

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AVELINO MEDEL II,

Plaintiff

v.

GABRIEL WALKER PRADO, in his
individual capacity, and the CITY OF
AUSTIN

Defendants

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CAUSE OF ACTION NO.
1:24-cv-0090

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Avelino Medel II brings this 42 U.S.C. § 1983 case against Defendant Austin Police Department officer Gabriel Walker Prado for the excessive force inflicted on him and against Defendant City of Austin for its practices that caused such excessive force to be employed.

I. PARTIES

1. Plaintiff Avelino Medel II is a resident of Austin, Texas.

2. Defendant Gabriel Walker Prado is a police officer with the Austin Police Department (APD) and is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Officer Prado was acting under color of law as an APD officer. He can be served with process at 715 E. 8th Street, Austin, Texas 78701. *Service is hereby requested.*

3. Defendant City of Austin is a municipality that operates the Austin Police Department and employed Defendant Prado at all relevant times. The City’s policymaker for policing matters at the time of the incident was and still is interim Chief of Police Robin Henderson. The City may be served with process through its City Manager at 301 W. 2nd Street, Austin, Texas 78701. *Service is hereby requested*

II. JURISDICTION AND VENUE

4. This Court has federal question jurisdiction over this 42 U.S.C. § 1983 action pursuant to 28 U.S.C. §§ 1331 and 1343.

5. This Court has general personal jurisdiction over Defendants as they are located in or reside in Travis County, Texas.

6. This Court has specific *in personam* jurisdiction over Defendants because this case arises out of conduct by Defendants that injured Plaintiff that occurred in Travis County, Texas, which is within the Western District of Texas.

7. Venue of this cause is proper in the Western District pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events or omissions giving rise to Plaintiff's claims occurred in Travis County, which is within the Western District of Texas.

III. FACTS

A. OFFICER PRADO'S SHOCKING USE OF EXCESSIVE, DEADLY FORCE ON PLAINTIFF AVELINO MEDEL.

8. Plaintiff Avelino Medel, a young Hispanic male, was the victim of police brutality.

9. During the early morning hours of April 6, 2024, Medel was at home with his father, with whom he was having a discussion.

10. After a neighbor called to complain about noise, APD Officer Prado, who had graduated from APD's Cadet School only seven months earlier, arrived to the scene along with several other APD officers.

11. Officer Prado positioned himself outside the glass doors to Medel's apartment. He then told the other officers that he saw an elderly man and a younger man, Medel and his father, just yelling.

12. Officer Prado stood by the apartment's sliding glass doors while the other APD officers went to the door. Prado could see Medel but did not announce his presence.

13. One officer pounded on the front door of Medel's apartment with his baton.

14. Given the hour, Medel was surprised by the loud pounding on the door.

15. Medel thus approached the front door of his apartment to check who was outside. As a precaution, he grabbed and held his legally-owned gun, pointed up in the air.

16. As Medel approached his apartment's front door to see who was there, Officer Prado saw him walk toward the door with the gun pointed directly in the air.

17. At no point during the incident did Medel pose a threat to any officer, nor did he point the gun in the direction of any officer.

18. In fact, Medel did not point his gun in the direction of any person, did not know Prado was outside, and did not even know police were at his door.

19. Medel was merely holding his legally-owned gun inside his own home while checking to see who had just loudly banged on his front door at 2am.

20. Yet Officer Prado panicked.

21. Prado shouted, he's got a gun! Gun! Gun! Gun!

22. Then, without any warning whatsoever to Medel, Prado shot Medel three times through the glass doors.

23. Prado never attempted to de-escalate the situation, never told Medel to drop his gun, and never warned Medel that he was going to shoot him.

24. He could have done each of these things before firing at Medel and avoided the entire event.

25. After Medel was shot multiple times and had fallen to the ground, Prado inexplicably shot him one more time.

26. As he lay bleeding on the floor, Medel slowly reached up and turned the handle to open the front door for the other officers. He kept his hands up and visible.

27. Though he could see Medel was moving slowly and keeping his hands visible to let the officers into the apartment, Prado twice yelled at Medel stop moving or I'll shoot you again while continuing to point his gun at Medel.

28. Though Medel repeatedly asked APD officers what happened, none of the officers provided any explanation.

29. The other APD officers on scene then detained Medel without further incident.

30. No charges were brought against Medel.

31. As a direct and proximate consequence of Prado's actions, Medel suffered serious ongoing injuries.

B. THE AUSTIN POLICE DEPARTMENT HAS A LONG HISTORY OF OFFICERS USING EXCESSIVE FORCE, FAILING TO DE-ESCALATE, AND FAILING TO DISCIPLINE OFFICERS WHO COMMIT VIOLENT ACTS.

32. Unfortunately, the actions of Defendant Prado are part of a longstanding pattern of APD officers using excessive force and failing to de-escalate.

33. APD fails to adequately train its officers and failed to adequately train Defendant Prado on the appropriate use of force in situations in which homeowners possess weapons, how to use de-escalation strategies, and the need to provide a warning before utilizing deadly force.

34. APD fails to train its officers to warn citizens and give them time to comply before using force and failed to train Defendant Prado on the need to warn and give time to comply before using force.

35. Moreover, the City of Austin has systematically failed to supervise or discipline its officers, rarely disciplines officers for using excessive force and rarely investigates or disciplines for failing to de-escalate, or not warning civilians before using force.

36. As a consequence, APD officers' engaging in excessive force, failing to warn and failing to de-escalate has become the de facto practice/policy of APD and the City of Austin which is well-known by the City's policymakers, including its Chief of Police.

37. Some of the most egregious and notorious examples are detailed below (among others):

- a. **Nathaniel Sanders and Sir Smith:** On May 11, 2009, then-Officer Leonardo Quintana shot both Nathaniel Sanders and Sir Smith without warning after approaching their car while they were asleep—Sanders died, Smith survived. Quintana and another officer came up on the car from behind, and could tell through the car windows that both occupants were asleep. Instead of making a plan, communicating with his partner, or identifying himself as police, Quintana woke Sanders, saw that Sanders had a pistol in his waistband, unsuccessfully tried to grab it, then backed away and opened fire on the car without warning, killing Sanders. Smith, unarmed and suddenly under fire, awoke from sleeping and tried to escape by running from the car. Instead of letting Smith escape to safety, Quintana shot him without warning while Smith was fleeing, unarmed, and posed no danger to anyone. The police chief disciplined Quintana only for failing to activate his squad car's video camera, rejecting an internal recommendation to discipline him for his poor tactics that ultimately led to deadly force. He was not disciplined for shooting an unarmed

Smith who was doing nothing threatening. Quintana's partner and the other officer present did nothing to stop the improper tactics or excessive force throughout the ordeal.

- b. **Carlos Chacon:** On April 29, 2011, APD officers Eric Copeland and Russell Rose used excessive force against Carlos Chacon when he called 911 to report he was the victim of an armed robbery. When Copeland and Rose arrived and saw Chacon, they immediately brandished their firearms before saying a word. When Chacon did not immediately comply with contradictory commands issued by the officers, Copeland and Rose escalated to punching and electrocuting Chacon with a TASER rather than taking the time to issue clear commands and given Chacon time to comply. In reviewing the undisputed facts from the video, Judge Sparks concluded that “[b]oth officers’ involvement in the entire struggle could likely have been avoided had the officers behaved reasonably,” and “[i]t was, after all, *the officers* who escalated the situation by drawing their weapons and shouting profanity.” The Fifth Circuit affirmed and a jury found against the officers on May 13, 2015. Yet APD never disciplined Copeland or Rose for abusing Chacon. APD likewise did not investigate either of them for failing to intervene.
- c. **Byron Carter and L.W.:** On May 30, 2011, Officer Nathan Wagner fatally shot Byron Carter, Jr., a 20-year-old Black man without warning. Carter was in a vehicle driven by L.W., a Black 16-year-old child, while exiting a tight parallel parking space downtown, just east of I-35, after 11:00 pm. Unbeknownst to Carter and L.W., Wagner and his partner were nearby on foot,

and had been following Carter and L.W. surreptitiously and without suspecting the young men of any crime. L.W. heard Carter say, “go,” in a fearful tone, so he accelerated out of the parking space. Although there was no danger, Wagner fired his weapon without any warning five times into the driver’s side doors as the car drove away. Wagner’s shots wounded L.W. and killed Carter. Wagner’s partner did nothing to intervene and stop the shooting, even as the car drove away. In ensuing excessive force litigation, Judge Yeakel denied summary judgment to Wagner. Although neither officer was disciplined by APD, then-Police Monitor Margo Frasier and a Citizen Review Panel told the chief that the shooting was unjustified. APD never investigated Wagner’s partner for failing to intervene.

- d. **Peter Hernandez:** On June 7, 2012, at least three officers used excessive force against Pete Hernandez, whose only “crime” was exiting a Wal-Mart store. As Hernandez walked through the parking lot, an APD officer suddenly yelled from behind him to “stay,” and then, “get on the ground.” Confused, Hernandez stopped—he testified that all he heard was to “Move out of the way,” not “get on the ground.” Then, less than four seconds after the first command, Officer John Sikoski ordered his colleagues to “grab him.” Officer Jesus Sanchez executed a flying tackle into Hernandez, slamming him into the ground. Officer Robert Escamilla then stepped on Hernandez’s hand. The City found the officers did not violate any policies. (Albeit, without even investigating whether the officers failed to intervene.) Magistrate Judge Austin recommended denial of summary judgment on the excessive force claims against Sikoski, Sanchez,

and Escamilla, and that recommendation was adopted by Judge Yeakel. A jury found Sanchez used excessive force, awarding Hernandez \$877,000 (later reduced on remittitur). APD never investigated any of the officers for failing to intervene to stop the initial use of force nor its escalation.

- e. **John Schaefer:** On March 1, 2013, 70-year-old John Schaefer called 911 to report that he had been attacked by a dog on his property, had shot and killed it in self-defense, and needed police assistance. When APD officer Jonathan Whitted arrived, Schaefer came out to meet him wearing his legally owned handgun in its holster. Without warning Whitted attempted to wrestle the holstered weapon away from Schaefer and, when Schaefer resisted having his legally owned handgun forcibly removed from him when he had done absolutely nothing wrong, Whitted shot him twice in the chest, killing him. Though the Citizen's Review Panel found serious problems with Whitted's use of force, Whitted was not disciplined by APD. In litigation brought by Schaefer's estate, Judge Sparks denied both Whitted's motion to dismiss the excessive force claim against him and the City of Austin's motion, finding that plaintiff stated a claim against the City for failing to train or supervise its police officers concerning the use of deadly force, how to interact with individuals legally entitled to possess and carry weapons, and citizens' Second Amendment right to possess weapons for self-defense in their own homes.
- f. **Hunter Pinney:** On December 20, 2013, APD officers Michael Nissen, Cassandra Langston, and Chance Bretches were sent to an apartment in search of Jason Brown, whom Williamson County said was involved in a domestic

disturbance, to arrest Brown. Instead of Brown, the officers encountered Hunter Pinney, who lived at the apartment. The officers knocked on the door persistently and demanded that Pinney come out. When Pinney complied, he told the officers his name. Instead of letting Pinney re-enter the apartment he had just voluntarily exited to get his ID and prove the officers were at the wrong address, the APD officers suddenly grabbed Pinney without warning and, Nissen claimed, demanded that Pinney allow them to frisk him for weapons. When Pinney “began to tense up” and “pull away,” the officers escalated their use of force and ultimately Nissen struck Pinney with his knee and electrocuted Pinney with a TASER. Although APD officers charged Pinney with resisting arrest, those charges were dismissed and the City settled Pinney’s ensuing lawsuit against Nissen and the other officers. Nissen and the other officers were not disciplined for their uses of force or investigated for failing to intervene.

- g. **Jawhari Smith:** In March 2014, APD Sergeant Greg White shot Jawhari Smith, a young black man, after confronting Smith when Smith was holding a small BB gun. Smith honestly and immediately told White that the “pistol” was just a BB gun and held it up in his right hand over his head, according to White. Smith reported that he quickly dropped the BB gun on the ground. White disagreed, claiming Smith still kept his right hand holding the BB gun above his head. Nonetheless, instead of giving Smith time to comply, White shot Smith, though his patrol car audio recording shows White gave Smith less than two seconds to comply with his commands. APD did not discipline White, but the City paid Smith a settlement.

- h. **Grady Bolton:** On February 9, 2015, APD Officers Manuel Jimenez, Michael Nguyen, and Rolando Ramirez approached Grady Bolton after Bolton was told to leave a bar on 6th Street. Jimenez escalated the encounter by suddenly and without warning grabbing Bolton's wrist, twisting it behind Bolton's back, and then kicking out Bolton's legs. Instead of intervening to stop Jimenez, Ramirez joined in the use of force, including by hitting Bolton in the neck. Next, Nguyen also did nothing to stop the force, instead joining and repeatedly kicking Bolton with knee strikes. In ensuing litigation by Bolton, Judge Sparks denied summary judgment to Jimenez, Nguyen, and Ramirez. APD never investigated the officers for failing to intervene.
- i. **Joseph Cuellar:** On February 15, 2015, Joseph Cuellar, who was intoxicated, encountered a "phalanx" of APD officers on horseback on 6th Street, while APD Detective Otho Deboise stood nearby. When Cuellar did not immediately yield to the horses, the officer riding ordered him to back away. Cuellar complied, but in a dancing motion. Cuellar then "danced" back towards one of the horses. Deboise reacted by advancing and grabbing Cuellar when he was one to three yards from the horse and throwing him to the ground. Deboise gave Cuellar no warning he was going to use force, much less time to comply. None of the other three officers intervened to stop Deboise or assist Cuellar. Deboise initially claimed that Cuellar had merely "stumbled" when pushed by the officer and fallen to the ground but revised his report when a bystander's cell phone footage revealed Deboise had brutally thrown Cuellar down. In ensuing litigation by Cuellar, Judge Sparks denied summary judgment on excessive force claims

against Deboise on October 11, 2018. APD never investigated the other officers for failing to intervene.

- j. **Justin Scott:** On February 20, 2015, APD Officer Greg White (apparently the same officer who shot Jawhari Smith) tackled and repeatedly struck Justin Scott, who was only passively resisting—Scott argued with White before the tackle, then “twisted and turned” on the ground. Judge Pitman denied summary judgment on January 7, 2019, and the Fifth Circuit dismissed a subsequent appeal. White was not disciplined for this use of force.
- k. **Adrian Aguado:** On April 25, 2015, APD Officers Eric Copeland (apparently the same Officer who used excessive force on Carlos Chacon) and Mark Bergeson had ordered Adrian Aguado out of the back of Copeland’s patrol vehicle to reapply his handcuffs, which had slipped off one hand, when Copeland suddenly fired his TASER at Aguado without warning. Aguado had been complying with Copeland’s command to exit the vehicle and had not even put his second foot on the ground to exit the patrol vehicle when Copeland fired, causing Aguado to fall. As Bergeson stood by doing nothing, Copeland then “dropped his body weight onto” Aguado’s shoulder using his knee, then fired his TASER a second time. Copeland was disciplined for using objectively unreasonable force, while Bergeson was not even investigated for failing to intervene.
- l. **Breaion King:** On June 15, 2015, Officer Bryan Richter used excessive force against Breaion King, a 120-pound Black woman that he had stopped for speeding. Without warning, Richter hauled King from her seat, slammed her

into a nearby vehicle, and then repeatedly knocked her onto the ground despite King's minimal resistance and very small stature. Richter later falsely told fellow officers King tried to punch him. In denying Richter summary judgment, Judge Sparks concluded, "a reasonable jury could find Officer Richter's use of force was clearly excessive and objectively unreasonable." Tellingly, APD command staff failed to take formal disciplinary action or even respond seriously to Richter's misconduct until after the civil lawsuit was filed. Thus, Judge Sparks also denied summary judgment as to the City on May 1, 2018, concluding that a reasonable jury could find the City's use of force, training, and discipline policies were inadequate, causing Richter's use of force against King, and that the City was deliberately indifferent to these known inadequacies.

- m. **Armando Martinez:** On August 27, 2015, APD Officers Christopher Van Buren and Daniel Jackson approached Armando Martinez, suspected of public urination, who was laying under a tree in a park just east of downtown Austin. Jackson ordered Martinez to "show me your hands," then Van Buren ordered, "stand up," "get off the ground," and "walk in front of that vehicle, or I'm going to tase you now." Martinez kept laying on the ground, and so, because the City did not adequately train him and Jackson did not tell him to wait, Van Buren fired at Martinez with his TASER four seconds later. Jackson agreed with APD investigators that he would not have used a TASER; Martinez was not preparing to fight, "just kind of sitting there." Jackson then handcuffed Martinez. EMS was called to remove the TASER barb, and they determined Martinez was

suffering a hyperglycemic reaction that required him to be hospitalized. Despite the fact that Martinez was obviously never a threat to anyone and Van Buren audibly threatened to use a TASER anyway, Jackson was not investigated for failing to intervene.

- n. **Gregory Jackson:** On December 20, 2015, Gregory Jackson was attempting to cross to the north side of 6th Street with his party when officers were about to close the street. He encountered APD Officers Jason Jones and Brian Huckaby on bicycles, among many other patrol officers. Jones' bike bumped into Jackson, they had an eleven-second conversation, then Jones suddenly grabbed Jackson to place him under arrest. Contrary to the officers' testimony, Jackson complied—or at least “did not actively resist.” Nonetheless, in seconds, Jones and Huckaby grabbed Jackson's arms and kicked him with their knees multiple times before escalating to punching his head and face, all without warning. Video evidence revealed a large number of officers surrounded Jackson and assisted in the use of force, causing a facial fracture, concussion, and other head injuries. Many APD officers were present and could see Jackson was not resisting, but none of them intervened to stop the use of excessive force. Magistrate Judge Austin denied summary judgment for Jackson's excessive force claims against Jones and Huckaby. APD never investigated any of the officers for failing to intervene.
- o. **Jason Roque:** On May 2, 2017, APD Officer James Harvel shot at Jason Roque—whom Harvel knew to be suicidal—three times, including twice after Roque dropped his BB-gun and was stumbling away from the police, hitting

and killing him with the third shot. Though four other APD officers were on the scene standing right next to Harvel watching him take one shot after another, none of them did anything to try to prevent Harvel from continuing to fire on Roque. In ensuing litigation by Roque's survivors, Judge Yeakel denied summary judgment on excessive force claims against Harvel. The Fifth Circuit affirmed. The City settled the matter for \$2,250,000. APD never investigated the officers who were standing right next to Harvel for failing to intervene and stop the shooting—particularly after Roque dropped the BB gun and fled.

- p. **Landon Nobles:** On May 7, 2017, APD Officers Richard Egal and Maxwell Johnson encountered twenty-four-year-old Landon Nobles on 6th Street. Johnson found Nobles with other APD officers, and Nobles ran when he saw Johnson approach. Egal intercepted the pursuit and pushed a bicycle into Nobles' path, causing Nobles to stumble and fall to the ground. Johnson and Egal testified at trial that they saw a gun in Nobles' hand, so they drew their own weapons, but another APD officer, Nobles' cousin, and two security guards testified that Nobles never had a gun in his hands. Egal and Johnson fired at Nobles five times without any warning, hit him three times, and killed him. A jury found a constitutional violation, rejected the qualified immunity defense, and awarded Nobles' family \$67,107,500 in damages. Neither Egal, Johnson, nor any of the APD officers present was disciplined for their conduct surrounding Nobles' death.
- q. **Joseph Figueroa:** On April 17, 2018, APD Officers Mario Aquino and Daniel McLeish stopped a person for walking against a pedestrian signal near 6th Street

when Aquino decided to physically move a third person, Joseph Figueroa, who was standing against a nearby wall. Aquino pushed Figueroa's arm at the same time as he told him to move, prompting Figueroa to move but angrily tell the officer not to touch him. Instead of ignoring the compliant (and understandably annoyed) Figueroa, Aquino repeatedly taunted him, eventually being joined by McLeish who spoke up not to stop his fellow officer but to join the goading. Reacting to the incessant taunts, Figueroa moved toward the officers, so Aquino slammed him on the ground. Although the City temporarily suspended Aquino for starting a completely unnecessary fight with a person who was just standing nearby, McLeish was never investigated for failing to intervene.

- r. **Justin Grant:** On July 4, 2018, Justin Grant had an argument with security at a downtown bar who refused to let him rejoin his party. Grant walked away, but APD officers Gadiel Alas and Corey Hale approached Grant from behind. Alas and Hale grabbed Grant without warning, then violently threw him to the ground. Once Grant was on the ground, Alas escalated further by electrocuting Grant with his TASER while Alas sat on top of Grant. Instead of intervening to stop Alas' excessive force, Hale then punched Grant in the face repeatedly. Alas then punched Grant in the face repeatedly as well. Neither Alas nor Hale were disciplined by APD.
- s. **Michael Yeager-Huebner:** On November 18, 2018, Michael Yeager-Huebner and his girlfriend were heading back to their hotel from 6th Street when four unidentified assailants attacked Yeager while he waited at a crosswalk. APD Officers Bradley Hoover and Timothy Skeen witnessed the assault, dispersed

the assailants, and then followed Yeager to a nearby parking lot where they immediately threatened to electrocute him with a TASER. Then a third APD officer, Dusty Jester, sprinted over thirty yards to intentionally “surprise” tackle Yeager, pulling him to the ground, and then began to repeatedly punch him in the face. Instead of stopping Jester, Hoover and Skeen piled on—and called for backup, leading to a large mass of APD officers pummeling Yeager. Skeen testified in subsequent litigation that he would intervene to assist an officer who used unjustified force if their victim tried to defend themselves. Jester was given an informal reprimand but no additional punishment. The City did not even investigate, much less discipline, Hoover or Skeen.

- t. **Paul Mannie:** On March 28, 2019, numerous officers, including officers Chance Bretches (apparently the same officer who failed to intervene in the use of excessive force against Hunter Pinney) and Gregory Gentry, mercilessly and without warning punched and kicked Paul Mannie in the face while they had him pinned to the ground and he was not resisting. Although many officers were present, none of them intervened to stop the obviously excessive force. While APD decided not to discipline any of the officers—indeed, no one was even investigated for failing to intervene—Bretches was indicted for aggravated assault by a public servant on January 20, 2021.
- u. **Javier Ambler:** On March 28, 2019, Javier Ambler was prone on the pavement begging for help and telling officers “I can’t breathe.” APD Officer Michael Nissen (apparently the same officer who used excessive force on Hunter Pinney) was present and did nothing to help Javier Ambler. Instead, he assisted

the deputies' use of excessive force on Ambler and caused him to die at the scene. Despite knowing that Nissen was present while other officers were hurting Ambler, APD never investigated Nissen for not intervening.

- v. **Mauris DeSilva:** On July 31, 2019, Mauris Desilva, a Ph.D. neuroscientist from Sri Lanka, suffered a mental health crisis. Neighbors called 911 to specifically request a mental health officer. Instead, APD officers Christopher Taylor and Karl Krycia responded, though neither was trained as a mental health officer. APD had twice responded to mental health calls for DeSilva and Taylor and Krycia specifically knew he was mentally ill. When officers encountered DeSilva, he was holding a knife to his throat. When he complied with officers' commands and took a step towards officers, APD officer Joseph Cast fired a kinetic projectile from his shotgun without warning. Taylor and Krycia then shot DeSilva several times with their handguns without warning and without waiting to see if the projectile fired by Cast had stopped DeSilva from continuing to walk forward. DeSilva later died from his wounds. APD did not discipline any of the officers involved.
- w. **Michael Ramos:** On April 24, 2020, Michael Ramos was unarmed when APD Officer Mitchell Pieper fired a lead pellet-bag at him without warning. When Ramos tried to drive away from officers who had just fired a weapon at him, APD Officer Christopher Taylor shot him dead. Although Officer Taylor was indicted for murder and Ramos was unarmed, APD has not disciplined Taylor or Pieper.

- x. **2020 Black Lives Matter/ George Floyd Protests:** Dozens of APD officers shot at non-violent demonstrators with kinetic projectiles fired from shotguns and launchers without any warning over the course of May 30 – June 1, 2020. Despite the extensive police presence at the demonstrations, including numerous officers who could have intervened to prevent demonstrators from being seriously injured, no bystander officers intervened to protect unarmed civilians. This failure to intervene and put a stop to the illegal, unconscionable, and unreasonable shooting left numerous innocent individuals at the protest with serious, life altering injuries. Not a single officer has been disciplined for the intentional firing of kinetic projectiles into crowds without warning or the failure to intervene to stop their misuse during the protests, even though Chief Henderson and her predecessors Chacon and Manley personally knew that shotguns and kinetic projectiles were being used inappropriately, dangerously, and against hundreds of nonviolent people without warning. In another incident during the protests exemplifying the failure to APD officers to intervene, no fewer than three APD officers all used excessive force against a single non-violent protestor on May 30, 2020: Officer John Siegel pepper-sprayed Jason Gallagher in the face, then while Gallagher was still reacting to the pain of the first attack, Officer Salvador Gonzalez-Galvan also sprayed him in the face. When Gallagher turned away and tried to wipe his eyes, Officer Bryan McCulloch shoved Gallagher down a concrete hill while he was effectively blinded by the OC spray, causing significant injury to Gallagher. None of these officers warned Gallagher before they used force against him.

- y. **Armando Herrera-Amaro:** On December 1, 2020, APD officers Gadiel Alas (apparently the same officer who assaulted Justin Grant) and Alexander Khidre brutally tasered and hit an autistic, bipolar Hispanic young man for no justifiable reason and without warning. The force used by Officer Alas was excessive, unreasonable, and pure police brutality. Despite the egregious nature of the abuse, which was caught on video, another APD officer stood by and helped it happen. As a consequence, Amaro faced bogus charges for nearly two years before the County Attorney dismissed them. Tellingly, APD's leadership approved of Alas' misconduct and his fellow officer's decision to allow it to continue.
- z. **L.N.R.:** On June 23, 2021, APD Officer Nikolas Warren shot a fifteen year-old, unarmed girl who posed no danger to anyone without adequately warning her that he was going to do so. The girl had committed no crime, was not suspected of committing a crime, and yet was shot for walking forward instead of backwards. Rather than disciplining the officers involved, Chief Chacon approved and ratified the conduct of his officers. The City of Austin settled the excessive force case.
- aa. **Alex Gonzales, Jr. and Jessica Arellano:** In the early morning hours of January 5, 2021, off-duty APD officer Gabriel Gutierrez cut off Gonzales and Arellano while driving. Within seconds of Gonzales pulling his car next to Gutierrez a few blocks later to ask him what his problem was, Gutierrez opened fire into Gonzales's and Arellano's car without warning and despite making eye contact with Arellano, who was in the passenger seat. Gutierrez shot Arellano

three times and struck Gonzales in the head. When Gonzales's and Arellano's car slowly rolled to a stop a short distance ahead, Arellano attempted to check on their infant son in the backseat of the car but, unable to stand, fell from the car screaming for her baby. Gutierrez then called 911, reporting that he was an off-duty officer and that shots had been fired, though he failed to report that he was the only one who had fired a weapon. When Gonzales slowly got out of the car to check on his son, Gutierrez yelled at him—with 911 still on the line—to drop his weapon even though Gutierrez could see Gonzales's hands were empty of any weapon. APD officers Serrato and Nenno then responded to the scene. Grievously wounded, Gonzales slowly walked to the back passenger side of the vehicle, supporting his weight on the car. When Gonzales leaned into the back right seat to check on the baby, Serrato opened fire, killing him. Though both the Office of the Police Monitor the Community Police Review Commission (CPRC) recommended terminating Gutierrez, APD declined to discipline him. APD likewise declined to discipline Serrato, despite the CPRC's recommendation.

bb. **James Johnson:** On August 22, 2021, James Johnson was brutally attacked by APD officer Brandon Salter who repeatedly punched him in the head without warning after he had been taken to the ground, shattering his jaw. APD Officer Samuel Noble then fired his TASER on the unresisting James. Neither Officer Salter nor Noble intervened in the other's use of force. APD Officer Alzola, who was under investigation at the time for failing to intervene in another use of excessive force, watched both uses of force but again failed to intervene. As

is the pattern of the APD, none of the officers were disciplined despite the dangerous excessive force used against James.

cc. **Rajan Moonesinghe:** On November 15, 2022, Raj Moonesinghe was fatally shot by APD Officer Daniel Sanchez on the front steps of his own home. That night, Moonesinghe had arrived back at his home after a trip and saw signs that there was a burglar in his home. Moonesinghe was holding his legally owned gun on his own front steps when APD officers arrived and shot Moonesinghe within seconds of arriving on scene without any warning. Moonesinghe never pointed his weapon at officers or threatened anyone before being shot and killed by APD. Officer Sanchez has since been indicted for his conduct.

dd. **Louis Flores:** On January 15, 2023, APD Officer Felix Perez attacked Louis Flores without justification on Sixth Street and without any attempt to de-escalate or even any warning. Perez brutally threw Louis to the concrete before Officers Pierron and Pastore joined to apply more force by kneeing Louis in the back and shoving his head into the ground. As a result of the officers' assault, Flores suffered multiple spinal fractures, a traumatic brain injury, and a dislocated shoulder. Again, none of the officers involved were disciplined.

ee. **Anthony Marquis Franklin:** Shortly before midnight on January 15, 2023, APD officers shot and killed Anthony Marquis Franklin, a young Black man, as he ran away from police. During the foot pursuit, APD officers Kelby Radford, Ryan Rawlins, and Jacob Bowman watched him fall to the ground after trying to jump off a porch and, while Franklin lay on the ground in the

fetal position, shot him in the back several times without warning, killing him.

On information and belief, none of the officers were disciplined.

38. As is shown by the extensive history above, the City of Austin fails to discipline officers for using excessive force, failing to de-escalate, and failing to issue warnings before resorting to force.

39. APD's own reports reflect that its officers routinely use force against those who are not resisting at all—like Medel—as well as those who it deems to be engaged in mere “verbal,” “passive,” or “defensive” resistance. This is despite the fact that any significant force against people engaged in that level of resistance is unconstitutional.

40. Upon information and belief, there are numerous other instances where APD officers have used excessive force, failed to de-escalate, and failed to issue warnings to give citizens a chance to comply before using force.

41. Upon information and belief, the City has adopted policies and practices of encouraging its officers to rapidly escalate encounters with citizens, encouraging grotesque uses of force, and failing to discipline officers when they commit these violent acts.

42. These problems with APD's training and supervision had been festering for years by the time of this incident and were well-known to its policymakers, including the chief of police.

43. The Office of the Police Monitor (OPM), an agency created by the City to facilitate public complaints against police officers, participated in investigations of APD officers and made non-binding policy recommendations to APD.

44. OPM recommended APD rethink its missing de-escalation training and aggressive tactics as early as 2007—based on 2005 data—due to a high number of complaints and allegations of misconduct.

45. For 2005, OPM reported citizens made a total of 73 use-of-force-related allegations, and succeeding years saw between 47 and 123 such complaints each year through 2015, for a total of 815 allegations of excessive force reported to OPM from 2004 to 2015.

46. Critically, every year beginning in 2009, OPM warned that this number was under-inclusive, with succeeding reports stating that APD was not obeying its own written use-of-force complaint and investigation procedures—hampering oversight of misconduct both by deterring citizens from raising excessive force matters and by failing to internally investigate potential excessive uses of force.

47. In 2015, OPM observed that multiple high-profile cases highlighted the deficiency in the manner in which APD reviews responses to resistance or uses of force.

48. The OPM emphasized that the uses of force against Breiaion King and another use of force against Tyrone Wilson—a young man who was pepper sprayed in the face while handcuffed in the back of a prisoner transport van for only harmlessly kicking the van door—were originally determined by APD to be reasonable, only to later result in officer discipline when the videos were leaked to the press.

49. Sadly, Chief Henderson has continued the pattern of failing to discipline numerous officers who have committed acts of excessive force, failed to de-escalate, and failed to issue warnings before resorting to force.

50. In 2015, OPM again recommended APD revise policies and training for de-escalation and officer communication, but APD again declined.

51. In January 2021, the Austin Office of Police Oversight (OPO) recommended that APD update its policies concerning the discharge of firearms and use of deadly force, finding that existing policies failed to require officers to give a warning or specify how to warn before using

deadly force, leaving officers without guidance. OPO specifically noted that requiring officers to identify themselves, give a clear command, and provide adequate time for citizens to comply with commands could decrease the need to use deadly force.

52. APD declined to make these changes and, in fact, specifically left language in its use of firearm policy concerning warnings that the OPO identified as problematic.

53. A January 2022 report from Kroll Associates, a consultant hired by the City to evaluate APD uses of force, identified several instances just between June and November 2019 where APD officers used TASERS on individuals who were compliant or were uninvolved with any criminal activity and where officers failed to warn individuals before using their TASERS. Kroll noted that in each of these situations, APD did not even address, much less discipline the officers involved.

54. As a result, APD officers like Defendant continued to unnecessarily escalate encounters with violence and without warning.

55. As a direct and proximate result of the City's policies and practices, Officer Prado failed to de-escalate the encounter with Medel, failed to warn Medel before using force, and used excessive force on Medel.

IV. CAUSES OF ACTION

A. FOURTH AND FOURTEENTH AMENDMENT EXCESSIVE FORCE BY DEFENDANT PRADO

56. Plaintiff incorporates by reference the foregoing paragraphs and further alleges as follows:

57. Defendant Prado, while acting under color of law, shot Plaintiff Avelino Medel four times when Medel posed no danger to anyone and had not done anything justifying Prado's use of deadly force.

58. Defendant Prado's uses of force were wholly excessive to any conceivable need, objectively unreasonable in light of clearly established law, and directly caused Medel to suffer serious injuries. Therefore, Defendant Prado's actions violated Medel's clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.

59. In fact, Medel was not suspected of having committed any serious crime, posed no immediate threat to anyone, and was not at risk of flight.

60. As a direct and proximate result of Prado's actions, Medel suffered and continues to suffer significant injuries.

B. PUNITIVE/EXEMPLARY DAMAGES AS TO DEFENDANT PRADO

61. Plaintiff incorporates all of the foregoing as if alleged herein.

62. Defendant Prado's conduct was egregious, reckless, and endangered Medel and his father. Plaintiff therefore, in hopes of deterring future acts of violence like the one Medel suffered, seeks punitive or exemplary damages as to Defendant Prado.

63. Plaintiff brings this claim pursuant to 42 U.S.C. § 1983.

C. FOURTH AND FOURTEENTH AMENDMENT § 1983 MONELL CLAIM AGAINST DEFENDANT CITY OF AUSTIN ONLY.

64. Plaintiff incorporates all of the foregoing and further alleges as follows:

65. The conduct by APD Officer Prado discussed in this complaint and described herein constituted excessive force in violation of the Fourth Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment.

66. At all material times, Officer Prado acted under color of state law, as an agent of Defendant City of Austin.

67. At all material times, Defendant Prado was acting within the course and scope of his duties as a City of Austin police officer at the time he shot Medel.

68. Defendant City of Austin's policymaker for all matters related to the activities of the Austin Police Department at the time of the wrongful shooting was interim APD Chief, Robin Henderson.

69. The City of Austin, had or ratified the following policies, practices, or customs in place when Defendant Officer Prado shot Medel without justification:

- a. Using excessive force;
- b. Not providing warnings before using deadly and non-deadly force;
- c. Failing to train officers to provide warnings to citizens before using deadly and non-deadly force;
- d. Failing to train officers on reasonable use of force when interacting with citizens legally possessing firearms;
- e. Failing to train officers regarding citizens' right to bear arms in their own homes;
- f. Tolerating excessive force and deadly force without warning;
- g. Not disciplining or supervising officers who use excessive force;
- h. Failing to train officers on the need to use of de-escalation techniques;
- i. Not using de-escalation techniques and/or tolerating officers' repeated failures to use de-escalation techniques;
- j. Tolerating officers' failures to warn before using force;
- k. Not disciplining officers who fail or refuse to warn citizens before resorting to force despite having adequate opportunity for such a warning;
- l. Failing to adequately supervise officers who fail or refuse to warn citizens before resorting to force despite having adequate opportunity for such a warning;
- m. A culture of impunity.

70. Chief Henderson was aware of the pattern of similar incidents that occurred before and after Officer Prado wrongfully shot Medel as well as the culture of impunity at APD and the City, although it was also apparent and obvious that a constitutional violation was a highly

predictable consequence of the City's above delineated policies. Chief Henderson was specifically aware that her officers had violated the constitution by using excessive force in each of the specific incidents of excessive force listed in this complaint, as well as hundreds more incidents reported by APD, and that no additional procedures, policies, training, or practices had been implemented that would resolve this ongoing risk of constitutional harm to citizens.

71. Likewise, Chief Henderson knew or should have known that failing to correct the dangerous culture of impunity and failing to train her officers in the appropriate use of force, the use of de-escalation techniques and warnings, and interacting with lawfully armed citizens were particular omissions in the City's training program that would cause City employees to violate the constitutional rights of members of the public they encountered, like Medel. Nevertheless, though Chief Henderson knew of these obvious deficiencies, she acted with deliberate indifference and chose to retain the City's dangerously flawed training program.

72. Moreover, upon information and belief, the Austin Police Department hierarchy and Chief Henderson ratified Officer Prado's conduct and continued to approve the shocking and unreasonable shooting of Medel.

73. Each of the policies, practices, or customs delineated above was actually known, constructively known, approved, and/or ratified by City of Austin and its then policymaker for law enforcement purposes, Chief of Police Robin Henderson, and was promulgated with deliberate indifference to Avelino Medel's Fourth and Fourteenth Amendment rights under the United States Constitution. Moreover, the known and obvious consequence of these policies, practices, or customs was that APD officers would be placed in recurring situations in which the constitutional violations described within this complaint would result. Accordingly, these policies also made it

highly predictable that the particular violations alleged here, all of which were under color of law, would result.

74. Consequently, the policies and conduct delineated above were a moving force of Medel's constitutional deprivations and injuries, and proximately caused him to suffer severe injuries.

V. DAMAGES

75. Plaintiff Avelino Medel seeks the following damages:

- a. Past and future lost wages and loss of earning capacity;
- b. Past and future physical pain;
- c. Past and future mental anguish;
- d. Past and future impairment;
- e. Past and future disfigurement;
- f. Past and future medical expenses;
- g. Attorneys' fees, including costs, expert fees, and attorneys' fees pursuant to 42 U.S.C. § 1988;
- h. Pre-judgment and post-judgment interest at the highest rates allowable under the law;
- i. All other compensatory and/or general damages to which Medel is entitled under state or federal law; and,
- j. Punitive damages in the highest amount allowed by law against Defendant Prado only.

VI. JURY DEMAND

76. Plaintiff respectfully requests a trial by jury.

VII. PRAYER FOR RELIEF

77. To right this grave injustice, Plaintiff requests the Court:

- a. Award compensatory damages to the Plaintiff against all Defendants;
- b. Award punitive damages to Plaintiff against Defendant Prado only;
- c. Award Plaintiff costs including expert fees and attorneys' fees pursuant to 42 U.S.C. § 1988;
- d. Award pre-judgment and post-judgment interest at the highest rate allowable under the law; and,
- e. Award and grant such other just relief as the Court deems proper.

Dated: August 26, 2024.

Respectfully submitted,

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