

APPENDIX

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Appendix A

**United States Court of Appeals
for the Fifth Circuit**

No. 24-40599

DARYL L. DAVIS,

Plaintiff—Appellant,

versus

DON WARREN, *Mayor*; SHIRLEY MCKELLAR, *Council Member*; DEBORAH PULLUM, *City Attorney*; JIMMY TOLER, *Police Chief, City of Tyler*; JAMES GOODMAN, *Police Officer*; TIMOTHY HUTSON, *Police Officer*; GARRETT MARTIN, *Police Officer*; BLAKE KELLY, *Police Officer*; KRIS DAVIS, *Detective*; LARRY SMITH, *Sheriff*; NEAL FRANKLIN, *County Judge*; JACOB PUTMAN, *District Attorney*; RALPH CARAWAY, SR., *Commissioner Precinct 4*; JOANN HAMPTON, *Former Commissioner Precinct 4*; E. B. JOHNSON, *Police Supervisor*; J. RACKLIFF, *Police Supervisor*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:24-CV-207

Apr. 21, 2026

Before ELROD, *Chief Judge*, and WILLETT and
WILSON, *Circuit Judges*. DON R. WILLETT, *Circuit
Judge*:

This case arises from a traffic stop gone awry.

Tyler Police Department officers pulled over Daryl Davis in February 2019 as part of a planned drug sting. During the stop, the officers accused Davis of destroying evidence by swallowing an unknown quantity of crack cocaine. They arrested Davis for tampering with evidence and interfering with public duties.

Davis tells a different story. He contends that the officers violated his constitutional rights during and after the stop. On his telling, the arresting officers used excessive force and unlawfully detained him based on a false claim that he destroyed evidence. He further alleges that the officers refused to order a drug test that would have disproven the accusation that he swallowed drugs. In Davis's view, the constitutional violations continued after his arrest: prosecutors maliciously charged him with a crime he

did not commit, and he was subjected to unlawful post-indictment searches and seizures. Davis reported his complaints to city and county officials, but he maintains that they “turned a blind eye” to the misconduct in hopes of concealing a broader pattern of unconstitutional policing.

Based on those allegations, Davis—proceeding *pro se* and *in forma pauperis*—sued Smith County and Tyler city officials in June 2024 under 42 U.S.C. § 1983 for \$75 million.¹ The district court dismissed Davis’s complaint for failure to state a claim. We AFFIRM in part, VACATE in part, and REMAND for proceedings consistent with this opinion.

I. BACKGROUND

Davis’s initial pleadings are difficult to parse. His original complaint suggests that he was subjected to a pretextual traffic stop during which officers wrongly accused him of “eating crack,” used excessive force, and unlawfully arrested him. Afterward, Davis alleges that he was placed on pretrial supervision for an evidence-tampering offense he did not commit. He

¹ The County Defendants are Sheriff Larry Smith; Judge Neal Franklin; District Attorney Jacob Putman; Commissioner Ralph Caraway, Sr.; and former Commissioner JoAnn Hampton. The City Defendants are Mayor Don Warren; City Councilmember Shirley McKellar; City Attorney Deborah Pullum; Police Chief Jimmy Toler; police officers James Goodman, Timothy Hutson, Garrett Martin, Blake Kelly, and Kris Davis; and police supervisors E.B. Johnson and J. Rackliff.

also alleges that he reported the officers' unconstitutional conduct—namely, racial profiling—to city and county officials, who refused to act on his complaints.

A magistrate judge screened Davis's *in forma pauperis* action² and identified two problems: in the magistrate judge's view, the complaint was untimely and failed to state a claim. The magistrate judge ordered Davis to amend his complaint, correct his pleadings, and address the timeliness of his claims. Davis then filed an amended complaint that expanded on—but hardly clarified—his allegations. More usefully, he attached copies of his state court indictment for evidence tampering and interfering with public duties, and his judgment of conviction by plea of *nolo contendere* for interfering with public duties.³ Davis maintains that the statute of limitations on his constitutional claims was tolled between September 19, 2019, the date of his indictment, and May 13, 2024, the date he pled *nolo contendere* to interfering with public duties and the government dropped the evidence-tampering charge.

The magistrate judge then recommended that Davis's complaint be dismissed for failure to state a claim. The report liberally construed Davis's pleadings as alleging unlawful arrest and detention, malicious prosecution, and excessive force arising

² See 28 U.S.C. § 1915(e)(2).

³ See TEX. PENAL CODE § 38.15(a)(1).

from the traffic stop. The magistrate judge further concluded that those claims accrued when Davis was arrested in 2019 and were therefore barred under Texas’s two-year statute of limitations for § 1983 actions.⁴ And although Davis’s complaints mention that he reported the officers’ conduct to city and county officials, the magistrate judge did not discern a separate § 1983 claim based on those officials’ failure to act.⁵ Davis, still proceeding *pro se*, objected to the magistrate judge’s report and recommendation. Relying primarily on *McDonough v. Smith*, he argued that the statute of limitations for his malicious-prosecution claim did not begin to run until the “underlying criminal proceedings” were “resolved in [his] favor.”⁶ In Davis’s view, the clock began to run in May 2024, when the government dropped the evidence-tampering charge and he pleaded *nolo contendere* to interfering with public duties. Davis also argued that the magistrate judge overlooked Fourth and Fourteenth Amendment claims against the officials who ignored his complaints about the officers.

⁴ See *Davis v. Warren*, No. 6:24-cv-207, 2024 WL 4179171, at *2–3 (E.D. Tex. June 27, 2024); *Helton v. Clements*, 832 F.2d 332, 334 (5th Cir. 1987) (“Civil rights actions brought under 42 U.S.C. §§ 1981, 1983, 1985, and 1988 are deemed analogous to Texas tort actions, and therefore, the applicable limitations period is . . . two years.”).

⁵ *Davis*, 2024 WL 4179171, at *3.

⁶ See 588 U.S. 109, 116 (2019).

The district court overruled Davis’s objections, adopted the magistrate judge’s report and recommendation, and dismissed Davis’s action under 28 U.S.C. § 1915(e)(2)(B)(ii). The court held that Davis’s unlawful-arrest and excessive-force claims were time-barred. The court further concluded that Davis failed to state a malicious-prosecution claim because his criminal proceedings did not terminate in his favor. And it dismissed Davis’s failure-to-act claim for lack of factual specificity. Accordingly, the court dismissed Davis’s claims arising from his arrest and prosecution without prejudice, but dismissed with prejudice his claims based on officials’ failure to respond to his complaints. Davis appealed, and we appointed counsel.

II. STANDARD OF REVIEW

We review dismissals based on § 1915(e)(2)(B)(ii) *de novo*, using the same standard that governs dismissals under Federal Rule of Civil Procedure 12(b)(6).⁷ To survive dismissal, a complaint must allege “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”⁸ Put differently, “the complaint must contain either direct allegations on every material point necessary to sustain a recovery . . . or contain allegations from which an inference fairly may be drawn that evidence

⁷ See *Harris v. Hegmann*, 198 F.3d 153, 156 (5th Cir. 1999).

⁸ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)).

on these material points will be introduced at trial.”⁹ Dismissal is appropriate “if the complaint lacks an allegation regarding a required element necessary to obtain relief.”¹⁰

“We accept all well-pleaded facts as true, construing all reasonable inferences in the light most favorable to the plaintiff.”¹¹ Although we “liberally constru[e]” *pro se* complaints and hold them “to less stringent standards than formal pleadings drafted by lawyers,”¹² *pro se* plaintiffs “must still plead factual allegations that raise the right to relief above the speculative level.”¹³

III. ANALYSIS

On appeal, Davis argues that the district court erred in dismissing his various claims, each of which we address in turn.

⁹ *Sanford v. Louisiana*, 228 F. App’x 492, 493 (5th Cir. 2007) (quoting *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995)).

¹⁰ *Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 178 (5th Cir. 2018).

¹¹ *Hernandez v. W. Tex. Treasures Est. Sales, L.L.C.*, 79 F.4th 464, 469 (5th Cir. 2023).

¹² See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

¹³ See *Coleman v. United States*, 912 F.3d 824, 828 (5th Cir. 2019).

A. Unlawful Arrest & Excessive Force

The district court correctly concluded that Davis’s unlawful-arrest and excessive-force claims are time-barred. As Davis’s appellate counsel conceded at oral argument, both claims accrued at the moment of Davis’s arrest.¹⁴

Texas’s limitations period for § 1983 claims is two years.¹⁵ Because Davis was arrested on February 7, 2019, he had until February 7, 2021 to sue for unlawful arrest and excessive force. He did not file this action until June 2024. The claims are therefore untimely.

Although the district court dismissed these claims without prejudice, Davis may not replead them because they are time-barred.¹⁶ In these

¹⁴ See *Davis*, 2024 WL 4179171, at *3 (first citing *Wallace v. Kato*, 549 U.S. 384, 397 (2007); and then citing *Morill v. City of Denton*, 693 F. App’x 304, 306 (5th Cir. 2017)).

¹⁵ See *Helton*, 832 F.2d at 334 (“Civil rights actions brought under 42 U.S.C. §§ 1981, 1983, 1985, and 1988 are deemed analogous to Texas tort actions, and therefore, the applicable limitations period is . . . two years.”).

¹⁶ See *Long v. Simmons*, 77 F.3d 878, 880 (5th Cir. 1996) (“The district court dismissed the action at bar without prejudice. Because of the operation of the statute of limitations, however, the dismissal operates as a dismissal with prejudice.”); *Boazman v. Econ. Lab’y, Inc.*, 537 F.2d 210, 213 (5th Cir. 1976) (“Where, however, the statute of limitations prevents or arguably may prevent a party from refiling his case after it has been dismissed, we fail to see how a dismissal without prejudice is any less severe a sanction than a dismissal with prejudice.”); *Searcy v. Paxton*,

circumstances, dismissal without prejudice has the same practical effect as dismissal with prejudice.

B. Malicious Prosecution

The district court also correctly dismissed Davis’s malicious-prosecution claim. He alleged that prosecutors maliciously charged him with a crime he did not commit. To prevail on a § 1983 malicious-prosecution claim, a plaintiff must prove six elements:

- (1) the commencement or continuance of an original criminal proceeding; (2) its legal causation by the present defendant against plaintiff who was defendant in the original proceeding;
- (3) its bona fide termination in favor of the present plaintiff;
- (4) the absence of probable cause for such proceeding;
- (5) malice; and (6) damages.¹⁷

“[I]f the prosecution is supported by probable cause on at least one charge, then a malicious prosecution claim cannot move forward.”¹⁸ The

No. 21-40602, 2022 WL 1763373, at *1 (5th Cir. June 1, 2022) (per curiam) (quoting *McNeal v. Papasan*, 842 F.2d 787, 794 n.1 (5th Cir. 1988) (“[W]hen the statute of limitations on a claim has expired, a dismissal of that claim without prejudice is, in reality, a sanction no less harsh than dismissal with prejudice.”)).

¹⁷ *Armstrong v. Ashley*, 60 F.4th 262, 279 (5th Cir. 2023) (citing *Gordy v. Burns*, 294 F.3d 722, 725 (5th Cir. 2002)).

¹⁸ *See id.* at 279 n.15.

district court dismissed Davis’s malicious-prosecution claim at the third prong because he failed to show favorable termination of his criminal proceedings.¹⁹ We agree. And the fourth prong provides an independent basis for dismissal.

Davis’s criminal proceedings did not terminate in his favor. He was convicted by plea of *nolo contendere* for interfering with public duties. A *nolo contendere* plea is not the sort of “favorable termination” required to sustain a malicious-prosecution claim.²⁰ So far as this claim is concerned, that ends the matter.

On appeal, Davis offers a new theory: the government’s decision to drop the evidence-tampering charge, he says, reflected favorable termination of an underlying criminal proceeding. True, malicious-prosecution claims are evaluated on a charge-by-charge basis,²¹ and a plaintiff “may succeed when a baseless charge is accompanied by a valid charge.”²² But that is not what happened here. The government dropped the evidence-tampering charge as part of an agreement under which Davis entered a *nolo*

¹⁹ See *Davis*, No. 6:24-cv-207, 2024 WL 3890185, at *2 (E.D. Tex. Aug. 21, 2024) (citing *Pete v. Metcalfe*, 8 F.3d 214, 219 (5th Cir. 1993)).

²⁰ See *Pete*, 8 F.3d at 219 (“Pete fails to state a claim for malicious prosecution because his prosecution ended with a plea of *nolo contendere* and resulting conviction and thus the action did not terminate in his favor. This bars any action for malicious prosecution.”).

²¹ *Chiaverini v. City of Napoleon*, 602 U.S. 556, 562 (2024).

²² See *id.*

contendere plea for interfering with public duties. Favorable termination requires a plaintiff to “show that the criminal prosecution ended without a conviction.”²³ A bargained-for conviction of this sort is not favorable termination.²⁴ Probable cause provides an independent reason this claim fails. As part of his *nolo contendere* agreement, Davis “confess[ed] that each and every allegation contained in the indictment” was “true and correct,” and reflected “factual evidence against [him] in this case.” In stipulating to the indictment, Davis acknowledged that he acted with “criminal negligence” and “interrupted a peace officer” while the officer was conducting a consensual search of his vehicle. That confession tracks the elements of the Texas offense of interference with public duties and thus confirms probable cause for that charge.²⁵ Because Davis’s criminal proceedings did not terminate in his favor, and because probable cause supported the charge to

²³ See *Thompson v. Clark*, 596 U.S. 36, 49 (2022).

²⁴ See RESTATEMENT (SECOND) OF TORTS § 660 (“[T]ermination of criminal proceedings in favor of the accused other than by acquittal is not a sufficient termination to meet the requirements of a cause of action for malicious prosecution if . . . the charge is withdrawn or the prosecution abandoned pursuant to an agreement of compromise with the accused.”).

²⁵ See TEX. PENAL CODE § 38.15(a)(1) (“A person commits [interference with public duties] if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with . . . a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law.”).

which he pleaded, the district court correctly dismissed his malicious-prosecution claim.

C. Fabrication of Evidence

Davis initially alleged that “the prosecution team sought . . . to maliciously prosecute [him] with fabricated evidence.” Given that phrasing, the district court treated the fabrication allegation as part of Davis’s broader malicious-prosecution claim and dismissed it along with that claim.

On appeal, however, Davis presses a freestanding evidence-fabrication argument. He is right that malicious prosecution and evidence fabrication may be pleaded as separate claims.²⁶ But he did not distinctly plead a standalone fabrication claim in the district court. We therefore do not entertain that theory for the first time on appeal.

The first mention of prosecutorial evidence tampering appears in Davis’s objections to the magistrate judge’s report and recommendation. There, he asserted that *prosecutors* fabricated evidence “from the moment of [his] arrest” because *officers* declined to order an immediate drug test. Had he been tested on the day of the traffic stop, Davis says, the results would have confirmed he did not swallow cocaine. He also alleged that he tested

²⁶ See *Dean v. Phatak*, 162 F.4th 555, 564–65 (5th Cir. 2025) (WILLETT, J.) (recognizing a standalone § 1983 evidence-fabrication claim).

negative for illegal drugs in the days following his arrest. According to Davis, prosecutors fabricated evidence by charging him despite those negative drug tests and despite the officers' initial decision not to test him.

But Davis's complaints did not clearly plead such a claim. To be sure, they recount the facts of his arrest, including the negative drug tests and the officers' refusal to have him immediately tested for drugs. The complaints also suggest that he was maliciously prosecuted by being charged with a crime he did not commit. But they never allege that prosecutors knew of—much less deliberately concealed—the negative drug tests, or that prosecutors were responsible for the officers' decision not to order testing in the first place. Because the complaints did not actually plead a fabrication-of-evidence claim against prosecutors, the magistrate judge had no fair opportunity to evaluate it, the defendants had no fair opportunity to respond to it, and the district court understandably treated the allegation as part of the malicious-prosecution claim. By failing to plead this theory in his complaints, Davis forfeited it.²⁷

²⁷ See, e.g., *Firefighters' Ret. Sys. v. EisnerAmper, L.L.P.*, 898 F.3d 553, 559 (5th Cir. 2018) ("Plaintiffs forfeited their judicial estoppel argument by raising it for the first time in their objection to the magistrate judge's Report and Recommendation."); *Salas v. City of Galena Park*, No. 24-20034, 2024 WL 4719613, at *3 (5th Cir. Nov. 8, 2024) (per curiam)

If Davis wishes to allege—as a distinct claim—that prosecutors themselves fabricated evidence, he may attempt to do so in an amended complaint on remand.

D. Post-Indictment Search and Seizure

Davis also asserts, for the first time on appeal, that the conditions of his pretrial release—namely, a drug-testing requirement, weekly reporting to probation, and restrictions on possessing firearms and alcohol—violated the Fourth Amendment.²⁸ In his view, those conditions amounted to unlawful searches and seizures.

Davis did not present that theory to the district court. His complaints alleged that the officers used excessive force and unlawfully arrested him in violation of the Fourth Amendment. He also mentioned paying \$100 a month for his pretrial drug testing. But he never connected those pretrial-release conditions to an asserted constitutional violation. The district court therefore never had occasion to consider whether those conditions complied with the Fourth Amendment.

(“[T]hat issue was first raised in Plaintiffs’ objections to the magistrate judge’s Recommendation and is therefore [forfeited].”).

²⁸ See U.S. CONST. amend. IV.

We decline to resolve that question in the first instance.²⁹ Davis may attempt to plead it in an amended complaint on remand.

E. Claims Based on Officials' Failure to Act

The district court correctly dismissed Davis's claims against the officials who allegedly ignored his complaints about the police. But those claims should have been dismissed without prejudice rather than with prejudice.

Davis's pleadings fell short of stating a claim against the officials who allegedly ignored his reports of unconstitutional policing. His complaints allege that he repeatedly informed officials that he had been "falsely accused of eating crack cocaine" and "racially profiled." He further contends that the City, the County, and the Tyler Police Department "turned a blind eye" to his allegations in order to "cover up" a broader pattern of racial profiling, pretextual stops, excessive force, and unlawful arrests.

The district court dismissed those allegations as conclusory. That conclusion was correct. As the district court recognized, Davis's complaints offer "nothing more than general assertions that the city and county officials" were notified of constitutional

²⁹ See *Montano v. Texas*, 867 F.3d 540, 546 (5th Cir. 2017) ("As a court for review of errors, we do not decide facts or make legal conclusions in the first instance, but review the actions of a trial court for claimed errors." (cleaned up)).

violations and refused to act. Our precedents confirm that allegations of that sort do not state a claim.

First, the officials to whom Davis reported the officers' conduct are not liable under a failure-to-intervene theory. "An officer is liable for failure to intervene when that officer: (1) knew a fellow officer was violating an individual's constitutional rights, (2) was present at the scene of the constitutional violation, (3) had a reasonable opportunity to prevent the harm but nevertheless, (4) chose not to act."³⁰ That theory does not fit this case. The officials to whom Davis later complained were not present at the scene of the alleged constitutional violation and had no opportunity to prevent the harm as it unfolded. Davis therefore has not stated a failure-to-intervene claim.

Nor do Davis's pleadings adequately state a claim based on unconstitutional custom. A municipality or its policymakers "may be held liable under § 1983 when execution of a government's policy or custom, by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury."³¹ Davis identifies no official policy endorsing the allegedly unconstitutional conduct. Instead, he asserts only in

³⁰ *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 343 (5th Cir. 2020) (citation omitted).

³¹ *Pratt v. Harris County*, 822 F.3d 174, 180 (5th Cir. 2016) (cleaned up) (citing *Monell v. Dept. of Soc. Servs. of N.Y.*, 436 U.S. 658, 694 (1978)).

general terms that the violations he experienced reflect a broader custom.

But to state a claim based on unconstitutional custom, a plaintiff “must demonstrate a pattern of abuses that transcends the error made in a single case.”³² Such a pattern of requires “sufficiently numerous prior instances,” along with “similarity and specificity.”³³ Davis’s pleadings do not come close. They offer only a broad, conclusory assertion that city and county officials have violated the Constitution in cases beyond his own. That sort of blanket allegation establishes neither numerosity, similarity, nor specificity.³⁴ The district court therefore correctly dismissed Davis’s allegations of municipal inaction as conclusory.

Even so, those claims should have been dismissed without prejudice. When dismissing a *pro se* complaint, a district court ordinarily should do so “without prejudice in order to allow the plaintiff an opportunity to file an amended complaint,” unless “the plaintiff has [already] been given adequate opportunity to cure the inadequacies in his pleading[s] or if the pleadings demonstrate that the

³² See *Peterson v. City of Fort Worth*, 588 F.3d 838, 850–51 (5th Cir. 2009) (internal quotation marks omitted).

³³ *Id.* at 851.

³⁴ See, e.g., *Pineda v. City of Houston*, 291 F.3d 325, 329 (5th Cir. 2002).

plaintiff has pleaded his best case.”³⁵ Although the district court allowed Davis to amend once, his amended complaint remained as inartful as the first. On this record, we are not persuaded that Davis has pleaded his best case as to these claims.

“With the benefit of more specific allegations, [Davis] may be able to state a claim” against the individuals who allegedly ignored his complaints or conspired to conceal unconstitutional conduct.³⁶ And “[b]ecause it is not clear that [Davis] amended his complaint with a sufficient understanding of the inadequacies in his original pleading or that he has pleaded his *best case*, the general rule that dismissal should be without prejudice applies.”³⁷

IV. DISPOSITION

This case presents procedural and constitutional issues that require careful pleading. We cannot say with confidence that any new pleadings on remand will be clearer than Davis’s first two, such that they would survive a motion to dismiss. But our decision to appoint appellate counsel suggests that appointing counsel on remand may be appropriate.³⁸ We therefore AFFIRM in part and VACATE in part the district court’s order dismissing Davis’s action. We

³⁵ *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 423 (5th Cir. 2017) (internal quotation marks omitted).

³⁶ *See id.* at 423–24.

³⁷ *See id.* at 424.

³⁸ *See Ricks v. Khan*, 135 F.4th 296, 303 (5th Cir. 2025).

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REMAND with instructions to grant Davis leave to amend and to consider appointing counsel to represent him. We express no view on the ultimate merits of Davis's remanded claims.

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:24-cv-00207

Daryl L. Davis,
Plaintiff,

v.

Don Warren et al.,
Defendants.

ORDER

Plaintiff Daryl Davis, proceeding pro se, filed this lawsuit complaining of alleged violations of 42 U.S.C. § 1983. Doc. 1. This case was referred to United States Magistrate Judge John D. Love. Doc. 3. On June 11, 2024, the magistrate judge issued an order to amend and directed plaintiff to respond to “whether his complaint should be dismissed as time-barred and whether any tolling provisions apply to the late filing of his complaint.” Doc. 4. at 6–7. Thereafter, plaintiff filed an amended complaint (Doc. 6), and on June 27, 2024, the magistrate judge issued a report recommending that plaintiff’s § 1983 claims against defendants be dismissed without prejudice as barred

by the statute of limitations and that plaintiff's claims related to his ongoing complaints to city and county officials be dismissed with prejudice for failure to state a claim. Doc. 7. Plaintiff filed objections to the report and recommendation (Doc. 11), as well as a motion to recuse the magistrate judge (Doc. 12).

The court reviews the objected-to portions of a report and recommendation de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

In his objections, plaintiff maintains that his § 1983 claims related to his arrest on February 7, 2019, are not time barred because his criminal case was dismissed pursuant to his plea of *nolo contendere* on May 13, 2024. Doc. 11 at 2–4.

In this case, plaintiff has alleged claims pursuant to § 1983 for unlawful arrest, malicious prosecution, unlawful detention, and excessive use of force all related to his traffic stop, arrest, and detainment that occurred on February 7, 2019, and February 8, 2019. Docs. 1, 6. Plaintiff did not file the instant action until June 10, 2024. Doc. 1.

Federal law does not provide a statute of limitations for 42 U.S.C. § 1983 actions; rather, the relevant statute of the forum state furnishes the limitations period, but federal law determines the

date the accrual commences. *See Owens v. Okure*, 488 U.S. 235 (1989). In Texas, claims under § 1983 are governed by Texas’s two-year personal-injury limitations statute. Tex. Civ. Prac. & Rem. Code § 16.003(a); *King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 759 (5th Cir. 2015) (“[W]e have recognized that Texas’s two-year statute of limitations for personal injury actions applies to § 1983 claims filed in the state.”).

Under Fifth Circuit law, “the [limitations] period begins to run ‘the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured.’” *See Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001) (quoting *Russell v. Bd. of Trustees*, 968 F.2d 489, 493 (5th Cir. 1992)).

Here, plaintiff was aware of the facts that he now states provide a claim at the time they occurred over five years ago—that he was allegedly stopped under false pretenses, wrongfully accused of ingesting crack cocaine, and arrested with excessive force. Thus, plaintiff’s claims related to his February 7–8, 2019 arrest and detainment are timely only if tolling applies.

Plaintiff relies on *Heck v. Humphrey* as a basis to toll the statute of limitations. In *Heck*, the Supreme Court held that when a plaintiff seeks to recover damages under § 1983 for actions whose unlawfulness would render a conviction or sentence invalid, he must first prove that the conviction or sentence has

been reversed, expunged, invalidated, or otherwise called into question. *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). Plaintiff was arrested on February 7, 2019; indicted on September 19, 2019; and convicted of Interference with Public Duties by plea of *nolo contendere* on May 13, 2024. Docs. 6, 6-1, 6-2. *Heck* applies to plaintiff's conviction obtained by a *nolo* plea. See *Hernandez v. Boles*, 184 F.3d 819 (5th Cir. 1999) (applying *Heck* to a conviction obtained by a plea of *nolo contendere*). Thus, if plaintiff's § 1983 claims call into question his Interference with Public Duties conviction, those claims would indeed be subject to *Heck*. However, *Heck* provides no basis for tolling in this case.

Considering the limitations period in light of *Heck*, in *Wallace v. Kato*, the Court held that “the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process.” 549 U.S. 384, 397 (2007). The Court further posited that where a suit is filed upon arrest, dismissed pursuant to *Heck*, and then refiled once the *Heck* conditions were met, tolling of time to refile the suit once the *Heck* bar was removed would be appropriate. *Id.* at 395 n.4. But the Court did not find tolling warranted in *Kato* because there, like in the instant case, the petitioner did not file an initial suit upon arrest or at any point during the limitations period. *Id.* at 391–92. Similarly, plaintiff's excessive force claim began to

run at the time of his arrest. *See Morill v. City of Denton*, 693 F. App'x 304, 305–06 (5th Cir. 2017) (unpublished).

Here, plaintiff has provided no evidence, and the court can find no indication by a search of its docket, that plaintiff previously brought a suit on his § 1983 claims that was dismissed or stayed pursuant to *Heck* or *Kato*. Thus, even assuming that plaintiff's § 1983 claims would have been prospectively barred by *Heck*, this is not the “unusual case” that fits neatly within the doctrine of equitable tolling.

Plaintiff now further cites *McDonough v. Smith*, 588 U.S. 109 (2019), to suggest that his claim for malicious prosecution is not time barred because he was prosecuted using fabricated evidence and the statute of limitations therefore began to run only when the criminal proceedings terminated in his favor on May 13, 2024. Doc. 11 at 3–4. Plaintiff's argument and reliance on *McDonough* lack merit because his prosecution ended in a plea of *nolo contendere* and thus did not terminate in his favor. Doc. 6-2; *see Pete v. Metcalfe*, 8 F.3d 214, 219 (5th Cir. 1993) (holding that plaintiff failed to state a claim for malicious prosecution “because his prosecution ended with a plea of *nolo contendere*”). Therefore, plaintiff's objections are without merit, and his claims pursuant to § 1983 for unlawful arrest, malicious prosecution, unlawful detention, and excessive use of force are barred by the statute of limitations.

Regarding his remaining claims, plaintiff states that racial profiling generally violates the Constitution and that Tyler City Council Member Shirley McKellar was personally present on February 11, 2019, when his urinalysis came back negative for illegal drugs. Doc. 11 at 4–5. Plaintiff’s specific assertion against defendant McKellar suffers from the same time-bar problems as his § 1983 claims discussed above. Moreover, plaintiff provides nothing more than general assertions that the city and county officials were all put on notice that his constitutional rights were being violated and did nothing. *Id.* at 5. General allegations of racial profiling without specific facts do not state a claim entitled to relief. Even with pro se litigants, “conclusory allegations or legal conclusions masquerading as factual conclusions” are not sufficient. *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *S. Christian Leadership Conf. v. Sup. Ct. of the State of La.*, 252 F.3d 781, 786 (5th Cir. 2001)). Plaintiff’s conclusory allegations fail to state a claim.

Lastly, through his motion, plaintiff appears to object to the magistrate judge’s handling of this suit. Doc. 12. Here, the matter was referred to the magistrate judge pursuant to 28 U.S.C. § 636(b)(1), and the magistrate judge conducted an initial screening of the pleadings pursuant to 28 U.S.C. § 1915. Section 636(b)(1) provides the authority to refer any non-dispositive, pretrial matter to the magistrate judge for determination and to designate a magistrate judge to conduct hearings and to submit proposed

findings of fact and recommendations for the disposition of a matter to the district judge. *Jackson v. Cain*, 864 F.2d 1235, 1242 (5th Cir. 1989). The screening of pleadings pursuant to 28 U.S.C. § 1915 for proposed findings of fact and recommendations is well within the statutory authority granted. Plaintiff's motion (Doc. 12), which the court construes liberally as an additional objection, is therefore baseless.

Accordingly, plaintiff's objections are overruled, and the court accepts the report and recommendation. Doc. 7. Plaintiff's § 1983 claims related to his February 2019 arrest and subsequent prosecution are dismissed without prejudice as barred by the statute of limitations. Plaintiff's claims related to his ongoing complaints to city and county officials are dismissed with prejudice for failure to state a claim. All pending motions are denied.

So ordered by the court on August 21, 2024.

/s/ J. Campbell Barker
J. CAMPBELL BARKER
United States District Judge

Appendix C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DARYL L. DAVIS,	§	
	§	
Plaintiff,	§	CIVIL ACTION
	§	NO. 6:24-CV-00207-
v.	§	JCB
	§	
DON WARREN,	§	
MAYOR; SHIRLEY	§	
MCKELLAR,	§	
COUNCIL MEMBER;	§	
DEBORAH PULLUM,	§	
CITY ATTORNEY;	§	
JIMMY TOLAR,		
POLICE CHIEF, CITY		
OF TYLER; JAMES		
GOODMAN, POLICE		
OFFICER;		
TIMONTHY HUTSON,		
POLICE OFFICER;		
GARRETT MARTIN,		
POLICE OFFICER;		
BLAKE KELLY,		
POLICE OFFICER;		

**KRIS DAVIS,
DETECTIVE; LARRY
SMITH, SHERIFF;
NEAL FRANKLIN,
COUNTY JUDGE;
JACOB PUTMAN,
DISTRICT
ATTORNEY; RALPH
CARAWAY, SR,
COMMISSIONER
PRECINCT 4; JOANN**

**HAMPTON,
FORMER
COMMISSIONER
PRECINCT 4; E B
JOHNSON, POLICE
SUPERVISOR; AND J
RACKLIFF, POLICE
SUPERVISOR;**

Defendants.

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On June 10, 2024, Plaintiff Daryl Davis, proceeding pro se and requesting to proceed *in forma pauperis*, filed the instant action alleging claims pursuant to 42 U.S.C. § 1983. (Doc. No. 1.) On June 11, 2024, the court issued an order directing Plaintiff to amend his complaint in this matter. (Doc. No. 4.)

The court outlined the deficiencies in Plaintiff's complaint and specifically ordered Plaintiff to respond to the issue of whether his complaint should be dismissed as time-barred and whether any tolling provisions apply to the filing of his complaint. *Id.* On June 25, 2024, Plaintiff filed an amended complaint. (Doc. No. 6.) Pursuant to § 1915(e)(2), the court now reviews these allegations.

28 U.S.C. § 1915(e)(2) provides that:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

A complaint fails to state a claim upon which relief may be granted where it does not allege sufficient facts which, taken as true, state a claim which is plausible on its face and thus does not raise a right to relief above the speculative level. *See Montoya v. FedEx Ground Packaging Sys. Inc.*, 614 F.3d 145, 149

(5th Cir. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *see also* Fed. R. Civ. P. 8 (To state a plausible claim for relief, a pleading must contain (1) “a short and plain statement of the grounds for the court’s jurisdiction,” (2) “a short and plain statement of the claim showing that the pleader is entitled to relief,” and (3) “a demand for the relief sought”). A claim has factual plausibility when the pleaded factual content allows the court to draw reasonable inferences that the defendant is liable for the misconduct alleged. *See Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 245 (5th Cir. 2010); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A pleading offering “labels and conclusions” or a “formulaic recitation of the elements of a cause of action” will not suffice, nor does a complaint which provides only naked assertions that are devoid of further factual enhancement. *Iqbal*, 556 U.S. at 678.

The pleading of a *pro se* plaintiff is to be “liberally construed” and is “held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Nevertheless, even with *pro se* litigants, “conclusory allegations or legal conclusions masquerading as factual conclusions” are not sufficient for a well-pleaded complaint. *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *S. Christian Leadership Conf. v. S. Ct. of State of La.*, 252 F.3d 781, 786 (5th Cir. 2001)). If the facts alleged in a complaint do not permit the court to infer more than the mere possibility of

misconduct, a plaintiff has not shown entitlement to relief. *See Rios v. City of Del Rio, Tex.*, 444 F.3d 417, 421 (5th Cir. 2006).

I. Plaintiff's Complaints

Plaintiff's original complaint purports to allege constitutional violations pursuant to 42 U.S.C. § 1983 against Defendants Don Warren, Shirley McKellar, Deborah Pullum, Jimmy Tolar, James Goodman, Timothy Hutson, Garrett Martin, Blake Kelly, Kris Davis, Larry Smith, Neal Franklin, Jacob Putman, Ralph Caraway Sr., JoAnn Hampton, EB Johnson, and J Rackliff (collectively "Defendants"). Plaintiff's factual allegations, construed liberally, arise from a traffic stop on the night of February 7, 2019. (Doc. No. 1, at 10.) Plaintiff alleges that he was pulled over by Defendant Officer James Goodman for failing to stop at a stop sign, but that the stop was actually part of a drug sting as Plaintiff was leaving a known crack house. *Id.* at 9–10. Plaintiff alleges that as part of the stop Defendant Officers Timothy Hutson, Garrett Martin, Blake Kelly, and Kris Davis used excessive force by choking him, twisting his hands and arms, and throwing him onto the hood of a police car. *Id.* at 10. Plaintiff alleges that he was falsely accused of ingesting crack and was taken to the hospital by Officer Goodman. *Id.* Plaintiff states that he was held in the emergency room for several hours without testing or treatment for having ingested crack cocaine. *Id.* at 9. Plaintiff alleges that he was then transported to jail and that he posted bond on February 8, 2019. *Id.* Plaintiff states that after his

release on February 8, 2019 through May 1, 2024, he started talking with various city and county officials about his traffic stop and racial profiling. *Id.* Plaintiff states that he is suing Defendants in both their individual and official capacities for violations of the Fourth, Eighth, and Fourteenth Amendments. *Id.* at 12. Plaintiff seeks a total of \$75,000,000.00 in damages and requests policy change. *Id.*

In his amended complaint, Plaintiff does not add to his factual allegations, but addresses the issue of whether his claims are time-barred. (Doc. No. 6.) Plaintiff alleges that on May 13, 2024, the charges against him were dismissed. (Doc. No. 6, at 2.) Plaintiff argues that his allegations were therefore tolled pursuant to *Heck*. *Id.* Plaintiff argues that under Texas tolling provisions, his § 1983 claims were tolled upon his indictment on September 19, 2019 and began to start running again on May 13, 2024. *Id.* Plaintiff argues that the filing of his case on June 10, 2024 was therefore timely. *Id.* Plaintiff further argues that the Eleventh Amendment does not bar his claims for money damages against county officials and cites the *Ex Parte Young* doctrine. *Id.* at 6–7. Plaintiff attaches his September 19, 2019 indictment (Doc. No. 6-1), as well as Plaintiff's May 13, 2024 Judge of Conviction by the Court for the offense of Interference with Public Duties (Doc. No. 6-2).

II. The Statute of Limitations

As stated, Plaintiff has brought his claims in this action pursuant to 42 U.S.C. § 1983 for alleged

constitutional violations. There is no federal statute of limitations for 42 U.S.C. § 1983 actions; the relevant statute of the forum state furnishes the limitations period—but federal law determines the date the accrual commences. *See Owens v. Okure*, 488 U.S. 235 (1989). The statute of limitations in Texas for section 1983 actions is two years, as claims under section 1983 are governed by Texas’s two-year, personal-injury limitations statute. *See Helton v. Clements*, 832 F.2d 332, 334 (5th Cir. 1987) (“Civil rights actions brought under 42 U.S.C. §§ 1981, 1983, 1985, and 1988 are deemed analogous to Texas tort actions, and therefore, the applicable limitations period is ... two years.”); *see also Wade v. City of Dallas*, 2018 WL 3966358 *1–2 (N.D. Tex. July 16, 2018) (citing and quoting *Helton*, 832 F.3d at 334).

The Fifth Circuit has stated that “the limitations period begins to run ‘the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured.’” *See Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001) (internal citation and quotations omitted); *Shelby v. City of El Paso, Tex.*, 577 F. App’x 327, 331–32 (5th Cir. 2014) (per curiam) (“The standard in § 1983 actions provides ‘that the time for accrual is when the plaintiff knows or has reason to know of the injury which is the basis of the action.’”) (quoting *Burrell v. Newsome*, 883 F.2d 416, 418 (5th Cir. 1989)).

Here, Plaintiff’s claims for unlawful arrest, malicious prosecution, unlawful detention, and

excessive use of force all relate to his traffic stop, arrest, and detainment that occurred on February 7, 2019 and February 8, 2019—over five years prior to the filing of his complaint in this action. Plaintiff was indisputably aware of the facts that he now states provide a claim at the time they occurred over five years ago—that he was allegedly stopped under false pretenses, wrongfully accused of ingesting crack cocaine, and arrested with force used upon him. Thus, Plaintiff's claims related to his February 7–8, 2019 arrest and detainment are only timely if tolling applies.

Plaintiff argues that the *Heck* provides for tolling in this case and that that under Texas tolling provisions, his § 1983 claims were tolled upon his indictment on September 19, 2019 and began to start running again on May 13, 2024. Addressing first the application of *Heck* to this matter, in *Heck*, the Supreme Court held that when a plaintiff seeks to recover damages under § 1983 for actions whose unlawfulness would render a conviction or sentence invalid, he must first prove that the conviction or sentence has been reversed, expunged, invalidated, or otherwise called into question. *Heck v. Humphrey*, 512 U.S. 477, 486 (1994).

Here, Plaintiff was arrested on February 7, 2019, indicted on September 19, 2019, and convicted of Interfering With Public Duties by plea of nolo contendere on May 13, 2024. (Doc. Nos. 6, 6-1, 6-2.) *Heck* applies to Plaintiff's conviction obtained by a nolo plea. *See Hernandez v. Boles*, 184 F.3d 819 (5th

Cir. 1999) (applying *Heck* to a conviction obtained by a plea of nolo contendere). Thus, Plaintiff is correct that to the extent his § 1983 claims call into question his Interference With Public Duties conviction, his claims would indeed be barred by *Heck* and subject to dismissal at present as Plaintiff has provided no evidence that his conviction by has been overturned. But the court need not wade into a *Heck* analysis if Plaintiff's claims remain untimely.

Here, if Plaintiff's claims are not subject to *Heck*, then they remain untimely as *Heck* would not provide a basis for tolling. Given *Heck*'s prospective bar to a civil claim that may accrue prior to a conviction, but for which the validity of the conviction would be called into question by the claim, the Supreme Court considered whether tolling should apply to such claims in *Wallace v. Kato*, 549 U.S. 384, 394–95 (2007). There, the Court plainly held that “the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process.” *Id.* at 397. Thus, the statute of limitations on Plaintiff's alleged § 1983 claims began to run at the time he alleges he was legally detained on February 7, 2019. The Court posited that where a suit is filed upon arrest, dismissed pursuant to *Heck*, and then refiled once the *Heck* conditions were met, tolling of time to refile the suit once the *Heck* bar was removed would be appropriate. *Id.* at 395, n. 4. But the Court did not

need to consider tolling under these circumstances in *Kato* because there, like in the instant case, the petitioner did not file an initial suit upon arrest or at any point during the limitations period. Plaintiff has provided no evidence, and the court can find no indication by a search of its docket, that Plaintiff previously brought a suit on these claims that was dismissed or stayed pursuant to *Heck* or *Kato*. Thus, this is not the “unusual case” that fits neatly within the doctrine of equitable tolling.

Plaintiff cites to a general proposition that in Texas the statute of limitations pauses when an individual is charged and does not start counting down until the charges are dismissed. (Doc. No. 6, at 4.) Plaintiff cites no authority for this Texas tolling provision, and the only provision of this type is set forth in the Texas Code of Criminal Procedure and applies to tolling the statute of limitations for a subsequent indictment. *See* Tex. Code Crim. Proc. Ann. art. 12.05 (“the time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation”). Thus, this tolling provision is plainly inapplicable to Plaintiff’s civil claims. Plaintiff has not cited, and the court is unaware, of any other equitable tolling provisions that would apply to the case at hand. *Kato*, 549 U.S. at 396 (“[e]quitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs.”). Accordingly, Plaintiff’s § 1983 claims related to his February 2019

arrest and detention should be dismissed without prejudice as barred by the statute of limitations.

III. Remaining Allegations

The only remaining allegations not subject to a possible time bar are Plaintiff's allegations that "through May 1, 2024," he has been talking with various city and county officials about his traffic stop and racial profiling. (Doc. No. 1, at 9.) But as the court previously explained, complaints about a past event, racial profiling, or bad policing, in general, do not state a claim for a violation of constitutional rights. In order to state a cause of action under 42 U.S.C. § 1983, the complaint must allege that (1) the conduct in controversy was committed by a person acting under color of state law, and (2) the conduct deprived the plaintiff of a federal right, either constitutional or statutory. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 930 (1982); *Johnson v. Dallas Indep. Sch. Dist.*, 38 F.3d 198, 200 (5th Cir. 1994). In his amended complaint, Plaintiff alleges that the city and county official's failure to get involved shows, by omission, their willingness to cover up racial profiling, pretextual stops, excessive use of force, and false charges. (Doc. No. 6, at 5.) But again, these allegations fail to indicate how *Plaintiff* was deprived of a constitutional right. Indeed, Plaintiff's allegations merely state that he complained to the officials but does not allege any conduct by those individuals in violation of his rights. Thus, even to the extent the court could consider a claim accrued within the statutory period based upon these

allegations, the factual allegations fail to state a claim and are therefore subject to dismissal. As Plaintiff has already been given an opportunity to amend and has pleaded his “best case,” any further amendment would be futile. *See Norman v. Tex. Court of Criminal Appeals*, 582 F. App’x 430, 431 (Mem) (5th Cir. 2014) (unpublished); *Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009). Therefore, Plaintiff’s claims related to his ongoing complaints to city and county officials should be dismissed with prejudice.

CONCLUSION

For the reasons stated above, this action should be dismissed pursuant to 28 U.S.C. § 1915(e)(2). The court **RECOMMENDS** that Plaintiff’s § 1983 claims against Defendants be **DISMISSED WITHOUT PREJUDICE** as barred by the statute of limitations. Plaintiff’s claims related to his ongoing complaints to city and county officials should be **DISMISSED WITH PREJUDICE** for failure to state a claim.

Within fourteen (14) days after receipt of the Magistrate Judge’s Report, any party may serve and file written objections to the findings and recommendations contained in the Report. A party’s failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen (14) days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual

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findings and legal conclusions accepted and adopted by the district court. *Douglass v. United States Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996).

So ORDERED and SIGNED this 27th day of June, 2024.

/s/ John D. Love

JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

Appendix D

**Constitutional and Statutory
Provisions Involved**

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.

U.S. Const. amend. XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1983. Civil action for deprivation of rights

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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes

of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Texas Penal Code § 37.09. Tampering with or fabricating physical evidence.

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under Subsection (a) or Subsection (d)(1) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

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(c-1) It is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 that was destroyed as described by Subsection (f)(3) of that section.

(d) A person commits an offense if the person:

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; or

(2) observes a human corpse under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know that a law enforcement agency is not aware of the existence of or location of the corpse, and fails to report the existence of and location of the corpse to a law enforcement agency.

(e) In this section, “human corpse” has the meaning assigned by Section 42.08.

Texas Penal Code § 38.15. Interference with public duties.

(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;

(2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty;

(3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;

(4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes;

(5) the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency;

(6) an officer with responsibility for animal control in a county or municipality, while the officer is performing a duty or exercising authority

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imposed or granted under Chapter 821 or 822, Health and Safety Code;

(7) a person who:

(A) has responsibility for assessing, enacting, or enforcing public health, environmental, radiation, or safety measures for the state or a county or municipality;

(B) is investigating a particular site as part of the person's responsibilities under Paragraph (A);

(C) is acting in accordance with policies and procedures related to the safety and security of the site described by Paragraph (B); and

(D) is performing a duty or exercising authority imposed or granted under the Agriculture Code, Health and Safety Code, Occupations Code, or Water Code; or

(8) a person who is an employee or agent of a utility while the person is performing a duty within the scope of that employment or agency.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant was intended to warn a person operating a motor

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vehicle of the presence of a peace officer who was enforcing Subtitle C, Title 7, Transportation Code.

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

(d-1) Except as provided by Subsection (d-2), in a prosecution for an offense under Subsection (a)(1), there is a rebuttable presumption that the actor interferes with a peace officer if it is shown on the trial of the offense that the actor intentionally disseminated the home address, home telephone number, emergency contact information, or social security number of the officer or a family member of the officer or any other information that is specifically described by Section 552.117(a), Government Code.

(d-2) The presumption in Subsection (d-1) does not apply to information disseminated by:

(1) a radio or television station that holds a license issued by the Federal Communications Commission; or

(2) a newspaper that is:

(A) a free newspaper of general circulation or qualified to publish legal notices;

(B) published at least once a week; and

(C) available and of interest to the general public.

(e) In this section:

(1) “Emergency” means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

(2) “Utility” means:

(A) an electric utility, as defined by Section 31.002, Utilities Code;

(B) a telecommunications provider, as defined by Section 51.002, Utilities Code;

(C) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code;

(D) a gas utility, as defined by Section 101.003, Utilities Code, which for the purposes of this subsection includes a municipally owned utility as defined by that section;

(E) a gas utility, as defined by Section 121.001, Utilities Code;

(F) a pipeline used for the transportation or sale of oil, gas, or related products;

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(G) an electric cooperative or municipally owned utility, as defined by Section 11.003, Utilities Code;

(H) a broadband provider, as defined by Section 253.0001, Utilities Code; or

(I) a retail water or sewer utility service, as defined by Section 13.002, Water Code.