	

PLAINTIFF DE'ON L. CRANE'S FIRST SET OF INTERROGATORIES TO DEFENDANT CRAIG ROPER

TO: Defendant, Craig Roper, by and through his attorney of record, James T. Jeffrey, Jr., Law Offices of Jim Jeffrey, 3200 West Arkansas Lane, Arlington, Texas 76016.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff De'On L. Crane hereby serves this her First Set of Interrogatories on Defendant Craig Roper and requests written responses within thirty (30) days of service.

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Respectfully submitted,

By:*/s/ Daryl K. Washington*

Daryl K. Washington
State Bar No. 24013714
WASHINGTON LAW FIRM, PC
325 N. St. Paul St., Suite 3950
Dallas, Texas 75201
Telephone: (214) 880-4883
Facsimile: (214) 751-6685

and

Thad Spalding
State Bar No. 00791708
tspalding@dpslawgroup.com
Shelby J. White
State Bar No. 24084086
swhite@dpslawgroup.com
DURHAM, PITTARD & SPALDING, LLP
P.O. Box 224626
Dallas. Texas 75222
214-946-8000
214-946-8433 fax

ATTORNEYS FOR PLAINTIFFS

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Certificate of Service

I hereby certify that on **August 28, 2023**, I served the foregoing discovery to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

Baxter W. Banowsky
bwb@banowsky.com
Banowsky, P.C.
12801 N. Central Expressway., Ste. 1700
Dallas, Texas 75243

James T. Jeffrey, Jr.
jim.jeffrey@sbcglobal.net
Law Offices of Jim Jeffrey
3200 West Arkansas Lane
Arlington, Texas 76016
Attorney for Defendant, Craig Roper

Cynthia Withers
cynthia.withers@arlingtontx.gov
City of Arlington
City Attorney's Office
Mail Stop #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231
Attorneys for Defendant, City of Arlington

/s/ Daryl K. Washington
Daryl K. Washington

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INSTRUCTIONS FOR ANSWERING

1. You shall answer these personally or shall choose one or more of your proper employees, officers, or agents to answer the Interrogatories, and the employee, officer or agent shall furnish such information as is known or available to the organization.

2. Where an Interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.

3. You are reminded that all answers must be made separately and fully and then at incomplete or evasive answer is a failure to answer.

4. Where the word "accident" is used, it refers to the incident which is the basis of this lawsuit unless otherwise specified.

2. When used in these Interrogatories, the phrases "Defendant", "individual in question", "you", or any synonym thereof are intended to and shall embrace and include, in addition to Defendant, individually, Defendant's attorneys, agents, servants, employees, representatives, private investigators, insurance adjusters, and all others who are in possession of, in control of, or may have obtained information for or on behalf of Defendant.

3. Throughout these Interrogatories, wherever Defendant is requested to identify a communication of any type and such communication was oral, the following information should be furnished with regard to each such communication:

   a) By whom it was made, and to whom;

   b) The date upon which it was made;

   c) Who else was present when it was made;

   d) Whether it was recorded or described in any writing of any type and, if so, identification of each such writing in the manner indicated in #7 below.

4. Throughout these Interrogatories, wherever Defendant is requested to identify a communication, letter, document, memorandum, report, or record of any type and such communication was written, the following information should be furnished:

   e) A specific description of its nature (e.g., whether it is a letter, a memorandum, etc.);

   f) By whom it was made and to whom it was addressed;

   g) The name and address of the present custodian of the writing or, if not known, the name and address of the present custodian of a copy thereof.

5. Throughout these Interrogatories, wherever Defendant is requested to identify a person, the following information should be furnished;

h) The person's full name;

i) His or her present home and business address and telephone number at each address;

j) His or her occupation; and

k) His or her place of employment.

6. Please insert your answers in the space provided below each Interrogatory. Should you need additional space, please attach extra sheet(s). Unless otherwise specified, all information requested pertains to the incident mentioned in the Complaint occurring on September 11, 2021.

DEFINITIONS

1. "Control" shall mean the person or persons requested to produce documents herein who have the right to secure the document, or a copy thereof, from another person or public entity or private entity which has actual, physical possession of the original document.

2. "Custody" shall mean the actual possession, custody or control, or constructive possession, custody or control and includes, but is not limited to, any documents contained in any filing or recordation system, manual or electronic, maintained by Defendant, or contained in any person or entity's filing or recordation system as to which Defendant has the right to compel that person to produce the necessary document.

3. "Plaintiff" means De'On L. Crane ("Crane"), Individually and as the surviving mother of Tavis Crane, deceased, and, as the context requires, includes her agents, representatives, affiliates, predecessors, successors, and persons acting or purporting to act on her behalf or under her control.

4. "Defendant," "you" or "your" or "Roper" means Craig Roper and includes your agents, partners, associates, employees, representatives, affiliates, predecessors, successors and persons acting or purporting to act on Your behalf or under your control.

5. "Complaint" and or "lawsuit" means the original complaint and all subsequent amendments thereto filed in the Northern District of Texas, Fort Worth Division, styled *De'on Crane, et al. v. The City of Arlington, Texas, et al,* Cause no. 4:19-CV-00091-P.

6. "City" means City of Arlington, Texas and all of its agents, employees, representatives, and individuals or entities acting or purporting to act on its behalf.

7. "Persons" as used herein includes natural persons, general partnerships, limited partnerships, joint ventures, associations, corporations, governmental agencies, departmental units or subdivisions thereof, and any other form of business entity or associations, as the case may be.

8. "Document" or "Documents" shall mean both drafts and final versions of any written, typed, printed, recorded, graphic or photographic matter, or sound productions, however produced or reproduced, including copies, computer or data processing inputs or outputs in

whatever form, or any means of electronic storage of information. These include, but are not limited to, all letters, e-mails, text messages, telegrams, cables, wires, notes, studies, memoranda, accounts, emails, opinions, translations, charts, graphics, brochures, instruction sheets, advertisements, articles, excerpts, invoices, ledgers, books, publications, diagrams, statements, drafts, transcripts, agreements, contracts, minutes, records, diaries, voice recordings, journals, logs, work papers, manuals, calendars, governmental forms, computer or data processing inputs or printouts, microfiche or microfilm, videotapes, recordings, statistical compilations, slides, photographs, negatives, motion pictures or other film, samples or other physical objects of whatever nature, whether originals or reproductions, now or formerly in the possession, custody access or control of you or any servant, employee, agent, representative or affiliate of yours. The term "documents" also includes every copy where the copy is not an identical reproduction of the original or where the copy contains any commentary, marginal comment or any notations that may not appear in the original.

9. "Lawsuit" refers to all claims, crossclaims, counterclaims and defenses, whether now asserted or asserted hereafter by amendment, supplement or otherwise, of the parties in the above-styled and numbered cause.

10. "Incident in Question" refers to the incident that took place on February 1, 2017, when Arlington Police Officer Craig Roper's use of excessive and deadly force resulted in the death of Tavis Crane. The incident is referred to in more detail in the Plaintiffs' Complaint filed in this Lawsuit.

11. "Correspondence" shall mean telephone communications, electronic mail, and items received by mail or fax.

12. "Incidents" include but is not limited to, Officer Involved Shootings, citizen complaints against Arlington Police Officers, discipline of officers and excessive force claims against Arlington Police Officers.

13. The terms "relating" or "evidencing" or "pertaining" or any derivation thereof shall mean and include any and all documents relating to, pertaining to, or evidencing the requested material or information, in whole or in part, or containing or reflecting the information requested. "Relating," "evidencing," or "pertaining" or any derivation thereof also shall mean and include any and all documents that tend to support or to disprove any allegations set out in that pleading, or that constitute, comprise, identify, refer to, or deal with the subject matter of the allegation.

14. The word "communication" means any transfer, attempted transfer or request for a transfer of information between persons.

15. The word "and" shall mean "and/or."

16. The word "or" shall mean "and/or."

17. The plural of any word used in these Requests shall include the singular and the singular includes the plural.

18. The masculine gender of any word used in these Requests shall include the feminine and the neuter.

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FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Please state the name and address of the person or persons answering these interrogatories, including his/her relationship to the defendant for which answers are being provided and their position of employment.

ANSWER:

INTERROGATORY NO. 2:

Please provide a summary of individual Your police and criminal justice experience, beginning with Your first police or criminal justice related training or Your first employment with any police department or criminal justice agency, (whichever came first) and ending with your present employment. For each police department or criminal justice agency that you worked for, please also provide:

a. The date of hire, the date of separation, and the reason for separation (if applicable);

b. A chronological listing of all ranks and all positions held, and a description of duties for each rank and position held;

c. A complete list of all police and criminal justice training that you attended;

d. A list of assignments from your start date with the Arlington Police Department to present; and,

The reason for the change in assignment(s), if any, previously mentioned in subsection (d) above.

ANSWER:

INTERROGATORY NO. 3:

Have you obtained any statements, whether recorded or in writing, regarding any of the issues in this lawsuit? If so, please provide the name, business address and telephone number, employer, and occupation of each person taking any such statements; the present location or custodian of

any such statements; the dates on which any such statements were taken; and the name, address and telephone number and employer of each person who has provide any such statement.

ANSWER:

INTERROGATORY NO. 4:

If you contend that Your use of deadly force was justified, please set forth specifically why.

ANSWER:

INTERROGATORY NO. 5:

Identify all persons who have, whom you believe to have, knowledge of facts concerning, supporting or disputing one or more of the facts, events, claims or other matters alleged in the answer that you filed. Please include a statement of their knowledge of facts concerning the incident in question.

ANSWER:

INTERROGATORY NO. 6:

Please set forth specifically why You shot and killed Tavis Crane. Please set forth specifically each such reason, duty and/or law authorizing such.

ANSWER:

INTERROGATORY NO. 7:

Please identify by full name, title, badge number, rank, and district or unit each deputy and/or police officer(s) who arrived in the vicinity of the area, after Tavis Crane was shot, state the time each deputy and/or police officer arrived, and state whether each individual prepared a police report or other record of his or her activities on the day in question.

ANSWER:

INTERROGATORY NO. 8:

Please identify by full name, title, badge number, and rank of any Arlington Police Department officer or city of Arlington's employee or agent you allege has knowledge of the Incident, the relevant events leading up to the Incident, or the relevant events and investigation following the

Incident. For each individual identified, provide a brief summary of the information in their possession.

ANSWER:

INTERROGATORY NO. 9:

Have you heard or do you know about any statement or remark made by or on behalf of any party to this lawsuit, other than yourself, concerning any issue in this lawsuit? If in the affirmative, please state:

a. The name and address of each person who made the statement or statements;
b. The name and address of each person who heard it; and
c. The date, time, place, and substance of each statement.

ANSWER:

INTERROGATORY NO. 10:

Please identify any transcripts taken of any oral statements given by you or any other officer regarding the incident described in the Complaint.

ANSWER:

INTERROGATORY NO. 11:

Please state whether You have ever been the subject of a civilian complaint or allegations of misconduct, whether on-duty or off-duty, including but not limited to civil lawsuits. If so, for each complaint or allegation, state:

a. When the complaint/allegation was made;

b. The name and address of each complainant;

c. Describe in detail the allegations of each complaint/allegation;

d. Whether the Arlington Police Department or another entity investigated the complaint. If so, give the name, badge number, and position of each individual involved in the investigation.

e. Describe in detail how each investigation was conducted and what its ultimate result was.

If a suit was filed in court, provide the court in which the suit was initiated, the name and address of the attorney for each party, and describe the results of the suit.

ANSWER:

INTERROGATORY 12:

Describe Your contention how Tavis Crane's injuries occurred on the night of the incident made the basis of this lawsuit.

ANSWER:

INTERROGATORY 13:

If an internal investigation was conducted by the city of Arlington or any other agency regarding the incident in question, describe any reports that were issued or any actions that were taken as a result of the investigation.

ANSWER:

INTERROGATORY 14:

Please state the name, age, telephone number and address of each witness to the shooting of Tavis Crane or all other persons with knowledge relevant to the shooting who are known to the Arlington Police Department or any of its agents or employees.

ANSWER:

INTERROGATORY 15:

Please state whether You have ever been the subject of a civilian complaint or allegations of misconduct, whether on-duty or off-duty, including but not limited to civil lawsuits. If so, for each complaint or allegation, state:

a. When the complaint/allegation was made;

b. The name and address of each complainant;

c. Describe in detail the allegations of each complaint/allegation;

d. Whether the Arlington Police Department or another entity investigated the complaint. If so, give the name, badge number, and position of each individual

involved in the investigation.

e. Describe in detail how each investigation was conducted and what its ultimate result was.

f. If a suit was filed in court, provide the court in which the suit was initiated, the name and address of the attorney for each party, and describe the results of the suit.

INTERROGATORY 16:

Please state whether You have ever been alleged to have committed or been investigated for or charged with a violation of the disciplinary code of the Arlington Police Department or any other law enforcement agency, or otherwise been the subject of any internal investigation, on or off duty? If so, state:

a. The dates on which each investigation or charge occurred;

b. The section of the disciplinary code alleged to have been violated and/or the subject of the investigation; and

c. The result of each charge and/or investigation, including any finding, recommendation and whether a reprimand, coaching or any form of discipline was requested or implemented.

ANSWER:

INTERROGATORY 17:

Please state and identify which policies and procedures for the Arlington Police Department regarding discharging firearms and use of deadly force were in effect on February 1, 2017.

ANSWER:

INTERROGATORY 18:

Please state whether there was any video, photographic, audio, or other kind of surveillance at the location where the shooting occurred, and if so, state:

a. Where the camera taking the surveillance was located;

b. How the video was recorded, i.e., digitally or otherwise;

c. If the video was preserved;

d. Who is in possession of the video; and,

e. Where the video is currently being stored.

ANSWER:

INTERROGATORY 19:

Please describe in detail any and all discipline, counseling, administrative leave, review, investigation, changes in assignment, personnel changes, loss of privileges, reprimand, training or any and all changes in employment and/or duties as a result of Your actions during the subject incident on February 1, 2017.

ANSWER:

INTERROGATORY 20:

State the number of times You fired your weapon on the date of the incident.

ANSWER:

INTERROGATORY 21:

State the kind of weapon and bullets used by You in the shooting at the incident and whether you used an Arlington Police Department issued gun in the shooting of Tavis Crane.

ANSWER:

INTERROGATORY 22:

Please state if your decision to enter the vehicle Tavis Crane was operating pursuant to policy and/or the training you received from the APD. If so, please state the specific policy and the date of the training.

ANSWER:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L. CRANE, et al	§	
	§	CIVIL ACTION NO.
v.	§	4:19-CV-00091-P
	§	
CITY OF ARLINGTON, et al	§	

JOINT SCHEDULING CONFERENCE REPORT

TO THE HONORABLE JUDGE OF SAID COURT:

The parties respectfully submit the following Joint Scheduling Conference Report as required by the Court's March 16, 2023 Order requiring scheduling conference and report for contents of Scheduling Order (Doc. 91).

I. Required Elements of Joint Report

(1) A statement detailing the date on which the Scheduling Conference was held, the location of the Scheduling Conference, the names of the attorneys present, a statement regarding whether meaningful progress toward settlement was made, and – without disclosing settlement figures – a statement regarding the prospect of settlement.

The scheduling conference was held on Thursday, April 6, 2023 at the office of Darryl K. Washington located at 325 N. St. Paul, Suite 3950, Dallas, Texas 75201.

The attorneys present were: Daryl K. Washington and Shelby White, attorney for Plaintiffs; James T. Jeffrey, attorney for Defendant Craig Roper; Cynthia Withers and Baxter Banowsky, attorneys for Defendant City of Arlington.

Settlement discussions took place, and the parties agree that mediation would be beneficial in pursuing settlement and are in the process of scheduling a mediation with Mike McCullough of Dallas.

(2) A brief statement of the claims and defenses.

Plaintiffs' claims: This is an action brought by the Plaintiffs against the City of Arlington, Texas and Officer Roper for his use of excessive and deadly force resulting in the unjustified death of Tavis M. Crane ("Tavis") under the color of law in violation of his individual rights under the Fourth Amendment of the United States Constitution and in violation of his civil rights pursuant to 42 U.S.C. § 1983.

Although the sequence of this case remains highly disputed, it is clear that the vehicle Tavis Crane was operating did not move until after Defendant Roper shot an unarmed Tavis for no lawful reason. Tavis did not attempt to hit an officer with his car nor did Defendant Roper enter the car to stop it from moving. It was Defendant Roper's unprovoked use of deadly force that killed Tavis before the vehicle moved. Defendant Roper placed everyone at risk, including his fellow officers, when he chose to enter the vehicle and certainly when he shot and killed the driver and caused the vehicle to begin moving. Roper's conduct was the direct cause of Tavis Crane's death.

The Plaintiffs filed suit against the City and Officer Craig Roper to recover not only for the brutal killing of Tavis, but also for their own wrongful death damages. Certain Plaintiffs—Dwight Jefferson, Valencia Johnson, and Z.C. (Crane's two-year-old daughter)—also brought their own excessive force claims against Officer Roper. Those claims, however, were dismissed by this Court and that dismissal was subsequently affirmed on appeal by the Fifth Circuit. *Crane v. City of Arlington, Tex.,* 50 F.4th 453, 468 (5th Cir. 2022).

Plaintiffs also bring claims against the City pursuant to *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658 (1978) and 42 U.S.C. § 1983, based on an official policy or custom of the Arlington Police Department, of which the City Council, the City Manager, the Mayor, and the Chief of Police all had actual or constructive knowledge and that was a moving force behind the constitutional violation that caused Tavis Crane's death. Specifically, Plaintiffs' Second Amended Complaint targets the City's failure to properly train its officers on use of force and de-escalation techniques. These failures resulted in a systemic City policy that encouraged its officers, like Roper, to "shoot first and ask questions later" even when "non-lethal control devices and tactics" could and should be used, and follow a "completely subjective continuum of force" rather than using the degree of force that is objectively reasonable. Notwithstanding the City's training failures, the City also—by opting not to discipline or supervise APD officers who showed they were inadequately trained in these aspects—ratified the use of even deadly force when no immediate threat of harm exists.

City of Arlington's defenses: Plaintiffs' claims against the City are without merit. Plaintiffs cannot show a constitutional violation, nor that any alleged constitutional violation was proximately caused by the City itself. Arlington cannot be held liable under § 1983 unless the alleged wrongful conduct of an employee is pursuant to a policy or custom of Arlington. *See Monell v. Dep't of Soc. Servs.,* 436 U.S. 658, 691 (1978). All claims against Arlington fail under *Monell* because Plaintiffs cannot show that an official policy or custom of Arlington was the moving force behind the alleged violation of Tavis Crane's constitutional rights. There is no evidence of deliberate indifference to support Plaintiffs' claim of failure to adequately train, supervise, or disciple officers, including Officer Roper. Further, Arlington contends that Officer Roper did not violate a clearly established constitutional right and that his actions were objectively reasonable and therefore Arlington cannot be liable in the absence of a constitutional violation.

To the extent Plaintiffs seek to recover exemplary damages against the City of Arlington (ECF No. 30, Page ID 305), federal law does not permit recovery of exemplary damages. The Supreme Court has clearly held that municipalities are immune from claims for

exemplary damages in § 1983 action. *See City of Newport v. Fact Concerts, Inc.,* 453 U.S.247, 267, 271 (1981).

Arlington asserts that Plaintiffs have not established the authority to pursue claims on behalf of all of the minors.

Officer Roper's claims and defenses:

Officer Roper is in the process of preparing a Petition for Writ of Certiorari to the United States Supreme Court to seek a reversal of the three judge panel opinion of the Fifth Circuit Court of Appeals.

This is a case against Officer Roper whereby Plaintiff De'On Crane asserts civil rights claims on behalf of decedent Tavis Crane – asserting that Officer Roper used excessive force. Plaintiffs Dwight Jefferson, Valencia Johnson, and Z.C. asserted claims against Officer Roper because they were nearby when he directed force at Tavis Crane. Such claims have been dismissed. The claims against Officer Roper based on force directed to Tavis Crane fail. Officer Roper asserts qualified immunity and asserts that Plaintiffs cannot penetrate either prong of his qualified immunity defense as to the claims based on force he directed at Tavis Crane.

Officer Roper knew Crane had a history of evading arrest and resisting arrest. Crane disobeyed orders, interfered with efforts of officers at the scene to take him into custody, Crane stopped his passenger Jefferson from complying with an officer's order to take the car keys from the ignition and shut off the car's engine. Crane kept the engine running despite Officers' efforts to have him turn off the engine. Crane refused orders to get out of his car. crane physically wrestled with and fought when Officer Roper entered the car and ordered Crane to stop the engine or he would be shot. Crane's actions created an immediate serious danger to all of the Officers at the scene and to the occupants of the car and to any persons who may have been in the vicinity. Officer Roper tried to stop Crane's threat of danger by using deadly force directed only at Crane. However, Officer Roper was unsuccessful in preventing Crane from seriously hurting an Officer – Crane ran over Officer Bowden twice. For these reasons, the first prong of qualified immunity fails because Officer Roper's use of force did not violate Fourth Amendment reasonableness standards.

Officer Roper further asserts that the second prong of qualified immunity cannot be overcome because he did not violate clearly established law in the context of the particular facts of this case. Officer Roper contends that he cannot be sued for any state law tort theories due to official immunity and statutory immunity pursuant to Tort Claims Act § 101.106. Officer Roper asserts all protections of his rights under the Texas and United States Constitutions.

Officer Roper asserts that Plaintiffs have not established the authority to pursue claims on behalf of all of the minor claimants.

(3) A proposed time limit to amend pleadings and join parties.

Plaintiffs' Position: A time limit to join parties is not necessary. Amended pleadings should, however, be permitted upon leave of Court no later than 150 days before trial. Any response to such a motion, or reply in support of such a motion, shall be within the time limits set by the Local Rules of the Northern District of Texas.

Defendants' Position: No additional time to amended pleadings and join parties is necessary. However, Plaintiffs indicated on 9/30/2020 (ECF No. 64) that De'On Crane does not have authority to act on behalf of minor child T.C. and therefore someone needs to be appointed to represent the child's interest.

Plaintiffs' live pleading is Plaintiffs' Second Amended Original Complaint. (ECF No. 30 filed 10/06/19). The deadline to amend pleadings in the Court's first scheduling order was 2/24/2020 (ECF No. 47 filed 12/26/19) and this deadline was not reopened in the Court's Bifurcated Scheduling Order. (ECF No. 66 filed 10/20/2020).

Further, Plaintiffs were previously ordered to file items concerning the administration of Tavis Crane's estate and authority of De'On Crane to proceed with this lawsuit. (ECF No. 62, filed 09/17/2020). Plaintiffs' response was filed on 9/30/2020 (ECF No. 64) and a supplemental response was filed on 10/02/2020 (ECF No. 65).

(4) A proposed time limit to file various types of motions, including dispositive motions.

100 days before trial.

(5) A proposed time limit for initial designation of experts and responsive designation of experts.

Plaintiff's deadline should be 180 days before trial.

Defendants' deadline should be 150 days before trial.

(6) A proposed time limit for objections to experts (i.e. *Daubert* and similar motions).

Same as dispositive motion deadline in No. 4.

(7) A proposed plan and schedule for discovery, a statement of the subjects on which discovery may be needed, a time limit to complete factual and expert discovery, and a statement of whether discovery should be conducted in phases.

Plaintiffs' Position: Given the Fifth Circuit's decision that fact issues exist regarding Officer Roper's qualified immunity defense, it is not necessary to conduct discovery in phases.

Plaintiffs agree that discovery, both factual and expert, be completed 120 days before trial.

Plaintiffs intend to depose Officers Roper as well as Officers Elsie Bowden and Eddie Johnson. Plaintiffs also intend to depose the Chief of the Arlington Police Department, as well as any officers involved in any investigation of the officer-involved shooting and the training provided to officers.

Plaintiffs intend to seek written discovery from the City of Arlington and Officer Roper, including document production, related to the incident, Officer Roper's employment file, and all documents related to that investigation and the City's use of force policy, employment, and training manuals.

Defendants' Position:
Defendants contend that discovery in the form of depositions directed to the adult passengers in the car should be conducted. Discovery into Tavis Crane's heirs, whether heirship has been established, and whether the adult representatives of the minor children have been authorized to act on their behalf should be conducted. Discovery into Tavis Crane's work history, criminal history, sources of income, education, prospects for future earnings, and support, if any, he provided to members of his family or persons claiming heirship is necessary. If Plaintiffs designate experts, then permissible written discovery as well as deposition discovery should be conducted.

Discovery should be completed 120 days before trial.

(8) A statement on whether any limitations on discovery need to be imposed, and if so, what limitations.

Plaintiffs' Position: No limitations on discovery need be imposed.

City's Position: The City concurs with the position of Officer Roper.

Officer Roper's Position:
Although Officer Roper recognizes the Fifth Circuit has overruled this Court's Order Granting Summary Judgment which recognized Officer Roper's entitlement to qualified immunity, Officer Roper is in the process of preparing a Petition for Writ of Certiorari. When the Petition has been filed, Officer Roper will notify the Court and anticipates requesting a full stay of proceedings to allow the Supreme Court an opportunity to address his Petition for Writ of Certiorari.

(9) A statement on how to disclose and conduct discovery on electronically stored information ("ESI") and any statement on disputes regarding disclosure and/or discovery of ESI.

ESI should be produced in its native format or other format agreed on by the parties.

(10) Any proposal regarding handling and protection of privileged or trial-preparation material that should be reflected in a Court Order.

Plaintiffs' Position: No proposals.

Defendants' Position:

Defendants request that the parties agree that the process for asserting privileges, together with the matters for which there is an exemption from asserting privilege, be governed by Texas Rules of Civil Procedure 193. Defendants request that the parties agree that substantive privileges be determined by reference to Federal law, but that the procedures for asserting privilege, and the exemptions from asserting privilege or designating privileged materials and filing privilege logs if necessary be controlled by Texas Rule of Civil Procedure 193.

(11) A proposed trial date, the estimated number of days for trial, and whether a jury has been demanded.

All parties: A jury trial has been demanded.

All parties: Estimated days required for trial = 5 days, exclusive of voir dire and jury selection.

Joint proposed trial date: **May 2024 –** Officer Roper's and the City's agreement to the joint proposed trial date is subject to their assertion that setting a trial date is not efficacious at this point in the case because their appeals have not been exhausted and they both intend to file a Petition for Writ of Certiorari to the Supreme Court. However, if the Court sets a trial date, Defendants assert that the earliest trial date that is realistic in view of the procedures and work that the parties need to accomplish is **May 2024**.

(12) A proposed mediation deadline.

The parties believe that, to be effective, they will need a full day and that it occur in person. The parties are already in the process of scheduling a full day in person mediation with Mike McCullough as stated in paragraph 1. Mr. McCullough's calendar for full day mediations is full through the end of June. Accordingly, Defendants suggest a mediation deadline of August 31, 2023, to allow for the coordination of the calendars of the mediator, counsel and the several parties.

(13) A statement as to when and how disclosures under Fed. R. Civ. P. 26(1) were made or will be made.

Plaintiffs' Position: Plaintiffs made their initial disclosures on August 28, 2020.

City's Position: Initial disclosures were made by the City of Arlington on August 27, 2020.

Officer Roper's Position: Initial disclosures were made by Officer Roper on August 27, 2020.

(14) A statement as to whether the parties will consent to a trial (jury or bench) before United States Magistrate Judges Cureton or Ray.

The parties do not unanimously consent to a trial before a U.S. Magistrate Judge.

(15) Whether a conference with the Court is desired, and if so, a brief explanation why.

Plaintiffs' Position: None at this time.

Defendants' Position:

Defendants are in the process of preparing Petitions for Writ of Certiorari to the Supreme Court. Upon filing such Petitions, Defendants intend to notify this Court. At that time, Defendants suggest that a conference with the parties may be advisable to determine what impact, if any, the filing of the Petitions for Writ of Certiorari will have on the proceedings in this case while awaiting action from the Supreme Court.

(16) Any other proposals on scheduling and discovery that the parties believe will facilitate expeditious and orderly preparation for trial, and other orders that the Court should enter under Fed. R. Civ. P. 16(b), 16(c), and 26(c).

Plaintiffs' Position: None at this time. It's the Plaintiffs' position that a stay of the discovery should not be granted given the Fifth Circuit's decision that fact issues exist regarding Officer Roper's qualified immunity defense.

City's Position: The City concurs with the position of Officer Roper.

Officer Roper's Position:
Officer Roper is in the process of filing a Petition for Writ of Certiorari with the U.S. Supreme Court. In that respect, his qualified immunity defense has not been finally determined. In accordance with Carswell v. Camp, 54 F.4th 307, 311-312 (5th Cir. 2022), Officer Roper contends that because his qualified immunity defense has not been finally resolved, there should be a stay. Officer Roper also refers to Ashcroft v. Iqbal, 556 U.S. 662 (2009) which recognizes that litigation in the face of qualified immunity, before qualified immunity has been determined adversely to the public official, operates to deprive that official of the protections of the immunity defense. Officer Roper therefore respectfully suggests that when his Petition for Writ of Certiorari has been filed, this Court may wish to evaluate whether to stay some or all of the proceedings in order to afford the Supreme Court an opportunity to address the Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Daryl K. Washington, by permission
DARYL K. WASHINGTON
State Bar No. 24013714
WASHINGTON LAW FIRM
325 N. St. Paul, Ste. 3950
Dallas, Tx 75201
(214) 880-4883
Fax (214) 751-6685

- and –

/s/ Thad Spaulding, by permission
Thad Spaulding
State Bar No. 00791708
Shelby White
State Bar No. 24084086
DURHAM, PITTARD & SPAULDING, LLP
P.O. Box 224626
Dallas, TX 75222
(214) 946-8000
Fax (214) 946-8433
ATTORNEYS FOR PLAINTIFFS

Respectfully submitted,

/s/ Baxter W. Banowsky, by permission
Baxter W. Banowsky
State Bar No. 00783593
BANOWSKY, P.C.
12801 N. Central Expressway, Suite 1700
Dallas, TX 75243
(214) 871-1300
Email: bwb@banowsky.com

- and –

/s/ Cynthia Withers, by permission
Cynthia Withers
State Bar No.
CITY OF ARLINGTON
City Attorney's Office
MS 63-0300
P.O. Box 90231
Arlington, TX 76004-3231
(817) 459-6878
Email: cynthia.withers@arlingtontx.gov
ATTORNEYS FOR DEFENDANT CITY OF ARLINGTON

/s/ James T. Jeffrey, Jr.
JAMES T. JEFFREY, JR.
State Bar No. 10612300
LAW OFFICES OF JIM JEFFREY
3200 W. Arkansas Lane
Arlington, Texas 76016
(817) 261-3200
Fax (817) 275-5826
ATTORNEY FOR DEFENDANT CRAIG ROPER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DE'ON L CRANE, et al.,

Plaintiffs,

v. **Civil Action No. 4:19-cv-0091-P**

CITY OF ARLINGTON TEXAS, et al.,

Defendants.

SCHEDULING ORDER

I. SUMMARY OF CRITICAL DATES

Deadline for Motions for Leave to Join Parties or Amend Pleadings (¶ 2)	June 16, 2023
Initial Expert Designation & Report (¶ 4 a.)	September 8, 2023
Responsive Expert Designation & Report (¶ 4 b.)	October 10, 2023
Rebuttal Expert Designation (¶ 4 c.)	30 days after disclosure made by other party
Expert Objections (¶ 4 d.)	April 1, 2024
Dispositive Motions (¶ 3)	January 8, 2024
Mediation (¶ 5)	August 31, 2023
Completion of Discovery (¶ 6)	December 8, 2023
Pretrial Disclosures and Objections (¶ 7)	March 27, 2024 Objections due 14 days thereafter
Pretrial Materials (pretrial order etc.)(¶ 8)	April 11, 2024
Exchange of Exhibits (¶ 9)	April 22, 2024
Pretrial Conference (¶ 11)	To be set if necessary.
Trial Date (¶ 1)	May 6, 2024

II. SCHEDULING INSTRUCTIONS

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and the local rules of this Court (except as modified herein), the Court, having considered the status report submitted by the parties, finds that the following schedule should govern the disposition of this case:

Unless otherwise ordered or specified herein, all limitations and requirements of the Federal Rules of Civil Procedure and the local rules of this Court must be observed.

Please note that the Court has attempted to adhere to the schedule requested by the parties. In so doing, the Court assumes that the parties thoroughly discussed scheduling issues prior to submitting their status report and that the parties understand that the deadlines imposed in this Order are firmly in place, absent the few exceptions set forth below.

1. **Trial Date**: This case is **set for trial** on this Court's four-week docket beginning **Monday, May 6, 2024**. Counsel and the parties shall be ready for trial on **two days'** notice at any time during this four-week period.

2. **Joinder of Parties or Amendment of Pleadings**: By **June 16, 2023**, all motions requesting **joinder** of additional parties or **amendments** of pleadings shall be filed.

3. **Dispositive Motions**: By **January 8, 2024**, all motions that would dispose of all or any part of this case (including motions for **summary judgment**) shall be filed.

4. **Experts**:

   a. Initial Designation of Expert(s): Unless otherwise stipulated or directed by order, the party with the burden of proof on the issue subject to the expert designation shall file a written designation of the name and address of each **expert witness** who will testify at trial for that party and shall otherwise comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure on or before **September 8, 2023**. (Unless otherwise noted, all references to Rules in this Order shall refer to the Federal Rules of Civil Procedure.)

   b. Responsive Designation of Expert(s): Each party without the burden of proof on the issue subject to expert designation shall file a written designation of the name

and address of each **expert witness** who will testify at trial for that party and shall otherwise comply with Rule 26(a)(2) on or before **October 10, 2023**.

c. **Rebuttal Expert(s)**: If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), the disclosures required under Rule 26(a)(2) shall be made within **30 days** after the disclosure made by the other party.

d. **Challenges to Experts**: The parties are directed to file any objections to, or motions to strike or exclude expert testimony (including Daubert motions), no later than **April 1, 2024**. ***No challenges to experts shall be filed prior to*** **January 8, 2024** ***without obtaining leave of court.***

5. **Mediation**: In accordance with the Court's Civil Justice Expense and Delay Reduction Plan, the Court hereby **REFERS** this case to mediation and **APPOINTS Hon. Paul Stickney** (Mediator) as the mediator in this case. A party opposing either mediation referral or the appointed provider should file a written objection **within 10 days** of the date of this Order. The parties shall mediate with **Hon. Paul Stickney** on or before **August 31, 2023.** Within **seven days** after the mediation, the parties shall **jointly prepare and file a written report**, which shall be signed by counsel for each party, detailing the date on which the mediation was held, the persons present (including the capacity of any representative), and a statement informing the Court of the effect of their mediation and whether this case has been settled by agreement of the parties.

6. **Completion of Discovery**: By **December 8, 2023,** all discovery—including discovery concerning expert witnesses—shall be completed. The parties may agree to extend this discovery deadline, provided (a) the extension **does not affect** the trial setting, dispositive motions deadline, challenges to experts deadline, or pretrial submission dates; and (b) written notice of the extension is given to the Court.

7. **Pretrial Disclosures and Objections**: Unless otherwise directed by order, the parties must make the disclosures required by Rule 26(a)(3)(A)-(B) by **March 27, 2024**. With respect to the identification of witnesses who will be called by deposition, the parties must also identify the portions of the deposition transcript that they intend to use. (Modification of Rule 26(a)(3)(A)(ii)). Within **14 days thereafter**, a party must serve and file a list disclosing any **objections**, together with the grounds therefor, to: (a) the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); (b) the admissibility of materials identified under Rule 26(a)(3)(A)(iii); and (c) the use of any witnesses (except for expert objections) identified under Rule 26(a)(3)(A)(i)[1], if any. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the Court for good cause.

8. **Pretrial Materials**: By **April 11, 2024** except as otherwise noted below, all **pretrial materials** shall be filed. Specifically, by this date:

a. **Pretrial Order**: A **joint pretrial order** shall be submitted by the Plaintiff's attorney which covers each of the matters listed in Local Rule 16.4 and which states the **estimated length of trial**. If an attorney for either party does not participate in the preparation of the joint pretrial order, the opposing attorney shall submit a separate pretrial order with an explanation of why a joint order was not submitted (so that the Court can impose sanctions, if appropriate). Each party may present its version of any disputed matter in the joint pretrial order; therefore, failure to agree upon content or language **is not an excuse for submitting separate pretrial orders**. (Modification of Local Rule 16.4). When the joint pretrial order is approved by the Court, it will control all subsequent proceedings in this case. If submitted on paper, the parties must submit the original and one copy of the proposed pretrial order (styled as the "Pretrial Order") directly to the Court's chambers. Do not file it with the clerk. The Court will direct the clerk to file it after the Court signs it. The proposed pretrial order must be transmitted to the

[1] Requiring parties to file objections to witnesses disclosed under Rule 26(a)(3)(A)(i) is a modification of the requirements of Rule 26(a)(3)(B), which only requires that the parties file objections to deposition designations (Rule 26(a)(3)(A)(ii)) and exhibits (Rule 26(a)(3)(A)(iii)).

electronic address used for receipt of proposed orders (pittman_orders@txnd.uscourts.gov) no later than **April 12, 2024.**

b. Witness List: A **list of witnesses** shall be filed by each party, which divides the persons listed into groups of "**probable witnesses**," "**possible witnesses**," "**experts**," and "**record custodians**" and which provides:

(i) the **name and address** of each witness;

(ii) a **brief narrative summary** of the testimony to be covered by each witness;

(iii) whether the witness has been **deposed**; and

(iv) the **expected duration** of direct or cross-examination of the witness.[2]

The Witness list will include three columns. The first column will contain a brief statement of the subject matter to be covered by a particular witness. The second column will bear the heading "Sworn" and the third column will bear the heading "Testified" so that the Court can keep track of the witnesses at trial.

If any witness needs an interpreter, please note this on the witness list. It is the obligation of the party offering such a witness to arrange for an interpreter to be present at trial.

(Modification of Local Rule 26.2(b))

c. Exhibit List and Deposition Testimony Designations: A **list of exhibits (including demonstrative exhibits) and a designation of portions of depositions** to be offered at trial shall be filed by each party. The list of exhibits shall describe with specificity the documents or things in numbered sequence. The documents or things to be offered as exhibits shall be numbered by attachment of gummed labels to correspond with the sequence on the exhibit list and identify the party submitting the exhibit. (Modification of Local Rule 26.2(b), (c)). Do not use letter suffixes to identify exhibits (e.g., designate them as 1, 2, 3, not as 1A, 1B, 1C). The Exhibit list will include two columns, one bearing the heading "Offered" and the other bearing the heading "Admitted."

[2] Pursuant to Rule 16(c)(2)(O) and Section VII of the United States District Court for the Northern District of Texas Civil Justice Expense and Delay Reduction Plan, the Court may impose a reasonable limit on the time allowed for presenting evidence in this case. See Commentary - 1993 Amendment to the Federal Rules of Civil Procedure (court should ordinarily impose time limits only after receiving appropriate submissions from the parties).

Each party's **exhibit list** shall be accompanied by a written statement, signed by counsel for each party and state that, as to each exhibit shown on the list,

(i) the parties agree to the admissibility of the exhibit; or

(ii) the admissibility of the exhibit is objected to, identifying the nature and legal basis of any objection to admissibility and the name(s) of the party or parties urging the objection.

All parties shall cooperate in causing such statements to be prepared in a timely manner for filing with the exhibit lists. Counsel for the party proposing to offer an exhibit shall be responsible for coordinating activities related to preparation of such a statement as to the exhibit the party proposes to offer. This includes an obligation to make exhibits available for inspection in advance of the deadline for filing exhibit lists where a party needs to see exhibits to assess admissibility. The Court may exclude any exhibit offered at trial unless such a statement regarding the exhibit has been filed in a timely manner. In addition, objections not identified in the statement may be waived.

A **list of each party's exhibits** to which no objection will be lodged (preadmitted) must be submitted at the **pretrial conference**.[3] The Court expects the parties to confer and agree to admit the majority of their exhibits prior to trial.

d. Jury Charge: **Requested jury instructions and questions (annotated)**[4] shall be filed as set forth below. In order to minimize time after commencement of the trial in resolving differences in the language to be included in the Court's charge to the jury:

(i) Counsel for the Plaintiff shall deliver to counsel for Defendant by **April 1, 2024** a copy of its proposed Court's charge to the jury.

(ii) Counsel for Defendant shall deliver to counsel for the Plaintiff by **April 3, 2024** (A) a statement, prepared with specificity, of any objection his client had to any part of the proposed charge that counsel for Plaintiff has delivered pursuant to this paragraph and (B) the text of all additional instructions or questions his client wishes to have included in the Court's charge to the jury. Each objection

[3] This does not change the sequential manner in which each side should number its exhibits. In other words, a party should not separately number its exhibits into "objected to" and "unobjected to" categories.

[4] "Annotated" means that ***each*** proposed instruction shall be accompanied by citation to statutory or case authority and/or pattern instructions. It is not sufficient to submit a proposed instruction without citation to supporting authority.

and each such request shall be accompanied by citations of authorities supporting defendant's objection or request.

(iii) At 10:00 a.m. on **April 5, 2024**, the lead attorneys for the parties to this action shall meet face-to-face at either (A) a mutually agreeable place, or (B) at the office of counsel for the Plaintiff located in Ft. Worth, Texas or within 50 miles of the Ft. Worth Division of the Northern District of Texas, for the purposes of (1) discussing, and trying to resolve, differences between the parties as to language to be included in the Court's charge to the jury and (2) identifying areas of disagreement that cannot be resolved. Such meeting shall be held for a sufficient length of time for there to be a meaningful discussion of all areas of disagreement and a meaningful attempt to accomplish agreement. Each attorney shall cooperate fully in all matters related to such a meeting.

(iv) By 2:00 p.m. on **April 8, 2024** counsel for Plaintiff shall file a document titled "Agreed Charge" which in a single document shall contain, in logical sequence, all language to be included in the charge, including jury instructions and jury questions, about which the parties do not have disagreement and all language either party wishes to have included in the charge about which there is disagreement. All language of the proposed charge about which there is disagreement shall be (A) in bold face, (B) preceded by an indication of the identity of the party requesting the language, and (C) followed by a listing of citations of authorities in favor of and in opposition to the proposed language. Objections may be waived if not stated in the Agreed Charge.

Plaintiff must also send, in a WordPerfect-compatible format, the Agreed Charge to: pittman_orders@txnd.uscourts.gov and include the case number and the document number of the referenced motion in the subject line.

e. Limited Number of Motions in Limine: Motions in limine should not be filed as a matter of course. If filed, counsel must file them with the Court and serve them on the opposing party by **April 8, 2024**. Responses must be filed with the Court and served on the opposing party by **April 22, 2024**. Replies to responses are not permitted except by leave of Court. Parties may file motions in limine on no more than **TEN discrete topics** (no subparts) that are actually in dispute. (good faith compliance with the conference requirements of Local Rule 7.1 will help to narrow issues that are actually in dispute). Motions in limine that contain boilerplate requests, that exceed ten topics or that cover undisputed issues will be stricken.

f. Voir Dire: The parties shall file any **proposed voir dire questions** which the Court is requested to ask during its examination of the jury panel by **April 15, 2024**.

g. Trial Briefs: Trial briefs may be filed by each party. In the absence of a specific order of the Court, trial briefs are not required, but are welcomed. The briefing should utilize Fifth Circuit and/or Supreme Court authority or relevant state authority to address the issues the parties anticipate will arise at trial.

NOTE: Deadlines in this order regarding pretrial materials are dates for **filing** or **delivery, not mailing** dates.

9. Exchange of Exhibits: No later than **April 22, 2024**, counsel for each party intending to offer exhibits shall **exchange a complete set** of marked exhibits (including demonstrative exhibits) with opposing counsel and **shall deliver a set of marked exhibits to the Court's chambers** (except for large or voluminous items that cannot be easily reproduced).

10. Settlement Conference and Status Report:

a. Settlement Conference: No later than **April 22, 2024**, the parties and their respective lead counsel shall hold a **face-to-face meeting** to discuss **settlement** of this case. Individual parties and their counsel shall participate in person, not by telephone or other remote means. All other parties shall participate by a representative or representatives, in addition to counsel, who shall have unlimited settlement authority and who shall participate in person, not by telephone or other remote means. If a party has liability insurance coverage as to any claim made against that party in this case, a representative of each insurance company providing such coverage, who shall have full authority to offer policy limits in settlement, shall be present at, and participate in, the meeting in person, not by telephone or other remote means. At this meeting, the parties shall comply with the requirements of Local Rule 16.3.

b. Joint Settlement Report: Within **seven days** after the settlement conference, the parties shall **jointly prepare and file a written report**, which shall be signed by counsel for each party, detailing the date on which the meeting was held, the persons present (including the capacity of any representative), a statement regarding whether meaningful progress toward settlement was made, and a statement regarding the prospects of settlement.

11. Pretrial Conference: A **pretrial conference** will be conducted, in person, if the Court determines such a conference is necessary. If the Court anticipates imposing

time limits on the presentation of evidence that *significantly* reduces the parties' estimated trial length, the Court will schedule a pretrial conference and advise of such deadlines so that counsel will have reasonable notice of such limits. Lead counsel for each party must attend, or, if the party is proceeding *pro se*, the party must attend. Fed. R. Civ. P. 16 (c)(1) & (e). Lead counsel and pro se parties must have the authority to enter into stipulations and admissions that would facilitate the admission of evidence and reduce the time and expense of trial. Id. All pretrial motions not previously decided will be resolved at that time, and procedures for trial will be discussed. At the final pretrial conference, it should be possible to assign the specific date for trial during the four-week docket. **Telephone calls about the probable trial date prior to the final pretrial conference will not likely be beneficial to counsel or the Court staff.**

12. **Modification of Scheduling Order**: As addressed above, this Order shall control the disposition of this case unless it is modified by the Court upon a showing of **good cause** and by leave of court. Fed. R. Civ. P. 16(b)(4). Conclusory statements will usually not suffice to show good cause, even if the motion is agreed or unopposed. Moreover, the Court does not grant motions to modify the scheduling order as a matter of course. Any request that the trial date of this case be modified must be made (a) **in writing** to the Court, (b) **before** the deadline for completion of discovery, and (c) **in accordance with the United States District Court for the Northern District of Texas Civil Justice Expense and Delay Reduction Plan ¶ V and Local Rule 40.1** (motions for continuance must be signed by the party as well as by the attorney of record).

13. **Sanctions**: Should any party or counsel fail to cooperate in doing anything required by this Order, such party or counsel or both may be subject to sanctions. **No pending dispositive motion or other request for affirmative relief (unless otherwise ordered by the Court or permitted by applicable law) relieves a party or counsel of their obligation to comply with the deadlines and instructions required by this Order**. If the *plaintiff* does not timely file the required (or other) pretrial material, the case will be dismissed. If the *defendant/third party* does not timely file the required (or other) pretrial material, a default will be entered or the defendant/third party will not be permitted to present witnesses or exhibits at trial. Fines or other sanctions, if appropriate, may also be imposed under Rule 16(f). **Failure to list a witness, exhibit, or deposition excerpt as required by this Order** shall be grounds for exclusion of that evidence. This does not apply to testimony, exhibits, or deposition excerpts offered for impeachment; further, the use of unlisted witnesses, exhibits, or deposition excerpts for rebuttal shall be permitted if the attorneys could not have reasonably anticipated their need for that evidence.

14. **Electronic Filing Procedures**: This case has been designated for enrollment in the Electronic Case Filing System (CM/ECF). (For more information on the ECF system, please see http://www.txnd.uscourts.gov/filing/ecf.html). Now that the case is designated an ECF case, all documents must be filed electronically; however, the Court still requires that courtesy copies of dispositive motions (and accompanying briefs and appendices) be sent to Chambers. Proposed orders are **required** to be submitted with **EVERY** motion. (Modification to Local Rule

7.1(c)). Proposed orders must be submitted via e-mail in a Word or WordPerfect-compatible format as instructed in the CM/ECF system's "Proposed Orders" Event. The proposed orders must be **e-mailed** to: pittman_orders@txnd.uscourts.gov. Include the case number and the document number of the referenced motion in the subject line.

15. **Citations**: All briefs filed with the Court shall comply with the most recent edition of *The Bluebook: A Uniform System of Citation*. Particularly, counsel are directed to provide, where applicable, the subsections of cited statutes, and to provide pinpoint citations when citing cases, i.e., provide the page where the stated legal proposition can be found. See *Bluebook* Rules 3.2-3.4 (Columbia Law Review Ass'n et al. eds, 20th ed. 2015) (regarding pinpoint citations and subsections). Furthermore, if a brief contains citations to unpublished opinions or to LEXIS, counsel must attach copies of those cases to the brief.

16. **Notice**: Each attorney of record and any unrepresented party must review and adhere to the Local Civil Rules of the Northern District of Texas, which may be accessed at http://www.txnd.uscourts.gov/rules/localrules/lr_civil.html. Additionally, each attorney of record and any unrepresented party must review and abide by the standards of litigation conduct for attorneys appearing in civil actions in the Northern District of Texas, as outlined in *Dondi Properties Corp. v. Commerce Savings & Loan*, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc), which may be accessed at http://www.txnd.uscourts.gov/publications/index.html.

17. **Inquiries**: Questions relating to this scheduling order or legal matters should be presented in a motion, as appropriate. Questions regarding electronic notice or

electronic case files shall be directed to the **Help Desk at 1-866-243-2866**. If any electronic equipment is needed in the courtroom, notify Brian Rebecek, Fort Worth Division Manager, at 817-850-6613.

SO ORDERED on this **April 18 2023.**

Mark T. Pittman

MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE