7/9/24

No. 24-193

IN THE
SUPREME COURT OF THE UNITED STATES

Yoel Weisshaus,

Petitioner,

v.

Steve Coy Teichelman, and 100th Judicial District,

Respondents.

On Petition for Writ of Certiorari
To the Court of Appeals for The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW

1. In *Tolan*, involving qualified immunity, the Court held, "Summary judgment is appropriate only if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Tolan v. Cotton*, 572 U.S. 650, 656-7 (2014). The Court emphasized "Our qualified-immunity cases illustrate the importance of drawing inferences in favor of the nonmovant, even when, as here, a court decides only the clearly-established prong of the standard." *Id* at 657. The Fifth Circuit continues to conflict with a different standard, "Normally, summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law... However, a qualified immunity defense alters the usual summary judgment burden of proof because the plaintiff, to overcome qualified immunity, must rebut the defense by establishing a genuine dispute of material fact as to whether the official's allegedly wrongful conduct violated clearly established law." *Bailey v. Iles*, 87 F.4th 275, 282 (5th Cir. 2023), also *Orr v. Copeland*, 844 F.3d 484, 490 (5th Cir. 2016).

First Question: Whether an official may move for summary judgment on qualified immunity without a showing that there is no genuine issue as to any material fact?

2. The Ninth, Seventh, and Second Circuits hold that broad profiles that can fit any number of individuals is not reasonable suspicion of a crime. The Fifth Circuit conflicts to considers broad profiles such as an out of state male driving with an "African American" female who "appeared to be considerably younger" and traveling together on a public highway (*i.e.* I-40, as a "known drug

corridor") is suspicion of a crime because the male driver "was short with his responses to questions about his travel plans" and the female appeared nervous, timid, scared, and she failed to make eye contact with Teichelman and looked at the floorboard.

Second Question: Whether the standard of individualized reasonable suspicion allows as "reasonable" to draw on broad profiles that can fit any number of individuals?

3. "Law enforcement agencies have become increasingly dependent on the money they raise from civil forfeitures." *Culley v. Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch concurring). "And it seems that, when local law enforcement budgets tighten, forfeiture activity often increases." *Id.*

Third Question: Whether a deprivation of a constitutional right that is rooted in the internal drive to target travelers from out of state to create probable cause in a way that leads to civil forfeiture of fungible property can be the basis of a Monell claim?

4. "The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). "The equal protection of the laws is not achieved through indiscriminate imposition of inequalities." *Id* at 219. "Our Constitution is color-blind, and neither knows nor tolerates classes among *citizens*. In respect of civil rights, all *citizens* are equal before the law." *United States v. Vaello Madero*, 596 U.S. 159, 178 (2022).

Yet, "Research indicates that Black Americans are pulled over more often, searched more often, arrested more often, imprisoned more often, wrongfully convicted more often, and killed by law enforcement more often than other Americans. Qualified immunity then bars many of these individuals from securing justice, shutting the courthouse doors on a large portion of those black and brown citizens who plausibly allege that police officers targeted, surveilled, or stopped them because of their race." *Green v. Thomas*, No. 3:23-CV-126-CWR-ASH, 2024 WL 2269133, at *8 (U.S. S.D. Miss. May 20, 2024). There is a growing contention that "America's 'long history of racism ... is unavoidably and inextricably enshrined in the doctrine" of qualified immunity. *Id* quoting *Katherine Enright & Amanda Geary, Qualified Immunity and the Colorblindness Fallacy: Why "Black Lives [Don't] Matter" to the Country's Highest Court*, 13 Geo. J. of L. & Mod. Critical Race Persps. 135, 140 (2021)[1](brackets and quotations in the original caption).

Fourth Question: Whether the Court should revisit the foundation of qualified immunity?

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[1] https://www.law.georgetown.edu/mcrp-journal/wp-content/uploads/sites/22/2023/02/FINAL_Enright_Geary-13.2-OJA-Draft-3.pdf

PROCEEDINGS

Yoel Weisshaus, v. Steve Coy Teichelman, 100th Judicial District, 2:22-cv-00035-Z-BR, United States District Court for the Northern District of Texas, Amarillo Division. Judgement entered for 100th Judicial District on May 25, 2022. (a49). Judgement entered for Steve Coy Teichelman on October 27, 2022. (a47).

Yoel Weisshaus, v. Steve Coy Teichelman, 100th Judicial District, 22-11099, United States Court of Appeals for the Fifth Circuit. Judgments affirmed February 14, 2024. Mandate issued March 7, 2024. (a2).

PARTIES TO THE PROCEEDINGS

The petitioner is Yoel Weisshaus.

The respondents are Steve Coy Teichelman and 100th Judicial District.

There were no other named parties or proceedings in this action below.

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Yoel Weisshaus respectfully petitions for a writ of certiorari to the Court of Appeals for the Fifth Circuit ("Fifth Circuit").

ORDERS BELOW

The United States District Court for the Northern District of Texas ("District Court") opinion dismissing Steve Coy Teichelman is dated October 27, 2022 is published, *Weisshaus v. Teichelman*, 637 F. Supp. 3d 434 (N.D. Tex. 2022). (a20). The dismissal of the 100th Judicial District is dated May 22, 2022 is unpublished. (a36). The unpublished opinion for the Fifth Circuit was issued February 14, 2024. (a2).

JURISDICTION IS UNDER 28 USC 1254(1).

This case arises under 42 USC 1983. The last defendant was dismissed on October 27, 2022. (a20). The notice of appeal was filed November 9, 2022. On February 14, 2023, the Fifth Circuit affirmed. (a2). No motion for rehearing. Associate Justice Alito extended the time to file this petition by July 12, 2024 (23A996). On July 11, 2024, the Clerk directed refiling a corrected petition by September 10, 2024, pursuant to Rule 14.5.

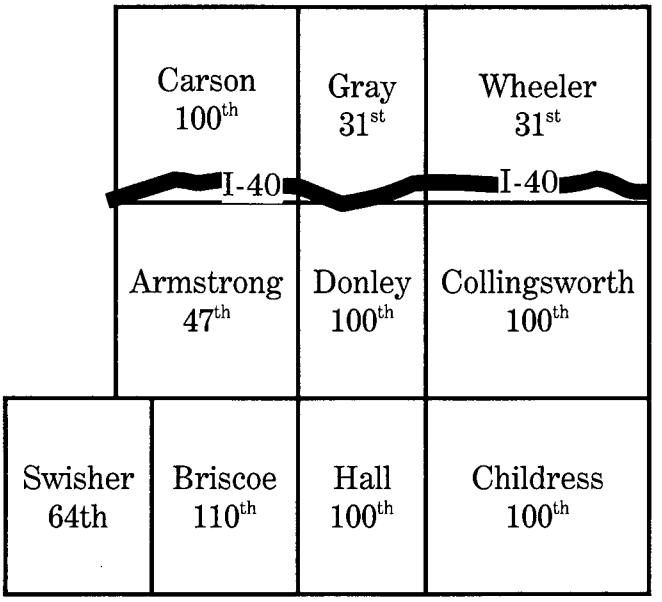
PROVISIONS INVOLVED

The relevant Constitutional provisions of Article III and the Fourteenth Amendment are reproduced in a120.

The relevant portions of the Federal Rules of Civil Procedure are reproduced: Rule 12 at a123, and Rule 56 at a127.

STATEMENT OF THE CASE

1. The 100th Judicial District in the State of Texas represents a census of 21,206 individuals in five counties, Carson, Childress, Collingsworth, Donley, and Hall,[1] of which 5,807 in Carson County and 3,258 in Donley County.[2] The Interstate 40 ("I-40") cross the 100th Judicial District at Carson County, for thirty-six (36) miles, and Donley County, for six (6) miles, as shown in this diagram.



In 2010, Luke Inman ("Inman"), the Prosecutor for the 100th Judicial District, created a Traffic Enforcement Division ("Traffic Division"), a self-funded police

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[1] Judicial District Population 2020 Census https://www.ethics.state.tx.us/data/resources/judicial/JudicialDistrictPopulations.pdf.

[2] United States Census Bureau, Carson County, Texas https://data.census.gov/profile/Carson_County,_Texas?g=050XX00US48065 Donley County https://data.census.gov/all?q=Donley%20County,%20Texas

department operating on I-40. The Traffic Division has less than a handful of sworn officers and does not even have a website. Yet, the Traffic Division generates millions of dollars every year by targeting travelers for assets and U.S. currency for civil forfeiture. (a70-71).

In Texas, "Seizure of property subject to forfeiture may be made without warrant if ... the seizure was incident to a ... lawful search..." Tex. Code Crim. Proc. Ann. art. 59.03(b)(4). Civil forfeiture extends to "Each person who is shown to have been a party to an underlying offense for which the proceeds are subject to forfeiture is jointly and severally liable in a suit under this article, *regardless of whether the person has been charged for the offense.*" Id at 59.023(emphasis added).

To enable civil forfeiture at traffic stops, all that is required is a "lawful search." Id at 59.03(b)(4). For that, each officer in the Traffic Division is equipped with a dog, also referred to as a canine or K9. At every other traffic stop, the Traffic Division seeks consent from the driver to search inside the vehicle. The dog is the device to create "probable cause," whenever there is no consent to search a vehicle, the officer will walk that dog around the exterior of a subject's vehicle. Whether the dog truly sniffed narcotics is subjective to the officer, and once the officer claims that the dog detected a sniff of narcotics, "probable cause" exists for a "lawful search" of a vehicle without consent of its owner. (a72). This process turns ordinary traffic stops into a venture for civil forfeiture, even though a dog sniff "is not an ordinary incident of a traffic stop." *Rodriguez v. United States*, 575 U.S. 348, 356 (2015).

2. In *Culley v. Marshall*, 601 U.S. 377, 396 (2024), the Court reviewed the post deprivation hearing aspect for civil forfeiture. In *Leonard v. Texas*, 580 U.S. 1178, 137 S.

Ct. 847 (2017) the petition for a writ of certiorari asked, "whether modern civil-forfeiture statutes can be squared with the Due Process Clause and our Nation's history." *Id* (Thomas respecting denial of certiorari). The *Leonard* petition was denied because the "petitioner raise[d] her due process arguments for the first time in this Court." *Id* at 850.

The relevant key elements in *Culley* and *Leonard* is that "Law enforcement agencies have become increasingly dependent on the money they raise from civil forfeitures." *Culley* at 396 (Gorsuch concurring). "Police officers have an incentive to enforce the law in a way that leads to the recovery of fungible property, like cash or cars. For example, officers might pose as drug dealers instead of buyers in a sting operation, because it allows police to seize a buyer's cash rather than a seller's drugs (which have no legal value to the seizing agency)." *Id* at 406 (Sotomayor dissenting). "Similarly, police officers might target low-level drug possession in cars instead of drug transactions on the street, so that they can seize the vehicle." *Id.* "A police officer cannot sell recovered marijuana and a prosecutor's office does not ordinarily pursue low-level marijuana offenses. When a police department can recover the proceeds from a car civilly forfeited in connection to a low-level marijuana offense, however, targeting that offense becomes more appealing." *Id.*

"Partially as a result of this distinct legal regime, civil forfeiture has in recent decades become widespread and highly profitable." *Leonard* at 848. "And because the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture." *Id.*

"This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses." *Id.* "According to one nationally publicized report, for example, police in the town of Tenaha, Texas, regularly seized the property of out-of-town drivers passing through and collaborated with the district attorney to coerce them into signing waivers of their property rights." *Id.* "In one case, local officials threatened to file unsubstantiated felony charges against a Latino driver and his girlfriend and to place their children in foster care unless they signed a waiver." *Id.* "In another, they seized a black plant worker's car and all his property (including cash he planned to use for dental work), jailed him for a night, forced him to sign away his property, and then released him on the side of the road without a phone or money." *Id.* "He was forced to walk to a Walmart, where he borrowed a stranger's phone to call his mother, who had to rent a car to pick him up." *Id.*

"These forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings." *Id.* "Perversely, these same groups are often the most burdened by forfeiture. They are more likely to use cash than alternative forms of payment, like credit cards, which may be less susceptible to forfeiture. And they are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home." *Id.*

This case, the petitioner has preserved the issue it brings before the Court regarding civil forfeiture.

3. On March 2, 2020, the petitioner was traveling with Sasha Lee from New Jersey to Scottsdale Arizona. At that time, Ms. Lee was forty-two and the petitioner was

thirty-nine years old. The purpose was a cross-country trip to help Ms. Lee move from her prior residence in Arizona to Teaneck, New Jersey. (a110). At about 8:30 a.m., Petitioner passed through the State of Texas, on I-40, westbound en route from the State of Oklahoma towards the State of New Mexico. (a111).

Steve Coy Teichelman ("Teichelman"), an officer of the Traffic Division conducted a traffic stop. Teichelman asked for Petitioner's driver license and registration. Teichelman then informed that he would only issue a warning with no fine. Seconds later, although nothing happened or changed, Teichelman detained Petitioner placing him in the police car, until that traffic warning was issued. (a111-112).

In detention, while processing the traffic warning, Teichelman asked Petitioner about his travel. The Petitioner answered that he is traveling to move Ms. Lee's from Scottsdale Arizona to New Jersey. (a112).

Ms. Lee and the Petitioner had clean records; neither had any warrants or suspensions pending, nor any history with narcotics. The Petitioner's driver's license and vehicle registration were in good standing with the State of New Jersey and the license plates and car registration were clearly visible. The Petitioner did not violate the speed limit. (a111).

Teichelman issued a warning stating that "There is no further action required" for "Speeding" (without stating the alleged offending speed) and for a "Fictitious, Altered, or Obscured License Plates/Registration Insignia" (without citing what was wrong with either the plates or registration but orally stating that there was dust on the plates). The warning was printed at 8:31 a.m., which took about three (3) minutes. (a55, a116).

4. What happened next took over twenty (20) minutes. After Teichelman issued the warning, stating that "There is no further action required," returned to Petitioner his driver's license with registration and insurance, and informed Petitioner that he is free to leave, Teichelman detained Petitioner again. (a58, a112-114).

Teichelman stated that the purpose for the traffic stop was that the Traffic Division is looking for "large sums of cash" or narcotics. Teichelman disclosure that he is looking for "large sums of cash" was repeated several times to make his intentions conspicuous. Teichelman asked Petitioner if he had any large sums of cash, to which Petitioner answered no. Teichelman asked Petitioner if he had any narcotics or marijuana, and Petitioner answered no. Teichelman then asked for consent to search the Petitioner's vehicle, which Petitioner declined. (a112).

In turn, Teichelman kept Petitioner from leaving, retrieved the dog from his police car, and walked the dog around the Petitioner's vehicle. In a pretext to create an appearance of probable cause for lawful search, Teichelman walked the dog three times around the outside of Petitioner's vehicle. The dog neither stopped, nor sat nor barked. Teichelman returned the dog to his unmarked vehicle and declared that the dog alerted him to narcotics inside Petitioner's vehicle. (a113).

Teichelman directed Petitioner to wait outside his police car and directed Ms. Lee to leave Petitioner's vehicle. Teichelman trespassed into the Petitioner's vehicle. During the trespass into Petitioner's vehicle, Teichelman did not use the dog inside the vehicle to find exactly where the purported sniff of the alleged narcotics originated. Teichelman damaged the interior of

Petitioner's vehicle by ripping the lining and tossing out Petitioner's personal belongings into the street. (a113).

At no point did Teichelman ask Ms. Lee for identification to see her true age or search if she had any outstanding warrants or criminal history. It was clear at the scene that Teichelman did not have reasonable suspicion, rather, Teichelman was looking for "large sums of cash" having emphasized that as the purpose for the stop and the search. In Teichelman's own words and action, probable cause would exist only after a dog sniffs the exterior of Petitioner's vehicle creating the color of probable cause. (a112-113)

5. After the warrantless search yielded nothing, as there was neither cash nor narcotics inside Petitioner's vehicle, Teichelman subjected Petitioner to a pat down. At that point, Petitioner was still at Teichelman's police car—a substantial distance from Petitioner's vehicle where the dog supposedly sniffed narcotics—Teichelman still persisted in finding large sums of cash. The Petitioner declined the pat down and asked to terminate the encounter. Teichelman then became aggressive, informing Petitioner that he will be arrested for refusing to comply. Petitioner repeated his request to terminate the encounter. Teichelman continued detaining Petitioner directing him to sit in his police car and that Petitioner was not free to leave. Petitioner asked again to terminate the encounter. After twenty minutes, Teichelman freed Petitioner. (a113-114).

6. On March 2, 2022, Petitioner filed the complaint in the District Court under 42 USC 1983 for damages resulting from the illegal search and detention. The Petitioner also pleaded that the civil forfeiture practice of 100th Judicial District was the cause to manufacture "probable cause" through a dog sniff. This allegation was

supported by documents and citations to news articles quoting Inman's bragging about the millions generated through civil forfeiture. (a51-97).

On May 25, 2022, the District Court dismissed the 100th Judicial District, concluding that Petitioner "makes conclusory statements to support his assertion that the 100th Judicial District has a practice of profiting off civil forfeiture actions instituted against citizens..." (a42).

Afterwards, Teichelman moved for summary judgment supported by an affidavit (prior to any opportunity for discovery) stating his version of events as to why there was probable cause and asserting that reasonable suspicion existed under the presupposition that Petitioner an out of state male driver, was traveling with a passenger who is an "African-American" female and there being "no familial connection" between the two, and that created reasonable suspicion of narcotics because the two friends were passing through on I-40 without disclosing their itinerary. The purported hook for criminality is that the interstate I-40 is a "known drug corridor". Teichelman also asserted that the dog is trained to sit or lay down or wait once she finds a scent, and that the dog gave a positive detection of narcotics. (a101-104).

On October 19, 2022, Petitioner filed its deceleration in opposition reciting his version of events of what happened. (a110-118).

On October 27, 2022, the District Court accredited the factual allegations in Teichelman's affidavit (repeatedly citing to Teichelman's Brief "ECF No. 27") and granted summary judgment on qualified immunity. The District Court verbatim repeated Teichelman and held in a published opinion that a male driver who is from

out of state (New Jersey), traveling in Texas with an "African American" woman who appeared younger and having "no familial connection," created reasonable suspicion of narcotics because the two friends passed I-40 in Texas without disclosing their itinerary in Arizona. (a20-34). On November 9, 2022, Petitioner appealed.

On February 14, 2023, the Fifth Circuit repeated the reasoning of the District Court's opinions and eliminated the description "African American" but describing the circumstances of reasonable suspicion that the woman "appeared to be considerably younger with no familial connection" to the Petitioner. (a3, a2-18).

REASONS FOR GRANTING THE WRIT

I. THE FIFTH CIRCUIT DISOBEYS *TOLAN V. COTTON* WITH A DIFFERENT STANDARD THAN REQUIRED UNDER FRCP RULE 56.

A. THE CONFLICT WITH THIS COURT IS IN ALL CASES OF QUALIFIED IMMUNITY.

In *Tolan v. Cotton*, a qualified immunity case, the Court held, "In articulating the factual context of the case, the Fifth Circuit failed to adhere to the axiom that in ruling on a motion for summary judgment, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Tolan v. Cotton*, 572 U.S. 650, 651 (2014). The Court held, "Summary judgment is appropriate only if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Id* at 656-7. "Our qualified-immunity cases illustrate the importance of drawing inferences in favor of the

nonmovant, even when, as here, a court decides only the clearly-established prong of the standard." *Id* at 657.

The Court noted "while this Court is not equipped to correct every perceived error coming from the lower federal courts, we intervene here because the opinion below reflects a clear misapprehension of summary judgment standards in light of our precedents." *Id* at 659 (citations omitted).

Despite the Court intervening in 2015, to date the Fifth Circuit continues following the rejected standard. In its own words, "Normally, summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law... However, a qualified immunity defense alters the usual summary judgment burden of proof because the plaintiff, to overcome qualified immunity, must rebut the defense by establishing a genuine dispute of material fact as to whether the official's allegedly wrongful conduct violated clearly established law." *Bailey v. Iles*, 87 F.4th 275, 282 (5th Cir. 2023), also *Orr v. Copeland*, 844 F.3d 484, 490 (5th Cir. 2016).

The treatment of the Fifth Circuit implies that a defendant seeking summary judgment on qualified immunity can do so without showing that there is no genuine issue as to any material fact. Rather, the motion itself, by seeking qualified immunity, misplaces a burden on the plaintiff to disprove the defense even without a showing that there is no genuine issue as to any material fact. This treatment by the Fifth Circuit disobeys *Tolan*.

B. THIS CASE IS THE PROPER VEHICLE FOR ADDRESSING THE CONFLICT AS THE SIGNIFICANCE IS BEYOND THE PRESENT CASE.

The question presented, in the context of qualified immunity, is whether an official moving for summary judgment on qualified immunity may do so without a showing that there is no genuine issue as to any material fact. This is an important question that needs to be resolved, as the standard leads to direct conflict with Court precedent.

The facts in this case fit the question presented. The complaint alleged that Teichelman informed Petitioner that he is "free to leave" prior to detaining Petitioner demanding consent to search Petitioner's car. (a58). Yet, the Fifth Circuit accepted the narrative advanced by Teichelman's affidavit (without any discovery) that the initial stop continued even after Petitioner was told that he was free to leave. (a11).

The Fifth Circuit (a12-15) also accepted Teichelman's assertion that his dog is trained to sit or lay down or wait once she finds a scent (a102), and that the dog gave a positive detection of narcotics (a103), and refused to apply Petitioner's allegations that the dog "neither sat, barked, or stopped to indicate there was a positive alert for drugs." (a59, a113).

The Fifth Circuit also reasoned "The totality of the circumstances shows that in addition to his questioning of both Appellant and Ms. Lee, the lack of familial connection, and the drug highway; Teichelman is trained in highway interdiction, Teichelman routinely patrols I-40 with Kobra, and Kobra is registered and trained to alert to narcotics. Under this set of facts, Appellant has not

shown that the search of his vehicle was clearly established as unconstitutional." (a13).

On the one hand, the Fifth Circuit considers matters outside the pleadings, as was in this case with Teichelman's affidavit. Rule 12(d) provides, where a Court considers "matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." (a106). Many Circuits hold that "given a reasonable opportunity to present all the material" means affording discovery. *Hernandez v. Coffey*, 582 F.3d 303, 309 (2d Cir. 2009), *Bates v. Green Farms*, 958 F.3d 470, 484 (6th Cir. 2020), *Federated v. Coyle*, 983 F.3d 307, 313 (7th Cir. 2020). Yet, when it comes to qualified immunity there are Circuits that grant "summary judgment without allowing discovery" by laying on plaintiff the burden of invoking FRCP 56(d). *Wellington v. Daza*, No. 21-2052, 2022 WL 3041100, at *6 (10th Cir. 2022); *Garner v. City of Ozark*, 587 F. App'x 515, 518 (11th Cir. 2014)("In qualified immunity cases, the Rule 56(d) balancing is done with a thumb on the side of the scale weighing against discovery"); *Dreyer v. Yelverton*, 291 F. App'x 571, 577 (5th Cir. 2008)("once the government official pleads qualified immunity as an affirmative defense, the burden shifts to the plaintiff to rebut the defense" to render "summary judgment without discovery").

On the other hand, the Court has stressed that qualified immunity "is an immunity from suit rather than a mere defense to liability," and should be resolved "at the earliest possible stage in litigation." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). Yet, there are circumstances, such as in this case, where qualified immunity is based on

a defendant's factual allegations outside the pleadings. Should the facts be viewed in the light most favorable to the plaintiff or the defendant? Should a court consider the defendant's factual narrative that is outside the pleading?

One would think that *Tolan* already addressed that "In cases alleging unreasonable searches or seizures, we have instructed that courts should define the 'clearly established' right at issue on the basis of the 'specific context of the case' and courts must take care not to define a case's 'context' in a manner that imports genuinely disputed factual propositions." *Tolan* at 657. But it is not enough. The Fifth Circuit is still guided by its own precedent that "Once an official pleads the qualified immunity defense, the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law." *Baker v. Coburn*, 68 F.4th 240, 244 (5th Cir. 2023).

This case is the proper vehicle for addressing the standard because the Fifth Circuit consciously rejected *Tolon* and followed its own standard of *Orr*. Appellant's Brief by Petitioner in the Fifth Circuit repeatedly emphasized *Tolan* as the guiding standard. Yet, the Fifth Circuit tested the probability of Petitioner's claim based on Teichelman's affidavit without any discovery. Notwithstanding that Petitioner argued on appeal that the District Court's decision relying on the factual narrative of Teichelman is reversible error under *Tolon*, the Fifth Circuit cited to *Orr* that the "assertion of qualified immunity alters the usual summary judgment burden of proof, shifting it to the plaintiff." (a4). The Fifth Circuit following a standard that the Court squarely rejected in *Tolon* calls for certiorari.

C. THE CONFLICT IS NOT LIMITED TO THE FIFTH CIRCUIT.

This Tenth Circuit also joins the error of the Fifth Circuit, by holding, "When a defendant asserts qualified immunity at summary judgment, the burden shifts to the plaintiff, who must demonstrate on the facts alleged that (1) the defendant's actions violated his or her constitutional or statutory rights, and (2) the right was clearly established at the time of the alleged misconduct. . . . If, and only if, the plaintiff meets this two-part test does a defendant then bear the traditional burden of the movant for summary judgment—showing 'that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law." *Est. of Beauford v. Mesa Cnty.*, 35 F.4th 1248, 1261–62 (10th Cir. 2022).

It is respectfully submitted that answering the question—whether an official moving for summary judgment seeking qualified immunity may bring such motion without a showing that there is no genuine issue as to any material fact—will harmonize the standard of summary judgment between the Circuits with this Court.

II. THE FIFTH CIRCUIT CONFLICTS ON THE STANDARD OF INDIVIDUALIZED REASONABLE SUSPICION TO ALLOW DRAWING ON BROAD PROFILES THAT CAN FIT ANY NUMBER OF INDIVIDUALS.

The Court requires "the officers to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *Brown v. Texas*, 443 U.S. 47, 51 (1979). A broad profile is one that fits any individual with a similar appearance. The Court has yet to address whether the use of broad profiles

without more, such as the appearance of a person's race and its association with a member from a different race, are permissible in casting suspicion of crime.

A. THE FIFTH CIRCUIT ASSUMES THAT THERE IS STILL A DEBATE AS TO WHETHER THE MERE TANDEM OF RACE AND GENDER CAN CREATE REASONABLE SUSPICION.

Generally, fruits discovered as a result of race being the but-for cause for suspicion would be subject to exclusion under *Terry v. Ohio*, 392 U.S. 1, 14–15 (1968) ("The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, ... When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials"). Also *United States v. Brignoni-Ponce*, 422 U.S. 873, 886 (1975) ("Even if they saw enough to think that the occupants were of Mexican descent, this factor alone would justify neither a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country.").

One would think that in the 21st Century, we are already beyond the debate where broad profiles like gender and race create the suspicion of crime. Yet, the District Court accepted the broad profile describing an African American female who appeared having no familial connection with the driver as suspicion of a crime. The Fifth Circuit affirmed, "Appellant was traveling on I-40, a known drug highway, with a woman who 'appeared to be younger' and had no familial connection ... this court cannot say it is 'beyond debate' that Teichelman did not have reasonable suspicion to extend the stop." (a9).

B. THERE IS A CIRCUIT SPLIT ON THE USE OF BROAD PROFILES.

The Ninth, Seventh, and Second Circuits hold that broad profiles that can fit any number of individuals is not reasonable suspicion of a crime. In the Second Circuit "race, when considered by itself and sometimes even in tandem with other factors, does not generate reasonable suspicion for a stop." *United States v. Walker*, 965 F.3d 180, 186 (2d Cir. 2020). "[T]he characteristics of the suspect identified by the district court based on the photograph—black male, medium-to-dark skin tone, glasses, facial hair, and long hair—is likewise a description that fits too many people to constitute sufficient articulable facts on which to justify a forcible stop." *Id* at 187. In the Ninth Circuit, "reasonable suspicion may not be based on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped." *U.S. v. Sigmond-Ballesteros*, 285 F.3d 1117, 1121 (9th Cir. 2002). In the Seventh Circuit "Without more, a description that applies to large numbers of people will not justify the seizure of a particular individual." *U.S. v. St.*, 917 F.3d 586, 594 (7th Cir. 2019). "This is especially true where the description is based primarily on race and sex, as important and helpful as those factors can be in describing a suspect ... vague descriptions, including race and sex, without more, are not enough to support reasonable suspicion." *Id.*

The common denominator between the cited Ninth, Seventh, and Second Circuits, is that they were appeals in criminal cases.

The caselaw in the Fifth Circuit splinters when it comes to qualified immunity, leading to inconsistent

precedent between the elements of reasonable suspicion needed to sustain a warrantless search in a criminal proceeding and the elements needed to obtain qualified immunity for the same warrantless search in a civil proceeding. The Petitioner infers that this split in the Fifth Circuit arises from the misplacement of burden of proof, that the plaintiff has the initial burden to show that a wrong is clearly established to defeat a defense of qualified immunity. The Fifth Circuit shifts that burden onto a plaintiff even tough "qualified immunity is a defense, the burden of pleading it rests with the defendant." *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). As a direct result of such misplacement of the standard, rather than the officer having the burden of showing the Constitutional violation was not clearly established, there seems to be the notion that we still live in an era where a citizen has to prove that the appearance of a person's race and its association with a member from a different race and gender are 'clearly established' as an impermissible utility for suspicion of crime.

This erroneous burden is vivid in this case. Teichelman stopped the Petitioner allegedly for speeding and obscured license plates/registration. Teichelman informed the Petitioner that only a warning would be issued. Then Teichelman sees Petitioner' a "white" (Hasidic) man (quoting a56) with a driver's license from New Jersey traveling with an "African American" female who appears to be younger, so according to Teichelman he became suspicious that a crime is afoot. Teichelman removes Petitioner from his car and detains Petitioner by placing him in his police car, then questioning Petitioner about his travel plans without first reading the Miranda Rights. What triggered the removal of Petitioner from his car? In Teichelman's words, the passenger's broad profile,

the race of "African American" and gender being different than Petitioner and coming from New Jersey.

While the complaint itself does not plea a prejudice of race or gender, Teichelman's own affidavit, volunteered for summary judgment, revealed that "reasonable suspicion" was created on Teichelman's negative view of gender and race between the driver and the passenger for being on I-40. The Fifth Circuit accepted Teichelman's statement that the initial suspicion came from the driver being from New Jersey, the passenger "appeared" to be a female without a "familial relationship" to the driver, meaning the ethnicities were different. So, one would think that the Fourteenth Amendment proscribes subjecting a person to "reasonable suspicion" of a crime based on a broad profile of elements that are explicitly protected by the Constitution.[3] But since the Fifth Circuit misplaces the burden that the plaintiff must prove that a wrong was clearly established, Petitioner was asked to prove that it is clearly established beyond any debate that the appearance of a person's race and its association with a member from a different race and gender are not reasonable suspicion of crime.

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[3] Each element that Teichelman employed as suspicion violates the Constitution. *Terry* at 14–15 proscribes using race to target an individual. In *Sessions v. Morales-Santana*, 582 U.S. 47, 58 (2017) gender is protected under Equal Protection and triggers a heightened review. In *Saenz v. Roe*, 526 U.S. 489, 500 (1999) "the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State." *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) "a suspect must be warned that he has a right to remain silent."

C. THE FIFTH CIRCUIT CONFLICTS WITH THIS COURT.

In a criminal defense, *Brown* provides reasonable suspicion needs to be based on objective facts, that the individual is involved in criminal activity. As the Court held that "An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). "And any refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Id* at 125. "One of these constraints, imposed by the equal protection component of the Due Process Clause of the Fifth Amendment... is that the decision whether to prosecute may not be based on an unjustifiable standard such as race, religion, or other arbitrary classification," *United States v. Armstrong*, 517 U.S. 456, 464 (1996). Yet, when it comes to qualified immunity, the Fifth Circuit includes elements to build a narrative of suspicion under the excuse they were not clearly established as beyond debate, when the very same elements would not be sustainable as reasonable in a criminal proceeding.

D. THE QUESTION PRESENTED HAS NATIONWIDE SIGNIFICANCE THAT CAN RESOLVE INNER SPLITS BETWEEN THE CIRCUITS.

The question of whether the standard of individualized reasonable suspicion allows drawing on broad profiles that can fit any number of individuals, is an important question that can harmonize case law between the elements of reasonable suspicion needed to sustain a

warrantless search and the elements needed to overcome qualified immunity.

The conflict amongst the Circuits on whether "reasonable suspicion" can be based on broad profiles has implications, not only for race and gender but also for those traveling on a public highway. While the Court previously addressed the question, that "An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Illinois*, at 124. The Circuit conflict is still not resolved.

The Fourth and Tenth Circuits hold: "that traveling on a known drug corridor is not itself probative of criminal behavior and does not serve to eliminate a substantial portion of innocent travelers." *United States v. Miller*, 54 F.4th 219, 232 (4th Cir. 2022). "The government has failed to provide any objective basis to show why the facts Berg was traveling at night along a known drug corridor, using a slightly indirect route are significant in this case." *United States v. Berg*, 956 F.3d 1213, 1219 (10th Cir. 2020). The "traveling from a drug source city—or a drug source state—does little to add to the overall calculus of suspicion." *Vasquez v. Lewis*, 834 F.3d 1132, 1137 (10th Cir. 2016).

In contrast, in the Fifth Circuit there is reasonable suspicion of a crime when a person is present on a known drug corridor, as was in this case. (a9). What is a known drug corridor? There is no precedent defining that. A survey of the Fifth Circuit decisions, every other highway in the State of Texas is a known drug corridor.[4]

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[4] The following interstate highways in Texas are flagged as a "known drug corridor": I-10 (*U.S. v. Solis*, 2023 WL 107529, at *1 (5th

The Third, Sixth, Eight, Ninth and Eleventh Circuits also use the flagging of 'known drug corridor' as a basis for reasonable suspicion. *United States v. Stewart*, 92 F.4th 461, 468 (3d Cir. 2024), *United States v. Menendez*, No. 20-13628, 2022 WL 2388421, at *4 (11th Cir. 2022), *United States v. Cruz*, No. 20-10114, 2021 WL 5507348, at *2 (9th Cir. 2021), *United States v. Blaylock*, 421 F.3d 758, 769 (8th Cir. 2005), *United States v. Smith*, 601 F.3d 530, 542 (6th Cir. 2010). In these Circuits, law enforcement can flag every other highway as a known drug corridor and subject innocent people to the reasonable suspicion of a crime.

This case presents the perfect vehicle for addressing the use of broad profiles to cast suspicion of crime. There were no specific facts identified by Teichelman that tend to give the impression that either the Petitioner or his passenger were engaged in crime. All there was broad categories with nothing to frame a logical inference of a crime. The presupposition that Petitioner was (i) speeding (at an unspecified speed) and a vague accusation of an obscured license plates/registration, (ii) the Petitioner being a male with a driver's license from New Jersey (iii) traveling on I-40 in Texas with an "African American" female who appears to be younger with no "familial relationship" to the driver. Teichelman did not identify how any of these facts taken together portray a person engaged in narcotics or escalate the inference of

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Cir. 2023)); I-20 (*U.S. v. Goodin*, 835 F. App'x 771, 780 (5th Cir. 2021)); I-30 (*Bonds v. Lumpkin*, 2022 WL 59894 (5th Cir. 2022)); I-40 (*U.S. v. Holmes*, 2022 WL 3335775, at *1 (5th Cir. 2022)). Other highways include, Route 287 (*U.S. v. Barrow*, 2022 WL 17566152, at *6 (N.D. Tex. 2022)); Highway 259 (*Fisher v. Dir., TDCJ-CID*, 2018 WL 7890010, at *2 (E.D. Tex. 2018)); U.S. 75 (*Giroux v. State*, 2020 WL 4281950, at *1 (Tex. App. 2020)).

any crime. Yet, the Fifth Circuit assumed reasonable suspicion of a crime. As such, this case is the proper vehicle for addressing the question presented.

III. THE MISUSE OF CIVIL FORFEITURE AS A SOURCE TO RAISE REVENUES IMPLICATES IMPORTANT QUESTIONS OF FEDERAL LAW THAT HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

A. THERE IS SKEPTICISM OF WHETHER CIVIL FORFEITURE "IS CAPABLE OF SUSTAINING, AS A CONSTITUTIONAL MATTER, THE CONTOURS OF MODERN PRACTICE." *LEONARD AT* 1178. THUS, THE QUESTION PRESENTED INVOLVES AN IMPORTANT ISSUE OF FEDERAL LAW THAT SHOULD BE SETTLED BY THE COURT.

As cited *supra* (ps. 3-5) at length, there are two factors relating to civil forfeiture that trigger constitutional concern. First, "forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings." *Leonard* at 848. Second, "Law enforcement agencies have become increasingly dependent on the money they raise from civil forfeitures." *Culley* at 396 (Gorsuch concurring). "And it seems that, when local law enforcement budgets tighten, forfeiture activity often increases." *Id.*

The way these two factors interplay, "Police officers have an incentive to enforce the law in a way that leads to the recovery of fungible property, like cash or cars. For

example, officers might pose as drug dealers instead of buyers in a sting operation, because it allows police to seize a buyer's cash rather than a seller's drugs (which have no legal value to the seizing agency)." *Id* at 406 (Sotomayor dissenting). "Similarly, police officers might target low-level drug possession in cars instead of drug transactions on the street, so that they can seize the vehicle." *Id.*

Since the target of civil forfeiture are those least able to defend their interests against forfeiture, the issue evades constitutional scrutiny, leading both to injustice and evade constitutional review. This case is the proper vehicle for addressing when a municipality can be subject to a Monell claim for its pursuit of civil forfeiture. The issue was preserved in the lower courts. Whereas the likelihood that a better opportunity to address the issue will come forward will be justice delayed.

B. THE FIFTH CIRCUIT DEPARTS FROM THIS COURT ON A MONELL CLAIM BY REQUIRING THE PLEADING OF A "WRITTEN POLICY."

"It is well established that in a § 1983 case a city or other local governmental entity cannot be subject to liability at all unless the harm was caused in the implementation of official municipal policy." *Lozman v. Riviera Beach*, 585 U.S. 87, 95 (2018). "Relying on the language of § 1983, the Court has long recognized that a plaintiff may be able to prove the existence of a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a 'custom or usage' with the force of law." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). Petitioner could not locate case law by this

Court requiring that a Monell claim plead a "written policy." Yet, the Fifth Circuit requires one. (a17)

Under Monell, "the trial judge must identify those officials or governmental bodies who speak with final policymaking authority for the local governmental actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue. Once those officials who have the power to make official policy on a particular issue have been identified, it is for the jury to determine whether their decisions have caused the deprivation of rights at issue by policies which affirmatively command that it occur." *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989).

The Fifth Circuit found that the complaint included specific facts showing that Inman was an official policy maker with regards to implementing civil forfeiture. (a16-17, a40). These factual allegations (and evidence cited in support) should have satisfied *Praprotnik,* but it did not. The Fifth Circuit quoted its own precedent, "an official policy usually exists in the form of written policy statements, ordinances, or regulations." (a15 quoting *Balle v. Nueces Cnty., Texas*, 952 F.3d 552, 559 (5th Cir. 2017)). But there is no such requirement in the Court's forty-six (46) year precedent of Monell that once the official policy and its maker were plead adequately that the plaintiff must also plead a "written policy." This extraneous "written" element imposed by the Fifth Circuit on Monell claims is a question for the Court to settle, the Circuit's imposition of elements for a claim for relief, did not just affect the Petitioner, also affects negatively other Monell claims in the Fifth Circuit.

IV. THE COURT SHOULD REVISIT THE FOUNDATION OF QUALIFIED IMMUNITY AS ITS DOCTRINE CONFLICTS WITH THE EQUAL PROTECTION AND CHECKS AND BALANCES AND POLARIZE THE NATION.

The Court held that "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan,* 555 U.S. 223, 231 (2009).

The foundation of qualified immunity does not sit well with indispensable dogmas provided by the Constitution and the Court should revisit its foundation.

A. THE DOCTRINE CONTRADICTS THE EQUAL PROTECTION CLAUSE.

The Court held that the Constitution does "not permit any distinctions of law based on race or color, ... any law which operates upon one man should operate equally upon all." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 202 (2023). The Fourteenth Amendment gives "to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty." *Id.* "The equal protection of the laws is not achieved through indiscriminate imposition of inequalities." *Id* at 219 (2023).

Despite the strong recognition of the purpose of the Equal Protection clause, qualified immunity diminishes its value. The legal maxim is that "ignorance of the law is no excuse." *Unicolors, Inc. v. H&M Hennes & Mauritz, L. P.*, 595 U.S. 178, 188 (2022). Qualified immunity leads to the polarization that no individual is equal before the law, public officials are protected from discretionary errors unless the right is clearly established, whereas an individual is not protected from any governmental error. The same is on the inverse, there is no defense available to private citizens that an alleged violation was not clearly established as a wrong. Yet, the doctrine of qualified immunity creates an inequality for public officials by allowing an official to claim ignorance of the law whereas the individual cannot plea such defense. The fact that qualified immunity allows an official to assert ignorance of the law, in contravention to the legal maxim, this alone warrants revisiting the foundation of the qualified immunity doctrine as being inconsistent with the Equal Protection clause, since not everyone stands equally before the law.

Also concerning, "Our Constitution is color-blind, and neither knows nor tolerates classes among *citizens*. In respect of civil rights, all *citizens* are equal before the law." *United States v. Vaello Madero*, 596 U.S. 159, 178 (2022). Yet, "Research indicates that Black Americans are pulled over more often, searched more often, arrested more often, imprisoned more often, wrongfully convicted more often, and killed by law enforcement more often than other Americans. Qualified immunity then bars many of these individuals from securing justice, shutting the courthouse doors on a large portion of those black and brown citizens who plausibly allege that police officers targeted, surveilled, or stopped them because of their

race." *Green v. Thomas*, No. 3:23-CV-126-CWR-ASH, 2024 WL 2269133, at *8 (S.D. Miss. May 20, 2024). There is a growing tension that "America's 'long history of racism ... is unavoidably and inextricably enshrined in the doctrine" of qualified immunity. *Id* quoting *Katherine Enright & Amanda Geary, Qualified Immunity and the Colorblindness Fallacy: Why "Black Lives [Don't] Matter" to the Country's Highest Court*, 13 Geo. J. of L. & Mod. Critical Race Persps. 135, 140 (2021)[5](brackets and quotations are in the original caption). The Equal Protection clause bars this kind of result, where disparate treatment is the outcome of the qualified immunity.

The injustice happening because of qualified immunity does not begin nor end with racism and extends to civil forfeiture. As cited *supra* (ps. 3-5) from *Culley* and *Leonard*, civil forfeiture targets individuals crossing state lines, who are poor, from diverse ethnicities, and without the financial means to litigate the return of forfeited property. With qualified immunity in place, there is no mechanism to remedy a wrongful subjection to a civil forfeiture fishing expedition, as evident by the Fifth Circuit's disposition of this case.

As a direct result, the doctrine of qualified immunity cannot stand in harmony with the Fourteenth Amendment. While the Court assumed the "tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that Congress would have specifically so provided had it wished to abolish the doctrine." *Owen v. City of Indep., Mo.*, 445 U.S. 622, 637 (1980). The Court has yet to consider

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[5] https://www.law.georgetown.edu/mcrp-journal/wp-content/uploads/sites/22/2023/02/FINAL_Enright_Geary-13.2-OJA-Draft-3.pdf

whether the Equal Protection clause places the citizen and the official at equal footing before the law, but the Fourteenth Amendment gives "to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty." *Students v. Harvard*, at 202. The fact that the enactment of §1983 came shortly after ratifying the Equal Protection clause supports rejecting the idea that Congress "would have specifically so provided had it wished to abolish the doctrine [of immunity]," because §1983 is a remedial statute enacted pursuant to Section 5 in furtherance of Section 1 of the Fourteenth Amendment where everyone stands at an equal footing before the law with the same reverence, the official, the well-respected and the most despised person; all are equal. Thus, qualified immunity cannot square with the dogmas of the Equal Protection clause.

B. THE DOCTRINE VIOLATES THE SYSTEM OF CHECKS AND BALANCES.

The structure of the American political system is "the separation of powers and the constitutional system of checks and balances as core principles of our constitutional design, essential to the protection of individual liberty." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 115–16 (2015). While the Court's caselaw to do not elaborate on how individual liberty is protected by a tripartite system of separation of powers and checks and balances, it is self-understood that an individual's right to due process, the right to redress, the right to be made whole, and the independence of the judiciary, all lead to a system of checks and balances where the judiciary can

rectify errors caused by those in a branch of government who enforce the law.

The doctrine of qualified immunity is inconsistent with a system of check and balances by creating a wholesale exemption of accountability to the law for discretionary acts. "If agencies were permitted unbridled discretion, their actions might violate important constitutional principles of separation of powers and checks and balances." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 536 (2009). Yet, "the Court has held that Government officials are entitled to qualified immunity with respect to discretionary functions performed in their official capacities." *Ziglar v. Abbasi*, 582 U.S. 120, 150 (2017). The fact that Congress cannot permit an agency to have unbridled discretion with its acts, as *F.C.C.* established, supports finding that Congress could not afford qualified immunity in §1983 cases to shield officials.

C. THE SHIELDING OF OFFICERS FROM FEDERAL LAW VIOLATES ARTICLE III.

The mandate of the Constitution is "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made..." Section 2 in Article III. "Article III, § 1 of the Constitution confers the judicial Power ... an inseparable element of the constitutional system of checks and balances, which sets aside for the Judiciary the authority to decide cases and controversies according to law." *Patchak v. Zinke*, 583 U.S. 244, 266 (2018). The Court is obliged to decide a "case or controversy that is properly within federal courts' Article III jurisdiction." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013).

Qualified immunity being an immunity to suit, violates Article III by preventing the courts, from deciding cases, in law and equity, arising from a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 USC 1983. The bar to suit is simply inconsistent with Article III by withholding from the courts the mandate to decide cases, in law and equity, arising under the Constitution.

D. THE INABILITY TO RECTIFY WRONGS COMMITTED BY OFFICIALS LEAD TO THE SELF-HELP OF CIVIL UNREST, WHENEVER THERE IS A PUBLIC OUTRAGE OF POLICE MISCONDUCT.

The residual effect of qualified immunity is the polarization throughout the nation as to whose life matter: "black lives matter," "blue lives matter," and "all lives matter." The result from these divisions leads to the self-help with demonstrations where outrage threaten taking a town and "burning itself to the ground."[6] This outcome is counter intuitive "in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs." *Gregg v. Georgia*, 428 U.S. 153, 183 (1976). "The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of [] justice serves an important purpose in promoting the stability of a society governed by law." *Id.* Qualified immunity being a bar to suit makes the legal process unavailable to address a wrong committed by an

[6] Quoting Michael Render, also known as Killer Mike, in an opinion published in The Guardian, *We must end 'qualified immunity' for police. It might save the next George Floyd,* https://www.theguardian.com/commentisfree/2021/apr/20/george-floyd-derek-chauvin-killer-mike-police

official, which in turn causes the polarization of whose "lives matter" thus promoting an uncivil reaction of self-help: burning a town to the ground.

E. THE REASONING THE COURT HAS OFFERED OVER THE YEARS FOR QUALIFIED IMMUNITY DOES NOT SIT WELL.

The reasoning by the Court that qualified immunity "shield officials from harassment, distraction, and liability when they perform their duties reasonably" (*Pearson* at 231) cannot square with good reasoning.

First, if suing law enforcement is an act of "harassment" then the same logic applies to every lawsuit filed in federal court: harassment of the defendant(s). Second, the premise that qualified immunity removes the threat of liability to preempt a distraction of discretionary duties, implies that there is no restraint on violating the basic rights of citizens. More concerning, while qualified immunity looks to shield the threat of liability, the immunity to suit deprives an individual from having a wrong corrected. These reasons for qualified immunity are inconsistent with the notion of justice.

The premise of qualified immunity to prevent "harassment" is unnecessary. Rule 11 of the Federal Rules of Civil Procedure already provides sanctions for any suit that was brought for "any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." FRCP 11(b). 28 USC 1927 also provides sanctions for vexatious litigation. There is no need for the extra vigilance of qualified immunity to deter what FRCP 11 and §1927 already deters.

F. THERE ARE ADEQUATE AND PRACTICAL DEFENSES AVAILABLE TO OFFICIALS MORE EFFECTIVE AND REASONABLE THAN QUALIFIED IMMUNITY.

The statute itself provides, 42 USC 1983 is only available for a tort taken under the "color" of law. The plain definition of color of law, "The appearance or semblance, without the substance, of legal right." Black's Law Dictionary, 2nd Edition, 1910, citing *McCain v. Des Moines*, 174 U.S. 168 (1899). "'Color of law' does not mean actual law. 'Color,' as a modifier, in legal parlance, means 'appearance, as distinguished from reality.'" *Id* at 175. Meaning, the injury arises from a color, a tortious application of such color of law. Under this plain language in §1983, there is no cause of action, when an official acts according to the law; meaning when there is no color or perversion of the law there is no case for deprivation. The element of color is ordinarily a question of law based on the pleadings, and easily resolved on a pre-answer motion.

By the same inference, there is also the bona fide error defense, which provides if there was no creating of a "color" there is no cause of action. A bona fide error is one where an official acted within the confines of the law, training, protocol and assignment without there being a color. Such as, an officer responding to an emergency and enters a property without a warrant to save a life. If the emergency turns out to be a false alarm, not manufactured by the officer, the bona fide error would be a defense. The same is if an officer mistakes an innocent person as a suspect of the crime scene, there is no color.

Even in the circumstances when there is a color, the Court has recognized that the §1983 has incorporated common law defenses. There are adequate common law

defenses more than sufficient in protecting law enforcement from erroneous liability, compared to qualified immunity that avoids the merits. For instance, the unclean hands doctrine proscribes equitable relief when, "an individual's misconduct has immediate and necessary relation to the equity that he seeks." *Henderson v. United States*, 575 U.S. 622, 625 (2015). The common law defense of unclean hands can bar many claims. For example, a tort from injuries that resulted from resisting arrest, unclean hands would be a complete defense since most states qualify resisting arrest as a crime. Common law also provides a defense for the failure to mitigate damages, which would be available for a "color" where the claimant neglected any efforts to mitigate damages. These are non-exhaustive examples of common law defenses that would encourage law abiding behavior by citizens, protect officials in their discretionary functions, whereas the uncivil behavior by an individual can act as a complete defense in a §1983 action.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: Forty Fort, PA
August 19, 2024

Respectfully submitted,

Yoel Weisshaus

Affirmed to its truth under the prohibition of 28 USC 1746 before me on this _____ day of August 2024

The Fourth Amendment "permits an officer to initiate a brief investigative traffic stop when he has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)). The "level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." Id. (quoting *Prado Navarette v. Cal.*, 572 U.S. 393, 397 (2014)). "The standard depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* at 1188 (internal quotations and citation omitted). The district court granted summary judgment to Teichelman based on qualified immunity, finding that Appellant had failed to show that any constitutional violation was clearly established.

The doctrine of qualified immunity "protects government officials from civil damages liability when their actions could reasonably have been believed to be legal." *Anderson v. Valdez*, 845 F.3d 580, 599 (5th Cir. 2016). "This immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" Id. "Accordingly, we do not deny immunity unless 'existing precedent [has] placed the statutory or constitutional question beyond debate.'" *Id.* at 599-600 (citation omitted). To defeat qualified immunity, Appellant must show: "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Id.* at 600. "This court, like the district court, has 'discretion to decide which of the two prongs of the

qualified-immunity analysis to tackle first.'" *Id.* (citation omitted). We begin with the second prong.

A. CLEARLY ESTABLISHED

"If the defendant's actions violated a clearly established constitutional right" courts examine "whether qualified immunity is still appropriate because the defendant's actions were objectively reasonable in light of law which was clearly established at the time of the disputed action." *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010) (internal quotations omitted). The court focuses on the state of the law at the time of the incident and whether it provided fair warning to the defendant that his conduct was unconstitutional. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014). The caselaw must establish beyond debate that the officer's conduct violated then-clearly established law. *Baldwin v. Dorsey*, 964 F.3d 320, 326 (5th Cir. 2020). Appellant must "identify a case in which an officer acting under similar circumstances was held to [have committed a constitutional violation] and explain why the case clearly proscribed the conduct of the officer." *Joseph on behalf of Estate of Joseph v. Bartlett*, 981 F.3d 319, 345 (5th Cir. 2020) (citation amended). "It is the plaintiff's burden to find a case in his favor that does not define the law at a high level of generality." *Rich v. Palko*, 920 F.3d 288, 294 (5th Cir. 2019) (quotations and citation omitted).

I. REASONABLE SUSPICION

Appellant first argues that it was clearly established that Teichelman did not have reasonable suspicion to prolong the stop and conduct a dog sniff. A "police stop exceeding the time needed to handle the

matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Rodriguez v. United States*, 575 U.S. 348, 350 (2015). "A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." *Id.* "Once the purpose of a valid traffic stop has been completed and an officer's initial suspicions have been verified or dispelled, the detention must end unless there is additional reasonable suspicion supported by articulable facts." *United States v. Estrada*, 459 F.3d 627, 631 (5th Cir. 2006) (quoting *United States v. Machuca–Barrera*, 261 F.3d 425, 434 (5th Cir. 2001)). "If the officer develops reasonable suspicion of additional criminal activity during his investigation of the circumstances that originally caused the stop, he may further detain [the] occupants [of the vehicle] for a reasonable time while appropriately attempting to dispel this reasonable suspicion." *United States v. Andres*, 703 F.3d 828, 833 (5th Cir. 2013) (quoting *United States v. Pack*, 612 F.3d 341, 350 (5th Cir. 2010)). Reasonable suspicion exists "when the detaining officer can point to specific and articulable facts that, when taken together with rational inferences from those facts, reasonably warrant the search and seizure." *Id.*

Appellant has not shown that any constitutional violation was clearly established. It is undisputed that Teichelman questioned Appellant while he was seated in the car, still processing Appellant's documents. In this questioning, (1) Appellant was short with his responses to questions about his travel plans, (2) Appellant had a New Jersey driver's license and was traveling on I-40, a known drug corridor, (3) with a

female that appeared to be considerably younger than him, and (4) had no familial relation to him. Appellant has not shown that it was clearly established that under similar facts an officer was held to have committed a constitutional violation. In fact, we have previously found reasonable suspicion where the driver was unable to answer questions as to travel plans and where his story diverged from that of other occupants while traveling on a known drug corridor. (See *United States v. Smith*, 952 F.3d at 649 "we have consistently considered travel along known drug corridors as a relevant—even if not dispositive—piece of the reasonable suspicion puzzle." *Id.*)

For the same reasons, Appellant has failed to show that any continued detention to question Ms. Lee was clearly established as unconstitutional. After questioning Appellant, Teichelman questioned Lee with the same general questions on travel itinerary, and she (1) could not provide details as to the trip, (2) appeared nervous, timid, and scared, and (3) failed to make eye contact with him and looked at the floorboard. See *Andres*, 703 F.3d 828 at 833-34 (finding reasonable suspicion where the driver's untruthful answers, nervousness, and the anonymous tip about carrying drugs created additional reasonable suspicion justifying the continued detention). Furthermore, the reasonable suspicion determination "must be made based on the totality of the circumstances and the collective knowledge and experience of the officer or officers." *Estrada*, 459 F.3d at 631-32. Courts "must allow law enforcement officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Brigham*, 382 F.3d at 507

(quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)).

Appellant cites *United States v. Santiago*, for the proposition that it was clearly established that Teichelman unconstitutionally extended the stop. 310 F.3d 336 (5th Cir. 2002). In that case the officer stopped Santiago for a flashing light hazard to oncoming traffic. The officer claimed he was suspicious because Santiago said they were traveling on vacation to Atlanta for one week before his kids started school, but his wife, who was in the car, said they were staying for 2-3 weeks. Further, the officer knew that school in Louisiana had already started. The officer also noted nervousness when he asked Santiago for his license, and the officer was suspicious because there was another woman's name on Santiago's car's registration. To dispel this, Santiago explained that school started later where he lived, hence the late travel date, and he also explained that the other woman on the registration was his ex-wife, but the car was his. The officer ran criminal history checks, and despite them coming back negative, and the car not being reported as stolen, the officer extended the stop and ultimately conducted a canine drug sniff. The court found that the officer unreasonably extended the stop in violation of Santiago's Fourth Amendment rights stating that the officer's suspicion of child trafficking and stolen vehicle were dispelled, and the conflicting statements and nervousness were not enough. *Id.* at 342.

Unlike in *Santiago*, Teichelman articulated that he was partly suspicious because Appellant was traveling on I-40, a known drug highway, with a woman who "appeared to be younger" and had no familial

connection. Accordingly, pertinent facts present in this case, differ from those in Santiago. See *Smith*, 952 F.3d at 649 (finding that the totality of the circumstances supported reasonable suspicion where the stories of the driver and the non-relative passengers were inconsistent; the driver's story seemed implausible; and that they were traveling on an interstate frequently used to transport contraband). Accordingly, this court cannot say it is "beyond debate" that Teichelman did not have reasonable suspicion to extend the stop. *Tolan*, 572 U.S. at 656.

Furthermore, unlike in Santiago, Teichelman's suspicions were not dispelled. "Once the purpose of a valid traffic stop has been completed and an officer's initial suspicions have been verified or dispelled, the detention must end[.]" *Estrada*, 459 F.3d at 631 (citation omitted) (emphasis added). ("If the officer develops reasonable suspicion of additional criminal activity during his investigation of the circumstances that originally caused the stop, he may further detain [the] occupants [of the vehicle] for a reasonable time while appropriately attempting to dispel this reasonable suspicion.") *Andres*, 703 F.3d at 833 (citation omitted) (emphasis added). Here, neither Appellant nor Ms. Lee could give concrete travel details, they were traveling on a known drug highway with an out-of-state license, there was no familial relationship, and Ms. Lee was acting nervous, scared, and avoided eye contact. Only then did Teichelman conduct an open-air sniff. Accordingly, even if Teichelman did not have reasonable suspicion to prolong the stop to conduct the dog sniff, any violation was not clearly established.

II. PROBABLE CAUSE

Appellant next argues that it was clearly established that Teichelman did not have probable cause to search his vehicle. A police officer has probable cause to conduct a search when "the facts available to [him] would 'warrant a [person] of reasonable caution in the belief' that contraband or evidence of a crime is present." *Florida v. Harris*, U.S. 237, 243 (2013) (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality opinion)). "The test for probable cause is not reducible to 'precise definition or quantification.'" Id. (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). "All we have required is the kind of 'fair probability' on which 'reasonable and prudent [people,] not legal technicians, act.'" *Id.* (citation omitted). "In evaluating [this standard], we have consistently looked to the totality of the circumstances." *Id.* at 244. Our court "has repeatedly affirmed that an alert by a drug-detecting dog provides probable cause to search." *United States v. Sanchez-Pena,* 336 F.3d 431, 444 (5th Cir. 2003). "The question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." Harris, 568 U.S. at 248.

Teichelman states that Kobra alerted. Appellant argues that the dog did not sit, bark, or stop, and thus did not alert and there was therefore no probable cause to search his vehicle. Even if Teichelman did not have probable cause to search the vehicle, any violation was not clearly established. "Evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust

his alert." *Harris*, 568 U.S. at 246. Kobra is registered and trained to give passive alerts. Further, "[o]ur Fourth Amendment jurisprudence does not require drug dogs to abide by a specific and consistent code in signaling their sniffing of drugs to their handlers." *United States v. Clayton*, 374 F. App'x 497, 502 (5th Cir. 2010). Additionally, "[t]he question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." *Harris*, 568 U.S. at 248. The totality of the circumstances shows that in addition to his questioning of both Appellant and Ms. Lee, the lack of familial connection, and the drug highway; Teichelman is trained in highway interdiction, Teichelman routinely patrols I-40 with Kobra, and Kobra is registered and trained to alert to narcotics. Under this set of facts, Appellant has not shown that the search of his vehicle was clearly established as unconstitutional. Appellant cites to *Rodriguez*, 575 U.S. 348, to show that Teichelman violated a clearly established constitutional right. Although Appellant references this case in the context of his Monell claim against the District, we discuss it here.[1]

In *Rodriguez*, Rodriguez was pulled over for driving on a highway shoulder. When the officer asked Rodriguez why he was driving on the shoulder, he answered that he swerved to avoid a pothole. The officer then asked Rodriguez if he would accompany him

[1] Appellant mentions that the "dog was only a fabricated pretext . . . for probable cause," and so it is probative to his argument that Teichelman did not have probable cause to search his vehicle.

back to his patrol car, but he declined. The officer proceeded to run Rodriguez's information while in his patrol car, and it came back with no issues. He then asked both people in the car questions about where they were going, which they answered, and the officer issued a warning and returned all documents. Rodriguez, 575 U.S. at 351-52. At that point, the officer had fully completed everything related to the stop and "took care of all the business." *Id.* at 352. Despite this, the officer held Rodriguez while he conducted an open-air sniff around the vehicle. The dog alerted to drugs in the vehicle and a search revealed a large bag of methamphetamine. Rodriguez moved to suppress the evidence arguing that the officer prolonged the stop without reasonable suspicion.

The magistrate judge found that the continued detention for the dog sniff was not supported by individualized suspicion and the district court adopted those findings, but nonetheless denied the motion to suppress under Eighth Circuit precedent because the extension of the stop by seven to eight minutes was only a "*de minimis*" intrusion on Rodriguez's rights. The Eighth Circuit affirmed and did not address whether the officer had individualized suspicion. *Id.* at 352-53. The Supreme Court ultimately remanded the case for the Eighth Circuit to determine whether reasonable suspicion of criminal activity justified detaining the driver beyond the completion of the initial traffic stop because an officer may not prolong the stop "absent reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* at 355; 358.

Here, similar to *Santiago*, pertinent facts of this case differ from the facts of our case. Unlike in

Rodriguez, Teichelman specifically articulated his suspicion on why he suspected that criminal activity was afoot, and those reasons were not dispelled prior to extending the stop and conducting the search. Accordingly, Appellant has failed to establish that any constitutional violation was clearly established.

II. THE DISTRICT JURISDICTION

Appellee first argues that Appellant has waived his right to appeal the district court's order dismissing the claims against the District because Appellant failed to "designate the judgment—or appealable order—from which the appeal is taken." Under Federal Rule of Appellate Procedure 3(c)(1)(B), a "notice of appeal must ... designate the judgment, order, or part thereof being appealed." *Carraway v. U.S. ex rel. Fed. Emergency Mgmt. Agency*, 471 F. App'x 267, 268 (5th Cir. 2012). "Rule 3's dictates are jurisdictional in nature, and their satisfaction is a prerequisite to appellate review." Id. However, "we construe a notice of appeal liberally to avoid technical barriers to review." *U.S. ex rel. Bias v. Tangipahoa Par. Sch. Bd.*, 816 F.3d 315, 327 (5th Cir. 2016). Because Appellant identified the final order in this case in his Notice of Appeal, we may assert jurisdiction. "Reviewing a final judgment, [] 'clearly encompasses the prior orders leading up to it.'" *Id.* at 328.

STANDARD OF REVIEW

The court conducts de novo review of a district court's order to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 734 (5th Cir. 2019). "To survive a

Rule 12(b)(6) motion to dismiss, the complaint 'does not need detailed factual allegations,' but it must provide the plaintiff's grounds for entitlement to relief—including factual allegations that, when assumed to be true, 'raise a right to relief above the speculative level.'" *Taylor v. City of Shreveport*, 798 F.3d 276, 279 (5th Cir. 2015) (citation omitted). "We may affirm a district court's order dismissing a claim under Rule 12(b)(6) 'on any basis supported by the record.'" *Id.* (citation omitted).

MONELL LIABILITY

Appellant argues that the District has a custom or policy of exploiting Texas laws by converting ordinary traffic stops into an opportunity for civil forfeiture. He argues that the District created the 100th Judicial District Traffic Enforcement Division ("Traffic Division") to use these traffic stops as an opportunity for civil forfeiture, to search, without probable cause, in hopes of finding large sums of cash or narcotics. Municipal liability under 42 U.S.C. § 1983 "requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski v. City of Hous.*, 237 F.3d 567, 578 (5th Cir. 2001) (quoting *Monell v. Dep't. of Social Services*, 436 U.S. 658, 694 (1978)). *Monell* does not encompass liability based on *respondeat superior*; accordingly, "the unconstitutional conduct must be directly attributable to the municipality through some sort of official action or imprimatur; [and] isolated unconstitutional actions by municipal employees will almost never trigger liability." *Id.* There is no dispute that District Attorney

Inman was the District's policy maker. Accordingly, we look to whether there is an official policy.

"Although an official policy 'usually exists in the form of written policy statements, ordinances, or regulations, ... it may also arise in the form of a widespread practice that is so common and well-settled as to constitute a custom that fairly represents municipal policy.'" *Balle v. Nueces Cnty.*, 952 F.3d 552, 559 (5th Cir. 2017) (citation omitted). Appellant does not allege that there was a written policy, only that there was a "practice and custom" of unconstitutional seizures. "In order to find a municipality liable for a policy based on a pattern, that pattern 'must have occurred for so long or so frequently that the course of conduct warrants the attribution to the governing body of knowledge that the objectionable conduct is the expected, accepted practice." *Davidson v. City of Stafford, Tex.*, 848 F.3d 384, 396 (5th Cir. 2017). "A pattern requires similarity, specificity, and sufficiently numerous prior incidents." *Id.* Here, Appellant does not provide sufficient factual detail for this court to find an unconstitutional official policy.

At the district court, Appellant provided twenty-one instances where "the officer called a k-9 unit to prolong detentions after the purpose of the traffic stops had concluded pursuant to the District's unconstitutional pattern and practice." However, none of these examples provide the specific background necessary for a court to determine, for example, the purpose of the stop, whether the persons were guilty or not, any court rulings on the matter, any similarity between the occurrences, or number of total stops in context. See *Peterson v. City of Fort Worth, Tex.*, 588 F.3d 838, 851 (5th Cir. 2009) (finding the district court

did not err in holding that the plaintiff did not establish an unconstitutional official policy where the pattern evidence failed to provide context such as the size of the police department or number of arrests). Appellant only makes the conclusory assertion that these stops were prolonged due to an unconstitutional practice. That is not enough. To survive a motion to dismiss, a plaintiff's "description of a policy or custom and its relationship to the underlying constitutional violation ... cannot be conclusory; it must contain specific facts." *Balle*, 952 F.3d at 559 (quoting *Spiller v. City of Tex. City, Police Dep't*, 130 F.3d 162, 167 (5th Cir. 1997)). Even if this court were to take at face value, Appellant's contention that "he was not required to plead these factual allegations" the remainder of his complaint, is conclusory. Accordingly, the district court did not err in dismissing the complaint against the District.

CONCLUSION

We AFFIRM the district court.

APPENDIX B
ECF No. 34

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS, Plaintiff, v. STEVE COY TEICHELMAN, Defendant.	§ § § § § § § § §	2:22-CV-035-Z-BR

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion for Summary Judgment ("Motion") (ECF No. 26), filed on September 28, 2022. Having considered the Motion, briefing, and relevant law, the Court **GRANTS** the Motion and renders summary judgment in Defendant's favor.

BACKGROUND

This case arises out of a traffic stop that occurred on March 2, 2020. Plaintiff Yoel Weisshauss and passenger Sasha Lee were driving through Texas, en route from Oklahoma to Arizona. ECF No. 1 at 5. Plaintiff alleges he was pulled over by Defendant — an officer working for the 100th Judicial District Traffic Enforcement Division — for speeding and

displaying an obscured license plate.[1] *Id.* Defendant identified Plaintiff as a middle-aged male and his passenger as an African-American female who appeared to be in her early 20s. ECF No. 27 at 10. Plaintiffs driver's license indicated he was from New Jersey. *Id.* Defendant asked Plaintiff to step out of his vehicle and sit in the front of Defendant's patrol vehicle while Defendant "processed a warning." ECF No. 1 at 5. While in the patrol vehicle, Defendant asked Plaintiff questions regarding where he was traveling, how long he intended to stay at his destination, and his lodging plans. ECF No. 27 at 10. Defendant states Plaintiff was short with his responses and unable to provide any details.[2] *Id.* Given that Plaintiff was traveling with a driver's license from New Jersey on 1-40 — which Defendant asserts is "a known drug and human trafficking corridor"[3] — with a female who appeared to be considerably younger with no familial connection, Defendant argues he developed a suspicion of criminal activity. *Id.*

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[1] Plaintiff denies that he was speeding or that his vehicle displayed an obscured license plate. Plaintiff, however, does not appear to be challenging the lawfulness of the initial traffic stop. *See* ECF Nos. 29, 30 at 11.

[2] Plaintiff contends he "answered he was traveling to Scottsdale, Arizona to help Ms. Lee move her belongings to New Jersey." ECF No. 30 at 11. But Plaintiff does not deny that he "was unable to provide the duration of his travel plans, provide a general itinerary, or general hotel/lodging information." ECF No. 27 at 10.

[3] Plaintiff denies that 1-40 is known as such. ECF No. 30 at 11. *But see United States v. Lopez*, No. 2:21-CR-5 l-Z-(2), 2021 WL 5746006, at *4 (N.D. Tex. Dec. 2, 2021) (1-40 is "known by law enforcement as a notorious corridor for narcotics trafficking").

Defendant then asked the female passenger the same general questions. *Id.* at 11. Defendant asserts Ms. Lee could not provide details and "appeared nervous, timid, and scared." *Id.* Defendant then asked Plaintiff and Ms. Lee to stand away from the vehicle as he walked his canine partner Kobra around the vehicle. *Id.* After Kobra gave Defendant a passive alert, Defendant searched the vehicle.[4] *Id.* However, Defendant did not find any narcotics. *Id.* Defendant then let Plaintiff and Ms. Lee leave with a warning relating to Plaintiffs speeding and obscured license plate or registration insignia. *Id.*

Plaintiff filed suit on March 2, 2022, naming Officer Teichelman and the 100th Judicial District as Defendants. ECF No. 1. Plaintiff alleges Defendant's search was an "unconstitutional detention in violation of [Plaintiffs] rights pursuant to the 100th Judicial District's practice of prolonging traffic stops past when the purpose for the stop had concluded in order to illegally detain and search citizens and subject them to civil forfeiture proceedings." ECF No. 1 at 3. The 100th Judicial District filed a motion to dismiss for failure to state a claim. *See* ECF No. 10. The Court granted the motion, finding Plaintiff failed to plausibly plead the existence of an official policy under *Monell* v. *Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 (1978). *See* ECF No. 21. Defendant then filed the instant Motion on September 28, 2022. Plaintiff argues there are genuine disputes of material fact concerning: (1) whether Defendant had probable cause or reasonable suspicion to support detaining Plaintiff after the purposes of the traffic stop had

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[4] Plaintiff contends Kobra "neither sat, barked, or stopped to indicate there was a positive alert for drugs." *Id.* at 12.

concluded; and (2) whether an illegal search of Plaintiff s vehicle was conducted. ECF No. 29 at 1.

LEGAL STANDARD

Summary judgment is proper if the movant shows that there is no genuine dispute of material fact, and the movant is entitled to judgment as a matter of law. *Sanders v. Christwood,* 970 F.3d 558, 561 (5th Cir. 2020) (citing FED. R. CIV. P. 56(a)). A fact is "material" if resolving it one way or another would change the outcome of the lawsuit. *Sossamon* v. *Lone Star State of Tex.,* 560 F.3d 316, 325 (5th Cir. 2009). A genuine dispute over that fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *McCarty v. Hillstone Rest. Grp., Inc.,* 864 F.3d 354, 357-58 (5th Cir. 2017) (quoting *Boudreaux* v. *Swift Transp. Co.,* 402 F.3d 536, 540 (5th Cir. 2005)). Courts must view the evidence in the light most favorable to the non-movant and resolve factual controversies in the nonmovant's favor. *Id.* (citing *Little v. Liquid Air Corp., 31* F.3d 1069, 1075 (5th Cir. 1994) (en banc)).

ANALYSIS

Qualified immunity protects government officials acting within their authority from individual liability "when their actions could reasonably have been believed to be legal." *Morgan v. Swanson,* 659 F.3d 359, 412 (5th Cir. 2011) (en banc). Once a government official establishes that his conduct was within the scope of his discretionary authority, it is up to the plaintiff to show: (1) the official "violated a statutory or constitutional right"; and (2) the right was "clearly established at the time." *Bevill v. Fletcher,* 26 F.4th 270, 275 (5th Cir. 2022) (quoting *Benfield* v. *Magee,* 945 F.3d 333, 337 (5th Cir. 2019)).

Courts have discretion to decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson* v. *Callahan,* 555 U.S. 223, 226 (2009). "But under either prong, courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment." *Tolan v. Cotton,* 572 U.S. 650, 656 (2014). And "to overcome qualified immunity, the plaintiffs version of those disputed facts must also constitute a violation of clearly established law." *Edwards* v. *Oliver,* 31 F.4th 925, 929 (5th Cir. 2022) (internal marks omitted).

"A clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna,* 577 U.S. 7, 11 (2015) (internal marks omitted). Although there is no requirement that a case be "directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." *Kisela* v. *Hughes,* 138 S. Ct. 1148, 1152 (2018) (internal marks omitted). "In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law." *Id.* (internal marks omitted); *see also Stanton v. Sims,* 571 U.S. 3, 6 (2013) (government officials are given "breathing room to make reasonable but mistaken judgments" (internal marks omitted)). "It is the plaintiff s burden to find a case in his favor that does not define the law at a high level of generality." *Rich* v. *Palko,* 920 F.3d 288, 294 (5th Cir. 2019) (internal marks omitted).

"Even if the government official's conduct violates a clearly established right, the official is nonetheless entitled to qualified immunity if his

conduct was objectively reasonable." *Wallace v. County of Comal,* 400 F.3d 284, 289 (5th Cir. 2005) (internal marks omitted). "The defendant's acts are held to be objectively reasonable unless *all* reasonable officials in the defendant's circumstances would have then known that the defendant's conduct violated the plaintiff s asserted constitutional or federal statutory right." *Cozzo* v. *Tangipahoa Parish Council—President Gov't,* 279 F.3d 273, 284 (5th Cir. 2002) (internal marks omitted). Thus, denial of an official's motion for summary judgment predicated upon qualified immunity requires two distinct determinations: (1) "a certain course of conduct would, as a matter of law, be objectively unreasonable in light of clearly established law"; and (2) "a genuine issue of fact exists regarding whether the defendant(s) did, in fact, engage in such conduct." *Hogan v. Cunningham,* 722 F.3d 725, 730 (5th Cir. 2022) (internal marks omitted).

A. Defendant Acted Within the Scope of His Discretionary Duties

To trigger the qualified-immunity framework, the government official must "satisfy his burden of establishing that the challenged conduct was within the scope of his discretionary authority." *Sweetin* v. *City of Texas City,* 48 F.4th 387, 392 (5th Cir. 2022) (quoting *Cherry Knoll, L.L. C.* v. *Jones,* 922 F.3d 309,318 (5th Cir. 2019)). Courts look to state law in determining whether an official was acting within the scope of his duties. *Id.* (internal marks omitted). In *Sweetin* — for example — the Fifth Circuit held this "oft-overlooked threshold requirement" was dispositive "because state law does not give a permit officer the authority to conduct stops of any kind." *Id.* (internal marks omitted).

Here, it is undisputed that Defendant was acting within the scope of his discretionary duties. Defendant is an officer employed with the 100th Judicial Traffic Enforcement Division. Therefore, the traffic stop was within the scope of Defendant's discretionary duties.

B. THE INITIAL TRAFFIC STOP WAS JUSTIFIED AT ITS INCEPTION

The Fourth Amendment prohibits "unreasonable searches and seizures." Traffic stops are considered seizures within the meaning of the Fourth Amendment. *United States* v. *Valadez,* 267 F.3d 395, 397 (5th Cir. 2001). In determining the legality of a traffic stop, courts first examine whether the officer's action was justified at its inception, and then inquire whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop. *United States v. Brigham,* 382 F.3d 500, 506 (5th Cir. 2009) (citing *Terry* v. *Ohio,* 392 U.S. 1,1920 (1968)).

The Court first notes while Plaintiff denies that he was speeding or displaying an obscured license plate, he does not appear to be challenging the lawfulness of the initial traffic stop. But even assuming Plaintiff is correct, Defendant was entitled to make a "reasonable but mistaken judgment[]" so long as his determination that Plaintiff was speeding was not "plainly incompetent." *See Flora* v. *Sw. Iowa Narcotics Enf't Task Force,* 292 F. Supp. 3d 875, 889 (S.D. Iowa 2018) (quoting *Stanton, 571* U.S. at 6); *see also Heien* v. *North Carolina,* 574 U.S. 54, 60 (2014) (reasonable suspicion, as required for a traffic stop, can rest on a reasonable mistake of law). And a motion for summary judgment "cannot be defeated solely by

conclusional allegations that a witness lacks credibility." *Deville v. Marcantel,* 567 F.3d 156, 165 (5th Cir. 2009). In *Deville,* the Fifth Circuit held there were genuine issues as to the material facts of whether the plaintiff was detected to have been speeding. *Id.* at 166. But this was only because the plaintiff established the officer had "a history of problematic arrests" and was asked to resign because he filed a false charge of possession of marijuana against an individual who in fact did not have marijuana. *Id.* at 165-66. Thus, the plaintiffs "provided evidence that would allow the jury to disbelieve" the officer's testimony. *Id.* at 165.

But the "egregious history of the officer in *Deville* is clearly distinguishable" from the circumstances of the present case. *Lockett* v. *New Orleans City,* 639 F. Supp. 2d 710, 735-36 (E.D. La. 2009), *aff'd,* No. 09-30712, 2010 WL 1811772 (5th Cir. May 5,2010); *see also Retzlaff v. City of Cumberland,* No. 09-CV-692-SLC, 2010 WL 1780338, at *6 (W.D. Wis. May 3, 2010) (distinguishing from *Deville* on similar grounds). Here, Plaintiff alleges myriad instances involving Defendant where a K-9 Unit was supposedly called to the scene after "the purposes for the stop had concluded." *See* ECF No. 1 at 19-26. However, these conclusory allegations are not sufficient to establish Defendant has "any history of improper arrests." *Lockett,* 638 F. Supp. 2d at 736; *see also* ECF No. 21 (holding Plaintiffs conclusory allegations of prolonged stops failed to plausibly plead the existence of an official policy under *Monell).* Therefore, the Court holds Defendant's action was justified at its inception.

C. Defendant Developed Reasonable Suspicion of Additional Criminal Activity

Because the initial stop was justified, the next step is to determine whether Defendant's subsequent actions were reasonably related in scope to the circumstances that justified the stop. "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes,* 543 U.S. 405, 407 (2005). But "[i]f the officer develops reasonable suspicion of additional criminal activity during his investigation of the circumstances that originally caused the stop, he may further detain [the] occupants [of the vehicle] for a reasonable time while appropriately attempting to dispel this reasonable suspicion." *United States v. Andres,* 703 F.3d 828, 833 (5th Cir. 2013); *see also Brigham,* 382 F.3d at 511 ("There is, however, no constitutional stopwatch on traffic stops."). Reasonable suspicion exists when the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the search and seizure. *United States v. Santiago,* 310 F.3d 336, 340 (5th Cir. 2002). "The reasonable suspicion inquiry falls considerably short of 51% accuracy ... to be reasonable is not to be perfect." *Kansas v. Glover,* 140 S. Ct. 1183, 1188 (2020) (internal marks omitted). Courts must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. *United States v. Lopez-Moreno,* 420 F.3d 420, 430 (5th Cir. 2005) (internal marks omitted).

Plaintiff fails to allege a clearly established constitutional violation or that Defendant's actions were objectively unreasonable. Plaintiff insists the

purpose of the traffic stop concluded after Defendant gave him a warning and returned his driver's license. ECF No. 1 at 6-7. But considering the totality of the circumstances, the Court cannot agree that no reasonable suspicion of additional criminal activity had developed. Defendant was aware of the following facts:

- Plaintiff was speeding and displaying an obscured license plate;
- Plaintiff was traveling on 1-40, which is routinely used for narcotic and human trafficking;
- There appeared to be a large age gap between Plaintiff and a female passenger with no familial connection; and
- Plaintiffs responses were short and incomplete, and he was unable to provide information about his general travel itinerary, hotel accommodations, or
- length of stay.[5]

ECF No. 27 at 17-18.

Under these circumstances, the Court cannot conclude it is "clearly established" that Defendant was prohibited from asking Ms. Lee the same general questions he had asked Plaintiff after he gave Plaintiff the warning. Plaintiff chiefly relies on *Davis v. State,* 947 S.W.2d 240, 243 (Tex. Crim. App. 1997) (en banc). There, the court held that continued

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[5] Plaintiff is correct to note some of these factors — when considered individually — are not suspicious in and of themselves. *See* ECF No. 30 at 21. But the Court must look at the totality of the circumstances. And Plaintiff agrees that "a court may not consider the relevant factors in isolation from each other." *Id.* at 16 (quoting *United States* v. *Arvizu,* 534 U.S. 266, 274 (2022)).

detention after determining the driver was not intoxicated "based upon the officer's conclusion that the appellant did not appear to be someone who was on a business trip" was unjustified. *Davis,* 947 S.W.2d at 245. This case is distinguishable because of the facts mentioned above. For that reason, *Davis* would not have given Defendant "fair notice" that his conduct might be unconstitutional. *See Nerio v. Evans,* 974 F.3d 571, 575 (5th Cir. 2020). Plaintiffs reliance on *McQuarters* v. *State,* 58 S.W.3d 250 (Tex. App.—Fort Worth 2001, pet. ref d) and *Sieffert v. State,* 290 S.W.3d 478 (Tex. App.—Amarillo 2009, no pet.) fails for similar reasons. Thus, Plaintiff fails to allege Defendant violated a constitutional right. But even if Plaintiff s cited authority governs the facts of this case, the Court finds these cases are "insufficient to create a robust consensus." *Morrow v. Meachum,* 917 F.3d 870, 879 (5th Cir. 2019); *see also District of Columbia* v. *Wesby,* 138 S. Ct. 577, 590 (2018) ("It is not enough that the rule is suggested by then-existing precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply."). And even if Plaintiff s cited cases clearly establish a constitutional violation, the Court finds Defendant's questioning of Ms. Lee was not objectively unreasonable. Accordingly, Defendant is entitled to qualified immunity on Plaintiff s prolonged detention claim.

D. DEFENDANT DID NOT VIOLATE CLEARLY ESTABLISHED LAW BY SEARCHING PLAINTIFFS VEHICLE

1. *The sniff was not a "search."*

Defendant asserts Ms. Lee "appeared nervous,

timid, and scared" during her questioning and "also could not provide details as to the duration of the trip or general hotel/lodging information." ECF No. 27 at 11. "She looked at the floorboard and failed to make any eye contact" with Defendant. *Id.* Defendant then determined an exterior sniff search by Kobra was necessary to dispel his reasonable suspicion of criminal activity. *Id.* Defendant asserts Kobra gave a "passive alert" to the scent of narcotics. *Id.* Defendant then searched the vehicle but discovered no narcotics. *Id.* Plaintiff did not consent to the search. ECF No. 27 at 23.

Free-air sniffs by narcotics-detection dogs are so minimally invasive that they do not constitute a "search" or a "seizure" for Fourth Amendment purposes. *United States* v. *Place,* 462 U.S. 696, 707 (1983). "A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." *Caballes,* 543 U.S. at 409. The critical question is not whether the dog sniff occurs before or after the officer issues a ticket, but whether conducting the sniff prolongs the stop. *Rodriguez v. United States,* 575 U.S. 348, 357 (2015) (holding prolonging stop by "seven to eight minutes" for dog sniff is only *de minimus* intrusion on Fourth Amendment rights).

Here, Plaintiff does not contend the sniff itself constituted an unreasonable search. But in any case, there are no facts suggesting Kobra's sniff search prolonged the stop outside of the permissible range. Therefore, Kobra's sniff of Plaintiffs vehicle was not a "search" for the purposes of the Fourth Amendment. Plaintiff instead challenges Defendant's assertion

that Kobra alerted him to the presence of narcotics. *See* ECF Nos. 1 at 7, 30 at 12. Because there was no alert — Plaintiff argues — Defendant lacked probable cause to search his vehicle and therefore violated his constitutional rights. ECF No. 30 at 22-24.

2. *Defendant had probable cause to search the vehicle.*

A warrantless search of an automobile is valid under the Fourth Amendment when a police officer has probable cause. *Almeida-Sanchez v. United States,* 413 U.S. 266, 269 (1973). A narcotics-detection dog's alert provides probable cause when "all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." *Florida v. Harris,* 568 U.S. 237, 248 (2013). But a "full alert" is not required to establish probable cause. *United States* v. *Clayton,* 374 F. App'x 497,502 (5th Cir. 2010). "[E]ach dog alerts in a different way, and the dog's behavior must be interpreted by his handler." *United States* v. *Masterson,* 450 F. App'x 348, 349 (5th Cir. 2011). "[E]vidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert." *Harris,* 568 U.S. at 247. "Assuming as [Plaintiff] claims, that the dog did not 'alert' does not preclude immunity." *Jones v. Fountain,* 121 F. Supp. 2d 571, 574 (E.D. Tex. 2000).

Plaintiff fails to establish Defendant violated clearly established law. Plaintiff only cites cases at a high level of generality holding that searches are illegal when conducted without consent or probable cause. *See* ECF No. 30 at 22-23. But the Fifth Circuit has held — in a case involving the *same Defendant* on strikingly similar facts — that probable cause existed

despite the appellants' assertion that the dog did not sit or bark. *See United States* v. *Shen,* 749 F. App'x 256 (5th Cir. 2018). In *Shen,* Defendant's canine ("Alis") was a "passive" alert dog trained to alert by "just standing] and . . . maybe kind of even squat[ting], but she would be focused and staring at the area of the narcotics or the odor where she's detecting the narcotics." 749 F. App'x at 259. The Fifth Circuit held several factors supported a finding of probable cause:

- Defendant had been working with Alis for about two years;
- Alis was certified by the National Narcotic Detector Dog Association and the National Police Canine Association;
- Alis's annual certification, with blind testing, established that she reliably detects drugs in a controlled environment; and
- According to Defendant's uncontradicted testimony, every case of a false-positive response by Alis in the field was explained by the presence of recognizable narcotics odors, even if no drugs were ultimately found.

Shen, F. App'x at 261.

Here, Defendant asserts he routinely patrols 1-40 with Kobra, and that "Kobra is registered and trained to alert to narcotics with a passive response." ECF No. 28 at 4. Unlike in *Shen,* here there are no other alleged instances of any false-positive responses by Kobra. And there is no evidence that Defendant has ever "mistakenly interpreted" Kobra's actions to be an alert. *Clayton,* 374 F. App'x at 502. Here, Plaintiffs Complaint lists multiple instances where Defendant allegedly "illegally prolonged detention — but in all nine cases involving a K-9 Unit, a positive

alert uncovered either large sums of illegal drugs or currency. *See* ECF No. 1 at 19-26. Thus, "the record is absolutely devoid of anything that could possibly undermine the credibility of [Defendant] or the reliability of his canine." *Clayton,* 374 F. App'x at 502. Therefore, Defendant had probable cause to search Plaintiffs vehicle.

The Court simply cannot conclude Defendant violated clearly established law for conducting a search where his canine did not sit or bark when the Fifth Circuit has held Defendant did not conduct an illegal search where his canine did not sit or bark. In other words, Plaintiff is "barking up the wrong tree." *Shen,* 749 F. App'x at 262. Accordingly, Defendant is entitled to qualified immunity on Plaintiffs illegal search claim.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's Motion.

SO ORDERED.

October 27, 2022

/s/
Matthew J. Kacsmaryk
United States District Judge

APPENDIX C
ECF No. 21

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS, Plaintiff, v. STEVE COY TEICHELMAN, *et al.*, Defendants.	§ § § § § § §	2:22-CV-035-Z-BR

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant 100th Judicial District's Motion to Dismiss and Brief in Support ("Motion") (ECF No. 10), filed on March 30, 2022. Having reviewed the Motion, related pleadings, and applicable law, the Court finds the Motion should be and is hereby **GRANTED.**

BACKGROUND

Plaintiff Yoel Weisshaus ("Plaintiff") alleges the following facts. On March 2, 2020, Defendant Steven Coy Teichelman — in his individual capacity as an officer employed by the 100th Judicial District Attorney's Office, Traffic Enforcement Division — conducted a traffic stop on Plaintiff. ECF No. 1 at 3-4. Defendant Teichelman pulled Plaintiff over for "speeding and displaying an obscured license plate/registration insignia." *Id.* at 3. Defendant

Teichelman asked Plaintiff to sit in the passenger-side front seat of Defendant Teichelman's patrol vehicle. *Id.* at 5. Plaintiff asserts, "after running [Plaintiffs] information, Defendant Teichelman returned [Plaintiffs] driver license, issued him a citation, and informed him that he was free to leave." *Id.* at 3. Then, although "the purpose for the stop had concluded, Defendant Teichelman illegally prolonged the detention." *Id.*

Defendant Teichelman searched Plaintiffs vehicle with a K-9 used to detect contraband. *Id.* at 7. Defendant Teichelman "stated the dog alerted to drugs inside [Plaintiffs] vehicle." *Id.* at 8. Defendant Teichelman then searched Plaintiffs vehicle. *Id.* During the search, "Defendant Teichelman ripped out the lining of the seats ... and tossed out the luggage" stored inside the vehicle. *Id.* Defendant Teichelman found no contraband. *Id.*

Because Defendant Teichelman did not locate contraband inside Plaintiffs vehicle, "Defendant Teichelman insisted on patting [Plaintiff] down." *Id.* Plaintiff declined Defendant Teichelman's invitation to be patted down and, instead, asked to leave. *Id.* Defendant Teichelman responded by telling Plaintiff "he was detained for refusing to comply with orders." *Id.* Defendant Teichelman — however — granted Plaintiff permission to leave when he again asked for a third time. *Id.*

On March 2,2022, Plaintiff sued Defendants Teichelman and the 100th Judicial District of Texas under 42 U.S.C. § 1983. *See generally id.* Plaintiff avers Defendants caused Plaintiff to be illegally detained and searched in violation of his Fourth Amendment rights. *Id.* at 26-38. Plaintiff alleges Defendant Teichelman's search was an

"unconstitutional detention in violation of Mr. Weisshaus's rights pursuant to the 100th Judicial District's practice of prolonging traffic stops past when the purpose for the stop had concluded in order to illegally detain and search citizens and subject them to civil forfeiture proceedings." *Id.* at 3. Plaintiff claims "this practice was put into place by [District Attorney] Luke Inman, who created the 100th Judicial District Traffic Enforcement Division for the purpose of profiting off of traffic stops." *Id.* Plaintiff asserts both actual and punitive damages for these alleged violations. *Id.* at 38-39.

On March 30, 2022, Defendant 100th Judicial District filed a Motion to Dismiss based on Federal Rule of Civil Procedure 12(b)(6). ECF No. 10.

LEGAL STANDARD

A court may dismiss a complaint for "failure to state a claim upon which relief may be granted." FED. R. CIV. P. 12(b)(6). "To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,570 (2007)). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of the cause of action will not do." *Twombly*, 550 U.S. at 555 (internal marks omitted). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *In re*

Katrina, 495 F.3d at 205 (quoting *Twombly,* 550 U.S. at 555) (internal marks omitted). "The court accepts 'all well- pleaded facts as true, viewing them in the light most favorable to the plaintiff.'" *Id.* (quoting *Martin K. Eby Constr. Co., Inc.* v. *Dall. Area Rapid Transit,* 369 F.3d 464, 467 (5th Cir. 2004)).

A court should first "identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal,* 556 U.S. 662, 679 (2009). "While legal conclusions can provide the complaint's framework, they must be supported by factual allegations." *Id.* When "well-pleaded factual allegations" exist, "a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. This standard of "plausibility" is not necessarily a "probability requirement," but it requires "more than a sheer possibility that a defendant has acted unlawfully." *Id.* "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* "Determining whether a complaint states a plausible claint for relief [is] ... a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

ANALYSIS

Section 1983 applies to "municipalities and other local government units." *Monell* v. *Dep't ofSoc. Servs. of City ofN.Y.,* 436 U.S. 658, 690 (1978). "Local

governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where ... the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Id.* (internal marks omitted). Municipal or local government liability under Section 1983 requires: (1) "a policymaker"; (2) "an official policy"; and (3) "a violation of a constitutional right whose 'moving force' is the policy or custom." *Piotrowski* v. *City of Houston,* 237 F.3d 567, 578 (5th Cir. 2001). These three "attribution principles" differentiate "individual violations perpetrated by local government employees from those that can be fairly identified as actions of the government itself." *Id.*

Because Defendant 100th Judicial District does not dispute whether District Attorney Inman qualifies as "a policymaker," the Court begins by analyzing the second "attribution principle" — the existence of "an official policy." *See id.* at 579 ("Since the City chose not to pursue this angle of defense, no more need be said of it."). Official policies can take on various forms. *James v. Harris County,* 577 F.3d 612, 617 (5th Cir. 2009). An official policy "usually exists in the form of written policy statements, ordinances, or regulations, but also may arise in the form of a widespread practice that is 'so common and well-settled as to constitute a custom that

fairly represents municipal policy.'" *Id.* (quoting *Piotrowski,* 237 F.3d at 579). Whatever its form, to hold a municipality or local government liable under Section 1983, a plaintiff must show there is a "direct causal link between the [relevant] policy and the constitutional deprivation." *Piotrowski,* 237 F.3d at 580. When there is no written policy, a plaintiff has the "heavy burden" to show a "pervasive pattern" of constitutional violations that can be said to represent official policy. *Sanchez v. Young County,* 956 F.3d 785, 793 (5th Cir. 2020). "A pattern requires similarity, specificity, and sufficiently numerous prior incidents," based on the context of the incident and the police force at issue. *Davidson v. City of Stafford,* 848 F.3d 384, 396-97 (Sth Cir. 2017).

A facially innocuous policy "will support liability if it was promulgated with deliberate indifference to the 'known or obvious consequences' that constitutional violations would result." *Piotrowski,* 237 F.3d at 579 (quoting *Bd. of Cty. Comm 'rs of Bryan Cty.* v. *Brown,* 520 U.S. 397, 407 (1997)). "Deliberate indifference" is a stringent test — "a showing of simple or even heightened negligence will not suffice" to prove culpability. *Id.* Establishing deliberate indifference generally requires a "pattern of similar violations" arising from a policy "so clearly inadequate as to be 'obviously likely to result in a constitutional violation.'" *Burge* v. *St. Tammany Parish,* 336 F.3d 363, 370 (5th Cir. 2003) (quoting *Thompson v. Upshur County,* 245 F.3d 447, 459 (5th Cir. 2001)).

Plaintiff alleges it is Defendant 100th Judicial District's "practice and custom" to have the "Traffic Enforcement Division illegally prolong detentions for the purpose of searching vehicles to seize assets to pay for unique items that benefit law enforcement." ECF

No. 1 at 17 (internal marks omitted); *see also* ECF No. 16 at 6 (stating "lawful civil forfeiture statutes are the means by which Defendant [100th Judicial District] profits upon engaging in a pattern and practice of illegally prolonging detentions to perform illegal searches and seize property, currency, and contraband").[4] Plaintiff alleges "[t]he asset forfeiture agreements are evidence of Inman's authority, knowledge, and motivation to pursue the unconstitutional practice of illegal detentions, searches, and seizures." *Id.* To demonstrate an "unconstitutional pattern and practice" of Defendant's implementation of the civil forfeiture statutes, Plaintiff sets forth 21 examples in which a seizing officer called a K-9 unit to prolong detentions after consent of the detainee was denied and the purposes of the traffic stops had concluded. *See* ECF No. 1 at 17-26.

Defendant 100th Judicial District argues Plaintiff makes conclusory statements to support his assertion that the 100th Judicial District has a practice of profiting off civil forfeiture actions instituted against citizens under the Texas Code of Criminal Procedure. ECF No. 10 at 5. Defendant 100th Judicial District also asserts the 21 examples of unconstitutional searches and detentions Plaintiff details are factually dissimilar to Plaintiff's alleged stop and search. *Id.* at 6. Additionally, Plaintiff fails to describe the "context, documentation, or ultimate resolution" of those stops and searches. *Id.* at 6. Defendant 100th Judicial District explains "Plaintiff offers no explanation as to

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[4] Local agreements with law enforcement relating to the handling of civil forfeitures are contemplated by the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. art. 59.06(c).

how any of these stops were 'prolonged' pursuant to an 'unconstitutional pattern and practice.' Plaintiff only notes that traffic stops took place and contraband was discovered and in a conclusory manner alleges that each of those stops were unconstitutional in some manner." *Id.*

"The description of a policy or custom and its relationship to the underlying constitutional violation.. . cannot be conclusory; it must contain specific facts." *Spiller v. City of Texas City Police Dep't,* 130 F.3d 162, 167 (5th Cir. 1997); *see also Balle v. Nueces County,* 690 F. App'x 847, 852 (5th Cir. 2017) (same); *Mohamed v. Irving Indep. Sch. Dist.,* 300 F. Supp. 3d 857, 875 (N.D. Tex. 2018) (same). Stated otherwise, "the pleadings are adequate with respect to a [S]ection 1983 claim against a governmental entity when they set forth 'specific factual allegations that allow a court to reasonably infer that a policy or practice exists and that the alleged policy or practice was the moving force' for the constitutional violation asserted." *Mohamed,* 300 F. Supp. at 875 (quoting *Balle,* 690 F. App'x at 852).

The Court finds Plaintiff fails to plausibly plead the existence of an official policy. Plaintiff provides 21 examples of stops and seizures undertaken by Defendant 100th Judicial District. *See* ECF No. 1 at 17-25. But the examples Plaintiff provides lack specific facts upon which the Court can plausibly infer Defendant 100th Judicial District engaged in a "pervasive pattern" of Fourth Amendment violations, thereby constituting an official policy.

In *Peterson v. City of Fort Worth,* the Fifth Circuit determined evidence of 27 excessive- force complaints against Fort Worth Police Department officers over three years — absent evidence placing the number of

complaints in context — did not establish a pattern of excessive force. 588 F.3d 838, 850-52 (5th Cir. 2009). Like *Peterson,* the Court finds the sparse facts alleged by Plaintiff fail to plausibly show Defendant 100th Judicial District implemented an official policy. Plaintiff does not include information as to the size of Defendant's law enforcement division or how many arrests in total occurred during the eight-year period in which the alleged 21 alleged violations occurred. *See id.* at 851-52; *see also generally* ECF No. 1. Even more, Plaintiff does not include specific facts as to the ultimate resolution of any of the cited examples. *See generally* ECF No. 1. For instance, Plaintiff does not disclose whether the alleged victims of Fourth Amendment violations ultimately pled guilty or how a court ruled as to any claim of unconstitutional behavior. *See id.* at 17-26.

Plaintiff simply concludes each of the 21 examples are pursuant to Defendant's "unconstitutional pattern and practice." *See id.* The Court thus finds Plaintiff fails to plausibly plead Defendant 100th Judicial District "instituted the practice and custom of having [the] Traffic Enforcement Division illegally prolong detentions for the purpose of searching vehicles to seize assets to pay for unique items that benefit law enforcement." *Id.* at 17 (internal marks omitted). And because Plaintiff has not adequately pled an "official policy," he has not plausibly pled an "official policy" was the "moving force" behind the constitutional violations he alleges. *See, e.g., Bryan* v. *City of Dallas,* 188 F. Supp. 3d 611, 619 (N.D. Tex. 2016).

CONCLUSION

For the reasons set forth above, the Court **GRANTS** Defendant's Motion to Dismiss.

SO ORDERED.

May 25, 2022

/s/
Matthew J. Kacsmaryk
United States District Judge

APPENDIX D
ECF No. 35

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS,	§	
Plaintiff,	§	2:22-CV-035-Z-BR
	§	
v.	§	
	§	
STEVE COY TEICHELMAN,	§	
Defendant.	§	
	§	
	§	
	§	
	§	

JUDGMENT

Of equal date herewith, the undersigned United States District Judge issued an order **GRANTING** Defendant Steve Roy Teichelman's Motion for Summary Judgment (ECF No. 26) on all of Plaintiff s claims.

Judgment is rendered accordingly.

October 27, 2022

/s/
Matthew J. Kacsmaryk
United States District Judge

APPENDIX E
ECF No. 22

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF
AMARILLO DIVISION

YOEL WEISSHAUS, Plaintiff, v. STEVE COY TEICHELMAN, *et al.*, Defendants.	§ § § § § § § § §	2:22-CV-035-Z-BR

JUDGMENT

Of equal date herewith, the undersigned United States District Judge issued an order **GRANTING** Defendant 100th Judicial District's Motion to Dismiss (ECF No. 10) and **DISMISSING** all claims against Defendant 100th Judicial District.

Judgment is rendered accordingly.

May 25, 2022

/s/
Matthew J. Kacsmaryk
United States District Judge

APPENDIX F
ECF No. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS,	§	
Plaintiff,	§	
v	§	CIVIL ACTION
	§	NO. 3:22-CV-494
STEVE COY TEICHELMAN,	§	
AND 100TH JUDICIAL	§	
DISTRICT,	§	
Defendants.		

PLAINTIFF'S ORIGINAL COMPLAINT

Respectfully submitted,

/s/ Scott H. Palmer

SCOTT H. PALMER,
Texas Bar No. 00797196

/s/James P. Roberts

JAMES P. ROBERTS,
Texas Bar No. 24105721

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COUNSEL FOR PLAINTIFF

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Yoel Weisshaus, complaining of, STEVE COY TEICHELMAN, and the 100th JUDICIAL DISTRICT, and for causes of action will respectfully show unto the Court as follows:

> "[A] detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop, unless further reasonable suspicion, supported by articulable facts, emerges."

United States v. Brigham, 382 F.3d 500,507 (5th Cir. 2004).

SUMMARY

On March 2, 2020, Defendant Officer Steve Coy Teichelman employed with the 100th Judicial District Traffic Enforcement Division conducted a traffic stop on Plaintiff Yoel Weisshaus. Defendant Teichelman informed Mr. Weisshaus that the purpose for the stop was speeding and displaying an obscured license plate/registration insignia. After running Mr. Weisshaus's information, Defendant Teichelman returned Mr. Weisshaus's driver license, issued him a citation, and informed him that he was free to leave.

Then, even though the purpose for the stop had concluded, Defendant Teichelmen illegally prolonged the detention by detaining Mr. Weisshaus and searching his vehicle. Absent reasonable suspicion, Defendant Teichelman's extension of the traffic stop violated Mr. Weisshaus's Fourth Amendment rights under the United States Constitution to be free from unreasonable search and seizure as well as illegal

detention.

Defendant Teichelman conducted this unconstitutional detention in violation of Mr. Weisshaus's rights pursuant to the 100th Judicial District's practice of prolonging traffic stops past when the purpose for the stop has concluded in order to illegally detain and search citizens and subject them to civil forfeiture proceedings. [1] Upon information and belief, this practice was put into place by Luke Inman, who created the 100th Judicial District Traffic Enforcement Division for the purpose of profiting off of traffic stops.

I.

PARTIES

1. At all relevant times, Plaintiff Yoel Weisshaus was a resident of New Milford, New Jersey.

2. Defendant, Steve Coy Teichelman (referred hereinafter as "Teichelman"), is an individual residing in Carson, County, Texas who at all relevant times was an officer employed with the 100th Judicial District Traffic Enforcement Division. He may be served at his place of employment at the 100th Judicial District Traffic Enforcement Division located at 800 West Avenue, Box 1, Wellington, Texas 79095 or wherever he may be found. Defendant Teichelman is being sued in his individual capacity.

3. Defendant 100th Judicial District (referred herein after as the "District") acted at all relevant times under color of state law. It may be served through District Attorney Luke Inman at his place of

[1] Article 59.01 of Code of Criminal Procedure.

employment located at the 100th Judicial District Attorney's Office 800 West Avenue, Box 1, Wellington, Texas 79095.

II.

JURISDICTION AND VENUE

4. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343 since Plaintiff is suing for relief under 42 U.S.C. § 1983. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391 because the Defendants are domiciled and/or reside in the Northern District of Texas, and all or a substantial part of the causes of action accrued in the Northern District of Texas.

III.

FACTS AND ALLEGATIONS

5. Luke Inman is the District Attorney for the 100th Judicial District.

6. Upon information and belief, Luke Inman created the 100th Judicial District's Traffic Enforcement Division, which employs law enforcement officers who conduct traffic stops with the goal of seizing property, currency, and contraband to be forfeited over to the 100th Judicial District.

7. On March 2, 2020, Plaintiff Yoel Weisshaus drove through Texas en route from Oklahoma to Arizona.

8. During this trip, Defendant Steve Coy Teichelman, an officer working for the 100th Judicial District Traffic Enforcement Division conducted a traffic stop on Mr. Weisshaus and passenger Sasha

Lee.

9. The alleged purpose for the traffic stop was speeding and displaying an obscured license plate/registration insignia.

10. Defendant Teichelman requested to see Mr. Weisshaus' driver's license and registration which Mr. Weisshaus provided.

11. Defendant Teichelman requested that Mr. Weisshaus step out of his vehicle and follow him to his patrol vehicle while Teichelman processed a warning.

12. Defendant Teichelman instructed Mr. Weisshaus to sit in the front seat of his patrol vehicle while he printed out a warning.

13. Below is a screen shot of the warning Defendant Teichelman gave Mr. Weisshaus for speeding and displaying an obscured license plate/registration insignia.

100TH Judicial District Attorney's Office Wellington, Texas			
Day/Date/Time of Citation: 3/02/2020 8:31 AM	**Code:** -- --	**Case # if Applicable:** -- --	**Citation #:** DA 06821
Address/Location Direction of Travel or Corridor: 112 mile marker	**County:** Carson	**Result of Stop/ Contact:** Written Warning	
Alleged Reason for Stop – Initial Violation: Speeding			

Violations(s)			
1. ***WARNING*** Speeding			
2. ***WARNING*** Display Fictitious, Altered, Obscured License Plates/Registration Insignia			
3.			
Alleged Speed: -- --	**Speed Limit:** 75	**School Zn:** No	**Const Zn:** No
Weather No	**Accident:** No	**Traffic:** -- --	**Road Cond.:** Dry
Day/Night: Day	**Radar Od:** Yes	**Video Used:** Yes	

Person Information			
Name (Last, First, Middle):	WEISSHAUS, YOEL		
Address: 235 MILFORD AVE APT 2E, NEW MILFORD, NJ 07646			
Race:	White	**Ethnicity:**	Not Hispanic
Race/Ethnicity Known:	No		
Gender: Male	**Height:** -- --	**Weight:** -- --	
Hair: -- --	**Eyes:** -- --	**Build:** -- --	
Complexion: -- --	**Date of Birth:** [redacted]	**ID/DL#:** [redacted]	
State: TX	**DL Class:** D	**CDL:** No	**Social Security #:**
Telephone:	**Place of Employment:**	**Work Phone:**	
Contact: Driver	**Person Search:** No	**Search Type:** -- --	
Contraband: -- --	**Type of Contraband:** -- --		
Use Of Force/Bodily Injury: No			

Facts Supporting Search and Document any Evidence Located:
-- --

VEHICLE INFORMATION			
YEAR: 2016	**MAKE:** JEE	**MODEL:** HER (Explain in Narrativ	**TYPE:** -- --
COLOR: -- --	**LICENSE #:** A35KUV	**STATE:** NJ	**EXP YEAR:** 2020
Description: 1	**Commercial:** No	**GVRW:** -- --	**Inter/Intra:** -- --
Hazmat: No	**Hazmat Plan:** -- --		
Owner/Leasor: WEISSHAUS, YOEL			
VIN: ZACCJBBT2GPD60985			
Vehicle Search: No	**Search Type:** -- --	**Contraband:** -- --	
Type of Contraband:			
-- --			
Facts Supporting Search and Document any Evidence Located:			
-- --			
Aide Facts:			
ISSUED BY: Coy Teichelman **I.D.#:** 8104			
-- --			
ON OR BEFORE -- -- **AT** -- --			

THIS IS NOT A GUILTY PLEA, ONLY A PROMISE TO APPEAR
SIGNATURE:

OFFICER NOTES		
First Noticed	Why Noticed	Light Conditions
Direction of Travel ON	Type of District	

Clocked 0 MPH	From	To
Highway Surface	Weaving? No	Number of Cars Passed 0
Number of Children 0		Number of Traffic Lanes 0
Divided? No	Drinking? No	Test Results
Number of Passengers 0		Current Safety Sticker No
Highway Conditions	Accident Involved No	Severity
Traffic Conditions		Roadway Type State Highway
Roadway Character		Location Stopped
Report Made by Coy Teichelman		Witness
Additional Information		
Page 1 of 1	Printed on 10/14/2020 12:04:05PM	

14. This warning demonstrates that Mr. Weisshaus was not suspected of any other crimes during the course of the traffic stop.

15. Defendant Teichelman informed Mr. Weisshaus that he was free to leave after handing Mr. Weisshaus the warning and returning his driver's license.

16. At this point the purpose for the stop had ended and there was no longer a legal reason for Defendant Teichelman to detain Mr. Weisshaus.

17. However, Defendant Teichelman then asked

Mr. Weisshaus if he would consent to a search of his vehicle.

18. Mr. Weisshaus, knowing his rights and choosing to exercise them, declined to give consent for a search of his vehicle.

19. Defendant Teichelman informed Mr. Weisshaus that under Texas law, if a dog alerts to narcotics in a vehicle, there would be probable cause to search without consent.

20. Mr. Weisshaus again declined to give consent for a search of his vehicle.

21. Defendant Teichelman directed Mr. Weisshaus not to leave as he walked his K9 unit around Mr. Weisshaus' vehicle.

22. Defendant Teichelman did not have facts giving rise to reasonable suspicion that a crime had been committed by Mr. Weisshaus of which evidence would be found inside of the vehicle, as the initial reason for the stop was due to traffic violations which Defendant Teichelman had just given Mr. Weisshaus a warning and Mr. Weisshaus had committed no criminal violations while in the presence of Defendant Teichelman.

23. Despite there being no legal reason for the continued detention, Mr. Weisshaus was forced to remain on the side of the road while Defendant Teichelman walked a K9 around his vehicle.

24. The K9 neither sat, barked, or stopped to indicate there was a positive alert for drugs.

25. This is because there were no illegal narcotics inside of the vehicle.

26. However, Defendant Teichelman returned the

K9 to the police cruiser and stated that the dog alerted to drugs inside Mr. Weisshaus' vehicle.

27. Defendant Teichelman then proceeded to perform a search of Mr. Weisshaus's vehicle.

28. During the search, Defendant Teichelman ripped out the lining of the seats of Mr. Weisshaus' vehicle and tossed out the luggage of Mr. Weisshaus and Ms. Lee.

29. After the search of Mr. Weisshaus's vehicle did not turn up any illegal contraband, Defendant Teichelman insisted on patting Mr. Weisshaus down.

30. Mr. Weisshaus declined to be patted down.

31. Mr. Weisshaus asked to leave.

32. Defendant Teichelman told Mr. Weisshaus he was detained for refusing to comply with his orders.

33. Mr. Weisshaus had not refused to comply with orders but had simply verbally declined the illegal search Defendant Teichelman was attempting to perform on Mr. Weisshaus' person.

34. Only then when Mr. Weisshaus asked to leave for a third time did Defendant Teichelman allow Mr. Weisshaus to leave.

35. The entire encounter lasted approximately twenty minutes.

36. At all times relevant to this suit, Defendant Teichelman was employed with the 100th Judicial District Traffic Enforcement Division and acting under the color of law as he performed the traffic stop with his department issued vehicle and the search with his department issued K9.

Asset Forfeiture

37. Chapter 59 of the Texas Code of Criminal Procedure governs civil forfeiture actions, which are *in rem* proceedings against contraband. Tex. Code Crim. Proc. Ann. art. 59.05(e); *State v. Silver Chevrolet Pickup,* 140 S.W.3d 691, 692 (Tex. 2004, per curiam), citing *Hardy v. State,* 102 S.W.3d 123,126-27 (Tex. 2003).

38. Contraband is defined as "property of any nature" that is used or intended to be used in the commission of certain enumerated felonies. Tex. Code Crim. Proc. Ann. art. 59.01(2); see also *Silver Chevrolet Pickup,* 140 S.W.3d at 692.

39. The State bears the burden to prove probable cause for the seizure. $56,700 in *US Currency v. State,* 730 S.W.2d 659, 661 (Tex. 1987), citing Tex. Const, art. I, § 9; U.S.C.A. Const. Amend. 4.

40. Probable cause in this context means "a reasonable belief that 'a substantial connection exists between the property to be forfeited and the criminal activity defined by the statute." $56,700 *in US Currency,* 730 S.W.2d at 661.

41. The Texas Supreme Court has stressed the importance of the connection between the at-issue property and the alleged criminal activity. "It is that link, or nexus, between the property to be forfeited and the statutorily defined criminal activity that establishes probable cause, without which the State lacks authority to seize a person's property." $56,700 *in US Currency,* 730 S.W.2d at 661; citing Tex. Const, art. I, § 9.

42. According to Article 59 of the Texas Code of Criminal Procedure, all forfeited property shall be

administered by the attorney representing the state, acting as the agent of the state, in accordance with accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. Tex. Code Crim. Proc. Ann. art. 59.06 (a).

43. The proceeds of forfeited property may be used for the official purposes of the District Attorney's office or solely for law enforcement purposes. Tex. Code Crim. Proc. Ann. art. 59.06 (c).

100th Judicial District's Practice of Unconstitutional Searches and Seizures

44. Upon information and belief, the 100th Judicial District Traffic Enforcement Division has a practice and custom of profiting off civil forfeiture actions instituted against citizens under Article 59.01 of the Texas Code of Criminal Procedure regarding property illegally seized after conducting unconstitutional searches during illegally prolonged detentions and without probable cause or consent to search.

The Asset Forfeiture Agreements

45. Defendant Luke Inman in his capacity as "Attorney Representing the State," for the 100th Judicial District entered into agreements with law enforcement in surrounding counties including Childress, Collingsworth, Donley, Hall, Randall, and Potter Counties for the purpose of profiting off civil forfeiture actions instituted against citizens under Article 59.01 of the Texas Code of Criminal Procedure.

46. Defendant Inman entered into Asset Forfeiture Agreements with surrounding counties in

"mutual consideration of the quotable sharing value of the contraband and the contraband itself, seized pursuant to appropriate state statutes."

47. The purpose of these agreements was for the 100th Judicial District to profit off law enforcement seizures in the counties within the 100th Judicial District.

48. Below is a screen capture of an Asset Forfeiture Agreement Defendant Inman entered into with surrounding counties.

- Logo -

Office of the 100th Judicial District Attorney

Luke M. Inman
District Attorney

LOCAL AGREEMENT

STATE OF TEXAS §
§
COUNTY OF CARSON §

This Local Agreement is made and entered into by and between the Hutchison County Sheriff's Office, hereinafter called Sheriff s Office, and the Prosecuting Attorney of Carson County, Texas, hereinafter referred to as Prosecuting Attorney. This agreement applies only in those situations when both parties hereto participate in the seizure of contraband. In all other situations, separate written agreements will apply.

Pursuant to the provisions of Chapter 59 of the Texas Code of Criminal Procedure, enacted by the 71st Legislature, First Called Session, 1989, which said enactment deals with disposition of forfeited property and contraband seized by law enforcement officers, the Sheriff's Office and

Prosecuting Attorney desire to enter into an agreement regarding the disposition of said forfeited contraband.

This agreement is entered into by and between the respective parties hereto and is predicated upon the mutual consideration of the quotable sharing of the value of the contraband and the contraband itself, seized pursuant to the appropriate state statutes. Accordingly, inasmuch as said statutes require that an agreement exist between the State and law enforcement agencies which seize said property and in furtherance of that statutory' purpose, it is the intention of said parties to herewith enter into an agreement with regard to disposition of said property.

In consideration of the services for the Sheriff's Office, associated with and relating to the forfeiture of the said contraband, rendered to the said Sheriff's Office by the Prosecuting Attorney, it is agreed that 50% of all money forfeited and 50% of the final sum received from the sale of real estate or other property, not otherwise disposed of by this agreement, shall be retained by the Prosecuting Attorney to be used for the official purposes of his office. It is agreed that the Sheriff's Office shall be permitted to retain 50% of all proceeds of real estate and

800 WEST AVENUE, BOX 1, WELLINGTON, TEXAS 79095
(806) 447-0055 (866) 233-2738 FACSIMILE
SERVING CARSON, CHILDRESS, COLLINGSWORTH, DONLEY AND HALL COUNTIES

49. Pursuant to provisions of Chapter 59 of the Texas Code of Criminal Procedure, which regulates

the disposition of property forfeited to the State of Texas as contraband, the Texas Department of Public Safety, the District Attorney's Office of the 100th Judicial district and Carson County Sheriffs Office entered into an agreement regarding the disposition of said property or the proceeds from the sale thereof.

50. Per the agreement, the 100th Judicial District received 50% of all money forfeitures.

CID-15d (Rev. 09/17)

Asset Forfeiture
Local Agreement with Multiple Parties

STATE OF TEXAS

COUNTY OF **Carson, Childless, Hall and Donley**

Pursuant to the provisions of Chapter 59 of the Texas Code of Criminal Procedure, which regulates the disposition of property forfeited to the State of Texas as contraband, the Texas Department of Public Safety ("DPS"), the District Attorney's Office of the 100th Judicial District (referred to herein as "the Attorney Representing the State"), and Carson County Sheriff's Office (referred to heroin as "the law enforcement agency" or "LEA") ' enter into this agreement ("Agreement") regarding the disposition of said property or the proceeds from the sale thereof. DPS, the Attorney Representing the State, and LEA arc collectively referred to in this Agreement as the "Parties."

I. Forfeiture Allocations

The LEA identified herein seized forfeited property concurrently with DPS or participated in a significant manner. In consideration of the services rendered by the Parties to this Agreement for the

> seizure and forfeiture of the contraband in a proceeding under Article 59.05, the Parties agree to allocate the forfeited property or tire proceeds from the sale thereof as follows, after the deduction of.....

Chief Policy Maker Luke Inman

51. At all times relevant to the subject matter of this litigation, Defendant Teichelman was an employee of the 100th Judicial District's Traffic Enforcement Division who was following policies and practices of the 100th Judicial District.

52. Defendant Teichelman joined the team as Traffic Enforcement Investigator "cracking down on drugs and US currency derived from the illegal narcotics trade."[2]

53. Upon information and belief, at all times relevant to the subject matter of this litigation, Luke Inman was the chief policy maker for the 100th Judicial District's Traffic Enforcement Division as the "Attorney Representing the State" and as the official for the 100th Judicial District who created the Traffic Enforcement Division.

54. Upon information and belief, as Attorney Representing the State, Inman had full and complete authority to enter into and execute local asset forfeiture agreements with surrounding law enforcement agencies to further the 100th Judicial District's goal of profiting off civil forfeitures.

55. Pursuant to these local asset forfeiture agreements, if money is seized, Defendant Inman as

[2] https:/hwwv.clarendonlive.com/?p=256i9

Attorney Representing the State shall, before disposition in accord with the agreements, handle such funds in accordance with applicable statutes.

56. Below is a screen capture from an asset forfeiture agreement executed in March of 2017, where Inman, as Attorney Representing the State, entered into a signed agreement with the Randall County Sheriff's Office and Texas Department of Public Safety.

> K. The signatory for the Attorney Representing the State and LEA hereby represent and warrant that they have full and complete authority to execute this Agreement.
>
> **Law Enforcement Agency**
> /s/
> Authorized Official from LEA
> Randell County Sheriff's Office
> Date: 3/23/17
> **Attorney Representing the State:**
> /s/
> Luke Inman , District Attorney
> 100th Judicial District
> Date: 3/23/2017
> **Texas Department of Public Safety**
> /s/
> Director or his/her Designee

57. Below is a screen capture from an asset forfeiture agreement executed in April of 2017, where Inman, as Attorney Representing the State, entered into a signed agreement with the Randall County Sheriff's Office and Texas Department of Public Safety.

> K. The signatory for the Attorney Representing the State and LEA hereby represent and warrant

that they have full and complete authority to execute this Agreement.

Law Enforcement Agency
/s/
Authorized Official from LEA
Randell County Sheriff's Office
Date:

Attorney Representing the State:
/s/
Luke Inman , District Attorney
100th Judicial District
Date:

Texas Department of Public Safety
/s/
Director or his/her Designee

Page 4 of 5

58. Below is a screen capture from an asset forfeiture agreement executed in September of 2018, where Inman, as Attorney Representing the State, entered into a signed agreement with the Randall County Sheriff's Office, Potter County Sheriff's Office and Texas Department of Public Safety.

Gary Albus
Regional Director
Texas Department of Public Safety
Address
1404 Lubbock Bus Park Blvd Ste #100
Lubbock, TX 79403
Facsimile: (806)740-8713
E-Mail: parv.albus@dps.texas.gov

Texas Department of Public Safety:

Luke Inman District Attorney 100th Judicial District Address: 800 West Avenue, PO Box 1 Wellington, TX 79095 Facsimile (866) 233-2738 E-Mail luke.inman@wind.stream.net Attorney Representing the State:
Randall County Sheriff's Office Law Enforcement Agency Address: 9100 S. Georgia Amarillo, TX 79118 Facsimile: (806) 468-5776 E-Mail: sheriff@rc-sheriff.com
Potter County Sheriff's Office Law Enforcement Agency Address: 13103 NE 29th Avenue Amarillo, Texas 79111 Facsimile: (806) 379-2919 E-Mail: brianlhomas@co.potter.tx.us
K. The signatory for the Attorney Representing the State and LEA hereby represent and warrant that they have full and complete authority to execute this Agreement.
Law Enforcement Agency: /s/ Authorized Official From LEA Randall County Sheriff's Office Date: 09/13/2018

Law Enforcement Agency: /s/ Authorized Official From LEA Potter County Sheriff's Office Date: 9-13-18

59. Upon information and belief, at all times relevant to the subject matter of this litigation, these signed agreements show that Inman was the official policy maker for the 100th Judicial District since as the "Attorney Representing the State," he possessed full and complete authority to execute such agreements.

60. In a news article, Inman is quoted as stating his team "is considered small, even though their caseload surpasses most districts across the Panhandle."[3]

61. According to Inman, "the most impressive part of this team is our reputation for obtaining large sentences against offenders."[4]

62. Inman explained he likes using drug traffickers' property and money to support local needs, taking the tax burden away from citizens.[5]

63. According to the article each year, Inman uses hundreds of thousands of forfeited property and money from drug dealers to protect law enforcement and better equip them.6

64. Inman is also known for assessing staunch fines against the criminal contingent, which brings in

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[3] Id.
[4] Id.
[5] Id.
[6] Id.

millions of dollars each year.7

65. According to Inman, "We are pro law enforcement and pro seizure of criminals' assets. At the end of the day, we're known for our reputation of getting tough sentences against wrongdoers.8"

66. Inman is quoted in another article stating "this chapter [Chapter 59] allows individuals engaged in the illegal narcotics trade to actually pay for unique items that benefit law enforcement and protect all of us tax-paying citizens. Drug dealers don't pay taxes, so the fact that we have an avenue to seize their property and put it to good use, especially in this case, is an amazing tool and asset that the great State of Texas affords all district attorneys."9

67. At the time of this article, the DA's office and the DPS had a sharing agreement to split proceeds 70/30 after property is sold at auction.10

68. However, Inman stated they were forgoing the monetary value to benefit the department.11

69. Upon information and belief, Inman as official policy maker for the 100th Judicial District instituted the practice and custom of having his Traffic Enforcement Division illegally prolong detentions for the purpose of searching vehicles to seize assets to pay for "unique items that benefit law enforcement."

[7] Id.
[8] Id.
[9] https://www.newschannel10.com/2019/05/16/area-drug-bust-leads-new-mobile-command-unit-texas-rangers
[10] Id.
[11] Id.

70. Inman is on record stating that seizure of assets by the 100th Judicial Traffic Enforcement Division requires a criminal charge but **does not** require a conviction.12

71. Therefore, even if the constitutionality of the seizure was successfully challenged in subsequent criminal proceedings, the 100th Judicial District still had the ability to seize assets as a result of civil forfeiture proceedings even if citizens were unconstitutionally subjected to prolonged detentions after the purposes of traffic stops had concluded.

72. The following are instances where after consent was denied the seizing officer called a K-9 unit to prolong detentions after the purposes of the traffic stops had concluded pursuant to the 100th Judicial District's unconstitutional pattern and practice.

Case Number 11.376

73. On April 10, 2014, Danny Dawson employed as a peace officer with the 100th Judicial District Attorney's Office seized a 1997 Honda Accord after Dawson conducted a traffic stop on Anthony Portillo for driving on improved shoulder and failure to signal lane change. Dawson asked for consent to search the vehicle which was denied by Portillo. Although the purposes of the traffic stop had concluded Dawson the proceeded to allow a K-9 to conduct a free-air sniff. The K-9 allegedly made a positive alert on the vehicle. During the search approximately 4.20 pounds of methamphetamine was located in a wind shield cowling of the vehicle.

[12] https://abc7amarillo.com/news/local/an-explainer-to-civil-asset-forfeitures

Case Number 11515

74. On February 4, 2015, Danny Dawson employed as a peace officer by the 100th Judicial District Attorney's Office seized a 2003 Fleetwood RV after conducting a traffic stop for driving on improved shoulder and failure to drive in single lane on David Paul Diaz. Dawson asked for consent to search the vehicle which was denied by Diaz. Although the purpose for the traffic stop had concluded, a K-9 Unit was called to the scene and conducted a free-air sniff. The K-9 allegedly made a positive alert to the vehicle. A search of the vehicle was conducted. During the search 90 pounds of marijuana was located in the closets of the vehicle.

Case Number 11607

75. On August 24, 2015, Danny Dawson employed as a peace officer by the 100th Judicial District seized a 2004 Chrysler 300 after conducting a traffic stop for failure to signal lane change and no driver's license on David J Torres. Dawson asked for consent to search the vehicle which was denied by Torres. Although the purposes for the traffic stop had concluded, a K-9 Unit was called to the scene and conducted a free-air sniff. The K-9 allegedly made a positive alert to the vehicle. A search of the vehicle was conducted due to the positive alert. During the search, 0.82 pounds of heroin was located in the trunk lining of the vehicle.

Case Number 11608

76. On August 26, 2015, Danny Dawson employed by the 100th Judicial District Attorney's Office seized $460,150.00 in Currency and a 2005 Chrysler Pacifica after Dawson conducting a traffic stop for following too close and failure to signal lane change on driver Hassan McElwain and passenger Sonia Torres.

Dawson asked for consent to search the vehicle, which was denied by McElwain and Torres. Although the purposes for the traffic stop had concluded, a K-9 Unit was called to the scene and conducted a free-air sniff. The K-9 allegedly made a positive alert to the vehicle. A search of the vehicle was conducted. During the search $460,000.00 in currency was located in a false floor compartment in the vehicle.

Case Number 11936

77. On April 18, 2017, Danny Dawson employed by the 100th Judicial District Attorney's Office seized a 2007 Honda Ridgeline after conducting a traffic stop on driver Hector Rene Nevarez and passenger Martin Norberto Castaneda for following too close. Consent to search the vehicle was denied. Although the purposes for the traffic stop had concluded, Dawson allowed a K-9 Unit to conduct a free air sniff of the vehicle. The K-9 allegedly made a positive alert to the vehicle. A search of the vehicle was conducted. During the search 15.86 pounds of methamphetamine was found in between the rear seat and back wall of the vehicle.

Case Number 7926

78. On January 10, 2019, Coy Teichelman employed as a peace officer by the 100th District Attorney's Office seized a 2017 Chevrolet Tahoe and $50,000.00 in Currency after conducting a traffic stop for speeding and failure to signal lane change on Marcos Arreaga Villa and Juvenal Gamino Segunda. Teichelman asked for consent to search the vehicle which was denied. Although the purposes for the traffic stop had concluded, s K-9 Unit was called to the scene. The K-9 allegedly made a positive alert to the vehicle. During the search, Currency was located in

the lining of a diaper bag and the center console of the vehicle.

Case Number 7960

79. On April 18, 2019, Coy Teichelman employed as a peace officer by the 100th District Attorney's Office seized a 2004 Lincoln Continental after conducting a traffic stop for following too closely on Thomas H. Ciccil. Teichelman asked for consent to search the vehicle which was denied by Ciccil. Although the purposes for the traffic stop had concluded, a K-9 Unit was called to the scene. The K-9 allegedly made a positive alert to the vehicle. A search was conducted on the vehicle. During the search 100 pounds of marihuana and 3 pounds of THC was located in the trunk of the vehicle.

Case Number 12303

80. On August 14, 2019, Coy Teichelman employed as a peace officer by the 100th District Attorney's Office seized a 2018 Honda Clarity and $189,056.00 in Currency after conducting a traffic stop on driver Husing Vang and passenger Crystal Lee for speeding and following too close. Teichelman asked for consent to search the vehicle which was denied by Vang and Lee. Although the purposes for the traffic stop had concluded, a K-9 unit was called to the scene and allegedly made a positive alert to the vehicle. A search was conducted on the vehicle. During the search, Currency was located in a black backpack laying on the back driver side floor of the vehicle.

Case Number 12410

81. On September 8, 2019, Coy Teichelman employed as a peace officer by the 100th District

Attorney's Office seized $508,100.00 in Currency after conducting a traffic stop for speeding and failure to drive in single lane on driver Mark Allen Randell and passenger Peter Judge Randell. Teichelman asked for consent to search the vehicle which was denied by M. Randell and P. Randell. Although the purposes for the traffic stop had concluded, a K-9 Unit was called to the scene and allegedly made a positive alert to the vehicle. A search was conducted. During the search, Currency was located in a red duffel and a silver suitcase that was located in the rear cargo area of the vehicle. Currency was also found in a leather pouch that was hidden in a natural void in the floor of the back passenger area of the vehicle. The Currency was rubber banded with different rubber bands and in different denominations. The K-9 made a positive alert to the Currency.

Case Number 12417

82. On September 27, 2019, Coy Teichelman employed with the 100 District Attorney's Office seized $554,850.00 in Currency after conducting a traffic stop on Justin Thomas Burnett for failure to signal lane change and following too close. Teichelman asked for consent to search the vehicle which was denied by Burnett. Although the purposes for the traffic stop had concluded, a K-9 Unit was called to the scene and allegedly made a positive alert to the vehicle. A search was conducted of the vehicle. During the search, Currency was located in a large gray and black duffle bag and was separated in different back packs and postal boxes and plastic bags located in the vehicle. Currency was vacuum-sealed and rubber banded in different denominations.

Case Number 12438

83. On October 31, 2019, Coy Teichelman employed as a peace officer by the 100th District Attorney's Office seized a 2015 Mercedes Benz CLA and $38,420.00 in Currency after conducting a traffic stop for following too closely and failure to signal lane change on driver Colin Ray Dotters and passenger Jessica Elora Jewell. Teichelman asked for consent to search the vehicle which was denied by Dotters and Jewell. Although the purposes for the traffic stop had concluded, a K-9 Unit was called to the scene and allegedly made a positive alert to the vehicle. A search was performed on the vehicle. During the search, Currency was located in a black backpack, rubber branded and in different denominations located in the trunk of the vehicle. Teichelman also located four vials of THC, a glass jar of THC wax, and marihuana in a black case all located in the center console of the vehicle.

Case Number 12455

84. On December 5, 2019, Danny Dawson employed as a peace officer with the 100th District Attorney's Office seized a 2010 Lexus RX 350 after conducting a traffic stop on Reynaldo Barron-Ortiz for following too closely. Dawson asked for consent to search the vehicle which was denied by Barron-Ortiz. Although the purposes for the traffic stop had concluded, a K-9 unit was called to the scene allegedly and made an alert to the vehicle. A search was conducted on the vehicle. During the search of the vehicle, approximately 205 pounds of marijuana was located in suitcases in the rear cargo area of the vehicle and in the spare tire compartment of the vehicle.

Case Number 12522

85. On March 4, 2020, Coy Teichelman employed as a peace officer by the 100th District Attorney's Office seized a 2008 Nissan Titan and $199,770.00 in Currency after conducting a traffic stop for failure to signal lane change and obscured license plate on driver Jerald S Kemp Jr. and passenger Brandon T Bevis. Teichelman asked for consent to search the vehicle which was denied by Kemp Jr. And Bevis. Although the purposes for the traffic stop had concluded, a K-9 unit was called to the scene allegedly and made an alert to the vehicle. A search was conducted on the vehicle. During the search Currency was located in a green camo bag laying in the back seat of the vehicle and one bundle was located in Bevis personal property. Currency was rubber banded and in different denominations.

Case Number 12563

86. On June 23,2020 Danny Dawson employed as a peace officer by the 100th District Attorney's Office seized a 2015 Chevrolet Traverse after conducting a traffic stop for following too closely on Jose Alberto Colin Contreras. Dawson asked for consent to search the vehicle which was denied by Contreras. Although the purposes for the traffic stop had concluded, a K-9 unit was called to the scene allegedly and made an alert to the vehicle. A search was conducted on the vehicle. During the search, 49 pounds of marihuana was located in the rear cargo area of the vehicle.

Case Number 11148

87. On August 5,2020, Coy Teichelman employed as a peace officer by the 100th District Attorney's Office seized $44,220.00 in Currency after conducting a traffic stop for following too closely and failure to

signal lane change on Brandon Scott Rutherford. Teichelman asked for consent to search the vehicle which was denied by Rutherford. Although the purposes for the traffic stop had concluded, a K-9 unit was called to the scene allegedly and made an alert to the vehicle. A search was conducted on the vehicle. During the search, the Currency was located in a red bag located in the trunk of the vehicle. There was a black empty duffle bag with the raw odor of marihuana emitting from it.

Case Number 12546

88. On January 26, 2020, Coy Teichelman employed as a peace officer by the 100th District Attorney's Office seized $205,415.00 in Currency after conducting a traffic stop for speeding and left lane not passing on driver Jerrery Kyle Novak and passenger Tony Levell Perry. Teichelman asked for consent to search the vehicle which was denied by Novak and Perry. Although the purposes for the traffic stop had concluded, a K-9 unit was called to the scene allegedly and made an alert to the vehicle. A search was conducted on the vehicle. During the search Currency was located in a black backpack in the back seat located in the vehicle. Currency was rubber banded in different denominations and in vacuum sealed bags with fabric softener.

89. The following are cases where the seizing officer conducted a search not supported by a warrant, reasonable suspicion, probable cause, nor consent.

Case Number 11818

90. On October 5,2016, Danny Dawson employed as a peace officer by the 100th Judicial District

Attorney's Office seized a 2004 Jeep Cherokee after conducting a traffic stop for following too closely on driver Andres Jose Pule and passengers Nicolas Waditjh Bardawil Jr., Dawson alleged he had probable cause to search the vehicle but did not pinpoint specific facts indicating a crime had been committed or was in the process of being committed. Dawson simply stated he had probable cause as justification for performing the search. During the search, fifty-five grams of cocaine, eighty two grams of mushrooms, and thirty four grams of THC wax were located in a back pack found in the vehicle.

Case Number 12098

91. On January 24, 2018, Danny Dawson employed as a peace officer by the 100th Judicial District Attorney's Office seized a 2002 Chevrolet Avalanche after he conducted a traffic stop for following too closely and no valid driver's license. Dawson alleged he had probable cause to search the vehicle but did not pinpoint specific facts indicating a crime had been committed or was in the process of being committed. Dawson simply stated he had probable cause as justification for performing the search. During the search, one hundred and fifty four pounds of marihuana was located under a tarp in the vehicle.

Case Number 10901

92. On August 18, 2018, Coy Teichelman employed as a peace officer by the Childress Police Department seized a 2011 Chevrolet Aveo after conducting a traffic stop for impeding traffic and failure to maintain a single lane of traffic on driver Ulises Pomel and passenger Jose Alberto Guerra Menendez. Teichelman alleged he had probable cause

probable cause to search the vehicle but did not pinpoint specific facts indicating a crime had been committed or was in the process of being committed. Dawson simply stated he had probable cause as justification for performing the search. During the search of the vehicle, four pounds of marihuana was located in the trunk of the vehicle.

Case Number 7924

93. On January 4,2019, Danny Dawson employed as a peace officer by the 100th Judicial District Attorney's Office seized a 2012 Toyota Sienna and $30,000.00 in Currency after conducting a traffic stop for passenger not wearing a seatbelt on driver Li Tian and passenger Samuel Bian. Dawson alleged he had probable cause to search the vehicle but did not pinpoint specific facts indicating a crime had been committed or was in the process of being committed. He simply stated he had probable cause as justification for searching the vehicle. During the search, Currency was located in the lining of a suitcase located in the vehicle.

Case Number 12330

94. On March 20, 2019, Coy Teichelman employed as a peace officer by the 100th Judicial District Attorney's Office seized a 2003 Chevrolet 3500 Pickup and $54,431.00 in Currency after conducting a traffic stop for following too closely and speeding on driver Rebecca Jean Marinan and passenger Olivia R. Watkins. Teichelman alleged he had probable cause to search the vehicle but did not pinpoint specific facts indicating a crime had been committed or was in the process of being committed. He simply stated he had probable cause as justification for searching the vehicle. During the search one ounce of marihuana

and three grams of THC were located under the center console of the vehicle.

95. These examples show that the 100th Judicial District through its Traffic Enforcement Division being run by Luke Inman had a pattern and practice of illegally prolonging detentions to perform illegal searches for the purpose of seizing property, currency, and contraband to be forfeited to the 100th Judicial District as a profit.

96. This pattern and practice was the moving force behind the illegally prolonged detention of Mr. Weisshaus and the illegal search of his vehicle.

97. Although nothing was illegal was found in his vehicle or seized, he still suffered the constitutional violations caused by these unconstitutional practices of the 100th Judicial District.

IV.

CAUSES OF ACTION

Illegal Detention Against Defendant Teichelman Pursuant to the Fourth Amendment and 42 U.S.C § 1983

98. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

99. No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, to be free from all restraint or interference of others, unless by clear and unquestionable authority of law. *Terry v. Ohio,* 392 U.S. 1, 9 (1968).

100. Defendant Teichelman deprived Mr. Weisshaus of his constitutionally protected right to be free from unreasonable searches and seizures under the Fourth Amendment by unlawfully detaining him despite lacking reasonable suspicion that any crime had been committed as the reason for the detention had already been exhausted when Defendant Teichelmen gave Mr. Weisshaus a warning and advised him he was free to leave.

101. Unlawful detention implicates the Fourth Amendment's proscription against unreasonable seizures. *Peterson v. City of Fort Worth, Tex.*, 588 F.3d 838, 845 (5th Cir. 2009) See *Terry,* 392 U.S. at 16 ("[Whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person.").

102. Traffic stops are considered seizures within the meaning of the Fourth Amendment. *Delaware v. Prouse,* 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); *United States v. Valadez, 267* F.3d 395, 397 (5th Cir.2001).

103. The legality of a traffic stop is analyzed under the framework articulated in *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). See *Knowles v. Iowa,* 525 U.S. 113,117,119 S.Ct. 484,142 L.Ed.2d 492 (1998); *Berkemer v. McCarty,* 468 U.S. 420,439,104 S.Ct. 3138,82 L.Ed.2d 317 (1984); *United States v. Brigham,* 382 F.3d 500, 506 (5th Cir.2004) (enbanc).

104. Under the two-part Terry reasonable suspicion inquiry, the court must determine whether the officer's action was: (1) "justified at its inception"; and (2) "reasonably related in scope to the circumstances which justified the interference in the

first place." *Terry,* 392 U.S. at 19-20; *Brigham,* at 506-507; *U.S. v. Lopez-Moreno,* 420 F.3d 420,429-434 (5th Cir.2005).

105. For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle. See *United States v. Breeland,* 53 F.3d 100,102 (5th Cir.1995).

106. The Supreme Court has stated that in making a reasonable suspicion inquiry, a court "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu,* 534 U.S. 266, 273,122 S.Ct. 744,151 L.Ed.2d 740 (2002); *United States v. Cortez,* 449 U.S. 411, 417,101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

107. Reasonable suspicion exists when the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the search and seizure. See, e.g., *United States v. Santiago,* 310 F.3d 336, 340 (5th Cir.2002).

108. In evaluating the totality of the circumstances, a court may not consider the relevant factors in isolation from each other. *Arvizu,* 534 U.S. at 274.

109. In scrutinizing the officer's basis for suspecting wrongdoing, it is clear that the officer's mere hunch will not suffice. *Terry,* 392 U.S. at 27.

110. It is also clear, however, that reasonable suspicion need not rise to the level of probable cause.

Arvizu, 534 U.S. at 274.

111. As for the second prong of the Terry inquiry, generally, the "detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop, unless further reasonable suspicion, supported by articulable facts, emerges." *Brigham,* 382 F.3d at 507.

112. In the course of effectuating the stop, a police officer may permissibly examine the driver's license and registration and run a computer check on them to investigate whether the driver has any outstanding warrants and if the vehicle is stolen. *Id.* at 507-08.

113. An officer may also ask the driver about the purpose and itinerary of his trip. *Id.* at 508.

114. Indeed, the officer's questions need not even be related to the purpose of the traffic stop, since "[detention, not questioning, is the evil at which Teriy's second prong is aimed." *Id.*

115. **Although an officer's inquiry may be wide-ranging, once all relevant computer checks have come back clean, there is no more reasonable suspicion, and, as a general matter, continued questioning thereafter unconstitutionally prolongs the detention.** *Brigham,* 382 F.3d at 510. See also *Santiago,* 310 F.3d at 341-42; *United States v. Jones,* 234 F.3d 234, 241 (5th Cir. 2000).

116. A recognized exception to this rule is that if additional reasonable suspicion arises in the course of the stop and before the initial purpose of the stop has been fulfilled, then the detention may continue until the new reasonable suspicion has been dispelled or confirmed. See *Brigham,* 382 F.3d at 507; *United*

States v. Grant, 349 F.3d 192,196 (5th Cir.2003).

117. To prevail on a claim for unlawful seizure a plaintiff must allege facts that if true show that the defendant police officer lacked reasonable suspicion to detain or probable cause to arrest the Plaintiff. *Connors v. Graves,* 538 F.3d 373, 377 (5th Cir. 2008) (discussing showing of no probable cause with respect to claim for unlawful seizure); *Haggerty,* 391 F.3d at 655.

118. Under Terry, an officer may temporarily detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. See *Illinois v. Wardlaw,* 528 U.S. 119,123-24,120 S. Ct. 673, 145 L. Ed. 2d 570 (2000) (reiterating that reasonable suspicion is —more than an inchoate and unparticularized suspicion or hunch of criminal activity); *United States v. Sokolow,* 490 U.S. 1, 7,104 L. Ed. 2d 1,109 S. Ct. 1581 (1989); *United States v. Jones,* 234 F.3d 234, 241 (5th Cir. 2000).

119. The suspicion required to justify such a detention need not rise to the level of probable cause but must be based on more than an unparticularized suspicion or hunch. *Jones,* 234 F.3d at 241.

120. The Court must determine whether the search and seizure was reasonably related, in scope, to the circumstances that justified the stop in the first place. *Kothe v. State,* 152 S.W.3d 54, 62 (Tex. Crim. App. 2004).

121. In making this determination the scope of a *Terry* investigative stop can last no longer than necessary to effect the purpose to stop. *See id.*

122. As a component of the initial stop the officer

has authority to conduct a driver's license and warrant check. *See id.*

123. After completion of the purposes of the initial stop, the officer must have reasonable suspicion to believe that further criminal activity has occurred or is being committed to justify further detention of the suspect. See *Davis v. State,* 947 S.W.2d 240, 244 (Tex. Crim. App. 1997) (en banc); *McQuarters v. State,* 58 S.W.3d 250, 255 (Tex. App.—Fort Worth 2001, pet. ref d; *Sieffert v. State,* 290 S.W.3d 478, 485-86 (Tex. App.— Amarillo 2009, no pet.).

124. In order words, once the original purpose for the stop is exhausted, police may not unnecessarily detain drivers solely in hopes of finding evidence of some other crime. *Kothe,* 152 S.W.3d at 64.

125. For example, in *Davis,* after an officer determined that the driver was not intoxicated—the basis for the original stop—and completed the driver's license check and criminal history check, the officer continued to detain Davis because he did not look like someone traveling on a business trip. *Davis,* 947 S.W.2d at 245.

126. However, in *Davis,* the Texas Court of Criminal Appeals stated this conclusion was not based upon any articulable facts, that taken together with reasonable inferences from those facts, would provide reasonable suspicion that continued detention was warranted. *Id.*

127. For example, in *McQuarters,* a driver was stopped because the officer felt the driver was either falling asleep at the wheel or was intoxicated after observing his slow speed and the fact that the car drifted out of its lane on a couple of occasions. *McQuarters, 58* S.W.3d at 253.

128. Yet, an interview with the driver dispelled the notion he was intoxicated. *Id.*

129. Eventually after issuing the warning tickets, the officer asked if there was anything of an "illegal nature" in the car. *Id.*

130. The driver answered no, and the officer asked for consent to search, which was refused. *Id.*

131. At that point in time the officer just "felt like" he had reasonable suspicion that the driver had narcotics in the vehicle. *Id.*

132. Therefore, the officer continued detention until a K-9 unit could be brought to the site. *Id.*

133. The K-9 unit alerted to the vehicle and nine to ten pounds of marihuana were found in the trunk. Id.

134. Based on upon those facts, the Fort Worth Court of Appeals held that, when considering the totality of the circumstances, including the officer's personal experience, reasonable suspicion that the driver was hiding narcotics in the car could not be rationally inferred from these facts. *Id.* at 257

135. See *Thompson v. State,* 408 S.W.3d 614, 625 (Tex.App.Austin 2013, no pet.) (disagreeing with officer's characterization of appellants account of trip as "confused" and observing that simply because officer calls story confusing does not make it so).

136. After the reason for the stop had concluded, Defendant Teichelman intentionally detained Plaintiff without a warrant, without Plaintiffs consent, and without any legal justification as Defendant Teichelman told Mr. Weisshaus he was not free to leave, and Mr. Weisshaus was not allowed back in his vehicle, despite already being issued a warning

and being told he was free to leave.

137. Plaintiff did not consent to his confinement and was conscious of it.

138. Defendant Teichelman did not have probable cause nor reasonable suspicion to support detaining Plaintiff, after the purposes of the traffic stop had concluded as Mr. Weisshaus was not suspected of committing a crime or in the process of committing a crime when he was instructed not to leave.

139. 139- By knowingly and intentionally detaining Plaintiff without consent, without probable cause, and without legal justification, Defendant Teichelman deprived Plaintiff of his Fourth Amendment right to be free from unreasonable seizures.

140. As a result of the illegal detention, Plaintiff suffered injuries.

141. As a result of the illegal detention, Defendant Teichelman deprived Plaintiff of his civil, constitutional, and statutory rights and is liable to Plaintiff under 42 U.S.C. § 1983.

142. Plaintiff was damaged as a result of Defendant Teichelman's wrongful acts.

Count Two

Illegal Search
Against Defendant Teichelman
Pursuant to the Fourth Amendment and 42 U.S.C § 1983

143. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

144. The Fourth Amendment to the United States Constitution guarantees people the right to be free from unreasonable searches and seizures. U.S. Const, amend. IV.

145. A search under the Fourth Amendment occurs when a governmental employee or agent of the government violates an individual's reasonable expectation of privacy.

146. A search will not be deemed unreasonable if it is done pursuant to a valid warrant, based upon a finding of probable cause, or if the search falls within an exception to these requirements.

147. A search will not be deemed unreasonable if it is done with valid consent.

148. Defendant Teichelman, acting under color of law, was a governmental employee.

149. Defendant Teichelman did not have a valid warrant to search Plaintiffs vehicle.

150. Defendant Teichelman did not have probable cause to search Plaintiffs vehicle as Defendant Teichelman was not aware of any facts that evidence of a crime would be found inside of the vehicle as the reason for the stop was due to traffic offenses and no new information of criminal activity arose during the detention.

151. Defendant Teichelman did not have consent to search Plaintiffs vehicle as Mr. Weisshaus expressly denied consent to search.

152. No other exception permitted Defendant Teichelman to search Plaintiffs vehicle.

153. Defendant Teichelman conducted an illegal search of Plaintiffs vehicle.

154. Defendant Teichelman did not have authority of law to search Plaintiffs vehicle.

155. 155- By knowingly and intentionally searching Plaintiffs vehicle without consent, without probable cause, and without legal justification, Defendant Teichelman deprived Plaintiff of his Fourth Amendment right to be free from unreasonable searches.

156. As a result of the illegal search, Plaintiff suffered injuries.

157. As a result of the illegal search, Defendant Teichelman deprived Plaintiff of his civil, constitutional, and statutory rights and is liable to Plaintiff under 42 U.S.C. § 1983.

158. Plaintiff was damaged as a result of Defendant Teichelman's wrongful acts.

Count Three

Causes of action against Defendant 100th Judicial District under *Monell v. New York City Department of Social Services* Violation of the Fourth Amendment Pursuant to 42 U.S.C § 1983

159. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

160. Under the decisions of the Supreme Court and [the Fifth Circuit], municipal liability under section 1983 requires proof of three elements: a policy maker; an official policy; and a violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski v. City of Houston, 237* F.3d 567,578 (5th Cir. 2001) (citing *Monell,* 436 U.S. at 694).

161. Municipalities and other local governments

are "persons" within the meaning of Section 1983 and can therefore be held liable for violating a person's constitutional rights. *Monell v. Dep't ofSoc. Servs. of City of New York,* 436 U.S. 658, 690 (1978).

162. A municipality "cannot be liable for an unwritten custom unless '[a]ctual or constructive knowledge of such custom' is attributable to a city policymaker." *Pena v. City of Rio Grande City,* 879 F.3d 613,623 (5th Cir. 2018) (citing *Hicks-Fields v. Harris Cty.,* 860 F.3d 803, 808 (5th Cir. 2017)).

163. To establish municipal liability under § 1983 based on an alleged "persistent widespread practice or custom that is so common it could be said to represent municipal policy, actual or constructive knowledge of such practice or custom must be shown." *Malone v. City of Fort Worth,* 297 F. Supp. 3d 645, 654 (N.D. Tex. 2018) (citing *Hicks- Fields,* 860 F.3d at 808).

164. Constructive knowledge may be attributed to the governing body on the ground that it would have known of the violations if it had properly exercised its responsibilities..." *Hicks-Fields,* 860 F.3d at 808,

POLICYMAKER

165. The identification of policymaking officials is a question of state law. *City of St. Louis v. Praprotnik,* 485 U.S. *1^,* 124,108 S.Ct. 915, 99 L.Ed.2d 107 (1988).

166. Luke Inman is and was the policymaker for the 100th Judicial District with regard to the Traffic Enforcement Division as he is the official for the 100th Judicial District who created the Traffic Enforcement Division.

167. Inman was directly involved with implementing each of the 100th Judicial District

Traffic Enforcement Division's policies and practices, including but not limited to actions taken to prolong traffic stops past when the purposes for the stop had concluded in order to illegally detain citizens and subject them to civil forfeiture proceedings; accordingly, he had actual knowledge of these unconstitutional policies and practices.

168. Defendant Inman was directly involved with implementing each of the 100th Judicial District Traffic Enforcement Division's policies and practices as he entered into local asset forfeiture agreements regarding the disposition of property or proceeds derived by signing off on these agreements as "Attorney Representing the State."

169. Inman had constructive knowledge of actions taken to prolong traffic stops past when the purposes for the stop had concluded in order to illegally detain citizens and subject them to civil forfeiture proceedings as Inman would have known of these practices in the 100th Judicial District Traffic Enforcement Division had he exercised his responsibilities, especially with regard to investigating civil forfeiture actions pursued against detainees.

170. Inman had knowledge of these unconstitutional practices and policies as he submitted affidavits in each civil forfeiture case outlined above which included the seizing officer's Incident Reports in an attempt to prove each element of the civil forfeiture claims pursued by the 100* Judicial District and Inman was the official for the 100th Judicial District that reviewed, briefed, and argued the suppression issues related to these seizures in criminal cases and the forfeiture issues in

civil matters.

Policy, Custom, and Practice Which was Moving Force of Constitutional Violations

171. The § 1983 causation component requires that the plaintiff identify, with particularity, the policies or practices they allege cause the constitutional violation and demonstrate a "direct causal link." *M. D. by Stukenberg v. Abbott,* 907 F.3d 237,255 (5th Cir. 2018); See *Piotrowski, 237* F.3d at 580.

172. Inman created a culture of constitutional violations through incentivizing officers to illegally prolong traffic stops past when the purposes for the stop had concluded in order to illegally search citizens and subject them to civil forfeiture proceedings in an effort to financially benefit the 100th Judicial District, knowing that the likely results would be violation of constitutional rights as he saw in the affidavits presented for each arrest and forfeiture.

173. The violations of Plaintiffs constitutional rights under the Fourth Amendment to the United States Constitution, Plaintiffs damages, and the conduct of Defendant Teichelman were directly and proximately caused by the practices of the 100th Judicial District, under the direction of Luke Inman as chief policy maker of the 100th Judicial District Traffic Enforcement Division.

174. Inman, as chief policy maker of the 100th Judicial District, knowing of this high likelihood of illegal detentions, and searches, which would result in violations of the Fourth Amendment rights of its citizens, such as Mr. Weishauss was deliberately indifferent to the constitutional violations committed by officers working for the 100th Judicial District

Traffic Enforcement Division, such as Defendant Teichelman in this case.

175. The constitutional violations in this case were the direct result of the deliberate indifference outlined above by Luke Inman as chief policy maker of the 100th Judicial District Traffic Enforcement Division.

176. At the time of the incident, Defendant Teichelman was acting pursuant to a custom, policy, practice, and/or procedure of the 100th Judicial District.

177. Defendants' actions constitute a violation of the well-settled right to be free from unreasonable searches and illegal detention under the Fourth Amendment.

178. As a direct result of these acts, Plaintiff has suffered mental/emotional injuries and economic damages.

179. These injuries were not caused by any other means.

V.

Damages

180. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

181. When viewed objectively from the standpoint of Defendant Teichelman, at the time of the occurrence, said Defendant's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others.

182. Plaintiffs injuries were a foreseeable event. Those injuries were directly and proximately caused

by the illegal detention and search of Mr. Weisshaus. As a result, Plaintiff is entitled to recover all actual damages allowed by law. Plaintiff contends Defendant's conduct constitutes malice, evil intent, or reckless or callous indifference to Plaintiffs constitutionally protected rights. Thus, Plaintiff is entitled to punitive damages against the Defendant Teichelman.

183. As a direct and proximate result of the occurrence which made the basis of this lawsuit, Plaintiff was forced to suffer:

184. Emotional distress, torment, and mental anguish; and

185. Deprivations of his liberty.

VI.

Attorneys' Fees

186. If Plaintiff prevails in this action, by settlement or otherwise, Plaintiff is entitled to and hereby demands attorney's fees under 42 U.S.C. §1988.

VIII.

Jury Request

187. Plaintiff respectfully requests a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that judgment be rendered against Defendants, for an amount in excess of the jurisdictional minimum of this Court. Plaintiff further prays for all other relief, both legal and equitable, to

which he may show himself justly entitled.

Respectfully submitted,
/s/ Scott H. Palmer

SCOTT H. PALMER, Texas Bar No. 00797196
/s/James P. Roberts

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COUNSEL FOR PLAINTIFF

APPENDIX G

ECF No. 27

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS,	§	
Plaintiff,	§	
v	§	**CIVIL ACTION NO.**
STEVE COY TEICHELMAN,	§	2:22-CV-00035-Z
AND 100TH JUDICIAL	§	
DISTRICT,	§	
Defendants.	§	

APPENDIX TO DEFENDANT STEVE COY TEICHELMAN'S MOTION FOR SUMMARY JUDGMENT

Defendant Steve Coy Teichelman files this Appendix to Defendant's Motion for Summary

Judgment. To assist the Court in its review of the documents included in the Appendix, Defendants include the following table reference:

Page	**Description**
APPX. 001-003	Affidavit of Steve Coy Teichelman

Respectfully submitted,

/s/ Brad R. Timms

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ATTORNEYS FOR DEFENDANT
STEVE COY TEICHELMAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served on all parties of record via the Court's Electronic Filing System on the 28th day of September, 2022.

/s/ Brad R. Timms

Brad R. Timms

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS,	§	
Plaintiff,	§	
v	§	**CIVIL ACTION NO.**
STEVE COY TEICHELMAN, AND 100TH JUDICIAL DISTRICT,	§	2:22-CV-00035-Z
Defendants.	§	

AFFIDAVIT OF STEVE COY TEICHELMAN

STATE OF TEXAS §
§
COUNTY OF §

BEFORE ME, the undersigned authority, on this day personally appeared Steve Coy Teichelman, who is known to me, and after having first been duly sworn according to law, on his oath deposed and said as follows:

1. "My name is Steve Coy Teichelman. I am over twenty-one (21) years of age. I have never been convicted of a felony, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are true and correct.

2. "I have been a certified Texas Peace Officer since 2007.1 worked as an officer for the Childress Police Department from 2007 through 2019.1 left the Childress Police Department in 2019 and joined the 100th Judicial District where I work as an Investigator.

3. "I was certified in 2011 to handle K-9 officers. I have advanced training in highway

interdiction and identifying deceptive behavior. I attend yearly continuing education courses through Highway Interdiction Training Specialists, Inc. Those courses include training on Advanced Roadside Interview Techniques for Patrol Officers, Advanced Vehicle Contraband Concealment, and Criminal Patrol/Drug Interdiction.

4. "In my role as Investigator with the 100th Judicial District, I routinely patrol 1-40 with my K-9 partner, Kobra. I am certified to handle Kobra, and Kobra is registered and trained to alert to narcotics with a passive response. Kobra is trained to sit or lay down and wait once she finds a scent.

5. "The 1-40 corridor I regularly patrol is routinely used for human and drug trafficking. On March 2, 2020, I observed Yoel Weisshaus speeding and displaying an obscured license plate/registration insignia as he drove on 1-40. I pulled Mr. Weisshaus over based on these traffic violations. Mr. Weisshaus appeared to be a middle-aged male. Mr. Weishauss was traveling with an African-American female that appeared to be in her early 20s. I made contact with the driver, Mr. Weisshaus, and I asked him to walk with me to my patrol car as I ran his license and registration information. The passenger remained in the vehicle.

6. "While in my patrol vehicle, as I ran the license and registration information, I asked Mr. Weishauss questions regarding where he was traveling, how long he intended to stay at his destination, and his lodging plans. Mr. Weishauss' driver's license indicated he lived in New Jersey. Mr. Weishauss was short with his responses and was unable to provide any details as to a general itinerary,

hotel accommodations, or length of stay at his destination. Based on Mr. Weishauss' short and incomplete answers, coupled with Mr. Weishauss traveling with a driver's license from New Jersey on 1-40—a known drug and human trafficking corridor—with a female that appeared to be considerably younger than him with no familial connection, I developed a reasonable suspicion of criminal activity. My reasonable suspicion developed when Mr. Weishauss was in my patrol vehicle as I was questioning him and running his driver's license and registration information.

7. "After Mr. Weishauss was unable to provide the duration of his travel plans, provide a general itinerary, or general hotel/lodging information, I believed it necessary to question the female passenger. The asked the female passenger the same general questions that I asked Mr. Weishauss. The female passenger also could not provide details as to the duration of the trip or general hotel/lodging information. The female passenger appeared nervous, timid, and scared. She looked at the floorboard and failed to make any eye contact with me at any time during the questioning.

8. "At this point, my reasonable suspicion of criminal activity elevated, and I asked the driver for consent to search the vehicle. He refused consent. I determined there was reasonable suspicion sufficient to warrant a quick sniff of the exterior of the vehicle by my K-9 partner. I asked the passenger and Mr. Weishauss to stand at a safe distance from the vehicle as I walked Kobra around the vehicle for about one minute. Kobra gave me a passive alert to the scent of narcotics. Based on Kobra's alert, I briefly searched the vehicle. However, after the search, I was unable to

find any narcotics. I then let Mr. Weishauss and his passenger leave with a warning to Mr. Weishauss related to his speeding and obscured license plate/registration insignia.

9. "The dashboard camera footage was automatically deleted 90 days after the stop pursuant to applicable retention policy."

FURTHER AFFIANT SAYETH NOT.

/s/

Steve Coy Teichelman, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME by Steve Coy Teichelman on this 26th day Sept , 2022, to certify which witness my hand and seal of office.

/s/

Notary Public, State of Texas

-- Seal --

APPENDIX H
ECF No. 31

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS,	§	
Plaintiff,	§	
v	§	No. 2:22-CV-00035-Z
	§	
STEVE COY TEICHELMAN	§	
Defendant.	§	
	§	

PLAINTIFF'S APPENDIX IN SUPPORT OF BRIEF IN SUPPORT TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

/s/ Breanta Boss

BREANTA BOSS
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COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system on October 19, 2022. I further certify that all participants in this case are registered CM/ECF users and that they were served through the CM/ECF system.

/s/ Breanta Boss

BREANTA BOSS

Table of Contents

Exhibit A:
Declaration of Yoel Weisshaus

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

YOEL WEISSHAUS,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION No.
	§	2:22-CV-00035-Z
STEVE COY TEICHELMAN and 100th JUDICIAL DISTRICT,	§	
Defendants.		

DECLARATION OF YOEL WEISSHAUS

COUNTY OF LUZERNE §
§
STATE OF PENNSYLVANIA §

1. My name is Yoel Weisshaus, I am over the age of eighteen, and I have personal knowledge of the facts asserted in this declaration, and they are true and correct.

2. I am the Plaintiff in the above-entitled action, and I am familiar with the file, records, and pleadings in this matter.

3. I have never been convicted of any felonies.

4. On March 2, 2020,1 was residing in New Milford, New Jersey.

5. On March 2, 2020,1 was traveling with Sasha Lee in my 2016 Jeep Renegade.

6. Ms. Lee and I were traveling to Scottsdale Arizona, to help Ms. Lee move from her prior residence in Arizona to Teaneck, NJ.

7. At all relevant times, Ms. Lee was forty-two and I was thirty-nine years old.

8. On March 2, 2020, at about 8:30 A.M., I passed through the State of Texas, via the i40 westbound, en route from the State of Oklahoma to the State of New Mexico.

9. At all relevant times, the speed limit on i40 was 75 miles per hour.

10. At all relevant times, I was driving in the right lane at about 65 miles per hour.

11. The reason for driving slower is that my vehicle could not handle going 70 miles per hour without causing a mild vibration to the vehicle.

12. During this trip, Defendant, Coy Teichelman (referred hereinafter as "Defendant"), Teichelman conducted a traffic stop on my vehicle.

13. At all relevant times, Defendant identified himself as an officer of the Judicial District Traffic Enforcement Division (referred herein after as "Division"), an operation created by the District Attorney at the 100th Judicial District Attorney's Office.

14. I did not have any warrants or suspensions pending.

15. The registration of my vehicle was in good standing with the State of New Jersey.

16. Prior to conducting the traffic stop, Defendant passed my vehicle from the left side of the highway.

17. Defendant slowed down his unmarked vehicle for the purpose of conducting a traffic stop.

18. Defendant approached my vehicle from the passenger side and stated that the basis for the traffic stop was allegedly speeding and displaying an obscured license plate/registration insignia, specifically Defendant alleged I had dust on my plate.

19. However, I was traveling below the speed limit and the front and rear license plates of my

vehicle were clearly visible.

20. Defendant requested to see my drivers' license and registration which I provided.

21. Defendant detained me and directed me to follow him to his patrol vehicle placing me in the front right seat of his vehicle until he issued a traffic warning.

22. Defendant informed me that no fine would be issued.

23. While in Defendant's unmarked patrol vehicle as Defendant was engaged in processing the traffic warning, Defendant asked me to disclose the origin of my departure and destination.

24. I answered that I am traveling to Scottsdale Arizona to help Ms. Lee move her belongings to New Jersey.

25. Defendant asked about my relationship to Ms. Lee, and I informed him that we are friends.

26. Teichelman completed issuing the citation, returned to me my driver's license, and informed me that I am free to leave.

27. However, after Defendant informed me that I am free to leave, Defendant stopped me from leaving his unmarked vehicle, stated I need to hold on and the purpose for the traffic stop was that the Division's mission involves looking for "large sums of cash" or narcotics.

28. Defendant stated the Division uses traffic stops to achieve the goal of looking for "large sums of cash" or narcotics.

29. Defendant repeated the phrase that he is looking "large sums of cash" several times.

30. Defendant asked me if I have any cash, and I answered no.

31. Defendant asked me I have any drugs or marijuana, and I answered no.

32. Defendant then asked for my consent to a warrantless search of my vehicle, to which I declined.

33. In turn, Defendant informed me that under Texas law, if a dog alerts him to any narcotics in a vehicle, he will have probable cause to search the vehicle without the owner's consent.

34. Defendant told me I was detained, while he takes his K-9 to sniff my vehicle.

35. While utilizing a dog to sniff the outside of my vehicle, Defendant directed me not to leave the unmarked vehicle.

36. Defendant walked the K9 three times around the outside of my vehicle.

37. Defendant's K9 neither sat once, barked nor stopped.

38. Defendant returned the K9 to his unmarked vehicle and declared that the dog alerted him to narcotics inside my vehicle.

39. Defendant searched my vehicle.

40. Defendant directed Ms. Lee to leave my vehicle.

41. At no point did Defendant asked Ms. Lee for identification.

42. While Defendant searched my vehicle without a warrant, Defendant did not use the K9 to locate the purported sniff of the alleged narcotics.

43. During Defendant's warrantless search into my vehicle, Defendant damaged the interior of my vehicle and tossed out my belongings.

44. After the warrantless search yielded nothing, as there was no illegal narcotics inside of my vehicle, Defendant insisted that I be subjected to a pat down.

45. I declined to be pat down.

46. I asked to terminate the encounter.

47. Defendant became aggressive and informed me that I am being detained for refusing to follow his orders.

48. I asked again to terminate the encounter.

49. Teichelman directed me to sit in his police cruiser and that I was not free to leave.

50. I asked again to terminate the encounter.

51. After approximately twenty minutes passed, Defendant freed me.

52. I suffered injuries as a result of the illegal search and illegal detention performed by the Defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 19 day of October, 2022

Yoel Weisshaus

Exhibit B:
Citation # DA 06821 issued by 100th Judicial District Attorney's Office

CITATION
100TH JUDICIAL DISTRICT ATTORNEY'S OFFICE

Citation #: **DA 06821** Case# - --

Date/Time: **3/02/2020 8:31 AM**

Violator:

Name: WEISSHAUS, YOEL

Address: 235 MILFORD AVE APT 2E, NEW MILFORD, NJ 07646

DOB: 11/19/2019 Sex: Male

Race: White Ethnicity: N HISP

Hgt: -- -- Phone #:

ID/DL State: TX ID/DL #: ****9816

Vehicle:

License #: A35KUV State: NJ

Year: 2016 Make: JEE

Color: -- -- Type:

Passengers: No Hazd: No

Axle Weights: VIN: ***985

Location:

Location 112 mile marker Traffic -- --

County: Carson Road Cond: Dry

Direction: School Zn: No

Constr Zn: No Day/Night Day Posted Speed: 75

Alleged Speed: -- -- Workers No Radar Cal.: Yes

Accident No

Violation(s):

Warning(s):

Speeding

Display Fictitious. Altered, or Obscured License Plates/Registration Insignia

Court Information

Issued By: **Coy Teichelman** ID#: **8104**

THIS IS A WARNING ONLY. There is no further action required.

Walk in payment hours: -- --

On or Before: N/A

Annually traffic law violations are recorded as a factor in about 85% of the rural traffic accidents in Texas. Approximately 60% of the traffic deaths in Texas occur on rural highways. The Enforcement actions taken against you and any subsequent court actions are intended to secure compliance with the traffic laws by you and all other users of the highways. Failure to comply with your written promise to appear in the court as made on this citation will constitute a separate offense with which you may be charged and result in failure to satisfy a judgement ordering the payment of a fine and cost in the manner ordered by the court may result in the denial of renewal of your driver's license.

"A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver's license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for two (2) years from the date of conviction. The Department may waive the requirements to file evidence of financial responsibility if you file satisfactory evidence with the Department showing that at the time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility."

You may be able to require that this charge be

dismissed by successfully completing a driving safety course or motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course.

JP2 Carson County 806-537-3722

Violator Copy

APPENDIX I

The United States Constitution, in relevant part states,

Article III Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article III Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,— between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. U.S. Const. art. III, § 2, cl. 1

The Fourteenth Amendment Section 1 "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

The Fourteenth Amendment Section 1. "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." U.S. Const. amend. XIV, § 5.

APPENDIX J

FEDERAL RULES
OF
CIVIL PROCEDURE

DECEMBER 1, 2023

Printed for the use
of
THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) *United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) *Effect of a Motion.* Unless the court sets a

different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) MOTION FOR A MORE DEFINITE STATEMENT. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. if the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) MOTION TO STRIKE. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) JOINING MOTIONS.

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) WAIVING AND PRESERVING CERTAIN DEFENSES.

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction.* if the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) HEARING BEFORE TRIAL. If a party so moves, any defense listed in Rule 12(b)(1)-(7)—whether made in a pleading or by motion— and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) PROCEDURES.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to

properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)