

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

PAULETTE EZE and PAMELA EZE
SYLVESTRE, as PERSONAL
REPRESENTATIVES of the
ESTATE OF PRESLEY EZE,
ISAAC AND LORETTA EZE, parents of PRESLEY EZE,
PETE “OBI” EZE, brother of PRESLEY EZE,
ELENA EZE, spouse of PRESLEY EZE and
VINCENT J. WARD, as Guardian Ad Litem, of I.E.,
a minor child, of decedent Presley Eze,

Plaintiffs,

v.

No. 2:23-cv-00976-KWR-KRS

THE CITY OF LAS CRUCES and
BRAD JUSTIN LUNSFORD,
in his individual capacity,

Defendants.

**PLAINTIFFS' MOTION TO IMPOSE DEFAULT JUDGMENT SANCTIONS AGAINST
DEFENDANT BRAD LUNSFORD FOR HIS DESTRUCTION OF MATERIAL
ELECTRONICALLY STORED COMMUNICATIONS (“ESI”) AND TO PROVIDE
FURTHER RESPONSES TO PLAINTIFFS’ REQUEST FOR PRODUCTION NO. 3**

COME NOW Plaintiffs, by and through their counsel, and hereby move this Court to impose default judgment sanctions against Defendant Brad Lunsford (hereinafter “Lunsford”) under Fed.R.Civ.P. 37(b)(2)(A), and Fed.R.Civ.P. 37(e)(2)(C) for his intentional destruction of material electronically stored information (“ESI”) from his iPhone and to compel Lunsford to provide further responses to Plaintiffs’ Request for Production No. 3.

I. INTRODUCTION

The Plaintiffs’ *Motion* seeks entry of default judgment against Lunsford. Not only did Lunsford violate his duty to preserve texts and emails, but he is shameless in his assertions that he did so. This destruction of ESI is extremely prejudicial to Plaintiffs, because Lunsford is

simultaneously asserting his Fifth Amendment Right to remain silent blocking Plaintiffs from any substantive discovery answers. Lunsford has violated criminal law by taking a human life and has committed discovery violations to hide his motives for doing so. He does so in the context of his employer, the Defendant City of Las Cruces withholding and obscuring video of Lunsford's killing of Presley Eze for hundreds of days, delaying Lunsford's indictment for his crimes of a full year, and delaying his deposition until after his criminal trial, in February of 2025.

Because of the disparity in power and in access to evidence between Eze's grieving family, and Lunsford, who is backed by complicit City governmental agents in a joint defense agreement, Lunsford's egregious misconduct warrants the most severe sanction available under the Federal Rules of Civil Procedures against a defendant— entry of default judgment.¹ “Twin findings” of “willful bad faith conduct that cannot be deterred by lesser sanctions” will support affirming a default judgment under the abuse of discretion standard. *Rasmussen v. Cent. Fla. Council Boy Scouts of Am., Inc.*, 412 F. App'x 230, 232 (11th Cir. 2011) (citing *Malautea*, 987 F. 2d at 1542). Lunsford has zero compunction about killing Presley, nor destroying evidence about it. Lunsford is cold and clinical. He does not share his counsel's compunction about flouting the rules of discovery. Thus, the only way to deter him and others like him is an entry of default judgment.

A lesser sanction will not deter him. If Lunsford is not sanctioned with default judgment, then he will get away with keeping Plaintiffs completely in the dark about why he killed Presley Eze until the civil trial. Lunsford can destroy his electronic communications, falsely claim he doesn't have access to his emails with his employer and then take the stand in his civil trial and tell an unchallenged tale of what happened on August 2, 2022, and why it happened. This ambush

¹ "Determination of the correct sanction for a discovery violation is a fact-specific inquiry that the district court is best qualified to make." Thus, "[an appellate court] review[s] the district court's decision to dismiss for discovery violations under an abuse of discretion standard." *Ehrenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992).

approach, if allowed, would deny Plaintiffs a fair trial. Thus, Plaintiffs respectfully request the Court enter default judgment against Lunsford.

The Plaintiffs' attorney and Defendants' attorney have conferred, are conferring, and to date, have been unable to resolve this dispute due to Lunsford's willful and malicious destruction of ESI; however, the parties are trying to facilitate some further responses to Plaintiffs' Request for Production No. 3. Plaintiffs implore the Court to find Lunsford acted with bad faith when he deleted the text messages between himself and Chief Story after he was convicted of voluntary manslaughter for the death of Presley Eze. Lunsford could already easily remedy the situation by asking Chief Story, also Mr. Robles' client, to provide the deleted texts between them. To date, that has not happened. If the collective Defendants can remedy Defendant Lunsford's destruction of ESI to mitigate the prejudice to Plaintiffs by producing the ESI destroyed by Lunsford, then Plaintiffs will withdraw their *Motion for Sanctions*.

II. MATERIAL FACTS AND BACKGROUND

1. In January of 2014, the City of Las Cruces Police Department (hereinafter "LCPD") hired Lunsford as a patrol officer and promoted then officer Jeremy Story (herein after "Story") to sergeant. See **Ex. 1**, Deposition of Story: [Dropbox Link to Deposition of Story](#), at 09:34:35 am - 09:35:45 am, *and see attached to Story's Deposition as Ex. 2*, Lunsford's IA Pro "Concise Officer History."

2. Sergeant Story was in a supervisory position to review LCPD officers' uses of force. *Id.*

3. From January 24, 2014, until September 27, 2023, LCPD documented Lunsford's 73 uses of force, three vehicle accidents, five vehicle pursuits, six failures to appear and five citizen complaints. *Id.*, at 10:04:39 am - 10:05:30 am.

4. Story testified, Lunsford had 77 LCPD documented uses of force, two of them deadly. *Id.*

5. In 2015, Lunsford shot a Black man. Lunsford has invoked his Fifth Amendment Right to remain silent regarding this, and all other uses of force incidents documented in his IA Pro Concise History. See **Ex. 3**, *See* Lunsford's Deposition: [Dropbox Link to Video of Deposition](#) at 09:16:25 am - 09:17:02 am.

6. On August 2, 2022, Lunsford discharged his duty weapon causing the death of Presley Eze, a Black man, his second on-duty deadly use of force. *Id.*, and see **Ex. 4**, Affidavit for Arrest Warrant, filed October 3, 2022.

7. On August 2, 2022, the decedent, Presley Eze, was a passenger in a car that pulled into a Chevron gas station in Las Cruces, New Mexico

8. The Chevron clerk decided to call LCPD to report he had seen Mr. Eze take a beer from the cooler and walk to the car with the beer to drink with his friends

9. Approximately thirty minutes later, Lunsford arrived and detained three men in a car who were suspected of drinking a cold beer on a hot 107-degree August afternoon that they had allegedly not paid for.

10. Lunsford asked the men whether they had shoplifted the beer and Eze said he had walked into the Chevron station with the beer in hand after being denied an opportunity to buy cigarettes.

11. The value of the alleged stolen beer was \$2.39.

12. Lunsford asked Eze where he was from (West Hartford, Connecticut) and his name.

13. Lunsford then returned to his patrol unit to try to identify Eze via his radio.

14. Lunsford called for backup.

15. Lunsford returned to the car to tell Eze he was not coming back on file.

16. Eze had cash in his lap and offered to pay for the beer.

17. Instead of taking the cash, paying for the beer, and talking with Eze about why he was not coming back in the system, Lunsford walked away from the car.

18. Lunsford told LCPD officer Arbogast that Eze was not coming back in his system.

19. Lunsford and Arbogast together approached the passenger side of the car.

20. Eze had a black cell phone and held it up to record the actions of Lunsford and Arbogast.

21. The City of Las Cruces has refused to produce this black cell phone to Plaintiffs' experts for a download of the electronically stored information on it and this is the subject of Plaintiffs' Motion to Compel to produce it. [Doc. 82].

22. Eze handed his black cell phone to the driver of the car.

23. Eze was unarmed and willing to exit the car.

24. Eze asked the officers why they wanted him to come out of the car.

25. Lunsford responded that, "you are not in our system," or words to that effect.

26. Eze asked what that meant. Lunsford grabbed Eze's arm.



27. Rather than explain their concern or what it means not to come back on file or why they wanted him to exit the car or allow Eze to exit the car with his own power, Lunsford pulled Eze from the car by grabbing his arms.



- 28. Lunsford and Arbogast took Eze to the back of the car.
- 29. Eze was alarmed and frightened.
- 30. Eze began to tense his body.
- 31. Suddenly and without warning, Arbogast lifted Eze from his feet into the air and body slammed Eze onto the asphalt pavement.
- 32. With Arbogast on his back, wrapping his legs around Eze to hold him down on the ground and another officer in front of him (Lunsford), Eze struggled, sandwiched between the two officers.
- 33. Arbogast's Taser ends up on the ground with Eze's hand on top of it.
- 34. Arbogast's Taser's safety is on.
- 35. Eze holds his arm stiff over the Taser and away from the officers.
- 36. Eze never points the Taser at the officers.

37. Lunsford did not draw his own Taser.
38. Lunsford did not draw his baton.
39. Lunsford did not issue any verbal orders to Eze.
40. Calmly Lunsford stepped back, removed his handgun and shot Eze in the back of his head.
41. Lunsford did not warn Eze before his use of deadly force.
42. It was feasible to warn Eze before deploying his firearm to the back of Eze's head.
43. When Lunsford used deadly force, Eze, he posed no immediate threat of great bodily harm or death to either officer or the public.
44. A Chevron employee pulled out his cell phone to record what he thought would be the tasing of Eze
45. A Chevron employee provided to investigating officers his cell phone recording of Lunsford's killing of Eze. [3D Forensic, Inc.'s Combined BWC and Slow Motion Videos](#).
46. On August 19, 2022, the City of Las Cruces received a Tort Claims Notice letter about Lunsford's fatal shooting of Presley Eze. The letter stated the destruction of evidence would result in discovery sanctions based upon spoliation of evidence. **Ex. 5**, Tort Claims Letter.
47. On September 6, 2022, the Estate, through its attorneys, submitted an IPRA request to Defendant City's online Records Request Portal. The requested records included:
 - a) all LCPD incident reports.
 - b) all photographs.
 - c) all LCPD Standard Operating Procedures (SOPs).
 - d) all LCPD crisis intervention training (CIT) documents.
 - e) all LCPD communications.

- f) all video and/or audio recordings—not limited to belt tapes, body cameras, surveillance; and all interviews conducted as result of the killing of Mr. Eze.

48. On September 12, 2022, Defendant City of Las Cruces employee, Lissa Herrera, City Clerk's Office Records Manager, emailed Plaintiffs' attorney to acknowledge receipt of the IPRA Request. The Request was assigned to IPRA reference number P000742-090622.

49. On September 19, 2022, Defendant City of Las Cruces employee, Kristin Holguin, Records Clerk, emailed Plaintiffs' attorney to notify them of documents (19 LCPD officer body worn camera videos) that were made available for inspection. Ms. Holguin explained that portions of the documents were redacted because the information was exempt from disclosure, without an explanation of the nature of the claimed exemption.

50. Ms. Holguin said the remaining responsive documents were still under legal review and the Plaintiffs' attorney would receive a response from their office on or before October 7, 2022.

51. On October 7, 2022, Ms. Holguin emailed Plaintiffs' attorney to say additional responsive documents were still under legal review for privileged information. Ms. Holguin said Plaintiffs' attorney would have a response from their office on or before November 04, 2022.

52. On October 17, 2022, Ms. Holguin emailed the Plaintiffs' attorney and said five videos and one report had been released. "Approximately 37 videos and additional responsive documents" were still under legal review. Ms. Holguin said Plaintiffs' attorney would hear from their office on or before November 4, 2022.

53. On October 19, 2022, Ms. Herrera emailed Plaintiffs' attorney saying LCPD provided documents responsive to #6 of Plaintiffs' request for any LCPD Standard Operating Procedures ("SOPs") They released LCPD's SOP's "Assisting the Mentally Ill" and "De-escalation".

54. On October 23, 2022, then Lieutenant Story began to serve as Deputy Chief of LCPD.

55. On November 4, 2022, Ms. Holguin emailed Plaintiffs' attorney to say they uploaded the following documents to the Records Request Portal:

- a. 1 zip file containing 40 emails (11 were redacted and 11 were denied).
- b. 1 zip file containing 10 responsive documents (3 were redacted).
- c. 1 zip file containing responsive documents for #8 (453 photos related to a different LCPD case); and
- d. 28 BWC videos of which 22 were redacted.

Ms. Holguin said the remaining responsive documents (approximately 9 videos and multiple photos) were still under legal review. On November 16, 2022, Ms. Holguin emailed Plaintiffs' attorney notifying them that the "remaining responsive records" were uploaded and released. Plaintiffs received 21 BWC videos, one "Chevron Store Video", and 1,124 photographs that day.

56. The City of Las Cruces obscured the body worn cameras of Lunsford and Arbogast until **June 2, 2023**, when they finally disclosed them in their responses to Plaintiffs' First Set of Requests for Production of Documents to Defendant City of Las Cruces in the state court case.

57. The City of Las Cruces obscured the Chevron employee's cell phone video so Eze's family could not see who or what caused the death of Presley Eze.

58. The Chevron employee shared the footage with Plaintiffs' attorneys on **September 11, 2023**, a year after Presley Eze was killed by Lunsford.

59. The City of Las Cruces withheld key documents, including the statements that the two officers gave about the shooting and other videos and evidence depicting or showing the shooting of Presley Eze, including the cell phone video for hundreds of days.

60. The City of Las Cruces' willful violations of the New Mexico Inspection of Public Records Act following an officer involved shooting were unique to Presley Eze's family, a Black family.

As depicted in the chart below, the following is the timeline of the Defendant City's willful withholding of material evidence to protect Lunsford from legal scrutiny as long as feasible:

DATE	DOCUMENTS	REDACTED	UNREDACTED	DAY COUNT
09/06/2022	REQUESTED: All incident reports and supplemental reports; All video footage (dash camera; lapel camera; body worn camera); All photos; All communication (electronic; written; audio); All interviews; All LCPD SOPs; All Leica scans		June 2, 2023	
09/19/2022	RECEIVED IN IPRA: 19 BWC videos	7 videos	12 videos	
09/21/2022	IPRA RESPONSE DEADLINE			
10/17/2022	RECEIVED IN IPRA: 5 BWC videos	5 videos		
	RECEIVED IN IPRA: 1 document labeled "All Reports"		1 document	
10/19/2022	RECEIVED IN IPRA: 2 documents		2 documents	
11/04/2022	RECEIVED IN IPRA: 40 emails (11 denied)	11 emails	29 emails	
	RECEIVED IN IPRA: 10 "responsive documents" (LCPD Lesson Plans, Employee Training Reports; General Orders	3 documents	7 documents	
	DID NOT RECEIVE: Request No. 8 For Leica Scans (Plaintiffs received the Leica Scan on 11/15/2023 in response to an IPRA request to the New Mexico State Police).			
	RECEIVED IN IPRA: 28 BWC videos	22 videos	6 videos	
11/16/2022	RECEIVED IN IPRA: 21 BWC videos	15 videos	6 videos	
	RECEIVED IN IPRA: Chevron store video		1 video	
	RECEIVED IN IPRA: 1, 124 photos	108 photos	1,016 photos	
	Regarding Plaintiffs' request No. 8 for Leica Scans, the City of Las Cruces IPRA custodian said "The			

	Las Cruces Police Department is still looking into your follow-up inquiry regarding the photos provided in the zip file responsive to #8 of your requests. I will provide their response as soon as it's received."			
06/02/2023	RECEIVED IN DISCOVERY: Lunsford's BWC footage. Arbogast's BWC footage.		2 BWC videos	254 days
08/18/2023	RECEIVED IN DISCOVERY: Lunsford's Interview. Arbogast's Interview.		2 videos	331 days

61. On October 3, 2023, Special Agent T. Martinez of the New Mexico Office of the Attorney General swore out an arrest warrant for Lunsford for the crime of Voluntary Manslaughter (Third-Degree Felony) with a Firearm Enhancement (Discharge) for his fatal shooting of Presley Eze. See **Ex. 4**; and see *State of New Mexico v. Brad Justin Lunsford*, D-307-CR-2023-01613 ("the criminal proceeding").

62. On December 6, 2023, a Grand Jury indicted Lunsford for Count I: Voluntary Manslaughter (Firearm Enhancement) for his fatal shooting of Presley Eze. *Id.*, and see **Ex. 6**, Grand Jury Indictment, filed December 6, 2023.

63. On December 6, 2023, LCPD Lieutenant Peter Bradley ("Lt. Bradley") testified before the Grand Jury that Lunsford's fatal shooting of Eze was reasonable. *Id.*

64. During his deposition, when asked whether he ever spoke to Lt. Bradley about his grand jury testimony, Lunsford invoked his Fifth Amendment Right to remain silent. See **Ex. 3**, Lunsford's deposition at 9:41:07 am- 9:42:24 am.

65. Lunsford testified that Lt. Bradley had trained him; however, when asked about the substance of Lt. Bradley's training, including Force Science training, Lunsford invoked his Fifth Amendment Right to remain silent. *Id.* at 9:19:45 am - 9:20:12 am.

66. When asked about the number of times Lunsford deployed his Taser as an officer, Lunsford invoked his Fifth Amendment Right to remain silent regarding this and all other uses of force. *Id.* at 09:42:37-9:43:01 am, 10:23:36 am - 10:24:03 am, and 11:09:58 am - 11:10:18 am.

67. When asked about the red devil tattoo Lunsford displayed on his forearm during his encounter with Presley Eze Lunsford invoked his Fifth Amendment Right to remain silent. *Id.*, at 09:20:21 am - 09:21:22 am, and see (photo of red devil tattoo ¶ 27).

68. When asked whether Lunsford believed the prosecution against him for killing Presley Eze was politically motivated Lunsford invoked his Fifth Amendment Right to remain silent. *Id.* at 09:32:01 am - 09:32:36 am.

69. Lunsford's wife and the Law Enforcement Legal Defense Fund sent a letter to the criminal jury pool asserting the New Mexico Attorney General prosecuted Lunsford because "[Lunsford] is white, and Presley is black." When asked whether Lunsford agreed with the statement, he again invoked his right to remain silent. *Id.*, at 09:33:57 - 09:34:17 am.

70. From December 2023 until February 2025, while under criminal formal accusation for killing Presley Eze, LCPD promoted Lunsford from patrol to work in Internal Affairs to review uses of force and then transferred him to work for research and development further ratifying his criminal conduct. *Id.*, at 09:11:17 am - 09:13:04 am.

71. On February 3-12, 2025, Lunsford attended his criminal trial for his fatal shooting of Presley Eze, represented by both his criminal counsel Jose Coronado, and his civil counsel, Luis Robles. *State of New Mexico v. Lunsford*, D-307-CR-2023-01613

72. Chief Story, Lt. Tate McBride, Lt. Peter Bradley, Lt. Adrian Alva, Deputy Chief Sean Mullens, and other LCPD officers attended Lunsford's criminal trial to support him.

73. During the criminal trial, Lunsford was texting with Story and other LCPD officers also represented by Lunsford's civil counsel, Luis Robles.

74. On February 7, 2025, Plaintiffs served Requests for Production No. 3 to Lunsford requesting his emails, texts, social media between himself and members of the Las Cruces Police Department for the last four years. *See* [Doc. 54] Cert. of Service.

75. On February 12, 2025, a jury of twelve found Lunsford guilty of Voluntary Manslaughter and Judge Foy sent Lunsford from court directly sent to the Doña Ana County Detention Center. Presumably, while in jail, Lunsford did not have access to his cell phone. *See Exs. 7A and 7B*, Guilty Verdict Forms, filed February 12, 2025.

76. On February 13, 2025, the Treasurer of the Las Cruces Police Officers' Association created a GOFUNDME page to raise money to support Lunsford. Over a hundred officers, including Story, contributed tens of thousands of dollars to support Lunsford. **Ex. 8**, GoFundMe Page Research Memorandum dated 02/17/2025, attached hereto.

77. On February 24, 2025, Defendants' attorney, Luis Robles, visited Lunsford in jail for an hour. **Ex. 9**, Doña Ana County Detention Center Visitation Log Report.

78. On March 5, 2025, the parties agreed to an extension for Lunsford to respond to Plaintiffs' Request for Production No. 3, until **March 24, 2025**.

79. On **March 7, 2025**, Story testified he had "not recently," texted with Lunsford, but then when further confronted admitted that he had texted Lunsford before, during and after Lunsford's criminal trial. Story had also texted with other officers, including Officer Keegan Arbogast, a key witness to Lunsford's killing of Presley Eze. **Ex. 1**, at 11:04:11 am - 11:07:14 am, and see **Ex. 4**, Affidavit of Arrest Warrant.

80. On **March 7, 2025**, Story testified Lunsford's FACEBOOK posts, i.e., "I hate vagrants," "Un-American Americans," "a little brutality never hurt anyone," and "rough men stand ready to do violence," violate LCPD's social media policy, and conduct unbecoming an officer policy. **Ex. 1** at 10:40:45 am - 10:47:49 am, *and see also attached, Ex. 10-13*, Brad Lunsford's FB posts.

81. When asked are the circumstances when "a little brutality" never hurts, Lunsford invoked his Fifth Amendment Right to remain silent. See **Ex. 3**, Lunsford's deposition, at 10:42:29 am - 10:43:18 am.

82. When asked whether he has ever posted any racial epithets on social media, Lunsford invoked his Fifth Amendment Right to remain silent. *Id.*, at 10:44:42 am - 10:44:53 am.

83. When asked whether he thought Presley Eze "supported America," Lunsford invoked his Fifth Amendment right to remain silent. *Id.*, at 09:48:27 am - 09:48:41 am.

84. On **March 21, 2025**, Judge Foy set a \$10,000.00 bond. Lunsford posted the bond. Doña Ana County Detention Center released Lunsford from jail.

85. On **March 26, 2025**, Lunsford signed a Memorandum of Understanding/Waiver of Conflict waiving the actual conflict of interest existing between himself and the Defendant City and consenting to "sharing of confidential information between each of them, NMRA, § 16-106.". See Plaintiffs' **Ex. 14**, MOU/Waiver of Conflict, at ¶ 5.

86. On **March 31, 2025**, Defendant City Mayor Eric Enriquez signed a Memorandum of Understanding/Waiver of Conflict asserting: "It is in the City's best interest for Officer Lunsford's deposition to go forward, and it is in Officer Lunsford's best interest to assert his Fifth Amendment privilege against self-incrimination...". See **Ex. 15**, CLC MOU/Waiver of Conflict, at ¶¶ 3-5.

87. In the waiver, the Defendant City acknowledges the need to share "confidential information" between the City, Lunsford, and its official employees. *Id.*

88. On April 22, 2025, Plaintiffs filed their Second Amended Complaint for Violations of Federal Civil Rights, the New Mexico Civil Rights Act and for Loss of Consortium Pursuant to State Law [Doc. 85] with Count IV: *Monell* Claim Pursuant to Section 1983 of the Civil Rights Act against the City of Las Cruces.

89. On May 6, 2025, the defense counsel provided Lunsford's Responses to Plaintiffs' Request for Production No. 3. [Doc. 94].

90. Defendant's Responses to Plaintiffs' Second Set of Requests for Production to Defendant Officer Brad Lunsford:

- a. "As for Defendant Lunsford's text messages, Defendant Lunsford does not possess any text messages because *he deleted his text messages* with any member of the Las Cruces Police Department and any employee of the City of Las Cruces, including but not limited to the former or current Chiefs of the Las Cruces Police Department from August 2, 2021, to the present time." (emphasis added) See **Ex. 16**, Defendant Lunsford's Responses to Second RFPs.

91. On May 9, 2025, Lunsford testified he received Plaintiffs' Request for Production No. 3 on April 17, 2025. See **Ex. 3**, Lunsford's Deposition, at 09:07:08 am - 09:11:16 am, 09:50:02 am - 10:41:58 am, 09:50:10 am - 10:41:58 am and 11:18:38 am - 11:20:27 am.

92. When asked about whether he used his cell phone to communicate with other officers on the day he killed Presley Eze, Lunsford invoked his Fifth Amendment Right to remain silent. *Id.*, at 09:52:59 am - 09:53:19 am.

93. Lunsford refused to sign an Agreement to Download and Produce his Social Media Accounts. *Id.*, and see **Ex. 17**, to Lunsford's deposition attached hereto.

94. Lunsford provided two email addresses; one he used to consult with his chain of command and receive de-briefings: BLunsford@LasCruces.org; and one he claimed only to use for “personal” communications: Lunsford07@yahoo.com, and two he disclosed when refreshing his recollection with his cell phone: Brad.Luns.76@gmail.com and BradLunsford9@gmail.com. *Id.*

95. Lunsford testified that the only thing he did to answer Plaintiffs’ Request for Production No. 3 was to produce screen-shot text messages with three follow officers, Lucy Milks (Bate Stamped BL2115-2116); Lt. Cody Austin (Bate Stamped BL2117); and Alejandro Rodriguez (Bate Stamped 2118-2120). *See Ex. 18*, Bated Stamped BL 2115-2120.

96. When asked about his texts to LCPD Lucy Milks about his criminal prosecution for killing Presley Eze, being “B.S.,” Lunsford invoked his Fifth Amendment Right to remain silent. *Id.*, and see **Ex. 3**, Lunsford’s deposition, at 10:39:12 am - 10:39:57 am.

97. Lunsford asserted his Fifth Amendment Right to remain silent regarding whether he believed Presley Eze posed an immediate threat of great bodily harm to him or others when he shot him. **Ex. 3**, at 10:44:42 am - 10:44:59 am.

98. Lunsford deleted texts with Chief Story, Sgt. Patrick Doyle, and Lt. Bradley. While looking at his cell phone during the deposition, Lunsford claimed he could not tell when he deleted text messages responsive to Plaintiffs’ Request for Production No. 3, nor could he remember when he deleted text messages to over fifty officers, including when he deleted his texts with Officer Arbogast. *Id.*, at 10:58 am - 10:32:42 am.

99. Lunsford asserted his Fifth Amendment right to remain silent to questions pertaining to whether he had ever used or posted any racial epithets on social media or ever used the “N” word. **Ex. 3**, at 10:44:42 am - 10:44:59 am.

100. When asked whether Lunsford ever texted Officer Arbogast about the critical incident with Eze, or deleted his texts with Arbogast, Lunsford invoked his Fifth Amendment Right to remain silent. *Id.*, at 10:27:06 am - 10:27:32 am.

101. When asked whether he communicated with his Sergeant, Thaddeus Allen, about the Presley Eze shooting, Lunsford invoked his Fifth Amendment Right to remain silent. *Id.*, at 11:59 am - 11:12:28 am.

III. LEGAL ANALYSIS

A. Lunsford's Discovery Objections are Untimely and Waived

In this *Motion*, Plaintiffs still seek information related to any electronic communication between Lunsford and members of the Las Cruces Police Department from August 1, 2021, until the present time and ask the Court to order Lunsford to sign the social media release. See Plaintiffs' **Ex. 16**, Defendant Lunsford's Response to Plaintiffs' Request for Production No. 3, served on February 7, 2025. Pursuant to Fed. R. Civ. P. 37, a party may move for an order to compel discovery if a party does not or produce documents pursuant to Fed. R. Civ. P. 34 ("Rule 34"). *See* Fed. R. Civ. P. 37(a)(3)(B)(iii), (iv). "[A]n evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(4).

Rule 33 and Rule 34 permit the parties to ask questions or seek documents about any matter "that may be inquired into under Rule 26(b)." Fed. R. Civ. P. 33(a)(2); Fed. R. Civ. P. 34(a). Defendant Lunsford has failed to make timely objections to Plaintiffs' discovery requests and thus must act with due diligence to produce the responses he has not destroyed. His objections to Request for Production No. were waived when he failed to respond on or before March 24, 2025.

The case law consistently supports the principle that untimely objections to discovery requests are waived. In "*In re Terrell*," the court emphasized that objections to discovery must be

raised within 30 days of service, and any new objections raised after this period are waived (*In re Terrell*, 569 B.R. 881 (2017)). The court in "*Pulsecard, Inc. v. Discover Card Services, Inc.*" similarly held that failing to make specific legitimate objections to interrogatories or requests for production within the time allowed results in the waiver of those objections (*Pulsecard, Inc. v. Discover Card Services, Inc.*, 168 F.R.D. 295 (1996)). Additionally, in "*Pham v. Hartford Fire Ins. Co.*," the court concluded that the defendant waived its right to assert any objections, including the attorney-client privilege, by not asserting objections within the 30 days permitted by the federal rules (*Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659 (2000)). Lunsford has made no legitimate, nor timely objections to responding to Request for Production No. 3. The day before his deposition, in lieu of finally responding to discovery he responds that he has deleted texts.

B. Plaintiffs' Request for Production No. 3 Seeks Material Evidence

Whether Lunsford harbors or has expressed racially charged epithets on social media or to fellow officers via email or texts is relevant to Plaintiffs' punitive damages claims against Lunsford, to deter him and others like him, and to his motive for his use of deadly force against Presley Eze, a Nigerian American, and to the generational trauma caused to his Black family. "Americans rely on the American legal system to uphold justice and protect the vulnerable. Perceived betrayal- when the institution appears to side with the perpetrator- exacerbates trauma, deepens grief, and undermines confidence in our cherished systems of accountability." *See Ex. 19*, Affidavit of Dr. Monnica Williams, at ¶ 12, *and see* Plaintiffs' Second Amended Complaint, Count IV: *Monell* Claim Pursuant to Section 1983 of the Civil Rights Act. [Doc. 85]. Eze's family have lost more than a son, father, husband and brother, they have been betrayed by an entire police department and City administration who have sided with withholding evidence from them of their beloved death for over a year. *Id.* Only the Court can remedy this wrong.

Lunsford's electronic communications about his uses of force against other non-White suspects during his tenure as a City of Las Cruces officer, and his ability to break the law with impunity and emboldened by Defendant City's inadequate training, cover-up and ratification of the is highly relevant and certainly discoverable. Moreover, evidence of ESI between Lunsford and his fellow officers, Chiefs of Police and chain of command could provide more evidence of the LCPD implicit and explicit bias, a police culture that degrades the sanctity of human life, the department's historic ratification of Lunsford 77 uses of excessive force, Chief Story's bias in favor of Lunsford, implicit and explicit racial bias within LCPD, and deliberate indifference to the impact their institutional betrayal and support of Lunsford has had on the Eze family. *Id.*

C. Under Fed.R.Civ.P. 37(e)(2) Default Judgment is Appropriate Due to Lunsford's Willful Spoilation of ESI

Defendant Lunsford has been evasive, providing grossly incomplete disclosures of electronic communications and deleting text messages from his phone in lieu of providing them. Lunsford uses his assertion of a Fifth Amendment right to remain silent as a shield to when he deleted texts to material witnesses Arbogast. Lunsford has delayed, denied and done nothing to respond to the discovery requests other than create hurdles for Plaintiffs by destroying material evidence of his communications with Chief Story and other LCPD officers before his deposition, and making blanket Fifth Amendment assertions, *after* his criminal conviction for his voluntary manslaughter of the decent, Presley Eze. *See* Lunsford's Deposition.

Even without Lunsford's admissions, the adverse inference is self-effectuating. *Coyne v. Los Alamos Nat'l Security, LLC*, 2017 WL 3225466 at *9 (May 1, 2017, D. N.M.) ("The fact that Plaintiff would take so many deliberate steps to destroy the evidence just before it was forensically examined creates an inference that she knew information detrimental to her case might be recovered during a forensic examination of the phone.") More recently, in *Coyne v. Los Alamos*

Nat'l Security, LLC, 2017 WL 3225466 at *9 (May 1, 2017, D. N.M.), this Court granted dismissal as a sanction against a plaintiff-employee who had been ordered to submit her iPhone for forensic analysis and intentionally erased and reset her phone before submitting it. The Court rejected the plaintiff's alternative suggestion that the Court allow "evidence about the alleged deletion of information from the cell phone, together with an appropriate instruction to the jury concerning the implications of such conduct...." The Court found the proposed sanction insufficient.

As the case now exists, Defendants already have two potential avenues to present information to a jury about the deletion of information from the cell phone. First, Plaintiff cannot prove her claim without testifying and, when she does, her credibility, including the baggage related to her recent conduct, becomes fair game. Second, Defendants could arguably admit evidence that Plaintiff willfully destroyed relevant text messages to demonstrate Plaintiff's consciousness of guilt in support of their contention that Plaintiff engaged in bad behavior while a LANS employee in 2011 and 2012. Given that information about Plaintiff's destruction of potential text messages is *already* likely to come before the jury, the alternative sanction Plaintiff proposes does little to alter the status quo.

Default Judgment is the only sanction that remedies the prejudice to Plaintiffs.

Plaintiffs asked for electronic communications while Lunsford was in the criminal trial in February because they learned he was texting Chief Story. When Lunsford deleted some of the text messages between himself and Chief Story, sent during the criminal trial, it was after his release from jail and likely after Chief Story's deposition. The inference is clear he deleted the texts because he knew they were detrimental to his defense, both criminal and civil.

"A litigant has a duty to preserve evidence that he knows or should know is relevant to imminent or ongoing litigation." *Jordan F. Miller Corp. v. Mid-Continent Aircraft Serv., Inc.*, 139 F.3d 912 (10th Cir. 1998). The "intentional or negligent destruction or loss of tangible and relevant evidence which impairs a party's ability to prove or defend a claim" is known as spoliation. *U.S. ex rel. Baker v. Community Health Systems, Inc.*, 2012 WL 5387069, *8 (Oct. 3, 2012, D.N.M.), quoting *United States ex rel. Koch v. Koch Ind., Inc.*, 197 F.R.D. 488, 490 (N.D. Okla. 1999).

Fed.R.Civ.P. 37(e)(2) empowers the Court to impose severe sanctions for a party's willful spoliation of ESI.

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court... (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: (A) presume that the lost information was unfavorable to the party; (B) instruct the jury that it may or must presume that the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment."

"To impose sanctions under either subsection of Rule 37(e), the Court must find that three prerequisites are met: (1) the ESI should have been preserved, (2) a party failed to take 'reasonable steps' to preserve it, and (3) it cannot be restored or replaced. Once these three requirements are met, the Court must determine whether there has been a showing of intent to deprive the opposing party of information for use in the litigation, which could trigger the severe sanctions provided under Rule 37(e)(2), including a presumption of prejudice." *U.S. v. Carter*, 2019 WL 3798142 (D. Kansas, Aug. 13, 2019) (internal citations omitted).²

Here the ESI should have been preserved by the Defendant City and Lunsford after the City received the Tort Claims Notice letter on August 19, 2022. Lunsford failed to take reasonable steps to preserve the ESI and affirmatively deleted it. Lunsford's counsel has also failed to use

² *Ehrenhaus v. Reynolds*, 965 F.2d 916 (10th Cir. 1992) is the seminal 10th Circuit case evaluating sanctions for discovery violations, but it is doubtful that *Ehrenhaus* controls the analysis for willful spoliation sanctions, particularly since the 2015 Amendments. See Advisory Committee Notes (Rule 37(e)(2) was "designed to provide a uniform standard in federal court for the use of these serious measures when addressing failure to preserve electronically stored information."); see, also, *Cache La Poudre Feeds, LLC v. Land O'Lakes*, 244 F.R.D. 614, 636 (D.Col. Mar. 2, 2007)(describing *Ehrenhaus* as governing sanction analysis in a "non-spoliation context"); *Stovall v. Brykan Legends, LLC*, 2019 WL 480559, (D. Kan., Feb. 7, 2019)(analyzing sanctions under Rule 37(e) only). *Ehrenhaus* conflicts with Rule 37(e)(2) in two significant ways. First, Rule 37(e)(2) does not require advance notice that default judgment is a penalty for willful spoliation. Second, Advisory Committee Notes state that prejudice is presumed under Rule 37(e)(2) "because the finding of intent ... can support not only an inference that the lost information was unfavorable to the party that intentionally destroyed it, but also an inference that the opposing party was prejudiced by the loss of information that would have favored its position. Subdivision (e)(2) does not require any further finding of prejudice."

“due diligence” to recover responsive emails from Defendant City, an easy task as the Robles firm represents all the recalcitrant Defendants and City managerial employees.

a. Default Judgment Is the Appropriate Sanction.

"A court does justice by finding truth. That search requires evidence. Intentionally destroying evidence then, is more than a devious litigation strategy. It is a lethal attack on a court's purpose and must be responded to in kind." *TLS Management & Marketing Servs., L.L.C. v. Mardis Financial Servs., Inc.*, 2018 WL 3673090 at *1 (S.D. Miss. Jan. 29, 2019) (granting default judgment against all defendants as appropriate Rule 37(e)(2) sanction where defendants had relevant data, resisted its discovery, destroyed tools holding the data, lied under oath about destruction and permanently erased data).

Rule 37(e)(2) "allows courts to punish data destroyers with [dismissal or] default judgment, but only when that punishment fits the crime. The measure of that crime is *not* the harm to the opposing party, but is rather the severity of data destruction. Thus, [dismissal or] default judgment is appropriate only when destruction of evidence was of the worst sort: intentional, thoroughgoing, and (unsuccessfully) concealed." *Id.* at *7. That is exactly what happened here. Lunsford is brazen about his deleting of the text messages. He deleted all but three. He did so intentionally and shamelessly.

b. Lesser Sanctions Provide No Remedy.

The lesser sanctions found in Rule 37(e)(2) provide no real remedy for Defendant Lunsford's intentional spoliation. Subsections 37(e)(2)(A) and (B) allow the Court to "presume that the lost information was unfavorable to the party" or "instruct the jury that it may or must presume the information was unfavorable to the party." However, an instruction that the deleted text messages can are or can be presumed to have been unfavorable to the party does not adequately

punish Lunsford for the destruction of potentially explosive evidence concerning his malice toward Presley Eze and the justice system itself. Lunsford, convicted of Voluntary Manslaughter, is refusing to take responsibility for the harm he caused and his causing the victims of his violent crimes by destroying evidence.

Sanctions for willful spoliation must "go beyond the status quo." *Coyne*, 2017 WL 3225466 at *10 (rejecting lesser sanctions and granting dismissal under Rule 37(e)(2) because "information about Plaintiff's destruction of potential text messages is already likely to come before the jury, [so] the alternative sanction Plaintiff proposes does little to alter the status quo. Further, Plaintiff's proposed sanction would do little to deter future wrongful conduct.")

Here, no sanction short of dismissal will "go beyond the status quo." An adverse inference gives Plaintiffs nothing more than they have already. The jury will conclude on its own that the deleted recordings were so damaging to Lunsford that he violated discovery rules and deleted them. The only way to move past the status quo is to enter default judgment against Lunsford.

c. Lunsford Acted with Intent to Deprive Plaintiffs of ESI.

Plaintiffs can prove "intent to deprive" indirectly. Lunsford's intent to withhold and destroy the ESI is obvious from his actions. *Moody v. CSX Transp.*, 271 F.Supp.3d 410 (W.D.N.Y. Sept. 21, 2017). A party does not need a "smoking gun" to establish intent. *Auer v. City of Minot*, 896 F.3d 854, 858 (8th Cir. 2018). Here, Plaintiffs have a smoking gun -- or rather, a smoking iPhone. An adverse inference, whether it comes from the Court or arises naturally from the evidence, is of little value here because Plaintiffs will never know what the texts contained, so any adverse inference is uselessly vague. *Cf. Moody*, 271 F.Supp.3d 410 (W.D.N.Y. 2017) (in personal injury case involving failure to warn, court found that railroad intended to deprive plaintiff of train's event recorder and so granted plaintiff's request for adverse inference that train did not sound its bell

before moving while plaintiff was underneath it). The adverse inference in *Moody* adequately remedied the loss of evidence because it gave the plaintiff the benefit of the most favorable proof she could have possibly obtained from the missing evidence (*i.e.*, that the train did not sound its bell). That same result is impossible here where Plaintiffs and jurors can only guess at what evidence might have been gleaned from those deleted texts messages and withheld emails.

d. Default Judgment is a Just Remedy.

Lunsford's intentional destruction of evidence *during* litigation, and while a Request for Production is pending, is a slap in the face of Plaintiffs and the civil justice system. Default judgment serves a dual purpose. "It penalizes the party whose conduct warrants the sanction and discourages 'those who might be tempted to such conduct in the absence of such a deterrent.'" *Jones v. Thompson*, 996 F.2d 261, 266 (10th Cir. 1993). Here, the Defendant City needs to be deterred as well. Here Lunsford and the City have acted in concert to deny the Eze family with material evidence by refusing to produce public records for a year, resulting in a public records lawsuit in state district court; delaying the litigation for a year by withholding and obscuring video evidence of the subject fatal shooting, refusing to produce Lunsford for a deposition before his criminal trial and then after his conviction frustrating discovery by asserting the Fifth Amendment Right to remain silent to the contents of Lunsford's electronic communications, his training, his fatal shooting of Eze, his thoughts about Eze's humanity, his lack of remorse.

Admittedly, default judgement is a powerful measure, but the U.S. Supreme Court and the Tenth Circuit have affirmed dismissals for conduct like, and even less egregious than, Lunsford's. *See Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 639, 96 S. Ct. 2778, 2779, 49 L. Ed. 2d 747 (1976)(after plaintiff failed to comply with order requiring timely responses to interrogatories); *Freddie v. Marten Transport, Ltd.*, 428 Fed. Appx. 801, 2011 WL 2438655 (10th

Cir. June 20, 2011)(after plaintiff withheld relevant medical information about pre-existing conditions); *Ehrenhaus*, 965 F.2d at 918 (after plaintiff failed to appear for scheduled deposition as ordered); *Lee v. Max Intern. L.L.C.*, 638 F.3d 1318, 1319-1320 (10th Cir. May 3, 2011)(after failing to provide documents responsive to discovery requests and despite two subsequent orders compelling their production)("a party's thrice repeated failure to produce materials that have always been and remain within its control is strong evidence of willfulness and bad faith, and in any event is easily fault enough, we hold, to warrant dismissal or default judgment.")

Here, Lunsford and the City have been on notice of a duty to preserve evidence since August 19, 2022, when the Defendant City received a Tort Claims Notice, **Ex. 5**. Under Rule 37 of the Federal Rules of Civil Procedure, the Court may sanction a party "[i]f electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery." Fed. R. Civ. P. 37(e). Parties to a lawsuit are under an "obligation to preserve evidence when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation." *Browder v. City of Albuquerque*, 209 F. Supp. 3d 1236, 1243 (D.N.M. 2016) (citations omitted).

Lunsford's destruction of electronically stored evidence about the subject incident with his Chief of Police during his criminal trial for fatally shooting Presley Eze was not only clearly intentional it was in "bad faith". This duty to preserve evidence arises "when litigation is imminent." *U.S. ex rel. Baker v. Cmty. Health Sys., Inc.*, No. CIV. 05-279 WJ/ACT, 2012 WL 12294413, at *3 (D.N.M. Aug. 31, 2012), *objections overruled*, No. CIV. 05-279 WJ/ACT, 2012 WL 5387069 (D.N.M. Oct. 3, 2012). "Spoliation includes the intentional or negligent destruction or loss of tangible and relevant evidence which impairs a party's ability to prove or defend a claim."

Id. Once there are bad faith findings, the courts' inherent power to sanction parties (and lawyers) includes the discretion to enter default judgments. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 51 (1991); *Eagle Hosp.*, 561 F. 3d at 1303-1304 (11th Cir. 2009); *Sunshine*, 456 F. 3d at 1304; *Byrne v. Nexhat*, 261 F. 3d 1075, 1121 (11th Cir. 2001) (quoting *Barnes v. Dalton*, 158 F. 3d 1212, 1214 (11th Cir. 1998)) abrogated on other grounds by *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008).

Delaying or disrupting litigation is one way to show bad faith. *Eagle Hosp.*, 561 F. 3d at 1306; *Sunshine*, 456 F. 3d at 1304. Bad faith failures (and “flagrant disregard” or “willful disobedience” of orders) all carry the same range of potential sanctions under Rule 37. *37 *NHL*, 427 U.S. at 640 (1976); *Thornton v. Hospitality Management, Assoc., Inc.*, 787 Fed. Appx. 634, 638-639 (11th Cir. 2019); *Rasmussen*, 412 Fed Appx. at 232; *Malautea*, 987 F.2d at 1542 (11th Cir. 1993). Policy preferences for merits adjudications “yield” when a party intentionally prevents a fair adjudication. *Carlucci v. Piper Aircraft Corp.*, 102 F.R.D. 472, 486 (S.D. Fla. 1984) “[A] history of bad faith stonewalling” justifies a forfeit of the opportunity to dispute liability because it shows that lesser sanctions are insufficient to force compliance. *Sunshine*, 456 F. 3d at 1306. There is no questions both the Defendant City and Lunsford delayed this litigation over almost a year by hiding and obscuring the body worn camera and cell phone videotapes of the killing.

Because of Lunsford’s use of the Fifth Amendment as a shield and a sword, the only way to learn of the communications is via the ESI between Lunsford and his chain of command and fellow officers. Given this unique context, default judgment is the only sanction that can deter the destruction of material evidence by Lunsford as the prejudice of its destruction is so profound.

e. Monetary Sanctions are Appropriate to Make Plaintiffs Whole.

When a motion for sanctions is granted under Rule 37(b), the court generally “must order

the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C). Additionally, a court may assess an attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *LaJeunesse v. BNSF Ry. Co.*, 2019 WL 4385653 at *21 (D.N.M. Aug. 30, 2019). Based on the foregoing, Plaintiffs request Lunsford to pay the attorney fees and expenses incurred to pursue sanctions and further discovery responses.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request the Court enter default judgment against Lunsford for violations of Rules 37(B)(2)(c) and 37(e)(2), order the further production of responses to Plaintiffs' Request for Production No. 3 and award monetary sanctions sufficient to compensate Plaintiffs for the costs they incurred to pursue the evidence Lunsford has withheld and destroyed.

Respectfully Submitted,

THE KENNEDY LAW FIRM, P.C.

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of its filing a copy of the foregoing was served on all counsel of record via the Pacer system.

/s/ Shannon L. Kennedy
Shannon L. Kennedy

9/27/23, 2:40 PM

IAPro NextGen

Use(s) of force Effective/Not Effective
 Forced Stabilization Effective
 Noncompliant handcuffing Effective

Service being conducted: Shoplifting Invest

Involved Officer: Use of force

IA No: 2023UOF-069
 Case No: 23-036119

Received: Mar 27, 2023 20:19

Incident disposition/finding: Approved by Chain
 Role: Primary Officer Involved

Use(s) of force Effective/Not Effective
 Taser Not Effective

Service being conducted: Criminal Trespass

Involved Officer: Show of force

IA No: 2023SOF-038
 Case No: 23-044888

Received: Apr 17, 2023 21:28

Incident disposition/finding: Approved by Chain
 Role: Primary Officer Involved

Involved Officer: Show of force

IA No: 2023SOF-043
 Case No: 23-052047

Received: May 04, 2023 17:12

Incident disposition/finding: Approved by Chain
 Role: Primary Officer Involved

Involved Officer: Use of force

IA No: 2023UOF-138
 Case No: 23-070042

Received: Jun 14, 2023 22:49

Incident disposition/finding: Approved by Chain
 Role: Primary Officer Involved

Use(s) of force Effective/Not Effective
 Taser Not Effective

Service being conducted: Theft Investigation

Involved Officer: Show of force

IA No: 2023SOF-071
 Case No: 23-081966

Received: Jul 17, 2023 16:30

Incident disposition/finding: Approved by Chain
 Role: Primary Officer Involved

Report summary: totals by incident type:

Incident type	Received
Administrative File	0
Administrative Inspection	0
Booking Log	0
Cadre Reviews	0
Citizen Complaint	0
Citizen Compliment	0
Complaint	1
Discretionary arrest	0
Driving Complaint (DC)	0
Drug test	0
Early Intervention Alert	0
External Invest (EI-C1)	2
External Invest (EI-C2)	0
External Invest (EI-C3)	5
Failure to Appear	6
Firearm discharge	3
Forced entry	0
FTA Mandatory Training	0
Integrity test	0
Internal Investigation (II)	4
K9 Demonstration	0
K9 Field Deployment	0
K9 Training	0
K9 Utilization	0
Show of force	8
Stop	0
Supervisory Matter (SM)	1
Tort Claim	3
Use of force	73
Vehicle accident	3
Vehicle pursuit	5
Total	114

Printed: Sep 27, 2023 14:40 By: Lieutenant Rob Gutierrez

EXHIBIT**2**

tabbles®

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
IN THE DISTRICT COURT

2023-66918
DASO CF#

STATE OF NEW MEXICO

V.

BRAD JUSTIN LUNSFORD

DOB: [REDACTED]/1985

SOC: [REDACTED] 4252

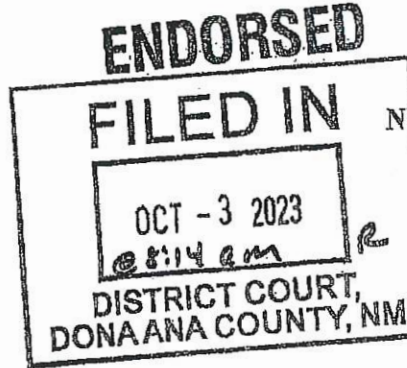
Race: Caucasian, Sex: Male

Height: 5' 6", Weight: 150

Hair: Brown, Eyes: Brown

Residence: 235 Sunken Train Pl

Las Cruces, NM 88007



NUMBER _____

CS-2023-1

AFFIDAVIT FOR ARREST WARRANT

The undersigned, being duly sworn, on his oath, states that she has reason to believe that on the 2nd day of August, 2022, in DOÑA ANA COUNTY, the STATE OF NEW MEXICO, the above-named defendant committed the crimes charged:

Count One: Voluntary Manslaughter (Third-Degree Felony)

Count Two: Firearm Enhancement (Discharge)

The undersigned further states the following facts on oath to establish probable cause to believe that the above-named defendant committed the crime charged: *(include facts in support of the credibility of any hearsay relied upon)*

STATEMENT OF FACTS

Affiant is a full-time, sworn Law Enforcement Officer with the New Mexico Office of the Attorney General. Affiant is currently assigned to the Special Investigations Unit. Affiant has been a full-time Law Enforcement Officer since 2011. Affiant has experience investigating cases ranging from white collar, burglary, abuse/neglect, homicide, and officer involved shootings. Affiant has received training and has experience in the writing and executing of Search and Arrest Warrants.

I. BACKGROUND OF INVESTIGATION

Information on an officer involved shooting (OIS) that occurred in Las Cruces, NM on August 2, 2022, was received by the New Mexico Office of the Attorney on September 20, 2023. Officer Brad Lunsford of the Las Cruces Police Department was the officer that discharged his duty weapon, resulting in the death of Presley Eze. Video and documentation of the incident were reviewed. New Mexico State Police conducted an investigation of the incident.



OITF

not

nmSP

Specific Probable Cause

On August 2, 2022, at approximately 1623 hours, a 911 call was received from an employee at the Chevron gas station located at 2645 S. Valley Dr., Las Cruces, New Mexico. The caller stated an individual had walked out of the store with a beer and was drinking it at pump number one. The caller stated this individual was in a green/turquoise Pontiac SUV. He described the individual that left the store with the beer was a shirtless black male and stated there was another individual with him wearing a tank top. The caller said the shirtless individual attempted to buy cigarettes without an ID and that he got upset with him. The caller updated dispatch that both individuals associated with the Pontiac were outside drinking the beer. He advised that the shirtless individual was walking towards the Ramada Hotel and the individual with the tank top remained at the vehicle. The dispatch operator asked the caller if these individuals had any weapons, which the caller responded "not that I could see". The dispatch operator advised the caller that she would dispatch someone to the location and the call ended.

Affiant reviewed the lapel video footage taken from both Brad Lunsford's and Keegan Arbogast's On Body Recording Devices (OBRD) as well as cell phone footage captured by a civilian bystander. The following is description of what the video footage captured.

On August 2, 2022, at approximately 1632 hours, Las Cruces Police Department Officer Brad Lunsford arrived on scene at 2645 S. Valley Dr. (Chevron) in his marked police unit. Officer Lunsford drove by the entrance to the convenience store of the gas station. While he passed, an individual pointed and stated "Right there, the black male". Officer Lunsford then engaged his emergency siren and drove a short distance forward. Officer Lunsford parked in front of pump one while the Pontiac was now parked in front of pump three.

At approximately 1633 hours, Officer Lunsford made initial contact with the driver of the vehicle who was wearing a multi colored tank top. Officer Lunsford asked the driver what was going on. The driver stated he was messing with his door, which Officer Lunsford replied "What's the deal with the people inside?" The shirtless male in the front passenger seat, who would be later identified as Presley Eze, stated he had walked into the store with a beer in his hand and when he walked out, they started harassing him. Presley told Officer Lunsford that he could check the cameras to confirm this. Officer Lunsford asked Presley for his ID and Presley said he didn't have it. Presley stated the whole thing was about him trying to buy cigarettes and they wouldn't sell them to him. Officer Lunsford asked Presley what his name and date of birth was. Presley responded his name was Pete Ezer and his date of birth is [REDACTED] 1990. Officer Lunsford then asked the driver for his license, which he handed to him. Officer Lunsford told the occupants of the vehicle to stay there while he gathered information from the gas station employee.

Concealing ID

At approximately 1636 hours, Officer Lunsford made contact with the gas station employee. The employee stated Presley did not walk in with the beer. Officer Lunsford did not seek to view surveillance footage at this stage of the investigation. Officer Lunsford then proceeded to call for an additional unit on his police radio and walked back to his vehicle. From his vehicle, Officer Lunsford ran the information provided by Presley through the National Crime Information Center (NCIC) to confirm his identity. The name Pete Ezer with a date of birth of [REDACTED] 1990 was not returning on file.

Stated he was going to once he addressed TW Backup
At approximately 1643 hours, Officer Lunsford approached the Pontiac to confirm the name and date of birth he was given by Presley. Officer Lunsford asked him to repeat his last name, which he stated was "Ezer". Officer Lunsford returned to his vehicle and ran the name Pete Ezer through NCIC. This name also returned not on file.

told eze that he was going to check as soon as he had backup

At approximately 1646 hours, Las Cruces Police Department Officer Keegan Arbogast arrived on scene. Officer Lunsford briefed Officer Arbogast that there were three occupants inside of the Pontiac and that the shoplifter is located in the front passenger seat. Officer Lunsford advised Officer Arbogast that the identifying information the male in the front passenger seat (Presley) provided him was returning not on file and that he was going to detain him. According to Officer Arbogast's OBRD, at **no time did Officer Arbogast inquire about surveillance footage from the store employees.**

At approximately 1647 hours, Officer Lunsford and Arbogast approached the Pontiac on the passenger side. Officer Lunsford opened the passenger side front door and asked Presley to step out of the vehicle. Presley responded that he really didn't want to get out of the car. Officer Lunsford said he was not asking him and Presley asked why he needed to get out of the car. Officer Lunsford then grabbed Presley's right wrist with his right hand and told him that he was not coming back on file. Presley asked Officer Lunsford what that meant. Officer Lunsford continued to tell Presley to get out of the car and that he was not coming back on file. Presley asked repeatedly "Can I know why?" and "What does that mean?" Officer Arbogast asked Presley if he was going to cooperate, which Presley replied "Yes". Officer Arbogast then removed a closed pocketknife from Presley's lap as Presley was standing up out of the vehicle. Presley stated he was not reaching for anything. Both of Presley's hands were visible at that moment from the view of Officer Lunsford's OBRD. Officers Lunsford and Arbogast commanded Presley to turn around. Presley did not turn around and at that point both officers had a hold on Presley. **he was told he wasn't coming back on file**

Officer Arbogast was behind Presley and had both arms around Presley's abdomen with Officer Arbogast's hands clasped in the front. **Officer Arbogast then picked Presley up and both men fell backwards to the ground.** Presley was now on top of Officer Arbogast and Officer Arbogast was now on his back. A male voice was heard saying "stop" and "stop it" repeatedly **while Presley was on top of Officer Arbogast.** No distinct commands were heard during this time. Officer Lunsford was attempting to hold Presley's arms and was positioned behind Presley. Presley had his right hand behind him and holding on Officer Arbogast's legs which were locked around Presley's torso. Presley had his left hand on the ground supporting his upper body. Presley then moved his left hand across towards Officer Arbogast's left side. Presley then moved his right hand on the ground for support. **During this time Officer Arbogast's Conductive Electrical Weapon (CEW) was out of its holster and was on the ground underneath Presley between Officer Arbogast and Presley's right hand which was still on the ground supporting his weight. Presley then moved the CEW with his left hand and transferred the CEW to his right hand.** Presley turned his head to the right, at which point Officer Lunsford struck Presley in the face with an open hand strike with Officer Lunsford's left hand. This knocked Presley off balance while Presley still had his right hand on the ground with the CEW in it, **pointed away from the officers, and had not been discharged.** Officer Lunsford then drew his duty weapon and fired a single shot to the left side of Presley's head, killing him. At the time of the incident, Officer Lunsford had two less-lethal options on his duty belt (CEW and baton) neither of which were utilized. The deceased male was later identified as Presley Eze.

On September 29, 2023. At approximately 1148 hours, I spoke with retired Rockford, Illinois Police Chief Chet Epperson on the telephone. Chief Epperson serves as an expert in applying Constitutional Standards, State Law, policy, and practice to police and jail incidents. He has extensive experience and employs a specialized focus as a police professional in the areas of use of force and officer-involved shootings. Chief Epperson was provided with **lapel camera footage from Officer Lunsford and Arbogast, along with a third video that was filmed from a civilian bystander's phone.** This is the same footage affiant has reviewed in support of probable cause for this incident. Chief Epperson stated he reviewed the videos provided to him and explained what his analysis is. Chief Epperson stated in his opinion, the initial investigation into the theft from the gas station could have been more thorough. He said from the time the backup officer was called to the time he arrived was approximately 12-14 minutes. He stated during that time the occupants of the Pontiac didn't display

not enough Information

in mouth
no he didn't
Time

not required
Ofc Lunsford says he will check
we can't figure out who you are
what do you mean
What happened between the vehicle
No, Presley drew the weapon from his holster

any signs that they were violent or a threat to officers. They stayed in the vehicle, didn't make any comments to the officers, and did not attempt to leave. Chief Epperson said the backup officer could have gone inside and checked the cameras to confirm a crime had been committed.

a crime had been committed

Chief Epperson stated he observed one officer on the ground, a male subject on top of that officer, and the second officer on the top. He observed that the officers were having a hard time controlling the male subject. Chief Epperson said he did see the male subject with the CEW in his hand, which was noticeable because it is yellow. However, he also stated he observed the CEW in the subject's right hand which the subject was utilizing for support on the ground. He said the subject's arm was extended on the pavement, with his arm straight (elbow locked), hand forward, and the CEW was not pointed at the officers. Chief Epperson also stated there were multiple less-lethal options to prevent the rapid escalation of force by Officer Lunsford. To include the use of a CEW, baton, or OC spray, depending on what was available to him at the time. Chief Epperson's expert opinion was that the level of force used was not justified due to the circumstances.

no CEW @ gas pumps
no OC. Baton Diseng problem
+ deadly force

Moreover, the New Mexico Department of Public Safety (NMDPS) Policies and Procedures states that the "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene. The proper use of force "requires careful attention to the facts and circumstances of each particular case, to include the severity of the crime at issue." Officers should ensure that they do not engage in unreasonable actions that create the need for the use of force because of tactical, strategic, and procedural errors that place themselves or others in jeopardy. Per NMDPS, less-than-lethal force is defined as any use of force other than that which is considered deadly force. Less-than-lethal force is not intended or expected to cause death or great bodily harm. Any use of force must be objectively reasonable under the totality of the circumstances (reasonable amount of force used to bring situation or resistive subject under control, given the totality of the circumstances.) Prior to using force, when safe and reasonable, the officer should use de-escalation techniques to slow down and stabilize a situation, to allow for more time, for more options, and for more resources to resolve the situation. It is a policy of NMDPS that commissioned personnel only use force that is objectively reasonable under the totality of the circumstances to effectively bring an incident under control while protection the lives of the officer and others.

Based on the aforementioned facts and information, probable cause exists. Your Affiant respectfully requests that an Arrest Warrant be issued for BRAD JUSTIN LUNSFORD, for VOLUNTARY MANSLAUGHTER-1 Count and FIREARM ENHANCEMENT-1 Count.

T. MARTINEZ
Signature of Affiant

Special Agent-New Mexico Office of the Attorney General
Official Title (if any)

Approved By R. JOHN DURAN
Approved by A.A.G./D.A.G.

Subscribed and sworn to or declared and affirmed to
Before me, in the above named County, in the State
Of New Mexico, this 3rd day of October, 2023.

NEW MEXICO
Judge, Notary or other Officer
District Court Judge

When used per 17

B. Kent Buckingham*+^

Rick Barrera*+

Adrian O. Vega

*Licensed in New Mexico
+Licensed in Texas



**BUCKINGHAM
BARRERA
VEGA**
LAW FIRM

Jennifer A. Houston*

Miguel A. Sarkis*+

^ Board Certified Personal Injury Trial Law
Texas Board of Legal Specialization

August 19, 2022

**VIA CERTIFIED MAIL
9490 9111 0803 3837 7713 95**

Mayor Ken Miyagishima
Las Cruces City Hall
700 N Main St
Las Cruces, NM 88001

Dear Mayor Miyagishima:

This letter serves as written notice of tort claims against the City of Las Cruces, pursuant to the New Mexico Tort Claims Act. In addition to serving as a tort claim notice under § 41-4-1 et seq., this letter also serves as notice to preserve all records and recordings related to the shooting of Prestley Eze at the Chevron located at 2645 South Valley Drive, Las Cruces, NM 88005 on August 2, 2022, as they existed at the time of the incident, including, but not limited to: belt tape, lapel footage, investigation photos, reports, statements, internal affair investigations, departmental investigations, interviews, memoranda, correspondence, 911 calls, dispatch calls, dispatch reports, and any and all other materials related to the file for the above referenced incident. The destruction of any of the above items with result in possible discovery sanctions based upon spoliation of evidence.

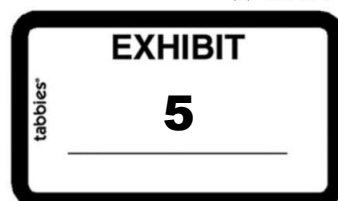
On the afternoon of August, 2, 2022, the Las Cruces Police Department, the Doña Ana County Sheriff's Department, and the New Mexico State Police Department responded to a report of shoplifting at the Chevron located at 2645 South Valley Drive, Las Cruces, NM 88005. The result of this response call was the Mr. Eze was shot and killed by Las Cruces police officers.

www.bbvlawfirm.com

ALBUQUERQUE OFFICE
4110 Cutler Ave NE, Suite 100
Albuquerque, NM 87110
(P) 505-266-4878

MIDLAND OFFICE
1707 W. Wall St.
Midland, TX 79701
(P) 432-570-1919

HOUSTON OFFICE
6671 Southwest Fwy Suite 612
Houston, TX 77074



TCN - 2022 - Eze, Prestley
Paulette Eze, et. al., v. City of Las Cruces, et. al.
D-307-CV-2023-00699
D000260

P/C lfo
lkani
Eric
Barbara
chief Dominguez
Legal

A claim is being made by the family of Mr. Eze against the City of Las Cruces, Doña Ana County, and the State of New Mexico.

Sincerely yours,



ADRIAN O. VEGA

AOV/rt



Buckingham Barrera
Law Firm
4110 Cutler Ave., Suite 100
Albuquerque, NM 87110

CERTIFIED MAIL ALBUQUERQUE NM 870

19 AUG 2022 PM 4 L

\$8.060
US POSTAGE
FIRST-CLASS
FROM 87110
08/19/2022
stamps
endicia



062S0009656004



9414 7111 0803 3837 7713 08

Mayor Ken Miyagishima
Las Cruces City Hall
700 N Main St
Las Cruces NM 88001-1120

CITY ATTORNEY'S OFFICE
AUG 23 2022

RECEIVED

RECEIVED

~~AUG 22 2022~~

CITY ATTORNEY'S OFFICE

66001-112000

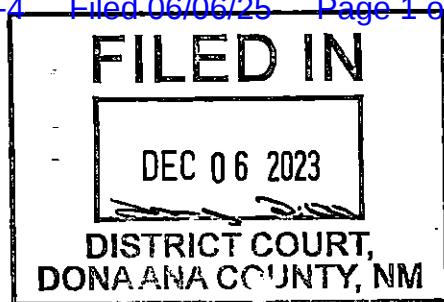


THIRD JUDICIAL DISTRICT COURT
COUNTY OF DONA ANA
STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff,

vs.

BRAD JUSTIN LUNSFORD
DOB: 07/29/1985
SSN: 589-60-4252
ADDRESS: 235 Sunken Train Pl, Las Cruces, NM 88007
Defendant.



No. **CR-2023-1613**
NMAO# 202307-00316
Richard M. Jacquez

CRIMES CHARGED
VOLUNTARY MANSLAUGHTER (FIREARM ENHANCEMENT)

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1: VOLUNTARY MANSLAUGHTER (FIREARM ENHANCEMENT) (0005)

That on or about the 2nd day of August, 2022, in Dona Ana County, New Mexico, the above-named defendant did kill Presley Eze, as a result of sufficient provocation, and knew that his acts created a strong probability of death or great bodily harm, a third degree felony resulting in the death of a human being, contrary to NMSA 1979, Section 30-2-3(A) (1994) and 31-18-16 (2021).

The names of the witnesses upon whose testimony this Indictment is based are as follows:
Clarence Gibson, Special Agent in Charge, New Mexico Attorney General's Office
Chet Epperson
Michael White
Lt. Peter Bradley, Las Cruces Police Department

I hereby certify that the foregoing Indictment is a true Bill.

APPROVED


R. John Duran
Deputy Attorney General

Date

12/6/23


Foreman

Date

12-6-23



**THIRD JUDICIAL DISTRICT COURT
COUNTY OF DONA ANA
STATE OF NEW MEXICO**

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
2/18/2025 11:02 AM
BERNICE A. RAMOS
CLERK OF THE COURT
Sandra Aguirre

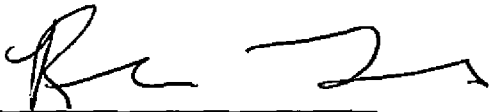
**STATE OF NEW MEXICO,
*Plaintiff,***

v.

**BRAD JUSTIN LUNSFORD,
*Defendant.***

**No. D-307-CR-2023-01613
Judge James B. Foy**

We find the Defendant, BRAD JUSTIN LUNSFORD, GUILTY of Voluntary Manslaughter, as charged in Count 1.



FOREPERSON



FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
2/18/2025 11:02 AM
BERNICE A. RAMOS
CLERK OF THE COURT
Sandra Aguirre

THIRD JUDICIAL DISTRICT COURT

**COUNTY OF DONA ANA
STATE OF NEW MEXICO**

**STATE OF NEW MEXICO,
*Plaintiff,***

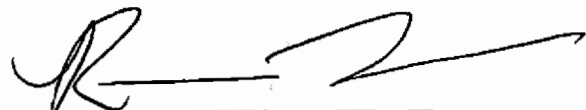
v.

**BRAD JUSTIN LUNSFORD,
*Defendant.***

**No. D-307-CR-2023-01613
Judge James B. Foy**

Do you unanimously find beyond a reasonable doubt that a firearm was used in the commission
of Voluntary Manslaughter?

yes (Yes or No)


FOREPERSON



GoFundMe Page Research

On 02/13/2025 a GoFundMe Page was created by Veronica De La O for Lacy Lunsford. Lacy Lunsford is identified as Brad Lunsford's wife. The stated monetary goal of the page was 45 thousand dollars. As of the writing of this report (02/17/2025) 30,040 dollars has been raised with 191 donations. The GoFundMe platform provides some identifying information on the donors.

GoFundMe runs the platform and individual donors can include their names in the list of donors. Other than the name on the donation list and amount donated there are no other identifiers.

For the purposes of this list I used the donor name and searched that name and "Las Cruces Police" and the donor name as well as "police" to see if there is any public mention of that name and the Las Cruces Police Department. Donors with no clear affiliation with the LCPD or another agency were not mentioned in this report.

James Arbogast- 250.00

James Arbogast may be related to Keegan Arbogast, but that is unknown.

Andrew Lazarin-250.00

Likely a LCPD officer

Isaac Legareta-50.00

A person with the same first name and last name spelled Legaretta worked as a detention officer at the Dona Ana County Detention Center.

Dean Thatcher-100.00

A person with this name is an Internal Affairs Investigator for the Dona Ana County Sheriff's Department.

Judy Oviedo-100.00

A person with this name is an El Paso Police Detective.

Curtis Yarnell-500.00

A School Resource Officer with the Las Cruces Police Department.

Viridiana Porras-100.00

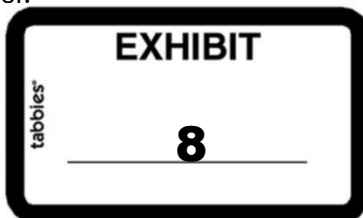
A person with this name is a LCPD officer.

Christal Ramirez-100.00

A person with this name is a Police Service Aide with the LCPD as of 2019.

Nathaniel Telles-100.00

A person with this name is an LCPD officer.



Anthony Fierro-100.00

A person with this name is or was an LCPD officer.

Amy Orlando-100.00

A person with this name is a former District Attorney in Dona Ana County.

Kacee Thatcher-100.00

A person with this name is a Detective with LCPD.

Joshua Herrera-100.00

A person with this name is an LCPD officer.

Alejandro Rodriguez-200.00

A person with this name is an officer with LCPD

Suteera Baker-100.00

A person with this name is a Financial Specialist with the 3rd Judicial District Court.

Andrew Sanchez-100.00

A person with this name is an Investigator for the Third Judicial District Attorney's Office.

Mathilda Martinez-200.00

A person with this name is or was an LCPD Police Officer.

John and Vanessa Ordonez-1000.00

A person name Vanessa Ordonez was the Chief of Police for the Anthony Police Department.

Laurie and Tommy McBride-100.00

A person named Tate McBride was a LCPD officer.

Miranda French-100.00

A person named Miranda Baker-French is an LCPD officer.

Gabriela Graham-100.00

A person with this name is an LCPD officer.

Andy DeLaO -500.00

A person with this name is a retired Sergeant with the LCPD.

Kenneth Erhard-50.00

A person with this name is a retired Sergeant with LCPD.

Thomas Hill-100.00

A person with this name is an LCPD officer.

Veronica DeLaO-200.00

A person with this name is the Treasurer of the Las Cruces Police Officers Association and the person that created the GoFundMe page for Laci Lunsford.

David Trbullo-100.00

A person with this name is listed as being an ATF agent and a graduate of the LCPD academy.

Troy Honeycutt-50.00

A person with this name graduated from NMSU and is a Tulsa Police Officer.

Brandon Roybal-200.00

A person with this name is a LCPD officer.

David and Darra Miller-100.00

A person named David Miller was a New Mexico State Police Officer.

Andrea Castaneda-150.00

A person with this name is an LCPD officer.

Keegan Arbogast-100.00

A person named Keegan Arbogast is a LCPD officer and is the other officer involved in the Presley Eze incident.

Javier Martinez-200.00

A person with this name is from Las Cruces and the New Mexico House Speaker.

Selena Tarin-100.00

A person with this name is an LCPD officer.

Chase Thouvenell-100.00

A person with this name is a Dona Ana County Sheriffs Deputy.

Austin & Brandee Kane-100.00

Austin Kane is the name of a person who is an LCPD officer.

Victor Tyfair-200.00

A person with this name is or was a deputy with the Dona Ana County Sheriff.

Aubrie Krause-50.00

A person with this name was a Firefighter for LCFD. Does not live in the state anymore.

Juan Monsivais-50.00

A person with this name is an LCPD officer.

Daniel Benoit-100.00

A person with this name is an LCPD officer.

Kevin Ramirez-100.00

A person with this name is an LCPD officer

Shannon Martin-100.00

A person with this name is a retired Deputy Chief with LCPD.

Antonio Chavez III-100.00

A person with this name is an LCPD officer.

Brian Johnston-1000.00

A person with this name is a Captain with the Dona Ana County SO.

Alexis Gomez-100.00

A person with this name is an LCPD officer

Steven and Marisol King-100.00

A person named Steven King is an officer with the New Mexico State Police.

Arturo C Ortega-50.00

A person with this name is a Deputy with the Dona Ana County Sheriff's Department.

Ruben Olivas-200.00

A person with this name is or was an LCPD officer.

Johnny Estrada-100.00

A person with this name is an LCPD officer

Sean & Naomi Terry-200.00

A person named Sean Terry is an LCPD Lieutenant.

Leonel Palomares-50.00

A person with this name is a New Mexico State Police Officer.

Joseph Misquez-100.00

A person with this name is or was an LCPD officer.

Derek Duran-200.00

A person with this name is or was an LCPD officer.

Lourdes Hernandez-50.00

A person with this name was an LCPD officer.

Adrian De la Garza-100.00

A person with this name is an officer with LCPD.

Jose Donato-320.00

A person with this name is an LCPD officer.

Hunter Hodges-100.00

A person with this name is an LCPD officer.

Lucy Milks-200.00

A person with this name is an LCPD officer

Richard Rivera-100.00

A person with this name is an LCPD officer

Fran Whitten-200.00

A person with this name is an LCPD officer

Joe Prado-50.00

A person with this name is an LCPD officer

Manny Soto-300.00

A person with this name is an LCPD officer

Johnny Rivera-100.00

A person with this name is an LCPD officer

Joshua Nanez-200.00

A person with this name is an LCPD officer

Isaac Renteria-100.00

A person with this name is an LCPD officer

Jesse Gonzales-100.00

A person with this name is an LCPD officer

Eduardo Salinas-1000.00

A person with this name is an LCPD officer and listed as the Academy Coordinator.

Adrian & Natasha Gonzales-100.00

Adrian Gonzales is a name of an LCPD officer.

Luis Balderrama-100.00

A person with this name is an LCPD officer

Mario Baltazar-100.00

Mario Baltazar-20.00

A person with this name is an LCPD officer

Jason Hayes-100.00

A person with this name is an LCPD officer

Yesenia Lopez-100.00

Not an officer with LCPD. A person with this name also has the same name as Johah Hernandez's wife. Officer Hernandez was killed in 2024.

Josh and Jamie Savage-350.00

A person named Jamie Savage is a Lt. for LCPD.

Tate McBride-100.00

A person with this name is an LCPD officer

Oscar Magallanes-100.00

A person with this name is an LCPD officer

Nate Dorado-100.00

A person named Nathan Dorado is an LCPD officer.

Ramon Armendariz-100.00

A person with this name is an LCPD officer

Stephanie Carabajal-100.00

A person with this name is or was an LCPD officer who was fired for a DWI.

Louis Jr Reyna-100.00

A person named Louis Reyna is an officer with LCPD.

Armando Valenzuela-100.00

A person with the same name is or was an Anthony, NM police officer.

Sergio Munoz-100.00

A person with this name is an LCPD officer

Jeremy & Jennifer Story-1000.00

Jeremy Story is the Chief of LCPD.

Jennifer Roman-150.00

A person with this name is an LCPD officer

Chris Smelser-100.00

A person named Christopher Smelser was an officer with LCPD who was charged and acquitted of homicide.

Jesse Rogers-100.00

A person with this name is an LCPD officer

Vincent & Lori Shadd-200.00

A person named Vincent Shadd is an LCPD officer.

Adrian & Meghan Alva-500.00

A person named Adrian Alva is, or was a LCPD officer.

Michael and Kacie Henke-1000.00

A person named Mike Henke is a Sergeant with LCPD.

Dustin Lockridge-50.00

A person with this name is a Detective with LCPD.

Doña Ana County Detention Center**Visitation Log Report**

Inmate #	Name	Visitor	Relationship:	Visit Length:	Checkin:	Start Time	EndTime	Checkout:
726589	LUNSFORD, BRAD JUSTIN	CORONADO, JOE (ATTY)	ATTORNEY	0	02/14/2025 13:42	02/14/2025 13:48	02/14/2025 14:03	02/14/2025 14:03
726589	LUNSFORD, BRAD JUSTIN	MARTIN, KRISTEN (USPO)	USPO	0	02/24/2025 09:24	02/24/2025 09:33	02/24/2025 10:06	02/24/2025 10:14
726589	LUNSFORD, BRAD JUSTIN	ROBLES, LUIS (ATTY)	ATTORNEY	0	02/24/2025 13:25	02/24/2025 13:35	02/24/2025 14:21	02/24/2025 14:51
726589	LUNSFORD, BRAD JUSTIN	HUTTON, BONITA (ATTY REP)	ATTY REP	0	02/24/2025 13:25	02/24/2025 13:35	02/24/2025 14:21	02/24/2025 14:51
726589	LUNSFORD, BRAD JUSTIN	MARTIN, KRISTEN (USPO)	USPO	0	02/28/2025 08:41	02/28/2025 08:50	02/28/2025 08:59	02/28/2025 09:04
726589	LUNSFORD, BRAD JUSTIN	CORONADO, JOE (ATTY)	ATTORNEY	0	02/28/2025 08:49	02/28/2025 08:50	02/28/2025 08:59	02/28/2025 09:04
726589	LUNSFORD, BRAD JUSTIN	CORONADO, JOE (ATTY)	ATTORNEY	0	03/19/2025 10:42	03/19/2025 10:53	03/19/2025 11:23	03/19/2025 11:42
726589	LUNSFORD, BRAD JUSTIN	CHANDLER, MATT (ATTY)		0	03/20/2025 12:46	03/20/2025 12:50	03/20/2025 13:46	03/20/2025 13:47



Brad's Post



Brad Lunsford

November 21, 2013 · 🌐



"People sleep peaceably in their beds at night because rough men stand ready to do violence on their behalf" -George Orwell



7

3 comments

Share



Jordan M. Hamilton

That describes The silent assassin!!! Bad ass quote!

9y



2



Melanie Ludwig

Yes sir! I have that whole speech, i cut it out of the paper when u were overseas! Reminded me of u. I love u so much:) now thats a MAN!!

9y



EXHIBIT

tabbles

10

Brad's Post

**Brad Lunsford**

September 22, 2014 · 🌐



Here's a riddle: Two cars are drag racing... The car in the left lane finishes first... So how does the third car in the very back WIN?



10

9 comments

Share

**Chris Miller**

3rd car is you on duty?

8y



3

**Melanie Ludwig**

Cuz its u, woo hoo!!! 😊

8y

**Brad Lunsford**

Hahaha! Winna! Winna! Winna!

See translation 8y



4

**Patrick Zeigler**

Damn those crazy kids!

8y

**Dominique Saldana**

That's gotta be cheating some how lol careful out there with all this crazy weather i bet you guys must be busy

8y

**Luis M Lozano**

No! They win! A TICKET TO TRAFFIC COURT!! Unless u arrested their asses...

8y



2

**Mike Lunsford**

Lights there asses up? 😏..

8y



3

**Travis Lunsford**

...good old fashion beat down 😏

8y



2

**Brad Lunsford**

Lil brutality never hurt anybody..

8y

EXHIBIT**11**

tabbles

Brad's Post

**Brad Lunsford**

June 29, 2014 · 🌐



Thank God Mexico lost. Now all these UN-American Americas can be quiet! And dont bother switching your allegiance now... We dont want you!

10

12 comments

Share

**Amanda Hardin**
Amen!!!

9y

**Alex Bosch**
Aint no one taking my guns hahahahah

9y

**Patrick Zeigler**
GO HOME MEXICO! No, seriously go home!

9y

**Martha Alejandra Lozano Salas**

9y

**Amanda Hardin**
I'm confused

9y

**Luis Quezada Jr.**
It feels like this post isn't about soccer anymore lol!

9y

**Luis Quezada Jr.**
Yeah I get it... I was just referring to the original post that was about soccer lol... or at least it sounded like it was about soccer, I'm kinda confused now after reading the rest of the comments.

9y

EXHIBIT

tabbles

12

Brad's Post

**Brad Lunsford**

September 8, 2014 · 🌐

**I hate vagrants!**

7

15 comments

Share

**Butterbean Chris Hern**

Yup

9y

**Dominique Saldana**Rough day **Brad Lunsford**

9y

**Brad Lunsford**

Lets just say shit and piss filled belongings were just the tip of the ice berg.

9y

**Butterbean Chris Hern**

Fuck that

9y

**Dominique Saldana**Oh my god **Brad Lunsford** lol welcome to father hood there is gonna be a lot a shit and piss and spit up filled things in your life now congratulations

9y

**Dominique Saldana**

Yea true but even when its your baby's butt explodes and covers you in poo you freak out the same

9y

**Brad Lunsford**

^ Hobos?

9y

**Brad Lunsford**

Oops! I apologize...

9y

EXHIBIT

tabbies®

13

MEMORANDUM OF UNDERSTANDING/WAIVER OF CONFLICT

This Memorandum of Understanding acknowledges that a conflict of interest exists arising from the current representation by Robles, Rael & Anaya, P.C. of Brad Lunsford in the actions filed in the United States District Court case captioned *Estate of Presley Eze v. City of Las Cruces, et al.*, CIV-23-00976 GBW/KRS and the Third Judicial District Court case captioned *Estate of Presley Eze, et al. v. City of Las Cruces, et al.*, D-307-CV-2023-00699 (both civil actions are collectively referred to as “*Estate of Presley Eze* litigation”) and *State of New Mexico v. Brad Justin Lunsford*, D-307-CR-2023-01613 (“the criminal proceeding”), while also currently representing the City of Las Cruces in the *Estate of Presley Eze* litigation and in other matters. The implications of the representation and the advantages and risks of such representations have been discussed by Robles, Rael & Anaya, P.C. with Brad Lunsford. Brad Lunsford agreed to waive the present and possible future conflicts as follows:

1. Robles, Rael & Anaya, P.C., by this Memorandum of Understanding, is informing Brad Lunsford that this firm has been asked by the City of Las Cruces to represent Brad Lunsford in *Estate of Presley Eze* litigation. Brad Lunsford has been informed that Robles, Rael & Anaya, P.C. also represents the City of Las Cruces in the *Estate of Presley Eze* litigation as well as numerous other lawsuits. According to the Code of Professional Responsibility, Robles, Rael & Anaya, P.C. may represent both Brad Lunsford and the City of Las Cruces in the *Estate of Presley Eze* litigation and/or the criminal proceeding and the City of Las Cruces in other matters if the parties have given their consent after being fully informed of the risks and of the advantages created by the representation. NMRA, § 16-107.

2. Brad Lunsford agrees that based on the facts known to date at issue in *Estate of Presley Eze* litigation and the criminal proceeding, he was at all times material to the allegations



in the *Estate of Presley Eze* litigation and/or the criminal proceeding, acting within the scope of his employment as defined by the New Mexico Tort Claims Act.

3. Brad Lunsford knows that there is an actual conflict of interest between the City of Las Cruces and himself. It is in the City of Las Cruces' best interest for Officer Lunsford's deposition to go forward, and it is in Officer Lunsford's best interest to assert his Fifth Amendment privilege against self-incrimination in response to any questions asked at his civil deposition. Despite this actual conflict of interest, Brad Lunsford agrees Robles, Rael & Anaya, P.C. can continue to represent both the City of Las Cruces and Brad Lunsford in the *Estate of Presley Eze* litigation.

4. Brad Lunsford knows that there is a second actual conflict of interest between the City of Las Cruces and himself. As a consequence of Officer Lunsford's violation of New Mexico law, the City of Las Cruces began the process of terminating Officer Lunsford's employment with the City of Las Cruces. Despite this actual conflict of interest, Brad Lunsford agrees that Robles, Rael & Anaya, P.C. can continue to represent both the City of Las Cruces and Brad Lunsford in the *Estate of Presley Eze* litigation.

5. Brad Lunsford acknowledges that representation in the *Estate of Presley Eze* litigation and the criminal proceeding could require sharing of confidential information between him and the City of Las Cruces and its officials and employees that would otherwise be privileged. Brad Lunsford hereby consents to such sharing of confidential information between each of them. NMRA, § 16-106.

6. Brad Lunsford acknowledges that facts not known now but later discovered may reveal differing interests, which if uncompromised, may require Robles, Rael & Anaya, P.C. to

withdraw from representing Brad Lunsford in the *Estate of Presley Eze* litigation and the criminal proceeding.

7. Brad Lunsford understands that a conflict of interest may arise if his interests become adverse to the interests of the City of Las Cruces in other lawsuits. If the interests of Brad Lunsford become adverse to the interests of the City of Las Cruces in other lawsuits, Robles, Rael & Anaya, P.C. may discontinue this firm's representation of Brad Lunsford and the City of Las Cruces in the *Estate of Presley Eze* litigation and/or the criminal proceeding.

8. Brad Lunsford understands that Robles, Rael & Anaya, P.C. may be required to withdraw from representing him in the *Estate of Presley Eze* litigation and the criminal proceeding, if it is determined by the City of Las Cruces that an actual conflict of interest has materialized such that any of the other lawsuits wherein Robles, Rael & Anaya, P.C. represents the City of Las Cruces may be adversely impacted by the firm's representation of Brad Lunsford in the *Estate of Presley Eze* litigation and/or the criminal proceeding.

9. A conflict of interest may also arise because of the prior and continuing representation by Robles, Rael & Anaya, P.C. of the City of Las Cruces in other matters.

10. Brad Lunsford has been advised by Robles, Rael & Anaya, P.C. that he may seek an opinion from independent counsel of his own choosing as to the advisability of this representation.

11. As indicated by his signature below, Brad Lunsford has read this Memorandum of Understanding/Waiver of Conflict and consents to this representation by Robles, Rael & Anaya, P.C. in the *Estate of Presley Eze* litigation and/or the criminal proceeding, with the understanding that he is waiving his rights if any conflict of interest may exist or arise in the course of these proceedings.

12. Brad Lunsford understands that currently there is a known conflict of interest in having Robles, Rael & Anaya, P.C. represent him in the *Estate of Presley Eze* litigation and/or the criminal proceeding. Despite the existence of an actual conflicts of interest and potential conflict of interest in the dual representation of himself and the City of Las Cruces by Robles, Rael & Anaya, P.C. Brad Lunsford grants his consent to such representation.

13. Brad Lunsford has read the foregoing Memorandum of Understanding/Waiver of Conflict and fully understands it.

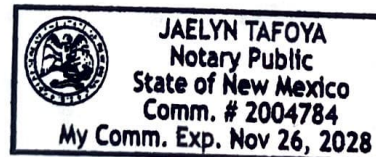
By: 
Brad Lunsford

SUBSCRIBED AND SWORN TO before me this 26 day of March 2025 by Brad Lunsford.


Notary Public

My Commission Expires:

NOV 26, 2028



MEMORANDUM OF UNDERSTANDING/WAIVER OF CONFLICT

This Memorandum of Understanding acknowledges that a conflict of interest exists arising from the current representation by Robles, Rael & Anaya, P.C. of the City Las Cruces in the actions filed in the United States District Court case captioned *Estate of Presley Eze v. City of Las Cruces, et al.*, CIV-23-00976 GBW/KRS and the Third Judicial District Court case captioned *Estate of Presley Eze, et al. v. City of Las Cruces, et al.*, D-307-CV-2023-00699 (both civil actions are collectively referred to as “*Estate of Presley Eze* litigation”) and *State of New Mexico v. Brad Justin Lunsford*, D-307-CR-2023-01613 (“the criminal proceeding”), while also currently representing Brad Lunsford in the *Estate of Presley Eze* litigation and in other matters. The implications of the representation and the advantages and risks of such representations have been discussed by Robles, Rael & Anaya, P.C. with the City of Las Cruces. The City of Las Cruces agreed to waive the present and possible future conflicts as follows:

1. Robles, Rael & Anaya, P.C., by this Memorandum of Understanding, is informing the City of Las Cruces that this firm has been asked by the City of Las Cruces to represent Brad Lunsford in the *Estate of Presley Eze* litigation. The City of Las Cruces also understands that Robles, Rael & Anaya, P.C. also represents the City of Las Cruces in the *Estate of Presley Eze* litigation as well as numerous other lawsuits. According to the Code of Professional Responsibility, Robles, Rael & Anaya, P.C. may represent both Brad Lunsford and the City of Las Cruces in the *Estate of Presley Eze* litigation and/or the criminal proceeding and the City of Las Cruces in other matters if the parties have given their consent after being fully informed of the risks and of the advantages created by the representation. NMRA, § 16-107.

2. The City of Las Cruces agrees that based on the facts known to date at issue in *Estate of Presley Eze* litigation and the criminal proceeding that Brad Lunsford was at all times



material to the allegations in the *Estate of Presley Eze* litigation and/or the criminal proceeding, acting within the scope of his employment as defined by the New Mexico Tort Claims Act.

3. The City of Las Cruces knows that there is an actual conflict of interest between the City of Las Cruces and Brad Lunsford. It is in the City of Las Cruces' best interest for Officer Lunsford's deposition to go forward, and it is in Officer Lunsford's best interest to assert his Fifth Amendment privilege against self-incrimination in response to any questions asked at his civil deposition. Despite this actual conflict of interest, the City of Las Cruces agrees Robles, Rael & Anaya, P.C. can continue to represent both the City of Las Cruces and Brad Lunsford in the *Estate of Presley Eze* litigation.

4. The city of Las Cruces knows that there is a second actual conflict of interest between the City of Las Cruces and Brad Lunsford. As a consequence of Officer Lunsford's violation of New Mexico law, the City of Las Cruces began the process of terminating Officer Lunsford's employment with the City of Las Cruces. Despite this actual conflict of interest, the City of Las Cruces agrees that Robles, Rael & Anaya, P.C. can continue to represent both the City of Las Cruces and Brad Lunford in the *Estate of Presley Eze* litigation.

5. The City of Las Cruces acknowledges that representation in the *Estate of Presley Eze* litigation and the criminal proceeding could require sharing of confidential information between Brad Lunsford and the City of Las Cruces and its officials and employees that would otherwise be privileged. The City of Las Cruces hereby consents to such sharing of confidential information between each of them. NMRA, § 16-106.

6. The City of Las Cruces acknowledges that facts not known now but later discovered may reveal differing interests, which if uncompromised, may require Robles, Rael & Anaya, P.C.

to withdraw from representing the City of Las Cruces in the *Estate of Presley Eze* litigation and the criminal proceeding.

7. The City of Las Cruces understands that a conflict of interest may arise if its interests become adverse to the interests of Brad Lunsford in other lawsuits. If the interests of the City of Las Cruces become adverse to the interests of Brad Lunsford in other lawsuits, Robles, Rael & Anaya, P.C. may discontinue this firm's representation of both the City of Las Cruces in the *Estate of Presley Eze* litigation and/or the criminal proceeding.

8. A conflict of interest may also arise because of the prior and continuing representation by Robles, Rael & Anaya, P.C. of the City of Las Cruces in other matters.

9. Until concluded otherwise, the City of Las Cruces agrees that Robles, Rael & Anaya, P.C. shall continue to represent the City of Las Cruces in existing and future matters.

10. The City of Las Cruces agrees that Robles, Rael & Anaya, P.C. shall continue to interact with all City of Las Cruces departments and officials, including, but not limited to, the Las Cruces Police Department and Las Cruces Police Department officers as this firm deems necessary for the firm's representation of the City of Las Cruces in existing and future matters.

11. The City was advised by Robles, Rael & Anaya, P.C. that it may seek an opinion from independent counsel of its own choosing as to the advisability of this representation.

12. The City of Las Cruces understands that currently there are two known conflicts of interest in having Robles, Rael & Anaya, P.C. (Luis Robles) represent it in the *Estate of Presley Eze* litigation and/or the criminal proceeding. Despite the existence of an actual conflict of interest and potential conflict of interest in the dual representation of Brad Lunsford and the City of Las Cruces by Robles, Rael & Anaya, P.C., the City of Las Cruces grants its consent to such representation.

13. As indicated by the signature below, the City of Las Cruces has read this Memorandum of Understanding/Waiver of Conflict and consents to the continuing representation of Brad Lunsford by Robles, Rael & Anaya, P.C. in the *Estate of Presley Eze* litigation and/or the criminal proceeding.

14. The City of Las Cruces has read the foregoing Memorandum of Understanding/Waiver of Conflict and fully understands it.

By:



Eric Enriquez

Mayor

City of Las Cruces

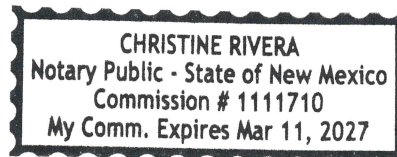
SUBSCRIBED AND SWORN TO before me this 31 day of March 2025 by Eric Enriquez.



Notary Public

My Commission Expires:

March 11, 2027 CR



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PAULETTE EZE and PAMELA EZE SYLVESTRE,
as personal representatives of the
estate of **PRESLEY EZE,**

Plaintiffs,

v.

No. 2:23-cv-976-GBW/KRS

OFFICER BRAD LUNSFORD,
in his individual capacity,

Defendant.

**DEFENDANT'S RESPONSES TO PLAINTIFFS' SECOND SET OF
REQUESTS FOR PRODUCTION TO DEFENDANT OFFICER BRAD LUNSFORD**

Defendant, Officer Brad Lunsford, through his attorneys Robles, Rael & Anaya, P.C. (Luis Robles), states the following for his Responses to Plaintiffs' Second Set of Requests for Production to Defendant Officer Brad Lunsford:



REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 3: Please product all texts, emails, or any type of electric communications between you and any other member of the City of Las Cruces Police Department or between you and any employee of the City of Las Cruces, including but not limited to, the former or current Chief of the Las Cruces Police Department from August 2, 2021, to the present time.

RESPONSE:

Objection. Defendant has a Fourteenth Amendment right to privacy regarding his personal communication in his possession.

According to Federal Rule of Civil Procedure 26, a party may seek discovery of “any matter, *not privileged*, that is relevant to the claim or defense of any party. . . .” Fed.R.Civ.P. 26(b)(1) (*italics added*). Moreover, Rule 26 vests this Court with broad discretion to bar unnecessary discovery. See Crawford--El v. Britton, 523 U.S. 574, 597-98 (1998) (“[w]hen a plaintiff files a complaint against a public official alleging a claim that requires proof of wrongful motive, the trial court must exercise its discretion in a way that protects the substance of the qualified immunity defense. It must exercise its discretion so that officials are not subjected to unnecessary and burdensome discovery or trial.”). This Court’s power to limit discovery is additionally outlined in Fed.R.Civ.P. 26(c) which provides that upon motion and for good cause shown, this Court may enter an order that “the disclosure or discovery not be had.” Fed. R. Civ. P. 26(c)(1). Thus, this Court has the authority to limit, if not bar, discovery regarding privileged materials.

The constitutional “right of privacy. . . [is] founded in the Fourteenth Amendment’s concept of personal liberty.” Roe v. Wade, 410 U.S. 113, 153 (1973).¹ Cases involving the constitutional right of privacy address two distinct interests: “[o]ne is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions.” Whalen v. Roe, 429 U.S. 589, 599-600 (1977). Defendant, LCPD Officer D’Anathony Roohr’s (Officer Roohr”), asserted privilege only involves the former of these interests. Following Supreme Court precedent, the Tenth Circuit held that “[d]ue process. . . implies an assurance of confidentiality with respect to certain forms of personal information possessed by the state.” Mangels v. Pena, 789 F.2d 836, 839 (10th Cir. 1986).

¹ In relevant part, the Fourteenth Amendment states that “nor shall any State deprive any person of . . . liberty . . . without due process of law.” U.S. Const. Amend. XIV, § 1.

Information falls within the ambit of constitutional protection when an individual has a “legitimate expectation. . . that it will remain confidential while in the state’s possession.” Id. (citing Nixon v. Administrator of General Services, 433 U.S. 425, 457-58 (1977) (citing Katz v. United States, 389 U.S. 347, 351-53 (1967))). The legitimacy of this expectation depends, “at least in part, upon the intimate or otherwise personal nature of the material which the state possesses.” Mangels, 789 F.2d at 839. If an individual has a legitimate expectation of confidentiality, then “[d]isclosure of such information must advance a compelling state interest which, in addition, must be accomplished in the least intrusive manner.” Id. (citing Denver Policemen’s Protective Assoc. v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981)).

With regard to information about personal matters, Officer Roohr and non-defendant LCPD police officers have a right to privacy. Indeed, the Tenth Circuit held that police officers have a recognized expectation of privacy as to personal matters contained in police personnel and investigative files. Denver Policemen’s Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981). Since Lichtenstein, the Tenth Circuit continues to recognize a constitutional right to privacy and confidentiality in personal information within government records. See Flanagan v. Munger, 890 F.2d 1557, 1570 (10th Cir. 1989) (“The Supreme Court has recognized that the constitutional right to privacy protects an individual’s interest in preventing disclosure by government of personal matters.”) (citation omitted); Mangels, 789 F.2d at 839 (“Due process thus implies an assurance of confidentiality with respect to certain forms of personal information possessed by the state.”). According to these Supreme Court and Tenth Circuit cases, Officer Roohr and all LCPD officers have constitutionally-based privacy interests in personal matters contained within their police personnel and investigative files.

In Lichtenstein, the Tenth Circuit adopted a balancing test to determine whether personal data is of such a highly personal or sensitive nature that it may fall within the zone of confidentiality. Lichtenstein, 660 F.2d at 435. The balancing test sets out the following factors which the court must consider: “(1) if the party asserting the right has a legitimate expectation of privacy, (2) if disclosure serves a compelling state interest, and (3) if disclosure can be made in the least intrusive manner.” Id. (citing Martinelli v. District Court in and for the City and County of Denver, 612 P.2d 1083, 1091 (Colo. 1980)).

Without waiving this objection, Defendant Lunsford is not in possession of any of the requested text messages or emails. Defendant Lunsford is not the custodian for his City of Las Cruces/Las Cruces Police Department emails and has no access to those e-mails because of his termination from the Las Cruces Police Department. As for Defendant Lunsford’s text messages, Defendant Lunsford does not possess any text messages because he deleted his text messages with any member of the City of Las Cruces Police Department and any employee of the City of Las Cruces, including but not limited to, the former or current Police Chiefs of the Las Cruces Police Department from August 2, 2021 to the present time.

Agreement to Download and Produce Social Media Account Data

This agreement is entered into by and between:

Brad Lunsford, hereafter referred to as "User", and

The Kennedy Law Firm, hereafter referred to as
"Requesting Party".

The User agrees to download and provide data from their social media account using the Platform's
"Download Your Information" tool for the purposes of civil litigation.

Platform name: X (Twitter)

Username: Brad Lunsford

Scope of Downloadable Data

The user agrees to download the following categories of information:

- Messages (Direct/Private)
- Posts (Public and Private)
- Photos/Videos
- Comments and Likes
- Other _____

The timeframe for requested data is:

From: January 24, 2014, To: May 9, 2025

Download Process

- The User will login to their account and use the Platform's official "Download Your Information" tool.
- The data will be downloaded in a machine-readable format (e.g., HTML or JSON).
- The parties may jointly review disputed redactions or submit disputes to the court if necessary.

User (Account Owner):

Signature: _____

Name: _____

Date: _____

Requesting Party (or Counsel):

Signature: _____

Name: _____

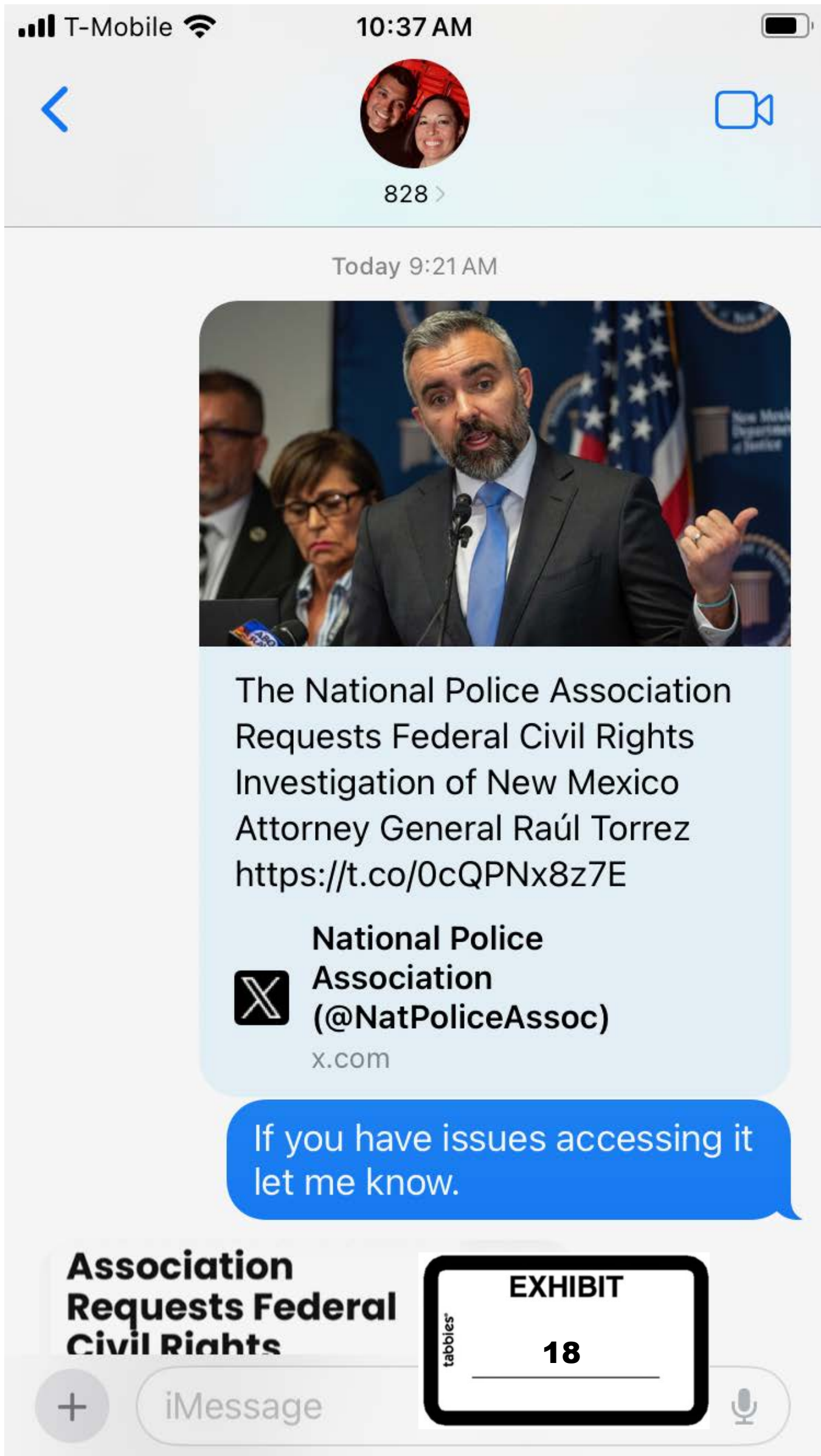
Date: _____

The Kennedy Law Firm, P.C.
P.O. Box 26776, Albuquerque, NM 87125-6776
P: 505-244-1400 / F: 505-244-1406 / www.civilrightslaw.com
Joseph P. Kennedy / Shannon L. Kennedy

EXHIBIT

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**Attorney General
Raúl Torrez**



Raúl Torrez via AP

Indianapolis, April 17, 2025 — The
National Police Association (NPA) today



Nationalpolice.org

Saw it first thing this
morning....couldn't wait 😂
already posted it to IG 😬

😏 hopefully something comes
of it. 🙌

Hopefully!!! 🙌 🙌

At least he's aware his bs is
getting brought up to US AG.

Delivered



iMessage





iMessage
Today 7:49 AM

You were on my mind today man. Just checking in on you

Today 8:59 AM

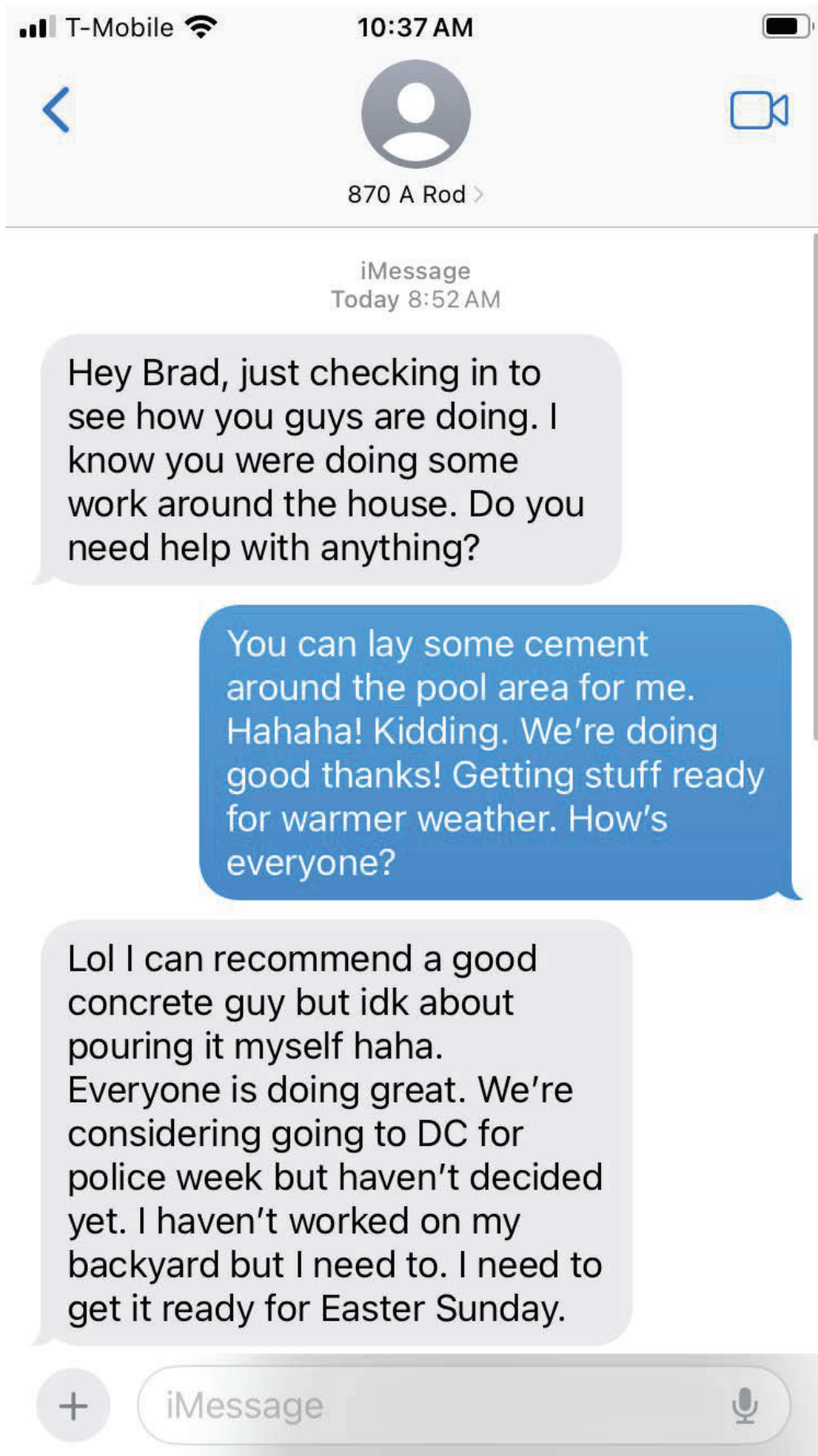
Doing good LT thanks. Getting tired of waiting around but it is what it is. At least I'm back home.

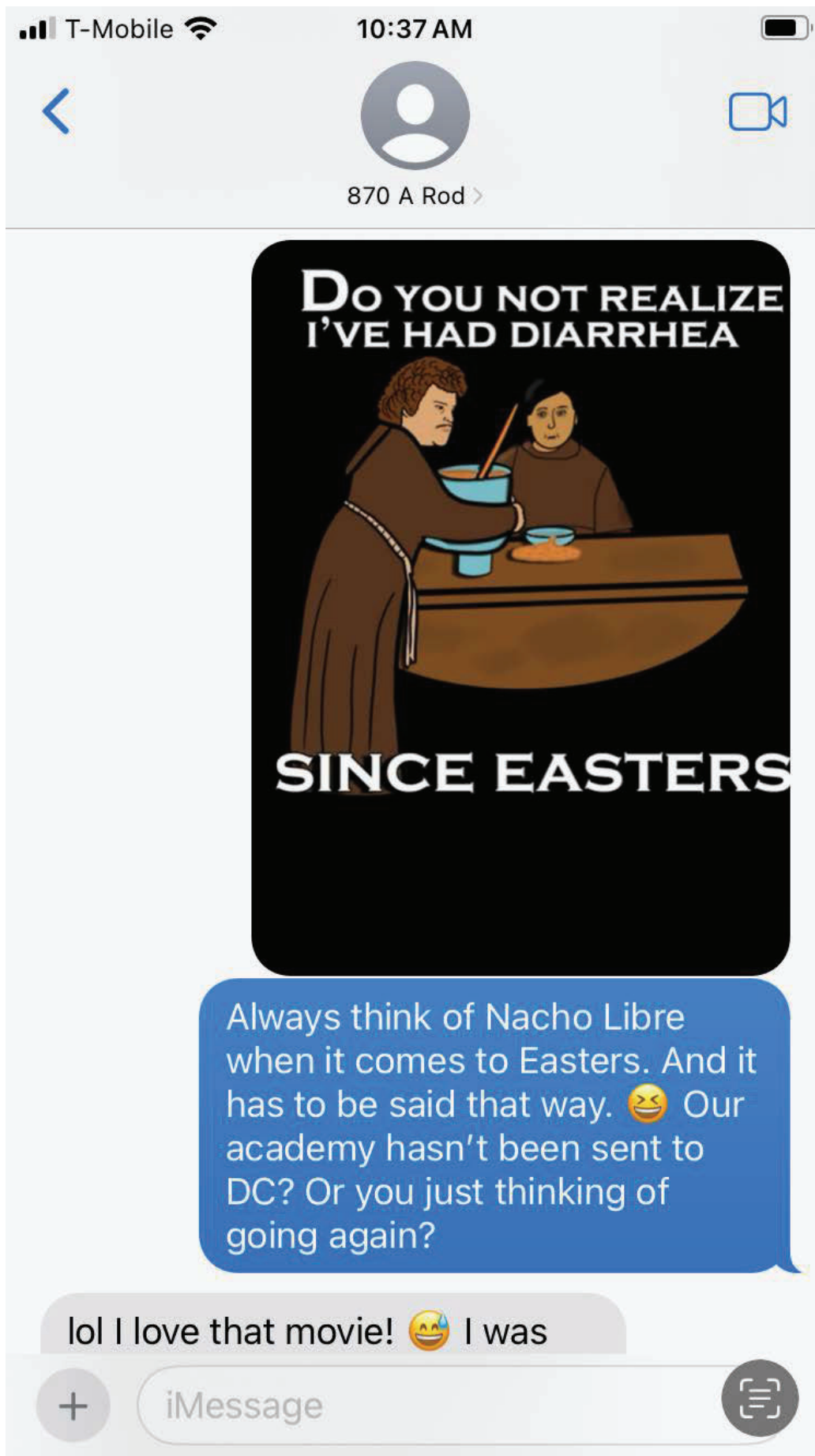
I can't even imagine man, keep you head up and keep busy with the family brother

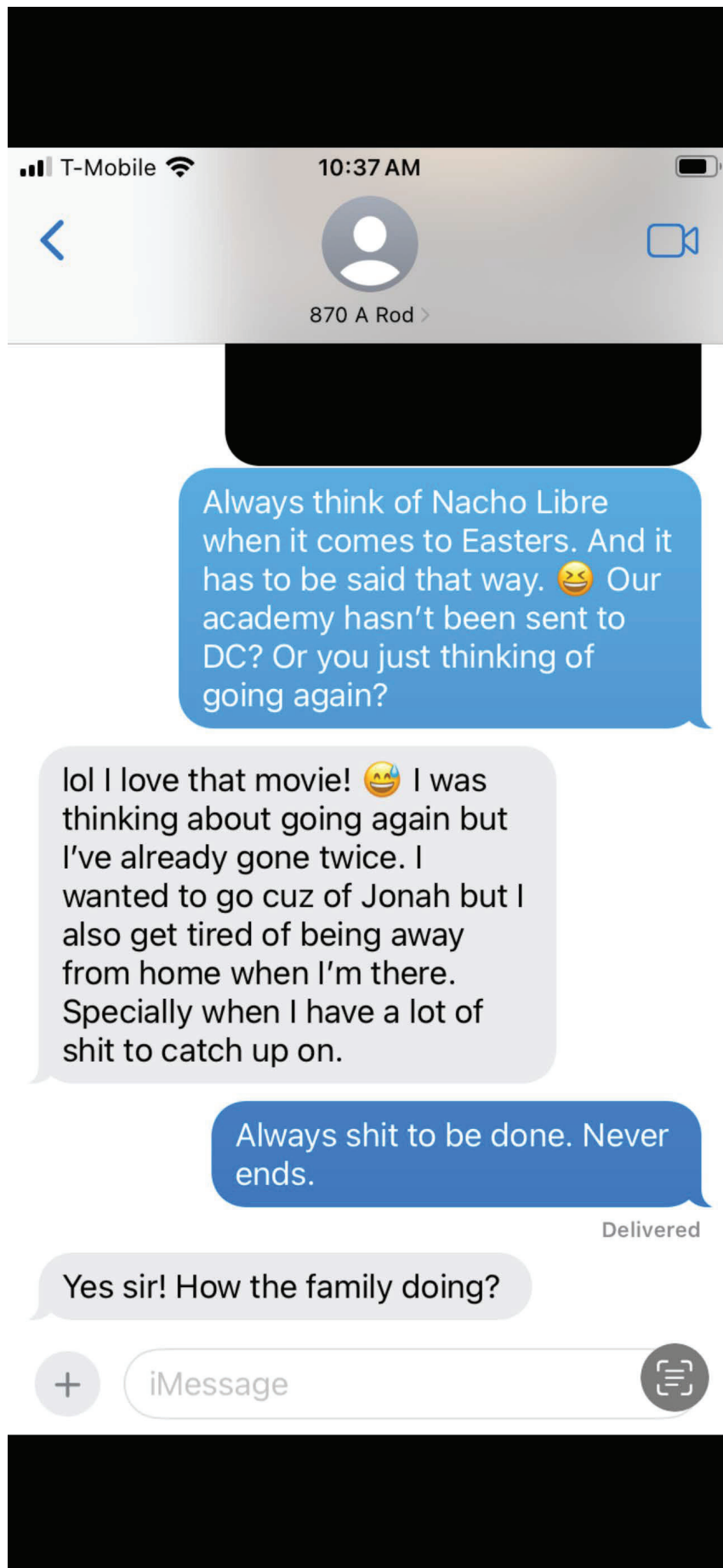
Will do. Thanks LT!

Delivered









**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO,

Plaintiff,

v.

No. D-307-CR-2023-01613

Judge James B. Foy

BRAD JUSTIN LUNSFORD,

Defendant.

AFFIDAVIT OF DR. MONNICA WILLIAMS

I, Monnica Williams, Ph.D., am a board-certified clinical psychologist, licensed to practice in the United States and Canada and swear under oath the following is true:

1. I have over 20 years of experience specializing in trauma and culturally informed mental health care. I have studied at MIT, UCLA, and the University of Virginia.
2. I have served as a tenured professor at multiple research universities, and I am currently a Canada Research Chair for Mental Health Disparities.
3. My expertise includes the psychological impact of racism, trauma, oppression-based stress, and the effects of state violence on individuals and communities.
4. I have published extensively in peer-reviewed journals, co-authored national guidelines on race-based trauma, and regularly provide expert consultation in legal cases involving psychological harm.
5. I hereby submit this affidavit in my capacity as an expert for the court to explain the psychological necessity of keeping Officer Brad Lunsford in custody pending resolution of his request for a new trial.



6. **Factual Background**

On August 2, 2022, while Presley Eze was on the ground between two police officers, with a Taser in his hand, saying “stop it, stop it,” LCPD Officer Brad Lunsford calmly withdrew his service weapon, placed the barrel against Mr. Eze’s skull, and fired—ending the life of a young Black man who posed no immediate threat of serious bodily harm or death.

7. Officer Lunsford was subsequently convicted of voluntary manslaughter by a jury and seeks a new trial.

8. **Extreme Brutality and Its Public Dissemination**

The act of executing an individual at point-blank range embodies brutality that violates not only legal standards but the most basic tenets of human dignity. The recording of this killing—widely available online— along with the ongoing news coverage of Mr. Lunsford’s release from custody and claims of victimhood force Mr. Eze’s family to repeatedly confront their loved one’s final, terrifying moments, compounding their grief and inflicting enduring emotional wounds.

9. **Ambiguous Loss and Complicated Grief**

Ongoing Ambiguity. Releasing Officer Lunsford before all legal avenues are exhausted prolongs a state of ambiguity for the Eze family surrounding the loss of their loved one. Without the psychological closure that finality in adjudication provides, mourners remain trapped between hope and despair, unable to integrate Mr. Eze’s death into a coherent life narrative—a process essential for healthy grief resolution.

10. **Risk of Severe Psychopathology**

This chronic uncertainty fuels persistent anxiety triggers intrusive recollections of the shooting, and intensifies symptoms of complicated grief—rumination, yearning, anger, and

sadness that can evolve into problems such as major depressive disorder, posttraumatic stress disorder (PTSD), and significant functional impairment.

11. **The Family Grief**

Profound and enduring psychological, relational, and cultural harm caused by racial trauma is present in Presley's family narratives, which can be particularly severe when it is perpetrated or reinforced by authorities entrusted with public protection and justice. These harms are consistent with documented clinical patterns of race-based traumatic stress, complicated grief, and oppression-based trauma (Comas-Díaz et al., 2019; Cénat, 2023; De Leon et al., 2023).

- a) **Paulette Eze's** affidavit, Presley's sister, reports experiencing ongoing emotional trauma symptoms, including grief, anxiety, and a diminished sense of safety and stability following her brother's killing (Affidavit of Paulette Eze, 2025). After this loss, she experienced lasting psychological distress and a sense of isolation. These symptoms are indicative of grief and unresolved trauma, which are known to cause long-term impairment when justice is delayed or denied (DeVylder et al., 2022).
- b) **Pete Obinna Eze**, Presley's youngest brother, describes a profound loss of guidance and meaning, stating that Presley was a father figure, mentor, and his closest emotional support. Pete's affidavit reflects disrupted identity development, survivor's guilt, and depression, particularly as his grief is compounded by feelings of injustice and systemic betrayal (Affidavit of Pete Eze, 2025). His emotional responses are characteristic of race-related traumatic stress and disenfranchised grief (Comas-Díaz et al., 2019).
- c) **Pamela Eze Sylvestre**, Presley's sister, recounts a vivid episode of trauma in which she experienced overwhelming fear, panic, and sobbing simply after seeing a police cruiser.

These were rooted in the catastrophic and fatal actions taken by law enforcement against her brother, leaving her with a deep sense of fear, mistrust, and psychological harm that continues to impact her daily life. Though she had committed no offense, her body reacted as if under threat—an experience aligned with somatic flashbacks and hypervigilance, hallmark symptoms of PTSD in racially traumatized individuals (Affidavit of Pamela Eze, 2025; Bor et al., 2018).

- d) **Loretta Eze**, Presley's mother, lost a son who was deeply beloved and a true blessing to her. Notably, she viewed him as a protector of the family (Affidavit of Loretta Eze, 2025). He helped support her physically, financially, and emotionally. With Presley's murderer living freely, after having taken the life of the family protector, this can be expected to exacerbate feelings of fear and despair. She reports that she can't stop crying, and America has become a nightmare. She needs to see that in America, the rule of law can triumph where public officials cannot simply take the law into their own hands.
- e) **Chief Isaac Eze**, Presley's father, and an Igbo elder, details the spiritual and cultural devastation of losing his firstborn son, a figure who in his tradition holds immense symbolic value (Affidavit of Chief Isaac Eze, 2025). This has inflicted a profound cultural and emotional wound on the family. This loss represents more than personal grief; it is a rupture in generational legacy and identity. The death of a first son, especially in diasporic communities, can represent the rupture of legacy, continuity, and communal identity, forms of grief often unrecognized by Western social systems but deeply consequential (Comas-Díaz et al., 2019).
- f) **Isaac**, Presley's son, will grow up without his father's presence, losing the guidance, love, and the financial support essential for healthy development. His mother now bears the

weight of single parenthood in grief. The loss of a parent to state violence during early childhood is a known risk factor for developmental trauma, often resulting in attachment disruptions, behavioral challenges, and long-term psychological vulnerability (Affidavit of Chief Isaac Eze, 2025; Affidavit of Pamela Eze Sylvestre, 2025 Comas-Díaz et al., 2019).

- g) Together, these testimonies form a coherent clinical picture of cumulative trauma and psychological injury. The Eze family's loss is not only personal, but also emblematic of a broader historical and systemic pattern of state violence and legal betrayal. Research has shown that these patterns intensify suffering, delay recovery, and create intergenerational wounds (De Leon et al., 2023; Fine et al., 2025).
- h) Their grief is not only for Presley's life, but for the injustice surrounding his death, and for the fear that it could happen again. The fact that the perpetrator is now at large, living freely among the public, is the embodiment of felt injustice at multiple levels.
- i) The emotional devastation that Eze's family has experienced is not isolated—it is connected to a broader historical and systemic pattern of race-based harm. It is not just the death of a family member they mourn, but also the erasure of his potential and the inheritance of trauma now carried by those he left behind

12. **Betrayal by the Justice System**

Americans rely on the American legal system to uphold justice and protect the vulnerable. Perceived betrayal—when the institution appears to side with perpetrator—exacerbates trauma, deepens grief, and undermines confidence in our cherished systems of accountability.

13. **Exacerbation of Racial Divisions**

Permitting a White officer convicted of killing an unarmed Black man to regain freedom before his sentencing is final sends a powerful message that not all lives are equally protected. This perceived injustice sharpens an “us-versus-them” mindset, heightens intergroup mistrust, and constitutes a form of collective re-traumatization for communities already burdened by historical and ongoing racial violence (Bor et al., 2018; DeVlyder et al., 2022).

14. Procedural Justice and Public Trust

Fair, transparent legal processes are critical to public acceptance of outcomes, even unpopular ones. The premature release of a law enforcement officer found guilty of voluntary manslaughter signals impunity rather than accountability, eroding trust in both the police and the courts. Such erosion fuels community-wide stress, hypervigilance, sleep disturbances, and a pervasive sense of unsafety—and can trigger protests or unrest with their own psychological toll (e.g., Fine et al., 2025).

15. Social Healing, Resilience, and Moral Order

Keeping former Officer Lunsford in custody until all appeals are concluded serves as a public acknowledgment that a grave wrong has occurred. This acknowledgement is a necessary first step in restoring moral order, enabling affected individuals to begin meaning-making and adaptive coping, and allowing communities to rebuild trust. By contrast, a premature release deepens psychological wounds, undermining social cohesion, and perpetuating cycles of distrust.

16. Justice Delayed as Racial Trauma

Oppression-based trauma arises not only from direct violence but also from the systemic denial of dignity and protection over time. Delaying final accountability mirrors the effects

of repeated racial traumatization—reinforcing feelings of invisibility, helplessness, and cumulative injury (Comas-Díaz, Hall, & Neville, 2019; De Leon et al., 2023).

17. Upholding the Principle That No One Is Above the Law

Equal application of the law is fundamental to the social contract. Maintaining custody underscores that law enforcement officers are not exempt from legal standards or consequences. If officers evade accountability, the public will rightly perceive that justice is arbitrary, fostering cynicism, powerlessness, and further injury to communal mental health.

18. Conclusion and Recommendation

Based on the foregoing psychological evidence and professional judgment, I conclude that continued custody of Brad Lunsford until all appeals are resolved is essential to:

- Provide the Eze family the closure necessary to begin healthy grief work.
- Prevent exacerbation of racial divisions and collective trauma.
- Preserve public trust through demonstrable procedural justice.
- Affirm the principle that no individual, regardless of position, stands above the law.

Sources Consulted

Affidavit of Paulette Eze (April 2025).

Affidavit of Pete Obinna Eze (April 2025).

Affidavit of Pamela Eze Sylvestre (April 2025).

Affidavit of Loretta Eze (May 2025).

Affidavit of Chief Isaac Eze (April 2025).

Research Sources Consulted

Bor, J., Venkataramani, A. S., Williams, D. R., & Tsai, A. (2018). Police killings and their spillover effects on the mental health of Black Americans: A population-based, quasi-experimental study. *The Lancet*, 392(10144), 302–310.

Comas-Díaz, L., Hall, G. N., & Neville, H. A. (2019). Racial trauma: Theory, research, and healing. *American Psychologist*, 74(1), 1–16.

Cénat, J. M. (2023). Complex racial trauma: Evidence, theory, assessment, and treatment. *Perspectives on Psychological Science*, 18(3), 675–687. <https://doi.org/10.1177/17456916221120428>

DeVylder, J. E., Oh, H. Y., Nam, B., Sharpe, T. L., & Link, B. G. (2022). Police violence and the mental health of Black Americans: A national study. *Journal of Traumatic Stress*, 35(1), 253–261.

De Leon, A. N., Woerner, J., Dvorak, R. D., Cox, J., Magri, T. D., Hayden, E. R., ... & Haeny, A. M. (2023). An examination of discrimination on stress, depression, and oppression-based trauma during the COVID-19 pandemic and the racial awakening of 2020. *Chronic Stress*, 7, 24705470231152953.

Fine, A. D., Oliveira, T. R., Jackson, J., Bradford, B., Trinkner, R., & Pósch, K. (2025). Did the murder of George Floyd damage public perceptions of police and law in the United States? *Journal of Research in Crime and Delinquency*, 62(2), 333–382.

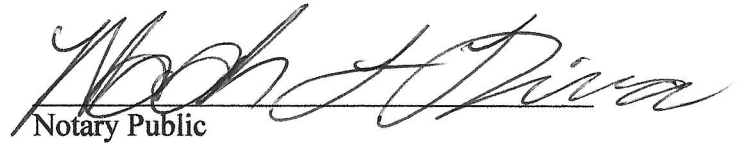
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Dr. Monnica Williams, Ph.D.

STATE OF KENTUCKY)
) ss.
COUNTY OF JEFFERSON)

SUBSCRIBED and SWORN to before me this 28th day of May 2025, by Dr.

Monnica Williams, Ph.D.


Notary Public

My Commission Expires:

11/20/27

