No. 24-_____

In the Supreme Court of the United States

RANDAL M. HALL,

Petitioner,

versus

TRAVIS TROCHESSETT; CITY OF LEAGUE CITY, TEXAS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Randall Kallinen
Kallinen Law PLLC
511 Broadway Street
Houston, Texas 77012
(713) 320-3785
attorneykallinen@aol.com
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether the First Amendment can countenance an arrest based on a husband's advice to his wife to take a clearly non-criminal action.

2. Whether this Court should correct the Fifth Circuit's departure from the other Circuit Courts of Appeals' and with the Texas Court of Criminal Appeals' application of the First Amendment to similar interference cases, and to Texas's own interference statute and built-in speech exception.

3. Whether this Court should revisit the propriety and scope of the qualified immunity defense.

PARTIES TO THE PROCEEDINGS

Petitioner Randal Hall was the plaintiff in the district court proceedings, and the appellant in the appellate court proceedings. Respondents Travis Trochessett and City of League City were the defendants in the district court proceedings and appellees in the appellate court proceedings.

RELATED CASES

Hall v. Trochessett, No. 3:22-cv-363, United States District Court for the Southern District of Texas. Judgment entered May 17th, 2023.

Hall v. Trochessett, No. 23-40362, United States Court of Appeals for the Fifth Circuit. Judgment entered June 20th, 2024.

Hall v. Trochessett, No. 23-40362, United States Court of Appeals for the Fifth Circuit. Rehearing denied August 20th, 2024.

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The Fifth Circuit's opinion is reported at *Hall v. Trochessett*, 105 F.4th 335 (5th Cir. 2024), and reproduced at 1a–17a. The Fifth Circuit's denial of petitioner's petition for rehearing *en banc* is reproduced at 20a. The opinion of the District Court for the Southern District of Texas is reproduced at 22a–37a.

JURISDICTION

The Court of Appeals entered judgment on June 20th, 2024. 18a. It then denied a timely petition for rehearing *en banc* on August 20th, 2024. 20a. After this Court granted Petitioner a 30-day extension, this petition is timely filed on or before December 18th, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

Texas Penal Code § 38.15(a)(1), (d)

(a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:

> (1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;

. . .

(d) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

STATEMENT OF THE CASE

Local real estate developer Randal Hall and his wife Rachael have lived in their house in League City for about twenty years, and have four minor children. Both are upstanding citizens, and neither has been convicted of a crime in their lives. On September 2nd, 2022, Rachel was driving through a gym parking lot at a safe speed when she was hit by one Mr. Melchor, who readily admitted full responsibility (to which Rachael's insurer agreed) and specifically asked that the police not be called. Mr. Melchor produced auto insurance papers to Rachael, who discovered upon contacting the insurance company later that Mr. Melchor did not, in fact, have insurance with that company, which is a crime. There being nothing left to do, Rachael departed the scene after a few minutes.

Later that day, Mr. Melchor contacted the City of League City police and a personal injury attorney, falsely claiming that Rachael was a fault and that he was injured — both patently false — and sought money damages from Rachael. Travis Trochessett was sent by League City to investigate Mr. Melchor's claim.

Trochessett arrived at the Halls' house that night after dark, and Randal was about 90 miles away in El Campo, Texas. Trochessett began aggressively interrogating Rachael and seeking her driver's license information — information to which he would have had access as a police officer

and likely used to find Rachael's address in the first place — and Rachael called Randal, her husband, about the situation. After Rachael spoke with her husband, she handed her phone to Trochessett, with whom he had a respectful conversation explaining that his wife, himself, and his family would feel unsafe providing that information to Trochessett at the time because they feared Mr. Melchor learning their address, but would arrange to provide the information in an alternative manner.

On September 18th, 2022, Randal was arrested at his home, in front of his children, and jailed for interference with public duties. The charges were dropped because the Galveston County District Attorney declined to prosecute the charge.

Petitioner brought suit for violations of his civil rights. He alleged that the arrest violated his First and Fourth Amendment rights because it was made without probable cause, and was in retaliation of his phone conversation with Trochessett. He alleged both that his conduct was not and could not have been interference, and that even if it could be considered interference, that it fell within the "speech-only" exception to Texas's interference statute, which vitiates probable cause.

The district court dismissed Petitioner's claims, Petitioner timely appealed, and the original Panel of the Fifth Circuit affirmed the dismissal. It incorrectly claimed that Petitioner did not argue that his actions did not constitute interference, then

held against its own precedent and Texas's interpretation of its own statute that the speech-only exception does not vitiate probable cause. The same Panel then denied Petitioners' timely motion for rehearing *en banc*.

REASONS FOR GRANTING THE PETITION

"The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Houston v. Hill*, 482 U.S. 451, 462–63 (1987).

Based on that freedom, the Fifth Circuit had consistently "held that merely arguing with police officers . . . falls within the speech exception to section 38.15 and thus does not constitute probable cause to arrest someone for interference." *Voss v. Goode*, 954 F.3d 234, 239 (5th Cir. 2020) (cleaned up) (emphasis added) (citing *Westfall v. Luna*, 903 F.3d 534, 544 (5th Cir. 2018); *Freeman v. Gore*, 483 F.3d 404, 414 (5th Cir. 2007)). The other Circuits likewise agree that the First Amendment protects speakers from arrest for their speech alone, even when an officer may believe the speech interfered with their duties. *See, e.g., Bernal v. Sacramento Cty. Sheriff's Dep't*, 73 F.4th 678, 696, 699 (9th Cir. 2023); *Friend v. Gasparino*, 61 F.4th 77, 88 (2d Cir. 2023); *Novak v. City of Parma*, 33 F.4th 296, 304 (6th Cir. 2022). That understanding is reflective of Texas state courts' understanding of Texas law, which notes that "a verbal interference with a

public servant or officer could be defended on grounds of the First Amendment to the United States Constitution." *Carney v. State*, 31 S. W. 3d 392, 396, 398 (Tex. App.—Austin 2000, no pet.) (citing *Houston v. Hill*, 482 U.S. 451 (1987)); *see also Barnes v. State*, 206 S.W.3d 601, 606 (Tex. Crim. App. 2006) (noting that the speech-only exception is derived from the First Amendment).

Thus, the Fifth Circuit's published opinion in this case that because the "'speech-only' defense is a defense to prosecution under Texas criminal law . . . [it] is of no consequence to the argument that probable cause is lacking. A defense that may be raised in future proceedings does not vitiate probable cause at the time of arrest," represents a serious conflict with this Court, previous Fifth Circuit precedent, the other Circuit Courts, and Texas state courts' previous consensus on this issue. Moreover, finding interference based on speech alone in the first instance presents a serious departure from the accepted application First Amendment that it requires this Court's correction.

I. The Fifth Circuit's published opinion directly contravenes the accepted application of First Amendment jurisprudence by finding interference in Randal's conduct. In doing so, it has both departed from the accepted and usual course of judicial proceedings, and come in conflict with the other Courts of Appeals.

Here, the case should have been straightforward, both for the officer and for the courts below. Trochessett, in his own words, "requested" Rachael Hall's driver's license and insurance information "for [his] report." He had neither sought nor received a warrant for that information, and the law at issue does not require provision of that information to a police officer investigating after the fact. Moreover, any "lawful authority" Trochessett had to investigate Mr. Melchor's claims does not obligate Ms. Hall to voluntarily comply with Trochessett's request for information absent a warrant, lest the Fourth Amendment cease to exist. By Trochessett's own admission, he also had already found her driver's license information in the process of finding her address. As a result, Rachael was not required by law to provide the requested information.

Indeed, even though Ms. Hall initially agreed to voluntarily provide the information, she, as an independent and autonomous adult, changed her mind before providing that information and instead refused to provide the information *to Trochessett that night*, but was willing to provide

the information in a context that she and her husband would be more comfortable with. Ms. Hall could have refused to answer the door at all when Trochessett arrived. She could have answered the door and requested that Trochessett return with a warrant for the information. She could have refused to provide the information in the first instance without explanation. That she refused to provide the information after further discussion with her husband, and that her husband explained the reasoning to Trochessett does not transform the legal decision of an independent and autonomous adult into interference by her husband.

Her refusal to provide the information that night cannot, then, be considered interference on its own. The question then becomes: can *Randal* be arrested for interference, even though Rachael could not have been, merely for advising her over the phone to provide only her name and phone number in order to make alternate arrangements for the provision of the requested information? The answer should have been a clear *no* under Texas statutory and common law, under federal law as described by the Circuit Courts of Appeals and the U.S. Supreme Court, and under the First and Fourth Amendments to the U.S. Constitution.

Contrary to the Fifth Circuit's assertion otherwise, Appellant made the argument that Randal's action was not interference in his Principal Brief, Reply Brief, and at oral argument. It thus sidestepped directly answering an important question that should be clarified by this Court, while

answering it incorrectly all the same. Specifically, the question is: Can someone may be guilty of interference by advising a third party to take a lawful action? The answer should be *no*, otherwise any criminal defense attorney that advises a client to tell an officer to come back with a warrant, or refuse to answer questions until the attorney is present, could be guilty of interference.

At oral argument, the Fifth Circuit posed a hypothetical about two drug dealers in the same situation, one talking to an officer, and the other on the phone advising the first. The drug dealer on the phone tells the other not to say anything to the officer — would that be interference? The First Amendment dictates that it would not be, *see Bernal*, 73 F.4th at 696, 699 ("verbally challenging and recording officers are not illegal actions. . . . William's actions remained protected under the First Amendment even if they were intended to interfere with the performance of an officer's duty, provided no physical interference occurs.") (cleaned up); *Friend*, 61 F.4th at 90 ("The only offense with which Friend was charged . . . was interference with a police officer. . . . Friend's conduct did not violate that statute. The Connecticut Supreme Court has long construed the statute to proscribe only physical conduct and fighting words that by their very utterance inflict injury or tend to incite an immediate breach of the peace. That court has explained that § 53a-167a does not proscribe even a text message exchange in which the defendant told a witness at a police station 'to keep his mouth shut.'") (cleaned up); *Novak*, 33 F.4th at

304 ("Protected speech cannot serve as the basis for probable cause. While protected speech can be evidence that a speaker committed a separate crime, the First Amendment bars its use as the sole basis for probable cause.") (cleaned up), and the speech-only exception to the interference statute, as an extension of the First Amendment, provides an additional backstop to that already easy question.

As a result, Randal's protected speech — disagreement with Officer Trochessett and a discussion with his wife about the safest way to provide the requested information — cannot be the basis for an arrest for interference without offending the First Amendment, and the lack of probable cause also offends the Fourth.

II. The Fifth Circuit's opinion also directly contravenes its own, the Texas Court of Criminal Appeals', and the Texas Court of Appeals' clear application of the speech only exception as an extension of the First Amendment.

Even if Randal's phone call could be considered interference, it necessarily fell under the "speech only" exception to the interference statute, which should have eliminated probable cause under both Fifth Circuit and Texas state court precedent. In *Freeman*, for example, the Fifth Circuit found that "[b]ecause the deputies were not granted the authority by law to conduct a warrantless search of Freeman's home, . . . a reasonable officer could not

conclude that Freeman was committing the offense of Interference with Public Duties," and that Freeman's "yelling" and "screaming" fell under the speech only exception regardless. *Freeman*, 483 F.3d at 413–14 (citing *Payne v. Pauley*, 337 F.3d 767, 776 (7th Cir. 2003) (noting that the First Amendment protects even profanity-laden speech directed at police officers and that police officers reasonably may be expected to exercise a higher degree of restraint than the average citizen); *Carney*, 31 S.W. 3d at 398. And the Texas Court of Criminal Appeals (the state's criminal court of last resort) likewise agrees that the speech only exception derives from the First Amendment. *Barnes*, 206 S.W.3d at 606.

Instead of breaking with precedent as it ultimately did, the Fifth Circuit should have first looked at *Carney*, which was notably absent from the opinion. In that case, the Texas 3rd Court of Appeals held that Mr. Carney was not guilty of interference for arguing with officers about the validity of a search warrant for his property, despite the fact that he was standing in front of the door. *Carney*, 31 S. W. 3d 392. The officers argued that Mr. Carney was "stalling" them from executing their search warrant, and ultimately arrested him "for not letting [them] in as soon as [they] would like." *Id.* at 398. The court then specifically held that the speech-only defense protected Mr. Carney "even if the end result is 'stalling.'" *Id.* "Stalling" is the worst that happened here: Trochessett could not persuade Rachael to voluntarily provide the requested information at the

time, so he either needed to get a warrant or make an alternative arrangement as requested.

Instead, the Fifth Circuit turned to *Voss v. Goode*, where a mother commanded her son to get into her own car after an officer took protective custody of the son and ordered him to get into the officer's car. *Voss*, 954 F.3d at 239. In doing so, it created another important question that should be addressed by this Court: what constitutes a "command," and what kind of physical action is contemplated by this exception to permissible speech-only interference? *Voss* and *Barnes* both involve physical actions to prevent an officer from taking lawful custody of a person, and both involve parent-child relationships, which distinguish those cases from this one. Here, the relationship between husband and wife is not analogous to the parent-child relationship; parents are assumed to have authority over their children, whereas no such assumption exists in a relationship between two autonomous adults. But perhaps more tellingly, the most that the Fifth Circuit could point to with respect to physical action was that Rachael went into her own home and closed the door, even though she was never in custody. Moreover, *Voss* and *Barnes* involved commands to take criminal action — escape lawful police custody — whereas there is no argument or indication that Rachael's actions were unlawful at all.

Such action should not transform speech into physical interference for several reasons. First, Trochessett did not have a warrant for the

information or to enter the Halls' home, so Rachael's act of reentering her own home and closing the door is not what prevented Trochessett from obtaining the requested information that night, it was Rachael's refusal. Second, providing someone with information is not an inherently physical act; Rachael orally provided her phone number, and could have done the same with her driver's license and insurance information. And finally, extending the *Voss* exception to speech-only interference in this case would severely narrow the scope of speech-only interference in a way that would clearly runs afoul of the First Amendment.

Even putting aside probable cause with respect to the interference statute, the speech-based nature of the facts of this case should have additionally made First Amendment retaliation claim. Such a claim is available "where officers have probable cause to make arrests, but typically exercise their discretion not to do so." *Nieves v. Bartlett*, 587 U.S. 391, 406 (2019). Petitioner has not found, Respondents have not found, and neither the Fifth Circuit nor the district court can cite any case wherein a similarly situated person was arrested purely for their speech with an officer over the phone. As a result, the First Amendment retaliation claim, at a minimum, should have survived.

III. The Fifth Circuit was wrong to apply the independent intermediary doctrine here, and this Court should grant the Petition

whether or not it reaches the independent intermediary question.

This Court should grant the Petition in order to correct the Fifth Circuit's clear misapplication of the First Amendment to this case, as described *supra*, whether by requesting briefing or by issuing a summary reversal of the Fifth Circuit. *See, e.g., Salazar-Limon v. City of Houston*, 581 U.S. 946, 947 (2017) (Alito, J., concurring with the denial of a petition for writ of certiorari) (noting that summary reversals may be appropriate "if the lower court conspicuously failed to apply a governing legal rule."). However, Petitioner will also address the other ground upon which the Fifth Circuit ruled in Trochessett's favor: the independent intermediary doctrine. As Petitioner will demonstrate, the *Malley* exception precludes its application here. But, Petitioner believes that reaching this question is unnecessary for granting his Petition.

"The *Malley* wrong is not the presentment of false evidence, but the *obvious failure of accurately presented evidence* to support the probable cause required for the issuance of a warrant." *Melton v. Phillips*, 875 F.3d 256, 264 (5th Cir. 2017) (en banc) (emphasis added). As the Fifth Circuit correctly noted, "[i]n *Malley*, the Supreme Court described that an officer can be held liable for a false arrest despite the issuance of an arrest warrant by a magistrate if the affidavit the officer presented to the magistrate was '*so lacking in indicia of probable cause* as to render official belief in its existence unreasonable.'" *Wilson v. Stroman*,

33 F.4th 202, 206 (5th Cir. 2022) (quoting *Malley v. Briggs*, 475 U.S. 335, 344–45 (1986)). Absent from the warrant affidavit are: (1) any legal basis — warrant, statute, or otherwise — for requiring Rachel to provide *Trochessett* the requested information; (2) any indication that he had the lawful authority to compel Rachel to provide the requested information; (3) any indication that Randal's alleged interference was anything but verbal; (4) any reason that Rachel was required to take the advice of her husband; and (5) any indication that her provision of the information to him was necessary to complete the investigation of what happened at the scene. As a result, no reasonable officer would have believed that the facts presented contained probable cause for interference.

Moreover, even if the independent intermediary doctrine shields Trochessett from the Fourth Amendment claims, it also does not shield him from the First Amendment retaliation claim, which, again, can exist "where officers have probable cause to make arrests, but typically exercise their discretion not to do so." *Nieves*, 587 U.S. at 406.

IV. Qualified immunity is a fundamentally flawed doctrine that should either be limited to heat-of-the-moment decisions, or cease to exist.

A foundational principle of the legal system is that "where there is a legal right, there is also a

legal remedy by suit or action at law, whenever that right is invaded. . . . for it is a settled and invariable principle . . . that every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Based on that bedrock understanding of the nature of legal rights, it must be the case that the qualified immunity defense has the power to negate the existence of constitutional rights altogether in certain cases by recognizing the existence of constitutional harms, but foreclosing the availability of a remedy. Whether or not a person's rights are erased is determined by an ultimately arbitrary standard (clear establishment) that also has the effect of shrinking the number of actionable claims as society and technology evolve past the factual scenarios that can currently be said to "clearly establish" any given right. Circuit Judges from the various federal Courts of Appeals are also beginning to question the propriety of the doctrine. *See, e.g., Sosa v. Martin Cty.*, 57 F.4th 1297, 1304 (11th Cir. 2023) (en banc) (Jordan, J., concurring in the judgment).

Indeed, qualified immunity is a "legal fiction" that came from the faulty interpretation of § 1983. *Id.*; *accord Werner v. Wall*, 836 F.3d 751, 768 (7th Cir. 2016) (Hamilton, J., dissenting). "[S]tatutory interpretation, as we always say, begins with the text," *Ross v. Blake*, 578 U.S. 632, 638 (2016), and often "ends" there as well. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 553 (2014). And § 1983's text is clear: "Every person

who, under color of *any* statute . . . subjects . . . *any* citizen of the United States . . . to the deprivation of *any* rights, privileges, or immunities . . . shall be liable to the party injured in an action at law." 42 U.S.C. § 1983 (emphasis added). Nowhere in that text does Congress mention or provide for immunity. *See, e.g.*, *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2421 (2021) (Thomas, J., concurring in denial of certiorari) (contemporary two-part qualified immunity "test cannot be located in § 1983's text and may have little basis in history."); William Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45, 47 (2018) (examining and rejecting various rationales for qualified immunity as a proper textualist interpretation of §1983). Moreover, § 1983's original text held actors liable when acting under color of state law, "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding." Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201, 235 (2023) (quoting Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13). That phrase was "meant to encompass" existing common law defenses and immunities—and make them unavailable to defendants. *Id.* As a result, "modern [qualified] immunity jurisprudence is not just *a*textual but *counter*textual." *Rogers v. Jarrett*, 63 F.4th 971, 980 (5th Cir. 2023) (emphasis in original) (Willett, J., dissenting).

In the context of the present case, the need to rethink the broad and ever-expanding application of qualified immunity is even clearer. Trochessett was not acting in the heat of the moment, or

making a split-second decision when making the decision to write an affidavit, seek a baseless arrest warrant, and ultimately plan and execute that warrant. At the very least, the protection of qualified immunity should not extend to circumstances such as this, where the official in question has ample opportunity to consider the legality of his actions, but chose not to do so.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari.

Respectfully submitted,

Randall Kallinen
Kallinen Law PLLC
511 Broadway Street
Houston, Texas 77012
(713) 320-3785
attorneykallinen@aol.com
Counsel for Petitioner

December 18th, 2024

APPENDIX

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United States Court of Appeals
for the Fifth Circuit

No. 23-40362

FILED
June 20, 2024

RANDAL M. HALL,

Plaintiffs—Appellee [sic],

versus

TRAVIS TROCHESSETT; CITY OF LEAGUE CITY, TEXAS,

Defendants—Appellants [sic].

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:22-cv-363

Before JONES and DOUGLAS, *Circuit Judges*, and DOUGHTY, *Chief District Judge*.*

TERRY A. DOUGHTY, *Chief District Judge*:

This is a civil rights case brought by Randal Hall against Officer Travis Trochesset[1] and the City of League City, Texas, for alleged constitutional violations following his arrest for

* Chief United States District Judge for the Western District of Louisiana, sitting by designation.

[1] Appellee Travis Trochesset's name is misspelled in the caption of the case.

interference with a police investigation. For the following reasons, we AFFIRM.

I. BACKGROUND AND PROCEDURAL HISTORY

On September 2, 2022, Rachael Hall, Randal's wife, was in a minor automobile accident in a parking lot. Following the fender bender, she and the other party exchanged insurance information. Appellant claims that it was not his wife's fault; however, when she left the scene, the other driver called the police and informed them that he had been involved in a hit and run. An investigation ensued. Only the events following the investigation are at issue in this matter.

Police Officer Travis Trochesset, Appellee, investigated the car wreck. On the same day of the wreck, Trochesset arrived at the Halls' home. Rachael answered the door, and he asked to see her driver's license and insurance information to investigate the wreck. According to Trochesset, Rachael intended to comply with his instructions, and she went into the house to retrieve the requested items. At this time, Randal was approximately 90 miles away in El Campo, Texas.

When she came back to the door, she was on the phone with Randal. Randal wished to speak to Trochesset. According to Randal, he had a "respectful" conversation with Trochesset about why his wife would not be providing him the requested information and said he would be willing to provide the information in an alternative manner. Trochesset's version of the conversation is

similar. He stated that after disclosing to Randal why he was there, Randal told Trochesset that he felt his wife and family would be unsafe if this information were disclosed and that he would instead give the information to the chief of police.

After the Halls refused to comply with the investigation, Trochesset left their home. He subsequently went to a Justice of the Peace and obtained a Warrant of Arrest for Randal Hall based on the offense of interfering with public duties. A Complaint and Probable Cause Affidavit are associated with the Warrant of Arrest. Trochesset and Hall agree that the contents of the probable cause affidavit are consistent with the allegations in the lawsuit complaint, but the affidavit provides more specific details.

The Probable Cause Affidavit ("the Affidavit") states the following. While Trochesset was performing a duty or exercising authority imposed or granted by law, here a criminal investigation, Randal Hall, "with criminal negligence", interrupted, disrupted, impeded, or interfered with Trochesset by instructing his wife not to comply with Trochesset's investigation in violation of statute TRC 550.023.[2] Hall's actions were in violation of Interfere with Public Duties 38.15(g)[3] Penal Code MB, CJIS-73991084. Trochesset stated

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[2] Duty to Give Information and Render Aid

[3] **(a)** "A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:**(1)** a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law[.]"

in the Affidavit that after he arrived at the Hall's home and asked Rachael for the requested information, she initially complied. However, she called her husband who wished to speak to Trochesset. Trochesset explained to Hall why he was there and that it was part of an investigation. Hall then told Trochesset that Rachael was previously stalked after an accident when her information was given. Randal informed Trochesset that he and Rachael would give her information to Chief Ratliff, but he would not let her give her license to someone with their home address on it. After Trochesset again explained to Hall that this was part of the ongoing investigation, Hall reiterated that Rachael would provide the information to Chief Ratliff but not Trochesset. For the third time, Trochesset explained the process to the Halls, but Hall again told Trochesset that his wife was not going to provide the requested information and that he was going to contact his attorney. After this back and forth, Randal instructed Rachael to only provide her cell phone number and nothing else to Trochesset. She then went into the home and locked the door.[4]

Trochesset asserted in the Affidavit that Randal interfered with his ability to conduct a proper investigation, which required obtaining Rachael's vehicle information and driver's license information, because he instructed Rachael to not provide the information to Trochesset. A warrant

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[4] The contents of this paragraph are cited solely from **ROA.141-142.**

request was then completed for Interference with Public Duties.

On September 18, 2022, Appellant Randal Hall was arrested at his home pursuant to a warrant issued by a judge. The charges were dropped because the Galveston County District Attorney declined to prosecute the charge.

On October 3, 2022, Appellant filed suit against Appellees Officer Trochesset and the City of League City, Texas. The Complaint was amended one time on November 15, 2022. On December 5, 2022, Appellees jointly filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6).

On May 17, 2023, the district court entered a memorandum opinion and order granting Appellee's motion to dismiss and dismissed Appellant's suit. The district court entered a final judgment in favor of Appellees on that same day.

On June 13, 2023, Appellant filed a notice of appeal.

II. DISCUSSION

We review de novo the district court's grant of the defendants' motion to dismiss. *McLin v. Ard*, 866 F.3d 682, 688 (5th Cir. 2017).

A. Liability Under 42 U.S.C. § 1983

Section 1983 provides a private right of action for the deprivation of certain rights, privileges, and immunities. 42 U.S.C. § 1983. As the district court properly stated, to prevail under a Section 1983 claim, the movant must allege that the

defendant violated a "right secured by the Constitution and laws of the United States," and he must show that "a person acting under color of state law committed the alleged violation. *Petersen v. Johnson*¸ 57 F.4th 225, 231 (5th Cir. 2023). The statutory or constitutional deprivation must also be due to deliberate indifference and not merely negligent acts. *Farmer v. Brennan*, 511 U.S. 825, 826. Claims under Section 1983 may be brought against government employees in their individual or official capacities or against a governmental entity. *Board of County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 403 (1997).

Here, Hall argues that Trochesset violated the Fourth and Fourteenth Amendments because he arrested him without probable cause. He also argues that he was "chilled" from exercising his First Amendment right to speak with police officers and that the conversation over the phone, which was a protected activity under the First Amendment, was the *only* motivation for the arrest.

In this case, a Probable Cause Affidavit is associated with the arrest warrant that Trochesset properly acquired from a justice of the peace. Appellant did not challenge the contents of the Probable Cause Affidavit in his brief. However, he argued in his reply that the Court should not give factual deference to Trochesset's description of events in the Affidavit to the extent that it contradicts Appellant's pleadings unless the purported contradictions align with favorable inferences to Appellant's pleadings. Despite this

argument, Appellant stated during oral argument that he did not contradict the contents of the probable cause affidavit.

"The Constitution does not guarantee that only the guilty will be arrested. If it did, § 1983 would provide a cause of action for every defendant acquitted—indeed for every suspect released." *Baker v. McCollan*, 443 U.S. 137, 145 n.3 (1979). "The Fourth Amendment requires that an arrest be supported by a properly issued arrest warrant or probable cause." *Glenn v. City of Tyler*, 242 F.3d 307, 313 (5th Cir. 2001). "Under the prevailing view in this country a peace officer who arrests someone with probable cause is not liable for false arrest [even if] the innocence of the suspect is later proved." Pierson v. Ray, 386 U.S. 547, 555 (1967).

Our cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause. See *Whren v. United States,* 517 U.S. 806, 812–813 (1996) (reviewing cases); *Arkansas v. Sullivan,* 532 U.S. 769, (2001) *(per curiam).* That is to say, his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause. As we have repeatedly explained, "'the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" *Whren, supra,* at 813, (quoting *Scott v. United States,* 436 U.S. 128, 138 (1978)). "[T]he Fourth Amendment's concern

with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Whren, supra,* at 814. "[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California,* 496 U.S. 128 (1990).

Probable cause to arrest "is not a high bar." *Kaley v. United States*, 571 U.S. 320, 338 (2014). It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983). And in the qualified immunity context, "[e]ven law enforcement officials who 'reasonably but mistakenly conclude that probable cause is present' are entitled to immunity." *Mendenhall v. Riser*, 213 F.3d 226, 230 (5th Cir. 2000) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)).

The district court properly found that probable cause existed in this matter pursuant to the independent intermediary doctrine. Under this doctrine, "even an officer who acted with malice ... will not be liable if *the facts* supporting the warrant or indictment are put before an impartial intermediary such as a magistrate or a grand jury, for that intermediary's 'independent' decision 'breaks the causal chain' and insulates the initiating party." *Hand v. Gary*, 838 F.2d 1420, 1427 (5th Cir. 1988) (quoting *Smith v. Gonzales*, 670 F.2d 522, 526 (5th Cir. 1982)). The "chain of causation is broken only where all the facts are presented to the grand jury, or other independent

intermediary where the malicious motive of the law enforcement officials does not lead them to withhold any relevant information from the independent intermediary." *Cuadra*, 626 F.3d at 813 (quoting *Hand*, 838 F.2d at 1428). The independent intermediary rule has one single, narrow exception, which arises "when 'it is obvious that *no* reasonably competent officer would have concluded that a warrant should issue.'" *Messerschmidt v. Millender*, 565 U.S. 535, 547 (2012) (emphasis added) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Further, the magistrate's mistake in issuing the arrest warrant must be "not just a reasonable mistake, but an unacceptable error indicating gross incompetence or neglect of duty." *Malley*, 475 U.S. at 346 n.9.

The independent intermediary doctrine applies here. Trochesset provided a Probable Cause Affidavit to a justice of the peace, who then issued an arrest warrant. The facts in the probable cause affidavit align with the facts presented by Hall. Hall has failed to present any argument showing Trochesset had malicious motive that led him to withhold any relevant information from the intermediary, thereby tainting the independent intermediary.

Nor has he shown that the single and narrow exception applies to the case here. This single and narrow exception is a high bar. Meeting this bar is difficult, and there is nothing here showing that no reasonably competent officer would have concluded that a warrant should issue. Accordingly, probable cause exists in this case, and

Hall has failed to establish that Trochesset violated the Fourth or Fourteenth Amendments to the United States Constitution.

Hall's argument that he did not violate the interference statute because of the speech-only defense is without merit. First, Hall's actions violated Texas law when he interfered with Trochesset's investigation. Although Hall cited several cases that were not speech-only interference, this does not vitiate the fact that he interfered with the investigation. Hall also does not dispute that he interfered. Instead, he argues that his manner of interference did not give rise to probable cause warranting arrest, and that it further violated his First Amendment right to free speech. Importantly, however, this "speech-only" defense is a defense to prosecution under Texas criminal law (see Tex. Pen. Code § 2.03), which is of no consequence to the argument that probable cause is lacking. A defense that may be raised in future proceedings does not vitiate probable cause at the time of arrest.

Hall has failed to allege that Trochesset violated a "right secured by the Constitution and laws of the United States" and has failed to defeat the independent intermediary doctrine.

B. Qualified Immunity

Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the

challenged conduct. *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). Section 1983 claims are subject to qualified immunity. Under existing caselaw, officers are almost always entitled to qualified immunity when enforcing even an unconstitutional law so long as they have probable cause. *Michigan v. DeFillippo*, 443 U.S. 31, 38 (1979).

(1)

Here, the district court found that there was no violation of a statutory or constitutional right by Trochesset because of the independent intermediary doctrine. This Court agrees with that finding. We will now determine whether there was a clearly established right.

(2)

Thus, even if the arrest were constitutionally infirm, Trochesset is entitled to qualified immunity unless Hall can identify binding precedent that "placed the statutory or constitutional question beyond debate," so that "every reasonable official would have understood that what he is doing violates that right." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (internal quotations and citations omitted). "That is because qualified immunity is inappropriate only where the officer had fair notice—in light of the specific context of the case, not as a broad general proposition—that his *particular* conduct was unlawful." *Craig v. Martin*, 49 F.4th 404, 417 (5th Cir. 2022) (internal quotation marks and citation omitted). In other words, "police officers

are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue." *Kisela v. Hughes*, 584 U.S. ——, 138 (2018) (*per curiam)* (internal quotation marks and citation omitted).

Hall cites to *Malley v. Briggs*, 475 U.S. 335 (1986), to assert that there is a clearly established right here. He argues that even if the independent intermediary doctrine applies, then his claim is still successful under *Malley*. Specifically, Hall asserts that Trochesset was wrong in relying on the arrest warrant because his affidavit was "so lacking in indicia of probable cause as to render official belief in its existence unreasonable." In *Malley*, the Supreme Court of the United States held that "the same standard of objective reasonableness that we applied in the context of a suppression hearing [] defines the qualified immunity accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest. Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable the shield of immunity be lost." *Id*., at 344-45. Thus, it must be determined whether a reasonably well-trained officer in Trochesset's position would have known that his affidavit failed to establish probable cause and that he should not have applied for such a warrant.

Hall argues that a reasonable officer in Trochesset's position would have known that probable cause did not exist because of the speech-only defense. This Court has held that the speech

only defense exists pursuant to § 38.15. *Voss v. Goode*. 954 F.3d 234, 239 (5th Cir. 2020). This Court has further held, though, that an arrestee's command to another to disobey a police officer's lawful order does not fall within the speech defense.[5] *Id*. The facts show that Hall told Trochesset three times that his wife was not going to provide the requested information. Hall also instructed his wife not to comply with the requests of Trochesset, which led to her going inside the house and shutting the door on Trochesset. Thus, an officer in Trochesset's position could reasonably believe that Appellant's conduct did not fall within the speech defense.

Accordingly, even if Hall's actions did fall within the clearly established law of the speech defense, which the facts indicate they did not, then Trochesset is still shielded by the independent intermediary doctrine.

Thus, Hall has failed to state plausible claims against Trochesset that overcome his qualified immunity defense.

C. Municipal Liability

Next, Hall asserts liability on the City of League City, Texas, based upon *Monell* liability. In *Monell v. Dept. of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978), the Supreme Court of the

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[5] And "fail[ing] to comply with an officer's instruction, made within the scope of the officer's official duty and pertaining to physical conduct rather than speech" can also constitute interference. *Childers v. Iglesias*, 848 F.3d 412, 415 (5th Cir. 2017) (describing the state of the law as of September 2013).

United States found that municipalities can be held liable for the constitutional violations which arise from enforcement of the municipalities policies and procedures, but the municipality cannot be held liable for constitutional torts of their employees under the doctrine of respondeat superior. To hold a municipality liable under § 1983, a plaintiff must identify (1) an official policy or custom, of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose "moving force" is that of policy or custom. *Monell*, 436 U.S. at 694.

First, because there was no constitutional violation by Trochesset, there can be no liability against League City. *Windham v. Harris Cty.*, Texas, 875 F.3d 229, 243 (5th Cir. 2017).

Second, Hall has not identified an official policy or custom of League City that was the moving force or cause of the alleged violation. Hall instead asserts that there was a "need for a policy" and an absence of or failure to adopt an appropriate policy. Specifically, Hall asserts that there was a lack of training or insufficient training on the boundaries of the interference statute, a widespread pattern or practice of arrests based on speech-only interference charges, and ratification of Trochesset's actions both by conducting and reviewing the arrest. Hall asserts that he is unable to point to a specific policy because the information is possessed solely by the City, and he cannot access it because discovery has not been conducted. Insofar as Hall makes this "policy"

argument as it relates to municipal liability, he is unable to show how the policy or lack thereof "caused" his arrest. As stated above, there was probable cause to make this arrest, so, again, this argument is defeated by the independent intermediary doctrine.

Hall has failed to allege facts stating a plausible claim for relief against the City of League City, Texas, under municipal liability.

D. Whether this Court Should Discontinue Application of the Qualified Immunity Doctrine

Finally, Hall argues that this Court should discontinue the application of the principles of the qualified immunity doctrine. The Supreme Court of the United States has interpreted § 1983 to give absolute immunity to functions "intimately associated with the *judicial* phase of the criminal process," *Malley*, 475 U.S. 335, 342, *quoting Imbler, supra,* at 430 (emphasis added), not from an exaggerated esteem for those who perform these functions, and certainly not from a desire to shield abuses of office, but because any lesser degree of immunity could impair the judicial process itself. *Briscoe v. LaHue,* 460 U.S. 325, 334–335 (1983). We intend no disrespect to the officer applying for a warrant by observing that his action, while a vital part of the administration of criminal justice, is further removed from the judicial phase of criminal proceedings than the act of a prosecutor in seeking an indictment. The prosecutor's act in seeking an indictment is but the first step in the process of seeking a conviction.

Exposing the prosecutor to liability for the initial phase of his prosecutorial work could interfere with his exercise of independent judgment at every phase of his work because the prosecutor might come to see later decisions in terms of their effect on his potential liability. Thus, we shield the prosecutor seeking an indictment because any lesser immunity could impair the performance of a central actor in the judicial process.

Hall argues that qualified immunity is a "legal fiction" that came from a faulty interpretation of Section 1983 and describes modern qualified immunity as "*counter*textual". Specifically, Appellant states that decisions that are not the type of "split-second, heat-of-the-moment choices" made by officers in a dangerous situation should not be afforded the same protections. Hall asserts that Trochesset had ample time to check the legality of his actions in this case and therefore should not avoid liability because he chose not to do so.

Trochesset urges that this Panel should not exercise authority to overrule Supreme Court precedent to abolish the doctrine of qualified immunity. He argues that qualified immunity is an element of a claim against an executive branch official and should not be eliminated by any appellate court.

Trochesset's argument is correct, and this Panel will continue to employ the use of the doctrine of qualified immunity. This panel is bound by the Fifth Circuit rule of orderliness, "that one panel of this court may not overturn another

panel's decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or *en banc* court." *Jacobs v. National Drug Intelligence Center*, 548 F.3d 375 (5th Cir. 2008).

III. CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

No. 23-40362

FILED
June 20, 2024

RANDAL M. HALL, *also known as* RANDY,

Plaintiff—Appellant,

versus

TRAVIS TROCHESSETT; CITY OF LEAGUE CITY, TEXAS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:22-CV-363

Before JONES and DOUGLAS, *Circuit Judges*, and DOUGHTY, *Chief District Judge*.*

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

* Chief United States District Judge for the Western District of Louisiana, sitting by designation.

IT IS FURTHER ORDERED that Appellants pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

United States Court of Appeals
for the Fifth Circuit

No. 23-40362

FILED
August 20, 2024

RANDAL M. HALL, *also known as* RANDY,

Plaintiff—Appellant,

versus

TRAVIS TROCHESSETT; CITY OF LEAGUE CITY, TEXAS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:22-CV-363

ON PETITION FOR REHEARING EN BANC

Before JONES and DOUGLAS, *Circuit Judges*, and DOUGHTY, *Chief District Judge*.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or

* Chief United States District Judge for the Western District of Louisiana, sitting by designation.

judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ENTERED
No. 3:22-cv-363 May 17, 2023

RANDAL M. HALL, *PLAINTIFF*,

v.

TRAVIS TROCHESSETT, *ET AL.*, *DEFENDANTS*.

MEMORANDUM OPINION AND ORDER

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*:

Officer Travis Trochessett and the City of League City have moved to dismiss Randal ("Randy") M. Hall's claims in his amended complaint. Dkt. 13. The court grants the motion.

I. Background

Randy Hall resides in League City with his wife, Rachel. Dkt. 12 ¶ 9. He alleges that on September 2, 2022, a third party, Guadalupe C. Melchor, rear- ended his car while Rachel drove it through a parking lot. *Id.* ¶ 10. Melchor "admitted full responsibility" and "specifically requested that the police not be called." *Id.* ¶ 11. He then gave Rachel his auto-insurance information. *Id.* ¶ 12. A few minutes later, they both left the accident scene. *Id.* ¶ 13. Despite his statements after the

crash, Melchor still contacted Officer Trochessett, a League City police officer. *Id.* ¶ 16.

That evening, Officer Trochessett visited the Hall residence. *Id.* ¶ 18. Rachel was home, but Randy was 90 miles away in El Campo. *Id.* Trochessett spoke to Rachel, "interrogating [her] and seeking driver's[-]license information." *Id.* ¶ 19. Rachel called Randy, who wanted to speak with Trochessett, so Rachel handed the officer her phone. *Id.* After conversing briefly, Randy refused to give Trochessett any driver's-license information because "he felt his wife and family would be unsafe." *Id.* ¶ 20. Randy said he would only give that information to the police chief. *Id.* He also told Rachel several times to do the same thing. Dkt. 16-3 at 1. Trochessett then returned the cell phone to Rachel, who went inside and locked the door. *Id.* at 1–2. Although Trochessett asked Rachel again to provide her driver's-license information and insurance, she refused. *Id.* at 2. Trochessett then left. Dkt. 12 ¶ 21.

Sixteen days after the accident, League City police arrested Randy. *Id.* ¶ 22. A Galveston County justice of the peace had issued an arrest warrant supported by a probable-cause affidavit sworn out by Officer Trochessett. Dkts. 16-1, 16-3.[1] The warrant provided that Randy was accused of

[1] For the reasons discussed below, the court may take judicial notice of the arrest warrant, commitment, and Officer Trochessett's probable-cause affidavit that the defendants attached to their reply without converting their motion into a motion for summary judgment. Dkts. 16-1, 16-2, 16-3.

interference with public duties under Texas Penal Code § 38.15(a). Dkt. 16-1. Randy spent about eight hours in jail before he was released on bond. Dkt. 12 ¶ 23. The Galveston County District Attorney ultimately did not prosecute Randy. *Id.* ¶ 25.

About two weeks later, Randy sued League City and Officer Trochessett in his individual capacity. Dkt. 1. In his amended complaint, Randy asserts general violations of the First, Fourth, Fifth, and Fourteenth Amendments pursuant to 42 U.S.C. § 1983. Dkt. 12. The defendants now move to dismiss these claims under Fed. R. Civ. P. 12(b)(6). Dkt. 13.

II. Legal Standard

To survive a motion to dismiss for failure to state a claim, a plaintiff must plead facts sufficient to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the pleaded facts allow the court to reasonably infer that the defendant is liable for the alleged conduct. *Id.* In reviewing the pleadings, a court accepts all well-pleaded facts as true, "construing all reasonable inferences in the complaint in the light most favorable to the plaintiff." *White v. U.S. Corrections, L.L.C.*, 996 F.3d 302, 306–07 (5th Cir. 2021) (citing *Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020)). But the court does not accept "[c]onclusory allegations, unwarranted factual

inferences, or legal conclusions" as true. *Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005). And although the court is limited to considering just the complaint and its attachments, it may take judicial notice of matters of public record. *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994).

III. **Analysis**

The defendants have moved to dismiss Hall's claims. Dkt. 13. They argue that Officer Trochessett is entitled to qualified immunity and that League City did not enact or enforce an unconstitutional policy. *Id.* After considering the pleadings and arguments of counsel, the court grants the motion.

A. Section 1983

Section 1983 provides a private right of action for the deprivation of certain rights, privileges, and immunities. 42 U.S.C. § 1983. To sue under § 1983, a plaintiff must (1) allege that the defendant violated "a right secured by the Constitution and laws of the United States" and (2) must show that "a person acting under color of state law" committed the violation. *Petersen v. Johnson*, 57 F.4th 225, 231 (5th Cir. 2023) (quoting *West v. Atkins*, 487 U.S. 42, 48 (1988)).

A complaint under § 1983 must also allege that the constitutional or statutory deprivation was intentional or due to deliberate indifference and

not the result of mere negligence. *Farmer v. Brennan*, 511 U.S. 825, 826 (1994). A claim under § 1983 may be brought against government employees in their individual or official capacities or against a governmental entity. *Goodman v. Harris County*, 571 F.3d 388, 395 (5th Cir. 2009) (citing *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 403 (1997)).

B. Qualified Immunity

Section 1983 claims are subject to qualified immunity. *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009). Qualified immunity "shields officers from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *City of Tahlequah v. Bond*, 142 S. Ct. 9, 11 (2021) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Id.* (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018)).

"When considering a qualified[-]immunity defense raised in the context of a Rule 12(b)(6) motion to dismiss, the [c]ourt must determine whether 'the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity.'" *Rojero v. El Paso County*, 226 F. Supp. 3d 768, 776–77 (W.D. Tex. 2016) (quoting *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012)). "Thus, a plaintiff seeking to overcome

qualified immunity must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity." *Backe*, 691 F.3d at 648.

Once a government official "establishes that his conduct was within the scope of his discretionary authority, it is up to the plaintiff to show that (1) the official 'violated a statutory or constitutional right,' and (2) the right was 'clearly established at the time.'" *Sweetin v. City of Texas City*, 48 F. 4th 387, 391 (5th Cir. 2022) (quotation omitted). Courts have "discretion to decide the order in which to engage these two prongs." *Tolan v. Cotton*, 572 U.S. 650, 656 (2014). They "may rely on either prong of the defense in its analysis." *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010).

"To say that the law was clearly established, we must be able to point to controlling authority—or a robust consensus of persuasive authority—that defines the contours of the right in question with a high degree of particularity." *Hogan v. Cunningham*, 722 F.3d 725, 735 (5th Cir. 2013) (internal quotation marks and citation omitted). "In essence, a plaintiff must allege facts sufficient to demonstrate that no reasonable officer could have believed his actions were proper." *Brown*, 623 F.3d at 253.

League City arrested Randy for interference with public duties under Texas Penal Code § 38.15. Dkt. 12 ¶ 22. Section 38.15 prohibits a person from negligently interrupting, disrupting, impeding, or otherwise interfering with a police officer, like Officer Trochessett, while he performs a duty or exercises his legal authority. Tex. Penal Code § 38.15(a). Yet "[i]t is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only." *Id.* § 38.15(d).

Officer Trochessett has established—and Randy does not dispute—that he acted within his discretional authority when he questioned the Halls and provided a probable-cause affidavit supporting Randy's arrest. *See* Dkt. 13 ¶¶ 7–10. Meanwhile, Randy alleges that he has pleaded sufficient facts to overcome Trochessett's qualified-immunity defense. Dkt. 15 at 3–10. The court takes each alleged constitutional violation in turn.

1.First and Fourth Amendment Claims

Randy argues that Officer Trochessett violated the First and Fourth Amendments, incorporated through the Fourteenth Amendment, by arresting him (1) without probable cause and (2) in retaliation for engaging in protected speech. Dkt. 12 ¶¶ 30–31. As both parties explain, a probable-cause finding here dooms both claims. Dkts. 13 ¶ 14; 15 at 5.

a. Probable Cause

The Fourth Amendment requires probable cause before an officer can arrest someone. U.S. CONST. amend. IV; *see also Virginia v. Moore*, 553 U.S. 164, 177 (2008). Probable cause is "not a high bar." *Kaley v. United States*, 571 U.S. 320, 338 (2014). It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983). This probability is "more than a bare suspicion, but need not reach the fifty percent mark." *United States v. Garcia*, 179 F.3d 265, 269 (5th Cir. 1999). Police officers may be liable for swearing to false information in an affidavit if the officer (1) "deliberately or recklessly provides false, material information for use in an affidavit in support of" an affidavit, or (2) "makes knowing and intentional omissions that result in a warrant being issued without probable cause." *Melton v. Phillips*, 875 F.3d 256, 262, 264 (5th Cir. 2017).

To establish a First Amendment retaliation claim, a plaintiff must plead sufficient facts to show that: (1) he "was engaged in constitutionally protected activity; (2) the officer's action caused [him] to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity; and (3) the officer's adverse actions were substantially motivated against [his] exercise of constitutionally protected activity." *Batyukova v. Doege*, 994 F.3d 717, 730 (5th Cir. 2021). Frequently, the validity of a plaintiff's First

Amendment claim "hinges on probable cause for [the] arrest." *Westfall v. Luna*, 903 F.3d 534, 550 (5th Cir. 2018). When probable cause exists, "any argument that the arrestee's speech . . . was the motivation for [the] arrest must fail." *Id.*; *see also Nieves v. Bartlett*, 139 S. Ct. 1715, 1726–27 (2019).

b. Constitutional Violation

Randy does not dispute that he interrupted, disrupted, impeded, or interfered with Officer Trochessett's investigation. *See* Dkt. 15. Relying on § 38.15's speech defense, he argues instead that Trochessett had "no reasonable suspicion or probable cause to arrest [him] for his respectful, few[-]minute speech over the phone while [he] was 90 miles away." Dkt. 12 ¶ 32. The independent-intermediary doctrine, however, dismantles Randy's claim.[2]

The doctrine is simple. "[I]f an independent intermediary, such as a justice of the peace, authorizes an arrest, then the initiating party cannot be liable for false arrest." *Shaw v. Villanueva*, 918 F.3d 414, 417 (5th Cir. 2019). This is because "the intermediary's decision breaks the chain of causation for false arrest." *McLin v. Ard*,

[2] Accordingly, the court will not address the defendants' other contentions that (1) League City had probable cause for the arrest, (2) the speech defense is inconsequential to a probable-cause finding because it is not an element of or exception to the offense, or (3) probable cause existed to arrest Randy for related crimes under the Texas Transportation Code. Dkt. 13 ¶¶ 21–34.

866 F.3d 682, 689 (5th Cir. 2017) (quoting *Deville v. Marcantel*, 567 F.3d 156, 170 (5th Cir. 2009)). The independent- intermediary doctrine persists even when the officer acted maliciously, *Shaw*, 918 F.3d at 417, and when the arrestee was never convicted of a crime, *Buehler v. City of Austin*, 824 F.3d 548, 554 & n.5 (5th Cir. 2016) (citing *Russell v. Altom*, 546 F. App'x 432, 434, 436–37 (5th Cir. 2013)). Additionally, courts have applied the doctrine to both First Amendment retaliation and Fourth Amendment claims. *Buehler*, 824 F.3d at 553–54 n.3. Randy denies the existence of an arrest warrant and—assuming it exists—claims the court cannot consider it when deciding a motion to dismiss. Dkt. 15 at 6–7. In reply, the defendants attach authentic copies of the arrest warrant, commitment, and Trochessett's probable-cause affidavit. Dkts. 16-1, 16-2, 16-3. Contrary to Randy's contentions, the court may take judicial notice of these documents and consider them at this stage. *See Poullard v. Gateway Buick GMC LLC*, No. 3:20-CV-2439-B, 2021 WL 4244781, at *4 (N.D. Tex. Sept. 17, 2021) (collecting cases).

Here, an independent intermediary clearly issued an arrest warrant for Randy's arrest based on Officer Trochessett's probable-cause affidavit. Dkts. 16-1, 16-3. Thus, the independent-intermediary doctrine applies and shields Officer Trochessett from liability.

c. Clearly Established Right

Randy then cites *Malley v. Briggs*, 475 U.S. 335 (1986), to assert that he wins, even if the independent-intermediary doctrine applies. He argues that Officer Trochessett was wrong in relying on the arrest warrant because his affidavit was "so lacking in indicia of probable cause as to render official belief in its existence unreasonable." Dkt. 16 at 7. A "*Malley* wrong" is "the obvious failure of accurately presented evidence to support the probable cause required for the issuance of a warrant." *Melton*, 875 F.3d at 264. "The question to be asked, under *Malley*, is 'whether a reasonably well-trained officer in [Officer Trochessett's] position would have known that his affidavit failed to establish probable cause and that he should not have applied for a warrant.'" *Jennings v. Joshua Indep. Sch. Dist.*, 877 F.2d 313, 317 (5th Cir. 1989) (quoting *Malley*, 475 U.S. at 345). This mirrors the second prong of qualified immunity, which requires the plaintiff to "allege facts sufficient to demonstrate that no reasonable officer could have believed his actions were proper." *Brown*, 623 F.3d at 253. Essentially, Randy argues that a reasonable officer in Trochessett's position would have known that probable cause did not exist to arrest Randy because of § 38.15's speech defense.

The Fifth Circuit has reviewed the boundaries of § 38.15's speech defense. It has held that "'merely arguing with police officers about the propriety of their conduct . . . falls within the

speech exception to § 38.15' and thus does not constitute probable cause." *Voss v. Goode*, 954 F.3d 234, 239 (5th Cir. 2020) (quoting *Freeman v. Gore*, 483 F.3d 404, 415 (5th Cir. 2007)). It also held, however, that an arrestee's "command to act" to another to disobey a police officer's lawful order does not fall within the speech defense. *Id.* (affirming a district court's ruling that a mother instructing her child to disobey an officer did not fall under the speech defense); *Barnes v. State*, 206 S.W.3d 601, 605 (Tex. Crim. App. 2006) (citing *Schenck v. United States*, 249 U.S. 47, 52 (1919)) (holding that a woman's instruction for her son to "run" as police attempted to restrain them did not fall under the speech defense).

An officer like Officer Trochessett could reasonably believe that Randy's conduct did not fall within the speech defense and his affidavit sufficiently established probable cause for Randy's arrest. Neither party disputes that Trochessett could investigate Melchor's reported accident or ask for Rachel's driver's license and insurance. Although Randy maintains that his actions involved only speech, he directed Rachel multiple times to disobey Trochessett's order to provide her driver's-license and insurance information:

- Randy initially "told Rachel not to give them any of her information." Dkt. 16-3 at 1.

- He then advised Trochessett that he was "not going to have her give her license to someone . . . that's not going to happen." *Id.*

- After Trochessett explained that Texas law required Rachel to provide the information, he said, "I'm telling you right now, she's not going to give that to you." *Id.*

- After Trochessett told Randy that he did not want to go through him as an intermediary, Randy said, "I'm telling you what she's going to do." *Id.*

- Rachel listened to Randy's commands, locked her door, and refused to provide the information. *Id.* at 2.

Randy directed Rachel to physically disobey Trochessett's orders, and she did exactly that.

Given the Fifth Circuit's and Texas's precedent, a reasonable officer could think that Randy's behavior established probable cause for interference beyond the speech defense. So, the independent-intermediary doctrine still shields Officer Trochessett from any alleged violations of the First and Fourth Amendments.

2. Fifth and Fourteenth Amendment Claims

To the extent Randy pursues separate claims under the Fifth and Fourteenth Amendments, they also fail as a matter of law. Although mentioned only in a heading, Randy alludes to claims that Officer Trochessett violated both amendments. Dkt. 12 at 7. But the Fifth

Amendment "applies only to violations of constitutional rights by the United States or a federal actor." Dkt. 13 ¶ 35; *see also Ristow v. Hansen*, 719 F. App'x 359, 364 (5th Cir. 2018) (quotation omitted). Neither League City (a municipality) nor Trochessett (a municipal employee) are federal actors. Dkt. 12 ¶¶ 1, 6–7. The Fifth Amendment does not apply.

Similarly, "[w]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (cleaned up) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Any substantive-due-process claim here rests on the same underlying actions for Randy's First and Fourth Amendment claims. Thus, Randy's Fourteenth Amendment claim also fails.

* * *

Because Randy failed to plead facts sufficient to show a violation of a constitutional right and—for the First and Fourth Amendments—that such a right was clearly established, Officer Trochessett is entitled to qualified immunity. The court, therefore, dismisses Randy's claims against Trochessett.

C. Municipality Liability

League City is a municipality that cannot be held liable under § 1983 "unless action pursuant to [an] official municipal policy of some nature caused a constitutional tort." *Monell v. Dep't of Soc. Servs. of N.Y.C.*, 436 U.S. 658, 691 (1978). To establish municipal liability under § 1983, a plaintiff must prove three elements: "a policymaker; an official policy [or custom]; 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) (quoting *Monell*, 436 U.S. at 694). In other words, a plaintiff must show "a direct causal link" between the policy and the violation. *James v. Harris County*, 577 F.3d 612, 617 (5th Cir. 2009) (quotation omitted). Municipal liability cannot be predicated on respondeat superior. *Piotrowski*, 237 F.3d at 578.

Foundational to the success of any municipal-liability claim under § 1983 is the existence of a violation. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Self v. City of Mansfield*, 369 F. Supp. 3d 684, 696 (N.D. Tex. 2019). Because the court has already determined that there was no constitutional violation by Officer Trochessett, there can likewise be no claim for *Monell* liability against League City. League City and Trochessett are entitled to dismissal.

*** * ***

The court expresses no opinion on the prudence of the course taken by the defendants in this case. But it is convinced that the plaintiffs' allegations do not amount to constitutional violations. Accordingly, for the foregoing reasons, the court grants the defendants' motion to dismiss. Dkt. 13. The court will enter a final judgment separately.

Signed on Galveston Island this 17th day of May, 2023.

/s/Jeffrey Vincent Brown
JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE