

II. PARTIES

a. RONALD SMITH is a resident of Comal County, Texas, and works throughout Texas. For the sake of brevity, Plaintiff will be referred to as ‘SMITH.’

b. GUADALUPE COUNTY, TEXAS is a government subdivision in Texas. Guadalupe County, Texas has its administrative offices in Seguin, Texas. Guadalupe County, Texas has a law enforcement arm in the Guadalupe County Sheriff’s Office. For the sake of brevity, Defendant will be referred to as ‘COUNTY.’ COUNTY is an artificial person.

c. HUNTER SAENZ was a Guadalupe County Sheriff’s Deputy on June 27, 2021, and was on duty that day. For the sake of brevity, this Defendant will be referred to as ‘SAENZ.’ At all relevant times, SAENZ was acting as a licensed Texas Peace Officer. SAENZ is sued in his **individual capacity only**.

d. ROBERT LOCKER was a Guadalupe County Sheriff’s Supervisor, and was on duty for that agency on June 27, 2021. For the sake of brevity, this Defendant will be referred to as ‘LOCKER.’ At all relevant times, LOCKER was acting as a licensed Texas Peace Officer. LOCKER is sued in his **individual capacity only**.

e. JIMMY GONZALEZ was a Guadalupe County Sheriff’s Deputy on June 27, 2021, and was on duty that day. For the sake of brevity, this Defendant will be referred to as ‘GONZALEZ’ At all relevant times, GONZALEZ was acting as a licensed Texas Peace Officer. GONZALEZ is sued in his **individual capacity only**.

III. SUBJECT MATTER JURISDICTION

This Honorable Court has subject matter pursuant to 28 U.S.C. 1331, the United States Constitution, 42 U.S.C. 1983, 42 U.S.C. 1988, the Americans with Disabilities Act of 1990; 42 U.S.C. 12101, and the Rehabilitation Act of 1973; 29 U.S.C. 791 et seq.

IV. VENUE AND PERSONAL JURISDICTION

Venue is proper pursuant to 28 U.S.C. 1291(b)(1)(2), as all of the parties reside within the confines of the Western District of Texas, and all of the events occurred in the Western District of Texas.

V. SERVICE OF PROCESS

- a. GUADALUPE COUNTY, TEXAS has been served process through Guadalupe County Judge Kyle Kutscher at 101 East Court Street, Seguin TX 78155.
- b. HUNTER SAENZ has been served process at his residence, 901 Oakhaven, Pleasanton, TX 78064.
- c. ROBERT LOCKER has been served process at his place of employment, the Guadalupe County Jail at 2615 N. Guadalupe Street, Seguin TX 78155.
- d. JIMMY GONZALEZ has been served process at his place of employment, the Guadalupe County Jail at 2615 N. Guadalupe Street, Seguin TX 78155.

VI. SUMMARY OF CLAIMS

a. Plaintiff seeks compensation for physical injuries, pain, and suffering for a violent arrest on June 27, 2021. The Plaintiff further experienced a dubious and retaliatory criminal charge for 'Evading Arrest,' which was dismissed on August 11, 2022. Defendants SAENZ and LOCKER are responsible for the excessive force and unlawful arrest respectively. Both acted according to COUNTY policies in dispensing force, the uses of force, arrest policies, and inattention to civil rights. Plaintiff SMITH endured physical pain as a result of being shot in the head with a pepper ball, pain from being thrown on the ground face first, pain from being jumped on by

SAENZ, and respiratory difficulties from the pepper irritant. Plaintiff still endures severe headaches, labored breathing, mental anguish, and monetary expenses to defend the baseless criminal charge.

VII. FACTUAL ALLEGATIONS

(1) On June 27, 2021, SMITH went for his daily jog. SMITH departed from his house in Bulverde, Texas in the late afternoon. These daily jogs had the purpose of preparing SMITH for his marathon races. These exercise sessions lasted hours and routinely covered many miles. Often, SMITH would jog and walk over 15 miles from his home, before returning. The effect would be to total mileage which would equate to the marathon distance of 26.2 miles or greater.

(2) SMITH was dressed in a T-shirt, exercise shorts, jogging shoes, and wore a baseball cap. SMITH also took his cellular phone and a drink. The exercise session was mostly uneventful. SMITH approached the boundary of Guadalupe and Comal Counties at Highway 46, and the session became frightening. SMITH always jogs/walks on the SIDE of the road(s), not on the road or in the lanes of automobile traffic.

(3) During the middle of SMITH's exercise session; something happened. SAENZ nearly impacted SMITH's shoulder with his cruiser, coming within 6 inches of striking SMITH's body. SAENZ' cruiser had drifted over across the side shoulder, and nearly struck SMITH. In response, SMITH gave SAENZ "the middle finger." This indicated SMITH's displeasure at nearly being run over and killed. SAENZ kept 'circling' like a shark, and turned around to stalk SMITH. SAENZ kept driving by SMITH, and seemed determined to right this 'affront' SMITH gave him with the obscene hand gestures. After several passes from SAENZ, SMITH lost sight of SAENZ and presumed SAENZ left the area. Then, SMITH continued exercising.

(4) SMITH stopped to rest on the gravel easement off Highway 46. SMITH was in the full view of the abundant traffic on Highway 46. Unbeknownst to SMITH, SAENZ had kept driving up

and down Highway 46 observing him. Unbeknownst to SMITH, SAENZ desired to make contact with him. As SMITH was resting, he accessed the features on his cellular phone. SMITH then manipulated the functions on his phone. While resting, SMITH was playing a video game application for enjoyment. SMITH showed no distress or need for external aid.

(5) SMITH started to move down the road again. At this moment, SAENZ sought to initiate contact. SMITH was unaware SAENZ was following him. SMITH did not become aware of SAENZ' presence until he reached the Guadalupe County Cemetery. At this point, SMITH observed SAENZ approaching while pointing a firearm at him. Almost instantaneously, Deputy GONZALEZ appeared, brandishing and pointing a firearm at SMITH.

(6) SMITH dialed 911 because of these threats with weapons directed at him. SMITH sat down in front of the Guadalupe County Cemetery in an 'Indian style' posture, in a seated position with his legs crossed. Meanwhile, SMITH's arms were thrust upwards, with his cellular phone in the air. SAENZ pointed his firearm at SMITH, while shouting "get on the ground now!" SAENZ then exchanged his firearm for his pepper ball gun. SAENZ told GONZALEZ, "he was now going to use less than lethal force."

(7) SMITH was speaking directly with the 911 Operator when SAENZ shot him in the left temple with a 'pepper ball.' The projectile struck with some force, and spread a white substance over SMITH's face. The pepper contained a respiratory irritant which caused SMITH physical distress and labored breathing. At this point, SAENZ and GONZALEZ immediately leaped upon SMITH. SAENZ and GONZALEZ smothered SMITH with their body weight, ramming SMITH's face into the grass.

(8) SAENZ handcuffed SMITH and stood him upright. Within a few minutes, SAENZ read SMITH his *Miranda Rights*, indicating a full custodial arrest. About this time, LOCKER arrived. Soon after, SMITH's wife arrived as well. LOCKER sent GONZALEZ to seek out

neighboring property owners, as witnesses or complainants. SAENZ had a bizarre perspective of events. Initially, SAENZ desired to initiate contact with SMITH based upon his unflattering hand gesture. Next, SAENZ thought it was odd SMITH was resting on the side of the Highway. SAENZ became suspicious when SMITH resumed his exercise. SAENZ' anxieties were heightened when he lost sight of SMITH. This gave rise to a full-blown contact and arrest. In hindsight, SAENZ became concerned with SMITH's exact route, and any properties he may have crossed. The underlying reason to contact SMITH was "to teach him a lesson" for insulting law enforcement with his "middle finger gesture."

(9) To this end, GONZALEZ spoke with neighboring property owners. The Deputies tried to convince the residents that SMITH 'trespassed' on their land. The property owners declined to consider the matter. All this information was directly given to Supervisor LOCKER; that no resident desired to assert any kind of criminal charges against SMITH. The Deputies' logic was flawed because a person in Texas commits trespass by **entering and remaining on** another's property—after being told to leave. SMITH was forcefully arrested at the Guadalupe County Cemetery.

(10) After hearing this information from GONZALEZ, LOCKER spoke at length with SMITH's wife, Natalie. She told LOCKER that SMITH regularly ventured far from home while training for marathons. Further, that it was not illegal for SMITH to jog or walk on the shoulders of Highway 46. LOCKER admitted SMITH's conduct was not illegal. But, LOCKER said it was 'strange' venturing that far from home while exercising. SMITH's wife kept asking LOCKER whether they were going to let SMITH go. The ultimate decision to transport SMITH to Jail lied with LOCKER. At this point, SAENZ told Natalie, "SMITH was being detained." Apparently, SAENZ forgot he read SMITH his *Miranda Rights* a few minutes earlier. SMITH had been seized, handcuffed, and informed of his right to remain silent. Through poor training, SAENZ thought he could un-ring the bell, and **un-arrest SMITH**.

(11) LOCKER was upset because SMITH didn't want to speak with him. SMITH identified himself to the Deputies, and stated he was exercising. SMITH had been read his *Miranda Rights* and sought to invoke silence. SMITH wore jogging shorts, a cotton T-shirt, running shoes, and a baseball cap. No more was required from SMITH. LOCKER knew SMITH had committed no criminal violations. This was so because no resident wanted to press criminal charges. Further, the Deputies could not identify any criminal conduct by SMITH. So, LOCKER ratified the arrest of SMITH. SAENZ played the role of the antagonist, and stated at the hospital that he, 'was the Complainant' preferring charges against SMITH.

(12) LOCKER and SAENZ asked all manner of inane, personal, and unrelated questions to law enforcement matters. At one point, they requested personal biographical information from SMITH. SMITH remarked that he had been professionally diagnosed with Dyslexia since age 6. Further, this Dyslexic condition hindered and prevented him from remembering data, information, and numerical sequences. Curiously, the Deputies changed their demeanor when hearing about this learning disability. LOCKER became more impatient. The Deputies seemed to jest about SMITH's condition, and treated him differently than before. LOCKER now formulated a desire to cause SMITH some grief from what he perceived as a "complete lack of cooperation." LOCKER aimed to arrest and prosecute SMITH for this failure to provide information.

(13) Regardless of the origins of SMITH's inability to vocalize and recall factual information, LOCKER and SAENZ sought to retaliate with a coerced seizure, prosecution, and transport to Jail. The intent was to treat SMITH disparately because of his disability, and prosecute him because of it. At this point, SAENZ and LOCKER are throwing different legal theories out to try and justify the arrest. Initially, they cited the caretaking function. Then, suspicious behavior by SMITH. Next, suspicion of criminal trespassing. Next, they opined on a mental health detention. Finally, they proffered and agreed on an Evading Arrest charge.

(14) SAENZ took SMITH to the Hospital to address the pepper irritants on his face and eyes. After a period of waiting at the Hospital, SMITH developed an adverse reaction to these chemical irritants on his face. SMITH began convulsing and displayed seizure-like symptoms. SMITH's breathing became labored and constricted. SMITH's neurological functions became addled by the chemical irritants as well. SMITH briefly lost control of his bodily functions and autonomy. Thus, SMITH had a medical episode due to the chemical irritants from SAENZ' pepper spray volley.

(15) SMITH was then taken to the Guadalupe County Jail for booking. SMITH was charged with 'Evading Arrest' in Criminal Cause No. CCL-21-0657 in Guadalupe County. The case was dismissed by the District Attorney on August 11, 2022. LOCKER and SAENZ worked in concert to assert a bogus criminal charge against him. LOCKER is captured on video acknowledging no citizen cared to file a criminal complaint against SMITH. LOCKER is captured on video with SMITH's wife acknowledging that SMITH's conduct did not violate the law. SMITH was unlawfully charged with 'Evading Arrest' without an underlying charge. This is further compounded by SAENZ' lack of a reasonable suspicion to contact SMITH. Exercising or resting off the side of public highway does not violate the law. SMITH is not required to converse with Police for the sake of casual conversation. SMITH was not in need of any aid by the Deputies.

(16) SMITH experienced the effects of deadly force, excessive force, the use of pepper spray, an allergic reaction to the pepper spray, the indignity of arrest, and the expenses of combatting the criminal charge. SMITH experienced mental trauma at being stalked, menaced with firearms, and forcefully seized. The vision of loaded firearms pointed at SMITH brought sheer terror. SMITH experienced pain at being shoved face-first into the ground. Further pain occurred when SAENZ and GONZALEZ leaped upon SMITH's back. SMITH was shot in the head with a pepper ball round. The projectile caused a sharp pain upon impact. However, the irritants had a profound effect on SMITH. Initially, the irritants caused difficulties in breathing. At the hospital, these irritants had a malevolent effect in halting SMITH's biological processes. The irritants

caused labored breathing, neurological convulsions, and loss of bodily control. These irritants continue to have untoward respiratory effects in labored and deviant breathing patterns.

(17) COUNTY has a law enforcement agency. This is the Guadalupe County Sheriff's Office. It employed and trained SAENZ, GONZALEZ, and LOCKER. Its Chief Administrator and Final Policymaker is Guadalupe County Sheriff Arnold Zwicke. Zwicke has been the Sheriff of Guadalupe County, Texas for over 20 continuous years. Training, Supervision, and Disciplinary responsibilities lie with Sheriff Zwicke to formulate policies. These policies, practices, and customs are the product of Sheriff Zwicke's 20 year administration. Sheriff Zwicke has actual knowledge of these policies and duties. This is confirmed by his official statements on the home website of the Guadalupe County Sheriff's Office, which discuss "training" and the entire operation of the Sheriff's Office. Sheriff Zwicke has shown "deliberate indifference" to the defects in COUNTY's formal policies and informal customs and practices. This is obvious because COUNTY's policies controvert U.S. Supreme Court decisions on the uses of force, *Terry* stops, probable cause, arrests, searches, and the initiation of false charges. Sheriff Zwicke has shown further "deliberate indifference" to COUNTY's defective policies and the resulting harms because Texas statutory laws entrust and empower him with administrative control over COUNTY's law enforcement activities. This "deliberate indifference" is further reinforced by Sheriff Zwicke's actual knowledge of harm to the public in the form of citizen complaints, allegations of misconduct against Deputies, and litigation against COUNTY. Sheriff Zwicke acts according to the powers vested in him under Texas law. As the Chief Administrator of COUNTY's law enforcement operations, Zwicke makes policy decisions for COUNTY.

(18) These Guadalupe County Deputies were not properly Trained in the Uses of Deadly Force by COUNTY. SAENZ and GONZALEZ instinctively drew and pointed their service weapons at SMITH. Even by the Deputies' biased view of events, at no time was it believed SMITH was armed or dangerous. At worst, SAENZ thought a trespass to property could have occurred. SAENZ acknowledged this was a form of deadly force in a dialogue with GONZALEZ. At no

time did SAENZ or GONZALEZ claim SMITH was dangerous or threatening to them. Their conduct was documented in great detail, and their actions were readily approved by LOCKER. Deadly force is a degree of force likely to cause serious bodily injury or death. It is not to be used when citizens offer no resistance. SMITH sat in an Indian-style position on the ground, with his hands extended upright. One hand grasped his cellular phone, which was used to contact the 911 operator. Curiously, SMITH called 911 on these Sheriff's Deputies.

(19) These Guadalupe County Deputies were not properly trained in the uses of secondary force. SAENZ transitioned from the unjustified use of deadly force to a secondary use of pepper spray against SMITH. There was no situation which called for the use of coercive force against SMITH. SMITH was not armed and didn't threaten SAENZ or GONZALEZ. In fact, SMITH was terrified, passive, and stationary. Neither SAENZ nor GONZALEZ tried to deescalate the situation. Instead, they used coercive force. The pepper spray was transmitted via a pepper gun. This fired a projectile with some velocity. The projectile struck SMITH in the head, and released an irritant on his face. This impact caused immediate pain. More significantly, these irritants remained on SMITH's face. At the Hospital, the irritants caused an adverse reaction producing neurological convulsions, labored breathing, and spasms. It is documented that individuals can experience harmful symptoms, or even death from chemical irritants fired by law enforcement.

(20) These Deputies were not properly trained on the 4th Amendment. A learned officer would know the proper foundations of reasonable suspicion. The basis of a criminal contact requires some factual specification criminal activity is afoot. In SAENZ' situation, he believed it was anomalous, or even unlawful that SMITH was exercising alongside a public road. Further, that SMITH displayed criminal conduct by moving in an opposite direction. Additionally, SAENZ, LOCKER, and GONZALEZ did not know the parameters of a Criminal Trespass offense. These Deputies did not comprehend you need: (1) an unauthorized trespass onto private property; (2) a command from the property owner to vacate the property; and (3) a refusal to vacate the property. LOCKER acknowledged that SMITH's conduct was not unlawful to his wife, Natalie.

With that concession, the Deputies failed to recognize a lack of probable cause to arrest SMITH. Further, the Deputies could not recognize there was no lawful basis to stop, detain, or arrest SMITH. The Reasonable Suspicion and Probable Cause concepts were not clear to them. The Deputies' Training did not provide the knowledge that Peace Officers need a lawful basis to arrest citizens. Apparently, these Deputies were trained that arrests may occur at their discretion, and not based on the probability a citizen has violated the law.

(21) These Deputies were not trained to recognize the harmful effects of chemical irritants, and their potentially lethal effects on suspects. It is documented that some individuals have adverse reactions to chemical irritants, including pepper spray. These can cause or lead to labored breathing and respiratory failure. These irritants impart additional harm when they are projected with force from a gun. The projectile struck SMITH in the head with some effect. The irritants provoked convulsions and spasms which jeopardized SMITH's health. Fortunately, the respiratory attack was not fatal for SMITH. However, SMITH still feels residual respiratory effects from the pepper spray irritants.

(22) These Deputies were not properly Supervised. SAENZ and GONZALEZ were allowed to unlawfully utilize deadly force on an unarmed, passive SMITH. SAENZ and GONZALEZ were allowed to use gratuitous excessive force against an unarmed, passive SMITH. SAENZ concocted several versions of why he desired/needed to contact SMITH. When these did not justify a *Terry* stop or arrest, the Deputies went door to door. GONZALEZ contacted property owners in the hopes one would press criminal charges against SMITH. No property owner was inclined to do so. As explained above, to have a lawful trespass scenario, a person must enter onto land without permission, and **remain** on the premises after being told to leave. SMITH was found, seized, and arrested at the Guadalupe County Cemetery entrance—public property. LOCKER was a Supervisor for COUNTY. LOCKER was aware of SAENZ' and GONZALEZ' conduct-- and approved. In fact, LOCKER was told by GONZALEZ no property owner desired to pursue criminal charges. Further, LOCKER acknowledged in a conversation with SMITH's

wife that SMITH's conduct was not unlawful. But, LOCKER called it 'weird.' Thus, LOCKER ordered the arrest of SMITH for lawful conduct he disapproved of.

(23) COUNTY fails to properly screen its Deputy personnel. COUNTY hires Deputies who have deficient or minimal training. COUNTY hires Deputies who have minimal experience in law enforcement. COUNTY hires Deputies who have dubious character. Deputies with propensities to use excessive force and violate citizens' rights are hired. COUNTY hires Deputies with a minimal education. The results are substandard Peace Officers who do not have the training, knowledge, character, or mentality to function as protectors of the law. COUNTY hires these inadequate candidates and fails to ensure they meet required Peace Officer standards. SAENZ had bounced around assorted law enforcement agencies in Texas. SAENZ' tenure at those agencies was not impressive, and he had an unremarkable career in law enforcement prior to his hiring.

(24) COUNTY also has policies and customs which authorize the gratuitous uses of force against citizens. These policies are approved and authorized by Sheriff Zwicke. These policies allow force to be directed against individuals who are unarmed, who are not a physical threat, and who do not resist arrest. The public is exposed to unwarranted uses of force. In SMITH's case, he had firearms pointed at him, was shot in the head with a pepper ball, and was tackled face-first on the ground. These acts were documented and approved by supervisors, and in accordance with COUNTY policies.

(25) COUNTY has formal policies which improperly delineate 4th Amendment principles such as Reasonable Suspicion and Probable Cause to arrest. Under these policies, Deputies are not instructed they need an articulable basis of facts to stop or detain a suspect. The results are unlawful contacts which degenerate into full-blown arrests. The Deputies are not instructed they must have an objective basis of facts that criminal activity is occurring or about to occur. They are not taught that 'hunches' and subjective beliefs are not sufficient. The Deputies are not taught

they need a reasonable suspicion, based upon facts and circumstances that would support a finding a person had committed a criminal act to be arrested. The proof is emphasized by LOCKER who acknowledged SMITH's conduct was not unlawful. The results of these policies are unlawful contacts, unlawful seizures, and unlawful arrests.

(26) COUNTY has formal Supervisory policies which permit lax oversight and disciplinary responses. These policies do not properly address or correct Deputy misconduct. Remedial and corrective measures are not dispensed. Deputies are permitted to use excessive force, initiate unlawful arrests, and conduct illegal searches without fear of censure or repercussions. The process does not provide a systematic means or method to control improper behavior. Reprimands or verbal admonitions are dispensed in lieu of discipline or termination.

(27) COUNTY fails to discipline its Deputies. Deputies are permitted and encouraged to violate the 4th Amendment. This is achieved through pretextual contacts; contacts which have no legal justification or predicate criminality. Some of these acts are the target of incentivized arrest quotas. Others are acts of self-aggrandizement in the attempts to discover criminality, rather than react to criminality. COUNTY breeds a culture where Deputies advance by aggressively seeking out criminality. Banal situations are given a criminal spin by Deputies, in the hopes of discovering contraband, drugs, weapons, or warrants. Illegal arrests purport to be remedied by subsequent discoveries, or the failsafe "mental health" crisis. Final Policymaker, Sheriff Arnold Zwicke, encourages this environment.

(28) The end results of COUNTY's informal customs and practices are unlawful contacts, unlawful seizures, unlawful searches, and excessive force. The Public is harmed from violations of their 4th Amendment rights. Pretextual contacts without a lawful basis routinely occur. In this atmosphere of improper training, citizens incur excessive force and even deadly force during contacts. COUNTY Deputies are not instructed their conduct must be reasonable in citizen encounters. In this environment of improper supervision, Deputies routinely violate citizens'

rights and are not held accountable. The imperfect process of hiring unqualified candidates reaps harmful effects of placing Deputies who are not properly trained or suited in positions of authority. All of these circumstances worked to create an apparatus where COUNTY Deputies violated the Constitutional rights of citizens, and aggravate the situation by asserting bogus criminal charges against them.

(29) COUNTY fails in its obligations under Section 504 of the 1973 Rehabilitation Act and Title II of the Americans with Disabilities Act. COUNTY fails in these regards because it does not provide adequate training to its employees so they can recognize genuine impairments and recognized disabilities in citizens/suspects. COUNTY does not provide adequate training to its employees to enable them to make reasonable accommodations when contacting them. For example, in SMITH's case, SAENZ could have run his driver's license, allowed SMITH to retrieve his identification from his pocket, or spoke directly to SMITH's wife. This would have enabled SMITH to provide the biographical information SAENZ demanded; notwithstanding the fact SAENZ never explained the purpose or justification for the initial contact. This lack of training causes discrimination and disparate treatment because employees do not know what to do. In SMITH's case, it led to a full-blown arrest and detention. Disabled persons and their needs are ignored, and are persecuted by Deputies for invoking their rights.

(30) The end results of COUNTY's formal policies are unlawful arrests, unlawful contacts, unlawful searches, unlawful seizures, and excessive force. These policies allow and authorize searches, seizures, arrests, and the uses of force without a lawful basis. Force is permitted and authorized even though a suspect is not armed, dangerous, or resisting arrest. Deadly force is permitted which unlawful in the absence of a clear danger or threat. Secondary force is authorized in a gratuitous manner, at the Deputy's discretion. Even chemical irritants may have harmful effects. These can include adverse reactions which affect the respiratory function. Deputies and their conduct are not properly regulated. Often, phantom or bogus charges are initiated to cover misconduct by COUNTY's law enforcement.

(31) SMITH suffered grievously from the encounter on June 27, 2021. SMITH was unlawfully contacted and seized. SMITH was clearly dressed in exercise apparel and was observed exercising by SAENZ. SMITH was seized via the uses of deadly force and excessive force. Deadly force occurred through the brandishing and pointing of firearms at SMITH. Excessive force occurred through the use of a pepper spray projectile. This impacted with some force, striking SMITH in the head. The irritants caused and continue to affect SMITH's respiratory process. SMITH was 'roughed up' on the ground. SAENZ and GONZALEZ leaped upon SMITH's back, forcing him to impact the ground face-first. It should be noted, SAENZ and GONZALEZ are large men, weighing over 250 pounds each. SMITH had never been arrested before. He experienced a 'culture shock' at being seized, arrested, transported to Jail, and formally charged. SMITH was forced to spend thousands of dollars to pay for his legal defense. SMITH experienced mental anguish and terror. SMITH was faced with a potentially lethal scenario where SAENZ and GONALEZ pointed loaded firearms at his body. In fact, SMITH dialed a 911 operator to report this imminent threat. SMITH had to endure a bogus criminal charge. It is acknowledged on video and audio the Deputies were aware SMITH's conduct was not unlawful. It was reinforced by citizens who did not desire to assert criminal charges. It must be noted, a criminal charge of 'Trespassing' was impossible. SMITH was arrested on public grounds in a fixed, immobile position. SMITH was not on private property, was not fleeing, and was not told to vacate by anyone. The fact SMITH was vindicated through the dismissal of criminal charges cannot alleviate these Constitutional wrongs.

(32) These Defendants, both singly and in conjunction, acted under the color of Texas law by virtue of their status as licensed Texas Peace Officers on June 27, 2021. In accordance with carrying out their duties, SAENZ, GONZALZ, and LOCKER implemented COUNTY's policies in the contact, seizure, arrest, and prosecution of SMITH to violate his Constitutional rights.

PLED FACTS OVERCOMING QUALIFIED IMMUNITY

Paragraphs **1-32** are adopted and incorporated in their entirety.

(33) **a.** SMITH was not violent or aggressive against the Deputies, or the public. **b.** SMITH was passive. **c.** SMITH had no weapons, contraband, or dangerous items on his person. **d.** SAENZ was not dispatched on a service call, or a 911 request to contact SMITH. **e.** SMITH and SAENZ never communicated with one another prior to SMITH's actual arrest. **f.** SMITH was exercising on the side of Highway 46, not breaking the law on June 27, 2021. **g.** SAENZ came up with 5 different versions as to why he felt compelled to contact SMITH. **h.** SAENZ and GONZALEZ pointed loaded firearms at an unarmed and passive SMITH. **i.** At worst, SAENZ and GONZALEZ thought SMITH may have walked across other people's property. **j.** SAENZ then switched to a "Pepper Gun" and shot SMITH on the side of his face, near the temple. **k.** The irritants spewed a white powder irritant on SMITH's face, causing respiratory distress. **l.** SAENZ and GONZALEZ then leaped upon SMITH's back, pushing him face first on the ground. Both men weighed well over 250 pounds each.

m. LOCKER ordered GONZALEZ to contact the neighboring property owners. **n.** None of the property owners were interested in pressing any charges against SMITH, because they never saw him on their property, he was not presently on their property, and nothing was harmed. **o.** GONZALEZ reported this to LOCKER. **p.** About this time, the Deputies became aware SMITH had Dyslexia. **q.** This condition made it difficult for SMITH to communicate and provide information. **r.** Instead of trying to make accommodations, like allowing SMITH to retrieve his identification, or obtaining the information from his wife, the Deputies chose to arrest SMITH. **s.** LOCKER acknowledged on camera that SMITH was not breaking the law by exercising on the side of the road. But, LOCKER thought it "was weird." **t.** LOCKER and SAENZ conspired to arrest SMITH and file criminal charges against him. **u.** SAENZ swears out a criminal complaint against SMITH for "evading arrest." There is no underlying cause SMITH is supposed to evade arrest for. **v.** This turned into Misdemeanor Cause CCL-21-0657 in Guadalupe County. **w.** This Cause was dismissed by the District Attorney on August 11, 2022. **x.** SMITH entailed legal expenses fighting the criminal charge, totaling over \$5000.00. **y.** SMITH incurred physical injury

from the pepper ball round, from being rammed face first onto the grass, from having SAENZ and GONZALEZ jump on his back, and lingering effects from the chemical irritants. z. SMITH incurred emotional harm and terror from being arrested, assaulted, and charged by SAENZ, GONZALEZ, and LOCKER.

VIII. LEGAL CLAIMS

The factual allegations in Section VII ¶ (1-33) are hereby incorporated in their entirety.

DEFENDANT HUNTER SAENZ

(34) 4th AMENDMENT DEADLY FORCE

On June 27, 2021, SAENZ seized SMITH by brandishing and pointed a loaded firearm at his body. SMITH was passive, unarmed, and in an innocuous posture. There was no need for any force, much less deadly force. Such force was clearly unreasonable and uncalled for. SAENZ acted under the color of Texas law as a licensed Peace Officer. SMITH suffered injury in the form of sheer mental terror and physical restraint.

(35) 4th AMENDMENT EXCESSIVE FORCE

On June 27, 2021, SAENZ seized SMITH by brandishing and pointed a pepperball gun at his SMITH. SAENZ fired the weapon, striking SAENZ in the head. SMITH was passive, unarmed, and in an innocuous posture. SAENZ then jumped on SMITH's back with all his weight, forcing SMITH's face to impact the ground. There was no need for any force, much less force from a projectile. SMITH experienced physical pain, labored respiration, and a convulsive reaction to the chemical irritant. Such force was clearly unreasonable and uncalled for. SAENZ acted under the color of Texas law as a licensed Peace Officer.

(36) 4th AMENDMENT UNREASONABLE SEARCH

On June 27, 2021, SAENZ unlawfully seized SMITH through excessive force. Subsequent to the physical acts of threatening and subduing SMITH, SAENZ physically searched SMITH's

person, body, and personal effects. SMITH experienced an unlawful intrusion into his person and privacy. SAENZ acted under the color of Texas law as a licensed Peace Officer.

(37) 4th AMENDMENT UNREASONABLE SEIZURE: FALSE ARREST

SMITH was unlawfully contacted, seized and arrested by SAENZ. No probable cause to arrest was present because there was no predicate criminal act. No criminality was present to justify a seizure. No criminal conduct existed. SMITH was harmed and suffered the indignity of being handcuffed, confined, arrested, and transported to the Hospital and Jail in violation of the 4th Amendment. LOCKER ratified the unlawful arrest and directed SAENZ to transport SMITH to Jail to start the criminal process.

(38) 4th AMENDMENT MALICIOUS PROSECUTION

On June 27, 2021, SAENZ unlawfully seized SMITH through excessive force. Subsequent to the physical acts of threatening and subduing SMITH, SAENZ physically searched SMITH's person, body, and personal effects. After these unjustified intrusions, SAENZ could not pronounce a lawful basis to contact or seize SMITH. Undaunted, SAENZ was the Complainant in CCL-21-0657 for 'Evading Arrest.' The Cause was dismissed on August 11, 2022 by the State of Texas.

DEFENDANT JIMMY GONZALEZ

(39) 4th AMENDMENT DEADLY FORCE

On June 27, 2021, GONZALEZ seized SMITH by brandishing and pointed a loaded firearm at his body. SMITH was passive, unarmed, and in an innocuous posture. There was no need for any force, much less deadly force. Such force was clearly unreasonable and uncalled for. GONZALEZ acted under the color of Texas law as a licensed Peace Officer. SMITH suffered injury in the form of sheer mental terror and physical restraint.

(40) 4th AMENDMENT EXCESSIVE FORCE

On June 27, 2021, GONZALEZ seized SMITH by physically jumping on his back. This caused SMITH to impact the ground on his face. There was no need for any force, much less a football style tackle. SMITH experienced physical pain. Such force was clearly unreasonable and uncalled for. GONZALEZ acted under the color of Texas law as a licensed Peace Officer.

DEFENDANT ROBERT LOCKER

(41) SUPERVISORY LIABILITY

On June 27, 2021, LOCKER failed to properly supervise and control his underlings, SAENZ and GONZALEZ. LOCKER was aware of a situation where substantial force was used against SMITH. LOCKER was aware of a situation where his Deputies had no lawful basis to contact, stop, or seize SMITH. LOCKER was aware that SMITH did not violate the law. Regardless, LOCKER authorized SAENZ to take SMITH to Jail, and to prefer criminal charges against him. LOCKER acted under the color of Texas law as a licensed Peace Officer.

(42) 4th AMENDMENT UNREASONABLE SEIZURE: FALSE ARREST

SMITH was unlawfully contacted, seized and arrested by SAENZ. No probable cause to arrest was present because there was no predicate criminal act. No criminality was present to justify a seizure. No criminal conduct existed. SMITH was harmed and suffered the indignity of being handcuffed, confined, arrested, and transported to the Hospital and Jail in violation of the 4th Amendment. LOCKER ratified the unlawful arrest and directed SAENZ to transport SMITH to Jail to start the criminal process.

(43) MALICIOUS PROSECUTION

On June 27, 2021, LOCKER failed to properly supervise and control his underlings, SAENZ and GONZALEZ. LOCKER was aware of a situation where substantial force was used against SMITH. LOCKER was aware of a situation where his Deputies had no lawful basis to contact, stop, or seize SMITH. LOCKER was aware that SMITH did not violate the law. Regardless,

LOCKER authorized SAENZ to take SMITH to Jail, and to prefer criminal charges against him. LOCKER knew that SMITH did not violate the law because SAENZ gave 5 different versions of why he wanted/needed to contact SMITH. LOCKER knew no property owner desired to press criminal charges against SMITH. LOCKER admitted to SMITH's wife in person that SMITH's conduct was not unlawful (exercising). LOCKER acted under the color of Texas law as a licensed Peace Officer.

The factual allegations in ¶ 1-43 are incorporated herein.

DEFENDANT GUADALUPE COUNTY'S MONELL CLAIMS

(44) DEFECTIVE AMERICANS WITH DISABILITIES ACT OF 1990 POLICIES

SMITH is a qualified individual with a disability. SMITH had a diagnosed learning disability of Dyslexia. SAENZ refused to make accommodations or allowances for this disability when SMITH was unable to recite numerical data or information. In fact, SAENZ retaliated and discriminated because of it. Instead of fulfilling his duty to "serve and protect," SAENZ responded with an unlawful seizure and invalid arrest for "Evading Arrest." SAENZ acted according to COUNTY's Policies and defective training regarding disabled individuals.

(45) DEFECTIVE SECTION 504 OF THE 1973 REHABILITATION ACT POLICIES

SMITH is a qualified individual with a disability. SMITH had a diagnosed learning disability of Dyslexia. SANCHEZ refused to make accommodations or allowances for this disability when SMITH was unable to recite numerical data or information. In fact, SAENZ retaliated and discriminated because of it. Instead of fulfilling his duty to "serve and protect," SAENZ responded with an unlawful seizure and invalid arrest for "Evading Arrest." SAENZ acted according to COUNTY's Policies and defective training regarding disabled individuals.

(46) FAILURE TO PROPERLY TRAIN ON THE USES OF DEADLY FORCE

Deputies SAENZ and GONZALEZ gratuitously and by rote, drew their firearms and pointed them at SMITH with offensive intent on June 27, 2021. SMITH is observed on video

seated on the ground, with his hands raised skyward. SMITH was not aggressive, armed, or a physical threat. The Deputies acted in accordance with their training—or lack of training on June 27, 2021. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(47) FAILURE TO PROPERLY TRAIN ON THE USES OF SECONDARY FORCE

Deputies SAENZ and GONZALEZ gratuitously and by rote, drew their firearms and pointed them at SMITH with offensive intent on June 27, 2021. SMITH is observed on video seated on the ground, with his hands raised skyward. SMITH was not aggressive, armed, or a physical threat. The Deputies acted in accordance with their training—or lack of training on June 27, 2021. The Deputies then transitioned to intermediate force. SAENZ pointed a pepperball gun at SMITH, fired it, and struck SMITH in the head with the projectile. The projectile impacted, and dispersed. This caused physical pain, and the irritants caused and labored breathing. The irritants continue to cause harmful respiratory effects. There was no need for any force to be used against a passive SMITH. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(48) FAILURE TO PROPERLY TRAIN ON THE USES OF PHYSICAL FORCE

Deputies SAENZ and GONZALEZ gratuitously and by rote, drew their firearms and pointed them at SMITH with offensive intent on June 27, 2021. SMITH is observed on video seated on the ground, with his hands raised skyward. SMITH was not aggressive, armed, or a physical threat. The Deputies acted in accordance with their training—or lack of training on June 27, 2021. The Deputies then transitioned to intermediate force. SAENZ pointed a pepperball gun at SMITH, fired it, and struck SMITH in the head with the projectile. The projectile impacted, and dispersed. This caused physical pain, and the irritants caused and labored breathing. The irritants continue to cause harmful respiratory effects. Deputies SAENZ and GONZALEZ then proceeded to physically leap upon SMITH's back. These were large men. Their combined weight and energy knocked SMITH face-first to the ground. The impact caused much physical

pain and distress. There was no need for any force to be used against a passive SMITH. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(49) FAILURE TO PROPERLY TRAIN ON REASONABLE SUSPICION AND PROBABLE CAUSE

On June 27, 2021, SMITH was unlawfully contacted, seized, arrested, and prosecuted. There was no lawful basis to contact SMITH, as exercising in public view is not a criminal offense. There was no lawful basis to arrest SMITH, as SAENZ could not elaborate criminal conduct. Further, no property owner was even aware of a trespass, nor desired to pursue criminal charges. LOCKER, as a supervisor, was aware of these circumstances. LOCKER even acknowledged SMITH was not violating the law in a discussion with SMITH's wife. Regardless, LOCKER instructed SAENZ to transport SMITH to Jail and initiate criminal charges. These violations of the 4th Amendment are the product of defects in training and formal policies. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(50) FAILURE TO SCREEN IN HIRING

COUNTY hires Deputies for patrol who are not qualified and are not properly suited to law enforcement. These candidates lacked training and the moral character to serve as Texas Peace Officers. These candidates are inclined to use gratuitous excessive force and initiate contacts with citizens for personal reasons—not legitimate law enforcement aims. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(51) FAILURE TO SUPERVISE

COUNTY fails to correct the unlawful and unconstitutional behavior of its Deputies. Unlawful conduct is sanctioned, ratified, and uncorrected by Supervisory officials. Violations in

the form of unlawful arrests, excessive force, and bogus criminal charges are allowed to occur. Constitutional principles and rights are displaced by unlawful conduct. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(52) POLICY OR CUSTOM OF EXCESSIVE FORCE

COUNTY has formal policies and directives which permit the use of coercive physical force against citizens even when they are unarmed, are not threatening, and do not resist arrest. These include, but are not limited to brandishing firearms, using intermediate weapons, and exerting coercive physical force. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(53) DEFECTIVE REASONABLE SUSPICION AND PROBABLE CAUSE POLICIES

COUNTY has policies, customs, and directives which allow for *Terry* stops with citizens in the absence of an articulable basis criminal activity occurred. COUNTY has formal policies and directives which allow arrests to occur in the absence of probable cause. COUNTY has formal policies and directives which permit the initiation of criminal charges in the absence of probable cause. The end results are Constitutional violations of citizens' rights, with a knowledge and acquiescence by Sheriff Zwicke constituting deliberate indifference.

(54) FAILURE TO DISCIPLINE

COUNTY creates an environment which authorizes 4th Amendment violations. Deputies are allowed to displace the 4th Amendment through illegal contacts, detentions, arrests, and searches. Deputies are encouraged to generate arrests, whether or not they have a criminal predicate. The rank and file become a law unto themselves. Final Policymaker Arnold Zwicke Salazar is aware of the resulting harms because it is a standard policy, and is oblivious to correct them.

The factual allegations in ¶ (1-54) are incorporated herein.

IX. DAMAGES

(55) HUNTER SAENZ

Plaintiff seeks Compensatory Damages against Defendant SAENZ for physical pain, mental anguish, the filing of false charges, continuing physical symptoms, and legal expenses for fighting Cause 21-CCL-0657 in the amount of \$7,000,000.00 United States Dollars.

Plaintiff seeks Punitive Damages against Defendant SAENZ for outrageous conduct, and to serve notice that such conduct is not tolerated in a civilized society.

(56) JIMMY GONZALEZ

Plaintiff seeks Compensatory Damages against Defendant GONZALES for physical pain, and mental anguish in the amount of \$3,000,000.00 United States Dollars.

Plaintiff seeks Punitive Damages against Defendant GONZALEZ for outrageous conduct, and to serve notice that such conduct is not tolerated in a civilized society.

(57) ROBERT LOCKER

Plaintiff seeks Compensatory Damages against Defendant LOCKER for the unlawful arrest, filing of false criminal charges, legal expenses in defending the charges, and mental anguish in the amount of \$5,000,000.00 United States Dollars.

Plaintiff seeks Punitive Damages against Defendant LOCKER for outrageous conduct, and to serve notice that such conduct is not tolerated in a civilized society.

(58) GUADALUPE COUNTY, TEXAS

Plaintiff seeks Compensatory Damages against COUNTY for improperly hiring, training, and supervising Deputies who violate citizens' rights according to informal and formal policies and directives in the amount of \$10,000,000.00 United States Dollars.

X. JURY DEMAND

Plaintiff invokes his right to a Jury Trial on all issues triable, and has paid the requisite fee pursuant to the Federal Rule of Civil Procedure 38.

XI. PRAYER

Wherefore, premises considered, Plaintiff Ronald Smith respectfully prays for the following relief:

- (a) Compensatory Damages in the pled amounts will be awarded against Defendants SAENZ, GONZALEZ, LOCKER, and COUNTY;
- (b) Punitive Damages in the appropriate amounts will be awarded against Defendants SAENZ, GONZALEZ, and LOCKER.
- (c) Reasonable Attorney fees will be awarded under 42 U.S.C. 1988;
- (d) Plaintiff will be awarded any other relief he shows himself entitled to, in equity or at law.

Respectfully Submitted,

/s/ Andres Cano

Andres Cano
Plaintiff's Attorney
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San Antonio, Texas 78204
(210) 320-2020
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mrbarister28@gmail.com

CERTIFICATE OF SERVICE

I affirm a true and correct copy of this Plaintiff's 1st Amended Original Complaint was physically mailed via USPS Certified Mail with DVD videos on August 7, 2023 to the following persons:

/s/ Andres Roberto Cano

Texas Bar 24100071

E. Magee
J. Mcvey
Defendants' Attorney
Allison-Bass Law firm
404 West 12th Street
Austin, TX 78701
e.magee@allison-bass.com
j.mcvey@allison-bass.com

ATTACHMENTS

Att. A Key Events of Hunter Saenz Body Camera Video

Att. B Key Events of Robert Locker Body Camera Video

Att. C TCOLE Training Record of Hunter Saenz

Att. D DVD of excessive force and arrest (2 videos) June 27, 2021

ATT. A: HUNTER SAENZ BODY CAMERA VIDEO: KEY EVENTS

Minutes

.00 Saenz leaves his parked car.

.35 Saenz scales a fence.

.43 Smith is nowhere in sight.

1:12 Saenz scales another fence.

1:40 Saenz scales a third fence.

2:09 Smith comes into view in front of a cemetery, seated with legs crossed and on the phone.

2:09 Saenz pulls and points his firearm at Smith.

2:20 Smith is on the phone with 9-11 Operator in Comal County. (he called on Saenz)

2:30 Gonzalez pulls a firearm and points it at Smith.

2:34 Saenz switches to pepper ball gun.

2:52 Saenz shoots Smith in the left side of his head with pepper ball.

2:52 Smith on phone with 9-11 Operator "people are shooting me."

3:22 Saenz and Gonzalez force Smith to the ground.

3:22 Smith says, "I can't breathe."

3:29 Saenz and Gonzalez have their knees on his back and/or neck.

3:30 Smith handcuffed by Saenz.

4:00 Saenz rummages Smith's pockets, and takes wallet and phone from him.

4:10 Saenz disconnects Smith's 9-11 emergency call to Comal County.

6:42 Saenz says he saw Smith walking. "Was gonna check on him."

6:57 Smith says, "he thought someone was shooting at him."

7:16 Property owners arrive from across the street.

7:57 Gonzalez goes to speak with property owners.

8:00 Mrs. Natalie Smith arrives.

8:41 Smith says he can't breathe.

9:00 Smith can't recite information (Dyslexia)

9:05 Smith asks for Attorney.

9:10 Saenz reads Smith his **Miranda Rights** from a card.

9:14 Locker runs from across the street. (was talking to property owners)

10:00 Smith asks to be released.

11:00 Smith says, "a crooked cop tried to run me over with his car. I called 9-11."

11:00 Smith says, "a cop pulled a gun on me."

11:38 Guadalupe County dispatch is running Smith's name.

12:05 Saenz says, "Smith doesn't understand his Miranda rights.

12:40 Saenz says, "he was going to check on Smith."

14:04 Smith has no warrants from dispatch confirmation.

15:18 Smith says, "he has broken no laws."

16:15 Smith tells Locker, "he was walking."

16:42 An Ambulance arrives.

22:11 Saenz asks Locker if "he can arrest Smith for Criminal Trespassing?"

22:14 Natalie Smith runs back from across the street. (talking to property owners)

22: 14 Natalie Smith says, "owners will not press charges for trespassing."

22:28 Saenz now says, "Smith is not being placed under arrest, he was being placed under an emergency detention."

23:20 Smith asks again to be released.

24:17 Now Saenz asks Locker, "Resisting Arrest, or Evading Arrest?"

26:08 Saenz walks back to his parked cruiser.

26:21 Smith had no active warrants confirmed by dispatch.

27:27 Locker and Saenz desire to charge Smith with "Evading Arrest."

28:36 Gonzalez says, "no property damage and owners will not pursue criminal charges for trespass."

29:00 Locker says, "good use of force" to Saenz and Gonzalez.

29:40 Locker says, "no mental health issues confirmed by wife."

30:14 Saenz tells Smith, "you're being charged with Evading Arrest, not Criminal Trespass."

ATT. B: ROBERT LOCKER BODYCAM VIDEO: KEY EVENTS

Minutes

- .21 Smith says Deputies had no right to stop him.
- .38 Saenz says he, “was going to just check on Smith.”
- 1:07 Deputies didn’t know if Smith owned the land he allegedly crossed into.
- 1:19 Saenz says he just saw Smith “walking.”
- 1:42 Smith says someone shot at him near Highway 46.
- 1:51 Son in law and daughter of property owner arrive at the gate.
- 2:00 Locker walks over to talk to the young couple.
- 2:33 Gonzalez pulls cruiser over to Property Owner’s gate.
- 2:45 Locker demands I.D. from property owners.
- 3:15 Woman says adjoining property owners do not have a house, and are never there.
- 3:35 Son in law calls Property Owner to come from his house.
- 3:45 Locker walks back across the street to the cemetery.
- 3:57 Saenz is reading Smith his **Miranda Rights**. Smith is laying on his side on the grass.
- 4:12 Natalie Smith (Smith’s wife) approaches Locker, walks towards him.
- 4:23 Natalie Smith asks why Smith is being detained. Answer: “running through peoples’ yards.”
- 4:30 Locker says Saenz was just going to ‘check on Smith.’ Criminal Trespass is a crime.
- 4:50 Natalie Smith asks if Smith is going to be charged with a crime.
- 5:00 Locker says “we are going to figure out what to do.”
- 5:08 Natalie Smith provides biographical information on Smith. No mental illnesses.
- 5:33 Locker doesn’t believe Smith can walk from Bulverde to Seguin.
- 5:46 Locker says Natalie Smith is ‘uncooperative.’
- 6:10 Locker running Smith’s info through dispatcher.
- 6:28 Smith says, “these are crooked cops will kill you and shoot you.”
- 6:40 Saenz tells Locker, “Smith doesn’t understand his Miranda Rights read to him.”
- 6:58 Smith says, “Saenz was trying to shoot him with a gun.”
- 7:13 Smith says to Locker “I called your dispatch.”

7:31 Locker tells Smith, "Saenz was checking on your welfare." They debate the rights of Police to conduct welfare checks.

7:42 Locker says all Smith had to do was say, "I don't need your help to Saenz."

7:46 Smith says he did tell Saenz he didn't need his help and Saenz didn't want to leave.

8:09 Smith says Saenz and Locker, "need to hit the gym—they are too fat."

8:34 Saenz says he was going to check on Smith because he was fidgeting with a device.

8:35 Smith says it was the GPS on his phone for directions.

8:42 Dispatch shows no warrants for Smith.

8:51 Locker says to contact Bulverde P.D. about Smith.

9:27 Locker to Saenz, "he doesn't understand Miranda?" Saenz, "no sir."

9:36 Locker walks back to Natalie Smith.

9:52 Locker tells Natalie. "for my future course of action, I need to know certain things."

10:00 Locker asks about drugs and mental issues. Answer, "no."

10:05 Locker says walking to Seguin from Bulverde is "not illegal...but weird."

10:10 Locker says "weird" can be part of their decision-making process.

10:17 Locker says he has to choose between the County Jail and a mental facility.

10:52 Smith and Locker engage in conversation. Smith asks Locker, "am I allowed to take a 5 minute break while walking?"

11:00 Locker asks Smith why he is walking.

11:21 Locker to Smith, "why are you walking?"

11:21 Smith to Locker, "because I can."

11:25 Smith to Locker, "I WAS EXERCISING."

11:33 Smith to Locker, "I RUN MARATHONS. 30 MILES IS EASY"

11:41 Locker, that's 60 miles roundtrip. "why are you down here?"

11:45 Locker, "it's hard to believe."

11:52 E.M.S. Personnel approach Smith.

12:00 Smith, "after you leave, I want them to release these handcuffs and let me go home."

12:45 Smith asks for an Attorney.

13:52 Gonzalez says he will go talk to property owners.

14:00 Smith asks Locker, "who is the Officer who tried to shoot me?"

14:10 Smith says he saw Saenz pull his weapon on him.

14:44 Locker says, "I am the Supervisor."

16:37 Saenz asks Locker, "criminal trespassing?"

16:38 Locker, "I'm thinking about the second one."

16:38 Natalie Smith returning from across the street. "The Property owners do not wish to press charges for criminal trespassing

17:00 Saenz tells Smith, "you are not being placed under arrest, you are being detained for a Medical evaluation."

17:38 Locker tells Smith "he is not acting rational."

17:48 Smith tells Saenz "he will not answer questions at the hospital without an attorney present." Can you please just let me go home?"

18:07 Smith tells Saenz, "my body is one fire from the pepper spray."

18:48 Saenz to Locker, "resisting arrest?"

18:49 Locker, "Evading arrest."

19:00 Locker to Saenz, "go get your car."

19:11 Locker to Smith, "either you are having mental issues because you don't know where you are."

19:12 Smith, "I am walking from I-10, I didn't know where I was."

19:25 Smith, "I was dropped off at I-10." "I need a map."

19:32 Natalie Smith, "those things aren't illegal."

19:45 Locker to Smith, "a deputy stopped to check on your for your welfare."

19:48 Smith to Locker, "I never heard your Deputy, and he never had his lights on."

20:00 Smith to Locker, "how close was he to me?"

20:37 Locker to Smith, "Evading Arrest or Detention."

21:00 Bulverde dispatch came clean on Smith.

21:47 Saenz arrives back with his cruiser.

22:05 Saenz to Locker, "arresting." Saenz puts Smith in the cruiser.

22:20 Locker picks up Smith's property on the ground.

- 22:46 Locker hands Smith's phone and property to Natalie Smith. Says, "Smith is under Arrest for Evading Arrest or Detention."
- 23:10 Locker hands Natalie his business card.
- 23:32 Locker walks back to Saenz and Gonzalez and says, "he needs their videos for the Use of Force on Smith."
- 23:38 Gonzalez to Locker, "no property damage, the owners do not want to press charges."
- 24:05 Natalie tells Saenz, "you said he was detained and not arrested."
- 24:14 Locker tells Saenz and Gonzalez, "if she told me he had mental issues, I would have diverted."
- 24:40 Locker gets into car.

ATTACHMENT C

Texas Commission On Law Enforcement**Personal Status Report**

| | |
|-----------------|---------------|
| Name | STATUS |
| HUNTER L. SAENZ | |

| | | |
|----------------|-------------|---------------|
| Citizen | Race | Gender |
| Yes | White | Male |

Career/Professional Training

| Institution | Hours | Education | From | To |
|-------------------------------|--------------|------------------|-------------|-----------|
| | 0 | High School | | |
| Total Higher Education Hours | <u>0</u> | | | |
| Total Higher Education Points | <u>0</u> | | | |
| Total Military Training Hours | <u>0</u> | | | |
| Total | <u>0</u> | | | |

Service History

| Appointed As | Department | Award | Service Start Date | Service End Date | Service Time |
|------------------------------|-----------------------------------|--------------------------|---------------------------|-------------------------|---------------------|
| Peace Officer (Full Time) | GUADALUPE CO. SHERIFF'S OFFICE | Peace Officer License | 2/22/2021 | 3/28/2022 | 1 years, 1 months |
| Peace Officer (Reserve) | POTEET POLICE DEPT. | Peace Officer License | 9/13/2019 | 5/23/2020 | 0 years, 8 months |
| Peace Officer (Full Time) | FLORESVILLE POLICE DEPT. | Peace Officer License | 5/15/2015 | 7/17/2019 | 4 years, 2 months |
| Peace Officer (Other) | POTH POLICE DEPT. | Peace Officer License | 2/1/2015 | 5/24/2015 | 0 years, 4 months |

Total Service Time

| Description | Service Time |
|--------------------|---------------------|
| Peace Officer | 6 years, 3 months |
| Total officer time | 6 years, 3 months |

Award Information

| Award | Type | Action | Action Date |
|----------------------------|-------------|----------------------|--------------------|
| Peace Officer License | License | Granted | 2/1/2015 |
| Basic Peace Officer | Certificate | Certification Issued | 2/11/2019 |
| Intermediate Peace Officer | Certificate | Certification Issued | 2/11/2019 |

Texas Commission On Law Enforcement
Personal Status Report

Academy History

| | Date | Institution | Course Title |
|-----------|-------------|--------------------|----------------------------------|
| Completed | 12/15/2014 | Alamo Area LEA | Basic Peace Officer Course (643) |

Courses Completed

09/01/2021 - 08/31/2023

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|---|--------------------|---------------------|---|--------------------------|
| 470 | Informed Response - Sexual Assault/Violence | 3/4/2022 | 8 | MyTCOLE 3 online | |
| 2095 | Use of Force (Non-Intermediate Core Course) | 2/3/2022 | 8 | Georgetown Police Department | |
| 3908 | Law Enforcement and the Elderly | 12/21/2021 | 1 | GUADALUPE CO. SHERIFF'S OFFICE (Training Rosters) | |
| 3910 | Sexual Harassment Recognition | 11/9/2021 | 1 | Texas Association of Counties | |
| 3851 | Breathalyzer / Intoxilyzer | 9/2/2021 | 2 | Texas Department of Public Safety LEA | |
| Unit Hours | | | 20 | | |

09/01/2019 - 08/31/2021

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|--|--------------------|---------------------|---|---|
| 2055 | Firearms | 8/18/2021 | 10 | GUADALUPE CO. SHERIFF'S OFFICE (Training Rosters) | |
| 77267 | OSS - NAPPI Toatal Verbal Deescalation | 8/15/2021 | 13 | OSS Academy | |
| 77263 | OSS - De-Escalation of Force | 8/11/2021 | 4 | OSS Academy | |
| 3271 | Advanced Human Trafficking | 8/9/2021 | 8 | MyTCOLE 3 online | Human Trafficking |
| 77118 | OSS - Secondary Employment & Off-Duty Powers | 8/9/2021 | 1 | OSS Academy | |
| 3186 | 86th Legislative Session Legal Update | 8/6/2021 | 4 | MyTCOLE 3 online | 86th Session State and Federal Law Update |
| 2055 | Firearms | 7/2/2021 | 8 | GUADALUPE CO. SHERIFF'S OFFICE (Training Rosters) | |
| 3960 | Marine Safety Enforcement Officer | 5/23/2021 | 8 | Texas Parks & Wildlife LEA | |
| 3396 | Patrol/Tactical Seminar | 5/20/2021 | 4 | Guadalupe County Sheriff's Office | |
| 3403 | Selective Traffic Enforcement | 9/13/2019 | 2 | Texas Municipal Police Association | |

Texas Commission On Law Enforcement
Personal Status Report

Courses Completed

09/01/2019 - 08/31/2021

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|----------------------------|--------------------|---------------------|---------------------------------------|--------------------------|
| 3851 | Breathalyzer / Intoxilyzer | 9/11/2019 | 2 | Texas Department of Public Safety LEA | |
| | | Unit Hours | 64 | | |

09/01/2017 - 08/31/2019 *

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|--|--------------------|---------------------|---|---|
| 3185 | 85th Legislative Session Legal Update | 6/27/2019 | 3 | Lexipol | 85th Session State and Federal Law Update |
| 3347 | Less Lethal Electronic Control Device Update | 5/24/2019 | 2 | FLORESVILLE POLICE DEPT. (Training Rosters) | |
| 3384 | 84th Legislative Session Legal Update (TCOLE Onlin | 2/2/2019 | 4 | TCOLE Online | 84th Session State and Federal Law Update |
| 1850 | Crisis Intervention Training 40hr | 2/1/2019 | 40 | Alamo Area LEA | Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate) |
| 2110 | Spanish for Law Enforcement Distance (Intermed.) | 1/27/2019 | 28 | OSS Academy | Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate) |
| 30418 | Civilian Interaction Training | 1/27/2019 | 2 | OSS Academy | Civilian Interaction Training Program |
| 3737 | New Supervisor's Course | 12/25/2018 | 40 | OSS Academy | Cultural Diversity (Intermediate) New Supervisor's Required Training Special Investigative Topics (Intermediate) |
| 2106 | Crime Scene Investigation (Intermediate) | 12/21/2018 | 32 | Alamo Area LEA | Crime Scene Investigation (Intermediate) |
| 2105 | Child Abuse Prevention and Investigation (Interm.) | 12/20/2018 | 24 | OSS Academy | Child Abuse Prevention and Investigation (Intermediate) |
| 3275 | Missing and Exploited Children | 12/20/2018 | 4 | OSS Academy | Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate) |
| 3702 | Field Training Officer | 12/20/2018 | 20 | OSS Academy | |

Texas Commission On Law Enforcement
Personal Status Report

Courses Completed

09/01/2017 - 08/31/2019 *

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|--|--------------------|---------------------|---|---|
| 4068 | Child Safety Check Alert List (Intermediate/Advanc | 12/19/2018 | 1 | OSS Academy | Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate) |
| 2108 | Arrest, Search, and Seizure (Intermediate) | 12/19/2018 | 18 | OSS Academy | Arrest, Search, and Seizure (Intermediate) |
| 1849 | De-escalation Tech (SB 1849) | 9/18/2018 | 8 | Combined Law Enforcement Asso. of Texas | De-escalation Tech (SB 1849) |
| 3344 | Less Lethal Electronic Control Device Training | 3/2/2018 | 4 | FLORESVILLE POLICE DEPT. (Training Rosters) | |
| 3150 | Law Update | 10/24/2017 | 8 | Texas District & County Attorneys Association | |
| | Unit Hours | | 238 | | |

09/01/2015 - 09/30/2017

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|--|--------------------|---------------------|---|--|
| 3851 | Breathalyzer / Intoxilyzer | 4/21/2017 | 28 | Alamo Area LEA | |
| 7887 | Interacting with drivers deaf or hard of hearing | 3/1/2017 | 4 | Alamo Area LEA | Interacting with drivers deaf or hard of hearing (Intermediate) |
| 3347 | Less Lethal Electronic Control Device Update | 1/20/2017 | 4 | FLORESVILLE POLICE DEPT. (Training Rosters) | |
| 2107 | Use of Force (Intermediate) | 1/2/2017 | 13 | OSS Academy | Use of Force (Intermediate) |
| 3232 | Special Investigative Topics | 11/16/2016 | 8 | Alamo Area LEA | Special Investigative Topics (Intermediate) |
| 2049 | Report Writing - general | 11/14/2016 | 4 | FLORESVILLE POLICE DEPT. (Training Rosters) | |
| 8158 | Body Worn Camera | 10/20/2016 | 4 | Alamo Area LEA | |
| 3322 | Patrol Rifle | 9/14/2016 | 24 | Bexar Co. Sheriff's Academy | |
| 3509 | Fire related investigations | 7/29/2016 | 50 | TEEX Central Texas Police Academy | |
| 3902 | Crime Prevention In-Service | 6/7/2016 | 16 | Texas State University Texas School Safety Center | |
| 3257 | Combined Asset Forfeiture and Racial Profiling | 5/10/2016 | 8 | Alamo Area LEA | Asset Forfeiture (Intermediate) Racial Profiling (Intermediate) |
| 3277 | Identity Theft | 5/9/2016 | 4 | Alamo Area LEA | Identity Theft (Intermediate) |
| 62040 | Defensive Tactics - Canine Encounters (Proprietary | 3/3/2016 | 8 | Combined Law Enforcement Asso. of Texas | Canine Encounter (Intermediate) Canine Encouter (Advance) |

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Courses Completed

09/01/2015 - 09/30/2017

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|--|--------------------|---------------------|---|---|
| 8837 | Peace Officer and Open Carry Training | 3/2/2016 | 4 | Combined Law Enforcement Asso. of Texas | |
| 2096 | Arrest, Search & Seizure (Non-Intermediate Core Co | 2/17/2016 | 8 | Texas District & County Attorneys Association | |
| 3208 | Distracted Driving Law Enforcement | 2/5/2016 | 4 | Texas Municipal Police Association | |
| 3925 | Ethics for Law Enforcement Distance | 1/30/2016 | 4 | TCOLE Online | Ethics in Law Enforcement |
| 394 | Cultural Diversity Web with Exercises | 1/30/2016 | 8 | TCOLE Online | Cultural Diversity (Intermediate) |
| 3270 | Human Trafficking | 1/29/2016 | 4 | TCOLE Online | Human Trafficking |
| 1994 | Learn Our TCOLE Site | 1/29/2016 | 1 | TCOLE Online | |
| 3184 | 84th Legislative Session Legal Update | 12/4/2015 | 4 | Gonzales County Sheriff's Office | 84th Session State and Federal Law Update |
| 3512 | Fire and Life Safety | 9/13/2015 | 15 | TEEX Central Texas Police Academy | |
| | | | Unit Hours | 227 | |

09/01/2013 - 08/31/2015

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|--|--------------------|---------------------|---|--|
| 3843 | CIT-Update | 8/21/2015 | 8 | Texas Municipal Police Association | Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 2009-09 |
| 3722 | Peace Officer Field Training | 7/7/2015 | 160 | FLORESVILLE POLICE DEPT. (Training Rosters) | Peace Officer Field Training |
| 1999 | Personnel Orientation by Dept. Basic Proficiency | 5/26/2015 | 0 | FLORESVILLE POLICE DEPT. (Training Rosters) | Personnel Orientation |

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Courses Completed

09/01/2013 - 08/31/2015

| Course No. | Course Title | Course Date | Course Hours | Institution | Training Mandates |
|-------------------|--|--------------------|---------------------|--------------------|---|
| 1000643 | Basic Peace Officer Course (643) | 12/15/2014 | 643 | Alamo Area LEA | 82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA 24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators |
| 101 | Addendum Basic Peace Officer | 12/15/2014 | 273 | Alamo Area LEA | |
| 3027 | Verbal/Nonverbal Communication | 12/3/2014 | 8 | Alamo Area LEA | |
| 3344 | Less Lethal Electronic Control Device Training | 11/6/2014 | 16 | Alamo Area LEA | |
| 2054 | Radar | 11/4/2014 | 20 | Alamo Area LEA | |
| 3305 | Active Shooter Response | 10/26/2014 | 16 | Alamo Area LEA | |
| 2053 | Baton (All) | 12/9/2013 | 8 | Alamo Area LEA | |
| 1033 | Chapter 33 Rule Overview Exam | 10/7/2013 | 0 | TCOLE Online | |
| | | Unit Hours | 1152 | | |
| | | Total Hours | 1701 | | |

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| Total Hours | |
|--|-------------|
| Total Career/Professional Hours | 0 |
| Total TCOLE Course Hours | 1701 |
| Total Hours | <u>1701</u> |

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.