

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

TARA FOGLEMAN-LAXEY

Plaintiff,

v.

JOSH GUILLORY, MAYOR-PRESIDENT OF
THE CITY OF LAFAYETTE; LAFAYETTE
CITY-PARISH CONSOLIDATED
GOVERNMENT; SCOTT MORGAN,
INTERIM POLICE CHIEF OF THE
LAFAYETTE POLICE DEPARTMENT;
MARK GARBER, SHERIFF OF LAFAYETTE
PARISH; DONALD LANDRY, DISTRICT
ATTORNEY FOR THE 15TH JUDICIAL
DISTRICT OF LOUISIANA; LIEUTENANT
LISA CARSTEN; and POLICE
OFFICER DOES 1 THROUGH 10,

Defendants.

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§ CIVIL ACTION NO. 6:21-CV-03038
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§ DISTRICT JUDGE MICHAEL J. JUNEAU
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§ MAGISTRATE JUDGE PATRICK J. HANNA
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§ JURY TRIAL REQUESTED
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FIRST AMENDED COMPLAINT

1. COMES NOW Plaintiff Tara Fogleman-Laxey (“Plaintiff” or “Ms. Fogleman-Laxey”), by and through her undersigned counsel, and for her First Amended Complaint¹ against Defendants—Joshua Guillory, Mayor-President of the City of Lafayette (“Mayor Guillory” or the “Mayor”); Lafayette City-Parish Consolidated Government (“Consolidated Government”); Scott Morgan, former Interim Police Chief of the Lafayette Police Department (“Chief Morgan”); Mark Garber, Sheriff of Lafayette Parish (“Sheriff Garber”); Donald Landry, District Attorney for the 15th Judicial District of Louisiana (“DA Landry”); Lieutenant Lisa Carsten (“Lieutenant Carsten”);

¹ Some information in this complaint is derived from a law enforcement agent that has requested to anonymity. As such, and in order to minimize the risk of retaliation, Plaintiff is not identifying this person by name at this time. However, at the time of Rule 26 disclosures, Plaintiff will disclose this person’s identity.

and Police/Sheriff Officer Does 1 through 10 (“Defendant Officers”)—hereby states and alleges as follows:

INTRODUCTION

2. This case is about Defendants’ abuse of their powers to abridge Plaintiff Tara Fogleman-Laxey’s constitutionally protected First Amendment rights to free speech and to peacefully assemble on a public road near Mayor Guillory’s residence. Defendants not only infringed on Ms. Fogleman-Laxey’s constitutionally protected rights, but they also used excessive force to seize her without lawful authority to do so. To be clear, violent and illegal conduct are not constitutionally protected and are not something Mr. Fogleman-Laxey or her counsel defend. Indeed, that is not what happened here. Ms. Fogleman-Laxey is entitled to exercise her constitutional rights without being subjected to harassment, abuse, or violence by the very people who are supposed to protect her rights under the United States and Louisiana Constitutions and laws. Ms. Fogleman-Laxey thus files this case to vindicate her rights and to ensure no other person is forced to suffer as she has.

3. On August 29, 2021, Ms. Fogleman-Laxey set out from her house to exercise her First Amendment rights to peacefully protest on a public street near Mayor Guillory’s residence with approximately two other nonviolent protestors. Ms. Fogleman-Laxey’s chosen method of protest was a community barbeque (“BBQ”) to promote a discussion with the Mayor about the killing of Trayford Pellerin (“Mr. Pellerin”), a 31-year-old Black man, by the Lafayette Police Department (“Police”). Ms. Fogleman-Laxey’s BBQ was joined by over 15,000 participants via a Facebook Live video stream (“Video”).



Ms. Fogleman-Laxey barbecuing during her peaceful protest.

4. Ms. Fogleman-Laxey chose to exercise her First Amendment right to speak about Mr. Pellerin's killing because of the injustice and lack of accountability surrounding his death. Mr. Pellerin died on August 21, 2020 at the hands of half a dozen Police officers who shot him 11 times as he entered a gas station convenience store. None of the Police officers were indicted. The final moments and death of Mr. Pellerin, similar to far too many other killings of Black people by police, led to a community outcry for justice, which was largely ignored by the Mayor.

5. Ms. Fogleman-Laxey's BBQ protest was one such outcry for justice. Despite the *undisputed* peaceful nature of her BBQ protest, Mayor Guillory directed the Police to immediately shut it down. As a result of Mayor Guillory's order and the Police's ratification and/or acquiescence of that order, Ms. Fogleman-Laxey's small peaceful BBQ protest abruptly ended when the Police arrived at the scene, sought her out, and arrested her on a bogus charge of obstructing a public roadway with her BBQ grill. As illustrated by the picture below, Ms. Fogleman-Laxey's BBQ grill in no way obstructed the public road on which it sat as vehicles and persons easily moved about on said road:



SUV driving by the BBQ protest grill while Ms. Fogleman-Laxey is interviewed by TV Station

6. Although there was no obstruction of a public roadway, Defendants weaponized their status, position, and authority in order to unconstitutionally apply a state law for the sole purpose of chilling Ms. Fogleman-Laxey’s speech and abridging her rights to peacefully assemble. Mayor Guillory, with the intent of chilling Ms. Fogleman-Laxey’s speech and punishing her exercise of the right to peacefully assemble, called the Police and ordered Mr. Fogleman-Laxey’s arrest for engaging in the BBQ protest. As a former criminal defense attorney, Mayor Guillory is uniquely positioned to understand the grave unconstitutionality of his conduct.

7. The Police officers (“Arresting Officers”) then arrived on scene and proceeded to arrest Ms. Fogleman-Laxey for violation of a statute that any reasonable officer would have known she was not violating and for which there was no probable cause to arrest her. Not only was it unreasonable to arrest Ms. Fogleman-Laxey, it was also a violation of a well-known instruction from Lafayette City Judge Bouillion, who has reiterated that there can be no obstruction of public

passageways when vehicles or persons can traverse the road.

8. After her arrest, Defendant Officers at the Lafayette Parish Correctional Center (“Correctional Center”) violated Lafayette Sheriff’s Office (“Sheriff’s Office”) Policy and Procedures in performing a strip search on Ms. Fogleman-Laxey when she did not fit any of the necessary requirements to warrant such a search.

9. The Arresting Officers and Defendant Officers engaged in these acts under direct order from one or all of Mayor Guillory, Chief Morgan, Sheriff Garber, and/or DA Landry; pursuant to a practice and pattern, custom, policy, or procedures; and/or as a result of improper training or supervision.

10. Defendants engaged in these unconstitutional and unjustified acts to prevent Ms. Fogleman-Laxey from speaking out in the face of racial injustice and police misconduct towards Black people and to prevent other would-be protesters from doing the same. Not only did Defendants violate Ms. Fogleman-Laxey’s First Amendment and Article One, Sections Seven and Nine rights, but they also violated her Fourth Amendment and Article One, Section Five rights by using excessive force to arrest her and by seizing her without lawful authority to do so.

11. To be clear, Ms. Fogleman-Laxey did absolutely nothing wrong—indeed, as the judge assigned to her criminal case clearly stated in dismissing her case, DA Landry was wrong for improperly bringing “political squabbles” into the court room. At the hearing the day before the arraignment was scheduled to take place, the judge stated that “this is the arena for politics. I highly doubt that Mr. Guillory, who is an Army-trained officer, with several deployments, is afraid of Ms. Fogleman. The Court is not the place for political stunts.”²

12. Even though Ms. Fogleman-Laxey did nothing wrong, the Arresting Officers, at

² Exhibit A, Transcript of the Hearing, p. 4.

the direction of Mayor Guillory and/or Chief Morgan, conducted a pat-down, confiscated her cell phone, and then arrested Ms. Fogleman-Laxey without reasonable suspicion and/or probable cause. In doing so, the Arresting Officers intentionally handcuffed her in a manner that caused unnecessary injury to Ms. Fogleman-Laxey, despite being told by Ms. Fogleman-Laxey that such injury would occur.

13. Upon information and belief, Mayor Guillory and/or Chief Morgan ordered the arrest of Ms. Fogleman-Laxey such that the arrest happened in front of her fellow protestors, her child, and her grandchildren, who were arriving at the protest as Ms. Fogleman-Laxey was being arrested. Moreover, as Ms. Fogleman-Laxey broadcasted her peaceful protest on Facebook so that protestors and allies could participate virtually, thousands of people who participated in the protest witnessed how the Arresting Officers intimidated and unlawfully arrested her. These actions by Mayor Guillory, Chief Morgan, and Arresting Officers were intended to violate and chill Ms. Fogleman-Laxey's First Amendment protected rights, to shame and humiliate her, and to deter other peaceful protestors from engaging in the same protected activity.

14. Ms. Fogleman-Laxey's painful ordeal did not end with her arrest. After her arrest, Ms. Fogleman-Laxey was taken to a police station where she was handcuffed to a wall and subjected to a tirade by a Defendant Officer who compared Mr. Pellerin's life to that of a dog's. She was then taken to the Correction Center, where she was placed in custody despite pre-existing conditions, like asthma and obesity, that placed her at higher risk of complications from COVID-19 and despite the Correction Center's COVID intake policy ("COVID Intake Policy"), which barred her custody unless she "commit[ed a] violent crime[] or [was] deemed to be an imminent threat to the public." Ms. Fogleman-Laxey fit into neither category, but she was nevertheless taken into the Correction Center; subjected to an invasive and unnecessary strip search, which also

violated written policy; and provided with inadequate clothing and personal protective equipment to ward off the threat of contracting COVID-19.

15. Eventually, Ms. Fogleman-Laxey was released from her unlawful detention at the Correction Center. For over five months she heard nothing further regarding the unjustified misdemeanor charges. That all changed when Ms. Fogleman-Laxey decided to again exercise her First Amendment rights during an Acadiana Patriots public meeting on January 28, 2021. At that public meeting, Ms. Fogleman-Laxey publicly questioned the Mayor about his policies on COVID-19 regulations, including his refusal to enforce a mask mandate. The Mayor responded with a visible *sneer*.

16. The next day, on January 29, 2021, upon information and belief, DA Landry formally charged Ms. Fogleman-Laxey with obstructing a roadway and disturbing the peace on the insistence and/or order of the Mayor because of the BBQ protest and/or her public questioning of him at the Acadiana Patriots public meeting. The presiding judge, at the conclusion of her criminal hearing on February 9, 2021, summarized this case perfectly when he reprimanded the DA for bringing a case against Ms. Fogleman-Laxey, admonishing the prosecuting Assistant District Attorney that his courtroom “is not the place for political stunts” and vigorously explained that the civil stay-away order did not apply to the Mayor and “doesn’t infringe on her right of speech, or right to traverse, or her right to redress.”³

17. Defendants’ response to the August 29, 2020 BBQ protest and January 28, 2021 Acadiana Patriots public meeting and their conduct during Ms. Fogleman-Laxey’s arrest and detention are precisely the types of oppressive conduct against which the First, Fourth, and Fourteenth Amendments and their Louisiana Constitution counterparts were intended to protect

³ Exhibit A, p. 4.

against.

18. As a result of the Defendants' actions, Ms. Fogleman-Laxey has experienced severe anxiety, panic attacks, depression, and lasting physical injuries exacerbated by her arrest. Defendants' unconstitutional and unlawful acts have caused Ms. Fogleman-Laxey to stop protesting in Lafayette for fear of future unlawful acts by Defendants, including repeats of the injurious physical restraint, invasive strip search, and hazardous seizure to a confined facility during the COVID-19 pandemic. Ms. Fogleman-Laxey's inability to continue advocating for Black lives hits very close to home—her son is Black, and she believes that his life is at stake if there is no accountability for Black lives lost at the hands of law enforcement, like Mr. Pellerin. She deeply fears that her Black son could be the next Mr. Pellerin, but struggles with the conflicting anxiety and fear that Defendants will further retaliate if she continues to use her voice and to protest in the community.

19. In this lawsuit, Ms. Fogleman-Laxey seeks to uphold, against uncivil, unwarranted, unjust, and unlawful attacks, her rights under First, Fourth, and Fourteenth Amendments, and their Louisiana Constitution counterparts, to peaceful assembly, petition for redress of grievances, equal protection under the law, freedom of speech, and freedom from unwarranted seizures by the government. Similarly, Ms. Fogleman-Laxey seeks to uphold the same rights under the Louisiana constitution and to vindicate said rights under Louisiana state law for the wrongs described above.

PARTIES⁴

20. Plaintiff Tara Fogleman-Laxey is a mother and local civil rights activist. She is a resident of the Western District of Louisiana.

21. Defendant Joshua Guillory is the Mayor-President of the Lafayette City-Parish

⁴ As required under Federal Rule of Civil Procedure 5.1, the Louisiana Attorney General was served with the original Complaint and the notice of constitutional question on September 2, 2021.

Consolidated Government and a resident of the Western District of Louisiana. Defendant Mayor Guillory is sued in his individual capacity.

22. Defendant Lafayette City-Parish Consolidated Government comprises the governments of the City of Lafayette, Louisiana and Parish of Lafayette, Louisiana and is located within the Western District of Louisiana. Moreover, the Consolidated Government also includes the Lafayette Police Department and Sheriff's Office.

23. Defendant Scott Morgan was the former Interim Police Chief for the Lafayette Police Department at the time of Ms. Fogleman-Laxey's arrest and, upon information and belief, is a resident of the Western District of Louisiana. Upon information and belief, Defendant Chief Morgan's responsibilities included, but were not limited to, the hiring, screening, training, retaining, supervising, disciplining, counseling, and controlling the officers under his command who are or were employed by the Lafayette Police Department. Defendant Chief Morgan is sued in his individual capacity.

24. Defendant Mark Garber is the Sheriff of Lafayette Parish and, upon information and belief, a resident of the Western District of Louisiana. Upon information and belief, Sheriff Garber's responsibilities include, but are not limited to, the hiring, screening, training, retaining, supervising, disciplining, counseling, and controlling the officers under his command who are or were employed by the Sheriff's Office. Sheriff Garber is sued in his individual and official capacities.

25. Defendant Donald Landry is the District Attorney for the 15th Judicial District of Louisiana and, upon information and belief, is a resident of the Western District of Louisiana. Defendant Landry is sued in his individual and official capacities.

26. Defendant Lieutenant Lisa Carsten was, at the time of the relevant events, a Police

Lieutenant in the Lafayette Police Department and present at the scene of Ms. Fogleman-Laxey's arrest. Upon information and belief, Lieutenant Carsten is a resident of the Western District of Louisiana. Lieutenant Carsten is sued in her individual capacity.

27. Defendant Officers John and Jane Does 1 through 10 (collectively, "Defendant Officers") are law enforcement officers employed by the City of Lafayette Police Department and/or Lafayette Parish Sheriff's Office that were present at the scene of Ms. Fogleman-Laxey's arrest (*i.e.*, the Arresting Officers) and the officers present at the police station and/or the Correction Center. These officers are persons for purposes of 42 U.S.C. § 1983. These officers are sued in their individual capacities. At all relevant times, these officers were acting under color of the law of the State of Louisiana.

28. Defendants are jointly, severally, and individually liable for the intentional, excessive, and otherwise unconstitutional and tortious conduct set forth below.

JURISDICTION AND VENUE

29. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a) because the asserted causes of action are issues of federal law, derived from claims under 42 U.S.C. § 1983, and the First, Fourth, and Fourteenth Amendments of the United States Constitution.

30. This Court, under 28 U.S.C. § 1367, has supplemental jurisdiction over claims that arise under the laws of the State of Louisiana because they are derived from the same common nucleus of operative fact as the federal claims.

31. This Court has personal jurisdiction over the defendants and venue is proper in the Western District of Louisiana under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in this district and all defendants reside in the forum state while at least one

defendant resides in this district.

32. Declaratory relief is authorized by 28 U.S.C. § 2201. A declaration of law is necessary to determine the rights and duties of the parties.

FACTUAL ALLEGATIONS⁵

A. THE POLICE KILLING OF MR. PELLERIN ON AUGUST 21, 2020 PROVOKED A COMMUNITY RESPONSE THAT LEAD TO MS. FOGLEMAN-LAXEY'S BBQ PROTEST

33. On the evening of August 21, 2020, the Lafayette community was shocked by the death of Mr. Pellerin. Mr. Pellerin died at the hands of several Police officers, who fatally shot him 11 times in the back at point-blank range as he entered a gas station convenience store. The final moments and death of Mr. Pellerin, similar to far too many other killings of Black people by police, led to a community outcry for justice.



Police body camera footage of officers shooting Mr. Pellerin

⁵ On July 13, 2021, before the commencement of this case, the Plaintiff filed public record requests with the Consolidated Government, Police Department, Sheriff's Office, and District Attorney's Office. Only the Sheriff's Office responded within the allotted time and provided documents. The remaining entities all failed to respond within the allotted time, and those that have responded have stonewalled Plaintiff's constitutional and statutory right to the records by raising unfounded objections devoid from the applicable law. As such, Plaintiff has been left with no choice but to pursue legal action to seek those documents. To the extent any allegations are deficient for lack of specificity or factual support, the fault for those deficiencies lies squarely on those entities.

34. From the day after Mr. Pellerin's death, hundreds of Louisianans took to the streets in Lafayette to protest Mr. Pellerin's death and to demand accountability for discriminatory policing practices.⁶ These protests were unarmed, nonviolent, and took place throughout Lafayette. Unfortunately, those pleas for justice were met with further police violence. For example, to disperse peaceful demonstrators that gathered for a vigil at the place where Mr. Pellerin was killed, law enforcement agents wore riot gear while confronting protestors.⁷ Protestors then began gathering on Moss Street in Lafayette near a police precinct to continue demonstrating. That peaceful protest came to an abrupt end when law enforcement blasted smoke and flash bang explosives, forcing protestors to run.⁸ Three protestors—Kimberly Culotta, Samuel Johnson, and Jyhikeen Simien—were arrested and charged with obstructing public passages.⁹ All three were booked despite changes to the Correctional Center's COVID Intake Policy, which, as explained further below, explicitly limited those who could be jailed.¹⁰

⁶ Ashley White, *Trayford Pellerin shooting: What we know about his death and the aftermath*, THE ADVERTISER (Sept. 1, 2020), available at <https://www.theadvertiser.com/story/news/2020/09/01/lafayette-police-shooting-what-we-know-trayford-pellerin-death/3456028001/>. *Id.*

⁷ *Id.*

⁸ Ashley White and Alyssa Berry, *Peaceful vigil for Lafayette police shooting victim becomes clash between marchers, police*, THE ADVERTISER (Aug. 22, 2020), available at <https://eu.theadvertiser.com/story/news/2020/08/22/speakers-urge-justice-vigil-black-man-killed-lafayette-police-black-lives-matter-trayford-pellerin/3420860001/>

⁹ Ashley White, *Protesters arrested during Saturday clash with officers facings charges for blocking roads*, THE ADVERTISER (Aug. 23, 2020), available at <https://www.theadvertiser.com/story/news/local/2020/08/23/three-arrested-lafayette-police-shooting-protest-trayford-pellerin/3423898001/>

¹⁰ *Id.*



Police Officers Confronting Protestors at the Gas Station Where Mr. Pellerin Was Killed

35. On the second day of protests over Mr. Pellerin’s death, law enforcement in riot gear again confronted peaceful protestors gathering on Camellia Boulevard in Lafayette. Approximately twenty minutes after arriving at the protest, law enforcement began attacking peaceful protestors with pepper bullets that released a chemical dispersant in the crowd.¹¹ Subsequently, upon information and belief, at a similar peaceful gathering near Acadiana Mall in Lafayette, law enforcement officers struck, unprovoked, approximately four peaceful demonstrators directly in the head with a baton, causing severe injuries.

36. Mayor Guillory, who defended the killing of Mr. Pellerin,¹² thereafter responded by criminalizing peaceful protests over his death, further “contributing to tensions felt in [Lafayette].”¹³ Indeed, shortly after the protests began, Mayor Guillory extended an executive order that effectively banned protests in the downtown area and parts of the University of Louisiana at Lafayette, specifically targeting areas where there were past protests of racial injustice

¹¹ Advocate Staff, *Chemical dispersants used against protestors of fatal Lafayette police shooting*, THE ADVOCATE (Aug. 23, 2020), available at https://www.theadvocate.com/acadiana/news/crime_police/article_c8a9ffa4-e59e-11ea-8513-27010c0c4e08.html

¹² *Id.*

¹³ *Id.*

and police misconduct.¹⁴ The executive order, which was extended on August 28, 2020, banned “congregating or loitering,” threatening penalties of up to \$500 or six months in jail.¹⁵

37. The timing of the executive order in relation to the protests over Mr. Pellerin’s death was not coincidental. Although Mayor Guillory attempted to guise this order as part of his “social distancing procedures” during the on-going COVID-19 pandemic,¹⁶ the prohibition’s target of specific locations and Mayor Guillory’s general statements about COVID-19 regulations make clear that this rationale for the order was simply pretextual. For example, Mayor Guillory has openly mocked restrictions relating to COVID-19. In July 2020, during a peak in COVID-19 cases in Lafayette, he outright refused to consider a local mask ordinance.¹⁷ During a public debate explaining his decision to reject such an ordinance, he claimed that individuals who followed mask mandates are “sheeples,” implying that these types of regulations were ineffective against COVID-19. These statements, in combination with his inflammatory comments that protest leaders were “terrorists”¹⁸ during a television interview, lay bare his true motivation and policy behind this executive order: the quelling of the right to demand justice for Mr. Pellerin’s killing and to criminalize peaceful demonstrators in Lafayette.

¹⁴ KATC News, *ACLU Demands Guillory Retract Unconstitutional Protest Ban*, KATC (Aug. 31, 2020), <https://www.katc.com/news/lafayette-parish/aclu-demands-guillory-retract-unconstitutional-protest-ban>; see also Christiaan Mader, *Guillory’s hole grows deeper with fallout over Hurricane Laura shelters*, *The Current* (Aug. 31, 2020), <https://thecurrentla.com/2020/guillorys-hole-gets-deeper-with-fallout-over-shelters/>.

¹⁵ *Id.*

¹⁶ Victoria Dodge and Ashley White, *Trayford Pellerin shooting: Protesters call for more information, transparency in case*, *THE LAFAYETTE DAILY ADVERTISER* (Sept. 4, 2020), available at <https://www.theadvertiser.com/story/news/local/2020/08/29/lafayette-police-shooting-trayford-pellerin/5670377002/>.

¹⁷ *Id.*

¹⁸ Andrew Capps, *Once a refuge after hurricanes, Lafayette suspends shelter plans over protest’s “bad actors,”* *THE LAFAYETTE DAILY ADVERTISER* (Aug. 31, 2020), available at <https://www.theadvertiser.com/story/news/local/2020/08/31/lafayette-police-shooting-parish-halts-laura-shelter-plans-over-protests-trayford-pellerin/5678653002/>.

B. DEFENDANTS ARRESTED MS. FOGLEMAN-LAXEY FOR PEACEFULLY BARBEQUING ON A PUBLIC STREET.

38. In the days after Mr. Pellerin's death, Mayor Guillory refused to visit the "Northside" communities in Lafayette that were protesting the shooting, nor would he personally speak to Mr. Pellerin's family about his death. As a result, Ms. Fogleman-Laxey felt compelled to get the attention of Mayor Guillory in order to peacefully discuss Mr. Pellerin's death at the hands of the police.¹⁹ But, because Mayor Guillory refused to visit the Northside or to engage with protestors, Ms. Fogleman-Laxey announced on her Facebook platform that she would peacefully protest in Mayor Guillory's neighborhood.²⁰

39. To this end, on August 29, 2020, Ms. Fogleman-Laxey decided to host a peaceful BBQ on the public road near the Mayor's home in the hopes of engaging the Mayor in a peaceful dialogue about Mr. Pellerin's killing and the outrage in the Lafayette community about police violence and conduct. Ms. Fogleman-Laxey had no intention of violating—and indeed did not violate—any laws; she went as far as consulting two local attorneys to ensure that she stayed within the bounds of the law during her BBQ protest. Both attorneys assured Ms. Fogleman-Laxey that her plan to conduct a peaceful BBQ on the wide public road near the Mayor's house was legal.

40. After speaking to the attorneys, Ms. Fogleman-Laxey published a post on her Facebook profile inviting the public to join her BBQ on the public road near the Mayor's house. Shortly after posting her invitation on Facebook, Ms. Fogleman-Laxey received a call from Carlos Harvin, the Chief of Minority Affairs for the Consolidated Government. Ms. Fogleman-Laxey explained the purpose of her BBQ to Mr. Harvin and expressed her desire to speak with the Mayor.

¹⁹ KATC News, *Protester who held cookout in front of mayor's home speaks*, KATC (Aug. 30, 2020), available at <https://www.katc.com/news/lafayette-parish/protester-who-held-cookout-in-front-of-mayors-home>

²⁰ KATC News, *Small Protest at Lafayette Mayor-President's Home*, KATC (Aug. 29, 2020), available at <https://www.katc.com/news/lafayette-parish/small-protest-at-lafayette-mayor-presidents-home>.

Mr. Harvin told Ms. Fogleman-Laxey that he would try to get the Mayor to speak with her and offered to mediate that meeting and conversation.

41. Ms. Fogleman-Laxey drove to the Mayor's publicly accessible neighborhood and legally parked her truck on the side of the public road, clear from traffic. Ms. Fogleman-Laxey then set up a BBQ grill on the public road behind the bed of her truck. Neither Ms. Fogleman-Laxey's truck nor the BBQ grill were directly in front of the Mayor's house.

42. After she parked on the side of the public road, Ms. Fogleman-Laxey began a Video of the BBQ protest. As Ms. Fogleman-Laxey made clear in the Video, she was not there to "cause trouble," as the purpose of her BBQ was to serve the community and create an opportunity for the Mayor to address Lafayette residents. Her video grabbed the attention of 15,000 viewers who were participating in the protest virtually.

43. Even with Ms. Fogleman-Laxey's truck parked at the curb, the public road was wide enough to allow cars to drive in both directions without obstruction or interference and for persons to traverse the sidewalk, public road, and surrounding areas with ease. In fact, Ms. Fogleman-Laxey's BBQ grill, which was placed directly behind her truck and was narrower in width than the truck, never obstructed or prevented a single car, of which there were a few, from freely using the public road, or a person, including the Arresting Officers, from freely using the road, sidewalk, or surrounding area. As illustrated by the image below, at no point did Ms. Fogleman-Laxey's BBQ grill, truck, or presence hamper or impede the public's use of the road:



*The BBQ protest, unobstructed public road and sidewalk, and arrest of Ms. Fogleman-Laxey*²¹

44. During the BBQ protest, Ms. Fogleman-Laxey noticed a person inside the Mayor's home watching her through the window. Upon information and belief, the Mayor's security team also watched Ms. Fogleman-Laxey from a parked car near the protest.

45. A Channel 3 television crew arrived at Ms. Fogleman-Laxey's BBQ protest to interview her. Ms. Fogleman-Laxey told the television crew that her protest was peaceful, legal, and well-meaning, stating that "it is important that we handle things in peace," that "we come in peace," and that "we are not here to be radical or noisy."²² Ms. Fogleman-Laxey invited the Mayor to join her for "a hamburger or hotdog" and to discuss the issues affecting the Lafayette community.

46. Gerry Monroe, a nationally known activist, was also present at Ms. Fogleman-Laxey's peaceful BBQ protest and was also interviewed by Channel 3.²³ Mr. Monroe echoed Ms. Fogleman-Laxey's desire for a peaceful conversation and to continue the peaceful protest until the

²¹ *Id.*

²² *Id.*

²³ *Id.*

Mayor agreed to engage in a public conversation over Mr. Pellerin's killing at the hands of Lafayette police officers.

47. A short while after the BBQ protest began, Mr. Harvin arrived at the peaceful BBQ protest. Mr. Harvin explained that his purpose was to mediate a dialogue between the Mayor and the three protestors: Ms. Fogleman-Laxey, Mr. Gerry Monroe, and Mr. Robbie Schooley. More importantly, Mr. Harvin stated that what Ms. Fogleman-Laxey was doing was "legal."

48. Upon information and belief, Mr. Harvin received a call from Mayor Guillory while he was speaking with Ms. Fogleman-Laxey. Mr. Harvin ended the call by stating, "Yes, Mr. Mayor." Then, without comment or explanation, Mr. Harvin abruptly abandoned his conversation with Ms. Fogleman-Laxey and quickly left the BBQ. Upon information and belief, the Mayor instructed Mr. Harvin to leave the BBQ protest because he had ordered the Police, including Chief Morgan and/or Arresting Officers, to arrest Ms. Fogleman-Laxey for holding the BBQ protest, which had been attended by thousands online, near his house.

49. Mayor Guillory called the Police and ordered that Ms. Fogleman-Laxey be arrested for peacefully barbecuing outside his house. Upon information and belief, Mayor Guillory ordered the arrest of Ms. Fogleman-Laxey with the intent to quell Ms. Fogleman-Laxey's protest, the attention it was bringing, and to do so by arresting her without probable cause on a charge of obstruction of a public passageway where any reasonable officer and former criminal defense attorney would have known that no probable cause for the arrest existed.

50. Minutes after the Mayor called Mr. Harvin, Arresting Officers arrived at the BBQ protest. One Arresting Officer, Lieutenant Carsten, approached the BBQ grill and asked for Ms. Fogleman-Laxey by name. Lieutenant Carsten told Ms. Fogleman-Laxey that she was obstructing a public roadway but failed to explain or identify how that was so. Indeed, Lieutenant Carsten

made this statement despite having free, unobstructed access to the public road, sidewalk, and other areas near the BBQ grill as clearly captured by the image below:



Defendant Officers at the BBQ Protest with unobstructed use of the road by cars passing by

51. Ms. Fogleman-Laxey explained to Lieutenant Carsten that she was not breaking any laws, which Lieutenant Carsten conceded to her. Ms. Fogleman-Laxey offered to move the BBQ grill from behind her truck to several other locations, but Lieutenant Carsten refused to allow her to move it. Instead, an Arresting Officer told Ms. Fogleman-Laxey that it was in her “best interest” to stop the BBQ protest.

52. Immediately thereafter, in contradiction to police procedures, training, and policy, and without any provocation or reason, Lieutenant Carsten informed Ms. Fogleman-Laxey that she was under arrest. One of the Arresting Officers confiscated her phone and handcuffed her behind her back. Ms. Fogleman-Laxey was the only person arrested even though two other people were participating in the peaceful BBQ protest at the time. Originally, the Arresting Officers arrested Ms. Fogleman-Laxey solely for a traffic violation—obstruction of a public passageway under Louisiana Revised Statute (“La. Rev. Stat.”) § 14:100.1. As illustrated by images in this

First Amended Complaint, and in the videos of the BBQ protest, Ms. Fogleman-Laxey's positioning, and that of her vehicle and barbeque, were not blocking the flow of human or vehicular traffic, which was obvious to all. Such obvious information was enough for a reasonable officer to surmise that there was no probable cause for an arrest under obstruction of a public passageway.

53. Not only was the road clearly not obstructed by Ms. Fogleman-Laxey's peaceful BBQ protest and her grill, it was common knowledge to officers in Lafayette that there can be no obstruction of a public passageway when vehicles or persons can traverse the road, as Lafayette City Judge Bouillion has made this clear on several occasions.

54. Later, while she sat handcuffed to a wall at the Police station, an additional charge of disturbing the peace under La. Rev. Stat. § 14:103 was added. Both charges are misdemeanor violations. Upon information and belief, Arresting Officers unlawfully targeted and arrested Ms. Fogleman-Laxey at the direction of Mayor Guillory because he wanted to shut down her BBQ protest, which had assembled thousands online, in violation of the First Amendment and the Louisiana Constitution.

55. As with the obstruction of a public passageway charge, the post-arrest charge for disturbing the peace also has no basis in facts. At no point during the arrest was disturbing the peace a justification given for the arrest and no Arresting Officer stated that the BBQ protest or Ms. Fogleman-Laxey were in any way disturbing the peace. To the contrary, as Ms. Fogleman-Laxey and Mr. Monroe made clear on several occasions on the Video and to the TV crew that interviewed them, the BBQ protest was a peaceful protest focused entirely on peacefully protesting racial injustice and lack of police accountability. All the recorded video evidence is crystal clear—the peaceful BBQ protest did not to disturb the peace. And neither did Ms. Fogleman-Laxey.

56. The true irony of the unlawful use of the disturbing the peace statute against Ms. Fogleman-Laxey is that the Mayor Guillory, Chief Morgan, and the Arresting Officers are the only parties to have actually violated that statute, which defines disturbing the peace as the “[i]nterruption of any lawful assembly of people.” La. Rev. Stat. § 14:103(A)(6). Interrupting a peaceful, lawful assembly of people is exactly what these Defendants did when they arrested Ms. Fogleman-Laxey.

C. DEFENDANTS’ PRESS CONFERENCE EXPLAINED THAT THE MAYOR ORDERED THE ARREST OF MS. FOGLEMAN-LAXEY BECAUSE HE DID NOT LIKE THE FACT THAT HER BBQ PROTEST TOOK PLACE IN HIS “PEACEFUL NEIGHBORHOOD.”

57. Shortly after Ms. Fogleman-Laxey’s arrest, Mayor Guillory, Chief Morgan, Sheriff Garber, and the fire chief held a press conference to discuss, among other things, Ms. Fogleman-Laxey’s arrest.²⁴ During the press conference, a visibly agitated Mayor Guillory emphatically praised the First Amendment and then quickly undermined it by stating that he would not allow “civil unrest” like Ms. Fogleman-Laxey’s peaceful BBQ protest, which had assembled thousands online, in his community.²⁵

58. According to the Mayor, Ms. Fogleman-Laxey’s BBQ protest was “not [a] protest”; instead, he wrongfully claimed, it was “public intimidation” because his wife and children had to witness Ms. Fogleman-Laxey’s BBQ protest on the public road near his home.²⁶ In response to a question about whether any property had been destroyed or invaded, the Mayor answered that “thanks to the very, very quick response from the Lafayette Police Department, no property was damaged,” describing the decision to hold the protest as “very unfortunate.” For his wife and kids

²⁴ KATC News, *Guillory on protests: “Lafayette is under control,”* KATC (Aug. 29, 2020), available at <https://www.katc.com/news/lafayette-parish/lafayette-mayor-president-police-department-holding-press-conference>

²⁵ *Id.*

²⁶ *Id.*

to witness this peaceful BBQ was, in the Mayor's eyes, a "tragedy." A "tragedy" he would not tolerate.²⁷ Thus, wrongfully claiming that the BBQ was "escalating," and not wanting to see Ms. Fogleman-Laxey's BBQ protest in his "peaceful neighborhood," the Mayor called the Police.²⁸ When asked to elaborate on what he meant by "escalating," he simply repeated his earlier comment and *smirked*.²⁹



*Mayor Guillory smirking after failing to elaborate on what he meant by "escalating"*³⁰

59. Chief Morgan also spoke about Ms. Fogleman-Laxey's BBQ, confirming that she was arrested for two misdemeanor violations.³¹ In explaining why she was arrested, he indicated that Ms. Fogleman-Laxey was not arrested because her BBQ grill obstructed a passage way.³² The reason, according to Chief Morgan, was that a roadway is not a place for a BBQ pit and hanging

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

out on tailgates:

She is being charged with disturbing the peace and obstruction of a public passageway. The roadway is not a place for BBQ pits and hanging out on tailgates and things like that. When they violate those types of things, you wanna put em on the sidewalk, you can't come hang out in front of people's houses and do those types of things."³³

60. Despite Mayor Guillory's and Chief Morgan's suggestions that Ms. Fogleman-Laxey's BBQ protest was meant to intimidate the Mayor's wife and children, there is simply no evidence of that. Quite the contrary: Ms. Fogleman-Laxey did not know the Mayor's wife and children were in the house prior to the BBQ protest and video evidence clearly demonstrates that she never sought to target them in any way. Moreover, Ms. Fogleman-Laxey made it absolutely clear that her BBQ protest was meant to open a dialogue with the Mayor about Mr. Pellerin's killing—a dialogue the Mayor made clear he would not engage in during the press conference.³⁴

61. Sheriff Garber also praised the First Amendment, acknowledging that he is responsible for ensuring that First Amendment rights are protected and claiming he would expend every resource and his own personal safety to protect the First Amendment right to peacefully protest.³⁵ He also noted that some protesters across Lafayette were protesting with firearms, and he went out of his way to claim that such persons have no history of violent action against the local community.³⁶ Upon information and belief, no such protestors were arrested and/or detained for causing "civil unrest" or publicly "intimidat[ing]" the community despite openly carrying firearms—a more menacing and lethal item than a BBQ grill—in public areas. On the other hand, in contradiction with official training, policies, customs, and procedures to treat all persons equally

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

and fairly, Sheriff Garber explicitly supported Mayor Guillory's and the Police's actions in dealing with other protesters, including Ms. Fogleman-Laxey.³⁷

D. AFTER THE ARREST, ARRESTING OFFICERS AND DEFENDANT OFFICERS USED EXCESSIVE FORCE, INVASIVELY STRIP SEARCHED HER, AND UNLAWFULLY DETAINED HER.

62. Despite the peaceful nature of the BBQ protest and the absence of any reasonable suspicion, probable cause, or exigent circumstances that justified a search or seizure, Arresting Officers removed all of Ms. Fogleman-Laxey's personal property from her person, seized her cell phone, and conducted a pat-down search during her arrest. After the pat-down, the Arresting Officers handcuffed Ms. Fogleman-Laxey, painfully tightening the handcuffs behind her back. The tight handcuffs exacerbated Ms. Fogleman-Laxey's pre-existing shoulder injuries, causing her to cry out, "You're hurting me!" The Arresting Officers ignored her cries and refused to accommodate her by loosening the handcuffs or handcuffing her in an alternative, less painful manner, such as handcuffing her in the front of her body. The placement of the handcuffs caused Ms. Fogleman-Laxey severe bruising on her wrists that lasted for several weeks and exacerbated her pre-existing shoulder injuries that last to this day.³⁸

63. Ms. Fogleman-Laxey was humiliated by her public arrest. Not only did over 15,000 viewers witness it on Video, but it also occurred in the presence of her friends, six children (three daughters and three sons), and eight young grandchildren who were arriving to participate in the BBQ protest at the time of Ms. Fogleman-Laxey's arrest.

64. One Arresting Officer placed Ms. Fogleman-Laxey in a Police car and took her to the Police station. At the station, the Arresting Officer inhumanely handcuffed Ms. Fogleman-

³⁷ *Id.*

³⁸ Handcuff injuries are known to be extremely painful and have been proven to cause permanent injuries. See F.S. Haddad, *Complaints of Pain After Use of Handcuffs Should Not Be Dismissed*, BMJ (Jan. 2, 1999), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1114546/>.

Laxey to a wall. A Defendant Officer then subjugated Ms. Fogleman-Laxey to an angry tirade comparing Mr. Pellerin's life to that of a dog's. This uncalled-for verbal abuse describing a Black man, who reminded her of her own Black son, as a dog traumatized Ms. Fogleman-Laxey even further.

65. After several hours without information or comprehension of her alleged "crimes," Ms. Fogleman-Laxey was moved to the Lafayette Parish Correctional Center ("Correction Center"), a jail operated by the Sheriff's Office.

66. When undergoing the booking process at the Correction Center, Ms. Fogleman-Laxey told the Defendant Officers that she was suffering from certain pre-existing conditions that made her uniquely susceptible to COVID-19, such as asthma and obesity.³⁹ Despite Ms. Fogleman-Laxey's comments, she received no suitable COVID-19 protections or accommodations while she was jailed in filthy conditions at the Correction Center.

67. Even though an Arresting Officer had already conducted a thorough pat-down before arresting Ms. Fogleman-Laxey, confiscating all of her belongings before placing her in the Police car, a Defendant Officer performed an additional, unnecessary, and intrusive physical inspection of her person. With no explanation, the Defendant Officer forced Ms. Fogleman-Laxey into an unknown location in the facility, and then ordered her to strip naked, bend over, and cough three times directly in front of her. This was a clear violation of written policy and procedures.

68. Sheriff's Office Corrections Division Policy J-2800 provides the procedures for "searches of the facility and offenders to control contraband and provide for its disposition."⁴⁰ In

³⁹ In August 2020, Louisiana had on average 613 new COVID-19 cases per seven-day averages. *See Tracking Coronavirus in Louisiana: Latest Map and Case Count*, N.Y. Times (Aug. 20, 2021) available at <https://www.nytimes.com/interactive/2021/us/louisiana-covid-cases.html>.

⁴⁰ Lafayette Parish Sheriff's Office, Corrections Division, Policy and Procedures, Section/Policy J-2800 at 1 ("Search Policy") or ("Exhibit B").

addition, the policy sets out the goal that “[c]are shall be taken to treat offenders with humanity and dignity while providing for a safe environment. Searches shall be conducted courteously, professionally, and in such a way as to allow the offender as much dignity as possible[.]”⁴¹

69. The first rule listed in the “RULES” section, Section J-2803, instructs that “[a]ll persons conducting searches shall receive related training during recruit training.”⁴² Section J-2803, subsection I provides that “[s]trip searches shall be authorized when any of the following conditions exist: . . . During the post-booking process prior to any offender being escorted to an offender housing unit when: a. The offender’s current charge is violent, weapon, or drug related; b. The offender has a criminal history consisting of violent, weapon, or drug related arrests; c. The offender has a history of possessing or manufacturing contraband while housed in the facility[.]”⁴³ Further, a strip search is also authorized when “there is reasonable suspicion that an offender is concealing contraband not disclosed by the inventory/custody search or clothing search,” as well as when “an offender has contact with the public.”⁴⁴

70. Ms. Fogleman-Laxey did not fit any of the profiles or circumstances circumscribed in the Search Policy. Instead, Defendant Officers violated their own policies and procedures, as detailed in the Search Policy. Upon information and belief, Defendant Officers did so at the direction of Mayor Guillory, Chief Morgan, and/or Sheriff Graber.

71. On top of that, upon information and belief, to further harass, intimidate, and/or abuse Ms. Fogleman-Laxey, the Defendant Officers knowingly forced her to wear a prison uniform that was visibly too small for her. She was forced to wear a tight prison jumpsuit with no underwear, as the prison-issued underwear was several sizes too small and visibly did not fit her.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 4-5.

⁴⁴ *Id.* at 4-5.

Next, the Defendant Officers forced Ms. Fogleman-Laxey to wear a *dirty and used mask* as a supposed shield against COVID-19. These events caused Ms. Fogleman-Laxey to fear exposure to COVID-19, a more likely occurrence in the Correction Center than in her community, without the proper protective equipment. For reference, one study found that prisoners are 5.5 times more likely to get COVID-19 and 3 times more likely to die from it than the general population.⁴⁵ Nevertheless, Mr. Fogleman-Laxey was forced to endure this inhumane treatment until she was released several hours after her arrest.

E. DEFENDANTS ARRESTED MS. FOGLEMAN-LAXEY DESPITE THE KNOWN DANGERS THAT COVID-19 POSES TO HIGHLY SUSCEPTIBLE PERSONS WHO ARE INCARCERATED, AND DID SO IN CLEAR VIOLATION OF THEIR OWN POLICIES.

72. At the start of the COVID-19 pandemic, the Sheriff’s Office instituted changes in the Correction Center’s intake policy (“COVID Intake Policy”). Under these changes, the facility “only accept[ed] suspects who commit *violent crimes* or those who are deemed to be an *imminent threat* to the public.”⁴⁶ According to a spokesman for the Sheriff’s Office, such changes were made “to help control the jail population for the safety and health of the inmates and the people that are working in there.”⁴⁷

73. At the time, Lafayette’s Chief District Court Judge Marilyn Castle had empowered law enforcement agencies to issue warrants instead of detaining suspects when there was no imminent threat to public safety.⁴⁸ One local newspaper, the Daily Advertiser, noted, “In most cases where a violent crime isn’t committed, offenders are being issued misdemeanor summons.

⁴⁵ Saloner B, Parish K, Ward JA, DiLaura G, Dolovich S., *COVID-19 Cases and Deaths in Federal and State Prisons*, JAMA (July 8, 2020).

⁴⁶ Ashley White, *COVID-19 changes at jail illustrate balance of public safety, inmate safety*, the Advertiser (Aug. 13, 2020) <https://www.theadvertiser.com/story/news/2020/08/13/lafayette-parish-covid-19-changes-jail-decrease-population/3358443001/> (emphasis added).

⁴⁷ *Id.*

⁴⁸ *Id.*

If a more serious crime is committed, but there is no threat to the public at the time, a warrant is issued for that person to be arrested when jail restrictions are lifted.”⁴⁹

74. Upon information and belief, even with the institution of the COVID Intake Policy and Judge Castle’s order, Mayor Guillory, Chief Morgan, Sheriff Garber, and Defendant Officers knew that incarcerated individuals were contracting COVID-19 at the Correction Center.⁵⁰ According to policies, procedures, and customs at the time of Ms. Fogleman-Laxey’s arrest, an officer seeking to book a prisoner in jail needed to first call a supervisor and go up the chain of command to get permission for the booking. Without such clearance, no booking was allowed. Yet, despite this fact and knowing the unique health risks to Ms. Fogleman-Laxey were she to contract COVID-19 due to her pre-existing medical conditions, Mayor Guillory, Chief Morgan, Sheriff Garber, and Defendant Officers arrested Ms. Fogleman-Laxey and/or processed her into the Correction Center for nonviolent misdemeanor offenses. They did so even after they realized that the protective prison clothing did not fit Ms. Fogleman-Laxey and that the only masks available to her were *dirty and used*.

75. For reference, over a one-week period in July 2020, 102 people were arrested in Lafayette but only 17 were booked into jail.⁵¹ The arresting officers generally issued misdemeanor summons instead of taking the individuals to jail.⁵² Examples of cases *not booked* include: an “irate” man causing a disturbance at a Discovery Inn who took an “aggressive stance against [Police] officers”; a person who had previously been convicted of a felony, who was charged with possession of a firearm; a man with a warrant for aggravated assault of a dating partner; and two

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

drug possession arrests.⁵³

76. Additionally, on the day of Ms. Fogleman-Laxey's arrest, four other individuals were arrested—all of whom were arrested for alleged violent conduct, including domestic abuse battery, battery, aggravated burglary, criminal damage to property, and resisting arrest. Unlike these persons, Ms. Fogleman-Laxey was arrested for non-violent misdemeanor offenses.

77. According to the COVID Intake Policy, Judge Castle's order, and the Correction Center's own booking practices, Mayor Guillory, Chief Morgan, Sheriff Garber, Arresting Officers, and Defendant Officers had no justifiable reason or authority to issue more than a misdemeanor summons for any alleged misdemeanor, but Mayor Guillory had other plans for Ms. Fogleman-Laxey. Upon information and belief, the Mayor instructed Chief Morgan, Sheriff Garber, Arresting Officers, and Defendant Officers to violate the COVID Intake Policy, Judge Castle's order, and the Correction Center's own booking patterns, so that Ms. Fogleman-Laxey could be humiliated, intimidated, and/or harassed while she was detained for the purpose of suppressing and chilling her First Amendment freedom of speech and assembly rights, and the corresponding state constitutional rights under Article One, Sections Seven and Nine, as well as those of the thousands who virtually joined the protest online.

F. DEFENDANTS PROSECUTED MS. FOGLEMAN-LAXEY BECAUSE SHE ATTEMPTED TO EXERCISE HER CONSTITUTIONALLY PROTECTED RIGHTS.

78. For almost five months, Ms. Fogleman-Laxey heard nothing further about her arrest on August 29, 2020.

79. On January 28, 2021, the Acadiana Patriots group hosted a public meeting. Both Ms. Fogleman-Laxey and the Mayor were in attendance at this meeting.

80. Ms. Fogleman-Laxey's objective in attending the meeting was to discuss the issues

⁵³ *Id.*

that the community was facing—primarily COVID-19. At the meeting, Mayor Guillory explained his decision to refuse to enforce a local mask mandate; Ms. Fogleman-Laxey publicly questioned the Mayor’s policy stance on COVID-19 regulations. In response, the Mayor visibly *sneered* at her, seemingly acknowledging that he recognized her from the August 29th BBQ protest.

81. The very next day, on January 29, 2021, DA Landry filed formal charges against Ms. Fogleman-Laxey based on the two misdemeanor violations arising from her August 29th BBQ protest. Upon information and belief, DA Landry formally charged Ms. Fogleman-Laxey on the insistence and/or order of the Mayor because of the BBQ protest, which had assembled thousands online, and/or her public questioning of him at the public meeting. The aim of these charges was to scare, harass, shame, and intimidate Ms. Fogleman-Laxey into silence and to prevent her and others from exercising their constitutional rights.

82. Ms. Fogleman-Laxey’s court hearing was scheduled for February 9, 2021. At the hearing, the charges against Ms. Fogleman-Laxey were dropped. Importantly, at the conclusion of the hearing, the presiding judge summarized this case perfectly when he reprimanded DA Landry for bringing a case against Ms. Fogleman-Laxey, admonishing prosecution that his courtroom “is not the place for political stunts” and vigorously explained that the civil stay-away order did not apply the Mayor and “doesn’t infringe on her right of speech, or right to traverse, or her right to redress.”⁵⁴

G. DEFENDANTS ENGAGED IN A PATTERN OR PRACTICE OF CONDUCT THAT VIOLATES THE CONSTITUTION AND FEDERAL LAWS.

83. The abuse that Ms. Fogleman-Laxey endured at the hands of Defendants is a continuation of a history and pattern of conduct by law enforcement officers and public officials

⁵⁴ Exhibit A, p. 4.

that deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States.

84. There is a longstanding recognition of the need to reform the Police Department to ensure that the Police Department and its officers do not violate the constitutional rights of city residents. Yet, such change has not happened.

85. The Police routinely arrests protestors and punishes innocent people for exercising their constitutionally protected rights. For example, while at the Police station, a Defendant Officer told Ms. Fogleman-Laxey that that every time the cops are called to an incident, the Police can add disturbing the peace charge. This is true irrespective of the necessary probable cause, as illustrated by Ms. Fogleman-Laxey's case. Upon information and belief, the Police routinely add a distributing the peace charge, irrespective of the requisite necessary probable cause for such charge, in cases where the underlying arrest and detention are without probable cause, unjustified under the criminal code, and/or unconstitutional.

86. Additionally, explained above, in 2020, the Police arrested and charged three protestors under the same dubious obstruction of passage statute Ms. Fogleman-Laxey was arrested for their participation in protests against the police killing of Mr. Pellerin.

87. In anticipation of the protests against Mr. Pellerin's killing, the Police reportedly used cyber-surveillance on activists and non-profit organizations.⁵⁵ Amidst the protests, police and parish officials implied that some of the protests and demonstrations were being organized by "outside agitators" and could lead to terrorist activity, while providing no evidence to support such a claim.⁵⁶

⁵⁵ Wes Muller, *Lafayette used cybersurveillance on activists and nonprofits amid strange warning of 'terrorism'* (Sept. 22, 2020), available at <https://ailluminator.com/2020/09/22/lafayette-used-cyber-surveillance-agency-on-activists-and-nonprofits-alleging-terrorism/>.

⁵⁶ *Id.*

88. The Consolidated Government, Mayor Guillory, and Police routinely punish and/or dismiss officers and other civil servants for exercising their constitutionally protected rights and/or seeking positive change to policing, including police chiefs like Thomas Glover, Sr. and individual officers. For example, a mere nine months after being hired, Former Chief Glover was fired without notice for trying to implement much needed change to the Police, including their use of force polices and engagement with the community.⁵⁷ The Mayor also muzzled the Chief Glover's attempt to speak to the community.⁵⁸

89. The Police also often fails to punish officers that violate the law. In 2017, a Police officer illegally deleted a photo a suspect's mother took on her cellphone, but the Police failed to hold the officer accountable.⁵⁹ In 2021, a Police Captain was investigated for allegations of abuse of power after a city resident claimed that the he failed to investigate an incident between a landlord and his tenants because the captain knew the tenants personally, but, again, the Police never conducted an internal affairs investigation on the complaint against the police captain.⁶⁰

90. The Consolidated Government, the entity responsible for the operations of the Police, also has a history of abusive practices.

⁵⁷ Leslie Turk, *Ousted Lafayette police chief says Guillory buried changes he was hired to make*, THE CURRENT (Oct. 21, 2021), available at <https://thecurrentla.com/2021/ousted-lafayette-police-chief-says-guillory-muzzled-changes-he-was-hired-to-make/>.

⁵⁸ *Id.* see also Katie Gagliano, Lafayette's fired police chief says termination had more to do with politics than performance, THE ADVOCATE (Oct. 10, 2021), available at https://www.theadvocate.com/acadiana/news/crime_police/article_fe090acc-2946-11ec-a108-879482f0057a.html; Ashley White, 'No reason to fire me': Ousted Lafayette Police Chief Thomas Glover speaks out, THE ADVOCATE (Oct. 8, 2011), available at <https://www.theadvertiser.com/story/news/2021/10/08/no-reason-fire-me-ousted-lafayette-police-chief-glover-speaks-out/6049102001/>.

⁵⁹ Corinne Lincoln-Pinheiro, *Lawsuit alleges Lafayette police officer illegally deleted photo of suspect*, LOUISIANA RECORD (Apr. 10, 2017) available at <https://louisianarecord.com/stories/511101882-lawsuit-alleges-lafayette-police-officer-illegally-deleted-photo-of-suspect>.

⁶⁰ Britt Lofaso, *Lafayette police captain faces allegations of abuse of power, civil service board investigates* (Sept. 15, 2021), available at <https://www.klfy.com/local/lafayette-police-captain-faces-allegations-of-abuse-of-power-civil-service-board-investigates/>.

91. The Consolidated Government and Mayor Guillory routinely prosecute individuals for exercising their constitutionally protected rights. For example, in 2020, they sued an individual from New York City over a satirical post on social media website Facebook.com.⁶¹

92. The Sheriff's Office is also marred in a pattern and practice of wrongful and abusive behavior, including filing wrongful criminal charges, tolerating prisoner brutality, and undermining prisoner's rights. For example, in 2017, the Sheriff's Office settled a case whereby sheriff's deputies beat and pepper sprayed the inmate causing him four fractured ribs and a punctured lung.⁶² In 2018, another inmate sued the Sheriff's Office injuries sustained during yet another violent beating by sheriff's deputies.⁶³

93. Sheriff Graber has also been accused of abusing his authority by filing frivolous criminal charges against his former wife⁶⁴ and “unlawfully double-dipping” to “enrich[] himself” with “ill-gotten gains.”⁶⁵

94. Moreover, an independent analysis of nationwide policing that scores police departments and sheriff's offices has rated, out of a 100%, the Police as 41% and Sheriff's Office 38 percent.⁶⁶ The lower the score, the less accountable the law enforcement officers are. For reference the New Orleans Police Department ranks at 51%.⁶⁷

⁶¹ Michael Carroll, *Lafayette city-parish sues satirist over announcement of fake antifa event*, LOUISIANA RECORD (Sept. 28, 2020), available at <https://louisianarecord.com/stories/554912488-lafayette-city-parish-sues-satirist-over-announcement-of-fake-antifa-event>.

⁶² <https://clayburgess.com/lps0-brutality-lawsuit/>

⁶³ *Landry v. Graber*, Civ. A. No. 6:19-cv-00367 (W.D. La.)

⁶⁴ The Louisiana Record, *Louisiana woman accuses Lafayette Parish officials, ex-husband of fictitious criminal charges*, Louisiana Record (May 3, 2016), available at <https://louisianarecord.com/stories/510722402-law-courts-louisiana-woman-accuses-lafayette-parish-officials-ex-husband-of-fictitious-criminal-charges>

⁶⁵ KATC News, *LPSO moves to strike 'offensive language' from lawsuit with LCG*, KATC (Jan. 27, 2020), available at <https://www.katc.com/news/lafayette-parish/lps0-moves-to-strike-offensive-language-from-lawsuit-with-lcg> (quoting from complaint).

⁶⁶ Police Scorecard – Lafayette Police Department, available at <https://policescorecard.org/la/police-department/lafayette> ; Police Scorecard – Lafayette Parish Sheriff's Department, available at <https://policescorecard.org/la/sheriff/lafayette-parish>.

⁶⁷ *Id.*

CAUSES OF ACTION

COUNT 1:
**VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983 (AGAINST ALL
DEFENDANTS)**

94. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

95. The First Amendment prohibits “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances,” as applied to the states under the Fourteenth Amendment to the United States Constitution. The violations of Ms. Fogleman-Laxey’s First Amendment rights are actionable as constitutional violations and under 42 U.S.C. § 1983, which provides a federal cause of action and remedy when officers violate federal rights under the color of state or local authority.

96. Title 14, §§ 14:100.1 and 14:103 of the La. Rev. Stat. are facially unconstitutionally vague and/or overbroad.

97. A statute is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Williams*, 553 U.S. 285, 304 (2008). As to the latter, a statute is vague when it fails to “establish minimal guidelines to govern law enforcement” thus allowing “policemen, prosecutors, and juries to pursue their personal predilections.” *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (quoting *Smith v. Goguen*, 415 U.S. 566, 573, 575 (1974)). For these reasons, courts apply a strict standard to determine whether a statute in “the area of free expression” contains “permissible statutory vagueness.” *Nat’l Ass’n for Advancement of Colored People v. Button*, 371 U.S. 415 (1963).

98. A statute is unconstitutionally overbroad if “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473, 130 S. Ct. 1577, 1587, 176 L. Ed. 2d 435 (2010).

99. Section 14:100.1 criminalizes obstruction of public passages. La. Rev. Stat. § 14:100.1 states the following:

No person shall willfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

100. Section 14:100.1 is overbroad because it applies to a “substantial” number of First Amendment protected activity, including but not limited to having a BBQ protest, walking on the street while discussing racial justice, standing on the sidewalk holding a sign asking for accountability for police officers.

101. Section 14:103(A)(5) is vague and overbroad in that it criminalizes “disturbing the peace,” which is defined, among other things, as the “[h]olding of an unlawful assembly,” in a manner that “foreseeably disturb[s] or alarm[s] the public.” La. Rev. Stat. § 14:103(A)(5).

102. Section 14:103(A)(5) is vague because it fails to provide a person of reasonable intelligence with fair notice of what is prohibited or allowed and it fails to provide minimal guidelines to government law enforcement in its application. Moreover, the statute, including terms such as “unlawful,” is vague and ambiguous because it “so standardless” and lacking in “minimal guidelines to govern law enforcement” that it allows, welcomes, and encourages police officers and other government officials to use it in a way that infringes on First Amendment protected rights, such as speaking freely and peacefully assembling, they do not like or agree with. In fact, that is precisely what happened here—Defendants used this vague statute to prevent Ms.

Fogleman-Laxey from exercising her rights.

103. Section 14:103(A)(5) is overbroad because it applies to a “substantial” number of First Amendment protected activity, including but not limited to having a BBQ protest, walking on the street while discussing racial justice, or having a conversation on any number of topics in at the entry of a park.

104. Alternatively: as applied, Defendants exploited Title 14, §§ 14:100.1 and 14:103 of the La. Rev. Stat. to criminalize and infringe upon Ms. Fogleman-Laxey’s protected First Amendment rights.

105. Ms. Fogleman-Laxey’s BBQ protest on a public street, including making it available to thousands online via the Video, was a constitutionally protected exercise of her rights to speak freely, peacefully assembly, and petition the government. Arresting Officers’ unlawful arrest of Ms. Fogleman-Laxey deliberately violated the clean and well-established exercise of such rights in public forums such as public streets, roads, and spaces. *See Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939) (“Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been part of the privileges, immunities, rights, and liberties of citizens.”).

106. As for La. Rev. Stat. § 14:100.1, Ms. Fogleman-Laxey’s BBQ protest did not obstruct any public sidewalk, street, highway, bridge, alley, road, or other passageway. Neither did her BBQ protest obstruct the free, convenient, and normal use of any entrance, corridor, or passage of any public building, structure, watercraft or ferry.

107. As for La. Rev. Stat. § 14:103(A)(5), the application of this statute, which was only used against Ms. Fogleman-Laxey after she was arrested for obstructing a public roadway, to Ms. Fogleman-Laxey's peaceful BBQ protest on a public street infringed on her First Amendment rights to exercise free speech and peaceful assembly and to petition the government

108. The application of these statutes to Ms. Fogleman-Laxey's peaceful BBQ protest on a public street infringed on her First Amendment rights to free speech, peaceful assembly, and petition of government because:

- a. She engaged in a peaceful assembly in the presence of friends, family, local residents, online protestors, and the media.
- b. Her BBQ equipment, vehicle, other belongings, and person did not block or restrict any public movement.
- c. Vehicles were able to freely move in a convenient and normal way on the public road, unimpeded by the presence of her BBQ equipment, vehicle, other belongings, and person.
- d. Persons were able to move freely and in a convenient and normal way on the public sidewalk, street, and road, unimpeded by the presence her BBQ equipment, vehicle, other belongings, and person.
- e. No action taken by Ms. Fogleman-Laxey in placing and/or using her BBQ equipment, which was located on the public road behind her truck, impeded, hindered, stifled, delayed, or restrained traffic or passage on the public sidewalk, street, or road.

109. Ms. Fogleman-Laxey's BBQ protest on a public street, including making it available to thousands online via the Video, was a constitutionally protected exercise of her rights

to free speech, peaceful assembly, and petitioning of the government. Defendants' unlawful arrest of Ms. Fogleman-Laxey deliberately violated the well-established exercise of such rights in public forums such as public streets, roads, and spaces.

110. Defendants' actions were not a reasonable regulation of the time, place, or manner of Ms. Fogleman-Laxey's First Amendment protected activity. Defendants' actions were not based on a compelling—or even rational—governmental interest justifying the infringement of Ms. Fogleman-Laxey's First Amendment rights.

111. Defendants' action against Ms. Fogleman-Laxey are a part of pattern and practice, custom, and/or unwritten policy to punish those that exercise their First Amendment rights to the dislike of the Defendants.

112. Ms. Fogleman-Laxey, at the time of her arrest for exercising her First Amendment right to free speech, had a clearly established constitutional right under the Fourteenth Amendment to procedural and substantive due process, to bodily integrity, and to be free from unreasonable seizure.

113. In arresting and detaining her at the behest of Mayor Guillory, Chief Morgan, and/or Sheriff Garber, Arresting Officers and Defendant Officers violated Ms. Fogleman-Laxey's substantive due process rights by exercising arbitrary and abusive practices on her person, in direct violation of internal official policies.

114. Defendant Officers' conduct at the Correctional Facility, described under Count 4 in detail and in the Factual Allegations, occurred maliciously, in bad faith, and in reckless disregard for Ms. Fogleman-Laxey's federally protected constitutional rights. In addition, Arrest Officers' conduct in arresting Ms. Fogleman-Laxey without probable cause while she was exercising her First Amendment right to free speech was objectively unreasonable in that any reasonable officer

would have known that there was no probable cause for a charge of obstruction of a public passage.

115. This count is actionable also actionable under the U.S. Constitution, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 2:
VIOLATIONS OF ARTICLE ONE, SECTIONS SEVEN AND NINE OF THE
LOUISIANA CONSTITUTION (AGAINST ALL DEFENDANTS)

116. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

117. Article One, Section Seven of the Louisiana Constitution prohibits the curtailment or restriction of the freedoms of speech and press and guarantees every person the right to “speak, write, and publish his sentiments on every subject.” La. Const. art. I, § 7.

118. Article One, Section Nine of the Louisiana Constitution protects “the right of any person to assemble peaceably or to petition government for a redress of grievances.” La. Const. art. I, § 9.

119. Defendants’ actions in punishing the peaceful demonstration of Ms. Fogleman-Laxey, as described above, interfered with the exercise of her fundamental rights, including the right to expression, to assemble, and petition the government as guaranteed by Article One, Sections Seven and Nine of Louisiana’s Constitution.

120. Defendants’ action against Ms. Fogleman-Laxey are a part of pattern and practice, custom, and/or unwritten policy to punish those that exercise their Article One rights to the dislike of the Defendants.

121. This count is actionable also actionable under the Louisiana Constitution, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 3:
**RETALIATORY ARREST IN VIOLATION OF THE FIRST AND FOURTEENTH
AMENDMENTS AND 42. U.S.C. § 1983 (AGAINST MAYOR GUILLORY, CHIEF
MORGAN, AND ARRESTING OFFICERS)**

122. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

123. On August 29, 2020, Ms. Fogleman-Laxey was engaged in protected First Amendment activity—namely, exercising her right to free speech and assembly near Mayor Guillory’s house while barbecuing some hamburgers and hotdogs.

124. As a result of this activity, and in retaliation for said activity, Mayor Guillory and/or Chief Morgan ordered or directed Arresting Officers to arrest Ms. Fogleman-Laxey. And Arresting Officers arrested Ms. Fogleman-Laxey as ordered, directed, and/or of their own fruition.

125. Ms. Fogleman-Laxey was charged with obstructing a passageway and later charged with disturbing the peace, despite no probable cause for such charges. Mayor Guillory, Chief Morgan, and the Arresting Officers knew or should have known that no probable cause or sufficient evidence existed to arrest and/or prosecute Ms. Fogleman-Laxey.

126. This arrest, detention, and prosecution was sufficiently adverse as to chill a person of ordinary firmness from engaging in such protected activity because Ms. Fogleman-Laxey was subjected to a humiliating arrest and strip search, had to appear in court, and retain the assistance of counsel, before the charges were finally dropped.

127. The individual Defendants’ adverse actions in arresting, detaining, and prosecuting Ms. Fogleman-Laxey—at Mayor Guillory’s direction, or with his encouragement—were done for the improper purpose of deterring or discouraging Ms. Fogleman-Laxey and other activists or would-be activists from engaging in First Amendment activities.

128. Upon information and belief, the Defendants conspired to and acted together under color of state law and violated Ms. Fogleman-Laxey's constitutional rights as alleged above, including the conspiracy between the Mayor and Chief Morgan to arrest and detain Ms. Fogleman-Laxey and the Mayor and DA Landry in the prosecution of Ms. Fogleman-Laxey.

129. As a direct and proximate result of the Defendants' misconduct, Ms. Fogleman-Laxey suffered injuries as more fully alleged above, including but not limited to the loss of liberty and the immediate silencing of her protest and Video. Furthermore, she fears future retaliation should she observe or participate in protest activity.

130. In fact, Defendants' unlawful actions have caused Ms. Fogleman-Laxey to engage in less First Amendment protected activity, such as protesting racial injustice and police brutality, because she fears Defendants will once again unlawfully arrest, search, including strip-searching her, and detain her in a facility without proper COVID-19 protections.

131. Defendants' actions described herein were substantially motivated against the exercise of Ms. Fogleman-Laxey's clearly established constitutional rights.

132. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 4
**UNLAWFUL SEARCH AND SEIZURE IN VIOLATION OF THE FOURTH AND
FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42
U.S.C. § 1983 (AGAINST ALL DEFENDANTS)**

133. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

134. The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” as applied to the states under the Fourteenth Amendment to the United States Constitution. At all relevant times,

Defendants were state actors acting under the color of law and pursuant to their policies, customs, and practices.

135. The right not to be arrested or detained, which constitutes a seizure, without probable cause was clearly established at the time of Ms. Fogleman-Laxey's arrest and detention.

136. The right not to be arrested or detained, which constitutes a seizure, for exercising one's First Amendment protected rights to speak freely, peacefully assemble, and petition the government were clearly established at the time of Ms. Fogleman-Laxey's arrest.

137. Arresting Officers knew or should have known that Ms. Fogleman-Laxey's arrest was without probable cause and in violation of her First Amendment rights.

138. Any reasonable police officer in the Arresting Officers' shoes would have known from the facts at the scene of the BBQ protest that Ms. Fogleman-Laxey's BBQ grill was *not* obstructing a passageway, the law she was claimed to have violated, and would know that arresting or detaining her for said violation was without probable cause and a violation of her clearly established constitutional rights.

139. Any reasonable police officer in the Arresting Officers' shoes would have known that arresting and detaining Ms. Fogleman-Laxey for exercising her First Amendment rights at the BBQ protest was objectively unreasonable and was a violation of her clearly established constitutional rights.

140. A pat-down search by law enforcement violates an individual's Fourth Amendment rights when the frisk is "not supported by a reasonable belief that [the individual] was armed and presently dangerous." *Ybarra v. Illinois*, 444 U.S. 85, 92-93 (1979).

141. Arresting Officers and Defendant Officers violated Ms. Fogleman-Laxey's Fourth Amendment right to be free of unreasonable and unlawful searches by conducting a warrantless

pat-down search without reasonable suspicion, her consent, exigent circumstances, and/or reasonable grounds to believe that Ms. Fogleman-Laxey was armed and dangerous.

142. The same is true for the invasive strip search in the Correction Center. The strip search conducted by Defendant Officers took place in blatant disregard of official Sheriff's Office policy.

143. Arresting Officers and Defendant Officers violated Ms. Fogleman-Laxey's Fourth Amendment right to be free from unreasonable and unlawful seizures by detaining—*i.e.*, seizing—Ms. Fogleman-Laxey and seizing her cell phone without probable cause.

144. Arresting Officers and Defendant Officers violated Ms. Fogleman-Laxey's Fourth Amendment rights by detaining her in the Correction Center in clear violation of the COVID Intake Policy and Judge Castle's order. Additionally, this detention was also a violation of the customs, policies, and procedures only persons arrested for active violent conduct were detained at the Correction Center.

145. Arresting Officers and Defendant Officers also violated Ms. Fogleman-Laxey's rights by searching and seizing her as retaliation for her exercise of her First Amendment rights.

146. As a direct and proximate result of Defendants' unlawful arrest, search, and seizure of Ms. Fogleman-Laxey she has suffered physical harm, economic harm, emotional harm, including anxiety, panic attacks, depression, and fear of future harm, which has led to the chilling of her First Amendment rights. Upon information and belief, the Arresting Officers and Defendant Officers engaged in the actions described above at the direction of and/or with support of Mayor Guillory, Chief Morgan, and Sheriff Graber.

147. Ms. Fogleman-Laxey is also entitled to attorneys' fees and costs under 42 U.S.C. § 1988, prejudgment interest, and costs allowable by federal law.

148. In addition, at the time of the arrest and detention, Ms. Fogleman-Laxey had a clearly established constitutional right under the Fourteenth Amendment to procedural and substantive due process, to bodily integrity, and to be free from unreasonable seizure by excessive force.

149. The Fourteenth Amendment of the United States Constitution guarantees the right to be free from arbitrary deprivation of life, liberty, or property by the government.

150. Defendant Officers violated Ms. Fogleman-Laxey's substantive due process rights by exercising arbitrary and abusive practices on her person, in direct violation of internal official policies. These include but are not limited to the following: placing Ms. Fogleman-Laxey, who was at high risk of contracting COVID-19 due to co-morbidities, in a jail population; booking and charging Ms. Fogleman-Laxey for misdemeanor offenses that did not warrant booking and for which there was no probable cause; giving Ms. Fogleman-Laxey a dirty and used mask as a means of protection against COVID-19; giving Ms. Fogleman-Laxey improperly-fitting clothing; and keeping Ms. Fogleman-Laxey in the Correctional Center when she should not have been booked to begin with and despite lacking adequate protections against COVID-19, including clean and new mask, for a person at high risk of complication from the virus. The conduct undertaken by Defendant Officers at the direction of and/or with the support of Mayor Guillory, Chief Morgan, and Sheriff Graber shocks the conscience.

151. Any reasonable police officer knew or should have known of these rights at the time of the arrest and detention as they were clearly established during Ms. Fogleman-Laxey's arrest and detention.

152. The conduct of Defendant Officers at the direction of and/or with the support of Mayor Guillory, Chief Morgan, and Sheriff Graber at the Correctional Center, described in detail

above, occurred maliciously, in bad faith, and in reckless disregard of Ms. Fogleman-Laxey's constitutional rights. Their conduct at the Correctional Center was objectively unreasonable in that their conduct directly contradicted official policy regarding strip searches, booking policies, common sense, medical understanding of COVID-19, judicial orders, and placed Ms. Fogleman-Laxey's life and health at high risk of contraction of COVID-19 and suffering severe issues because of it.

153. Defendant Officers are not entitled to qualified immunity because their conduct violated not only directly applicable official policies and judicial orders, but also Ms. Fogleman-Laxey's constitutional rights, and was objectively unreasonable in light of the facts.

154. This count is actionable under U.S. Constitution, 42 U.S.C. § 1983, and common law.

COUNT 5
DEPRIVATION OF DUE PROCESS RIGHTS AND RIGHT TO BE SECURE
AGAINST UNREASONABLE SEARCHES, SEIZURES, OR INVASIONS OF
PRIVACY UNDER THE LOUISIANA STATE CONSTITUTION
(AGAINST ALL DEFENDANTS)

155. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

156. Article One, Section Two of the Louisiana Constitution provides that "No person shall be deprived of life, liberty, or property, except by due process of law." La. Const. art. I, § 2.

157. Article One, Section Five of the Louisiana Constitution provides that every person "shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy."

158. The right not to be arrested or detained, which constitutes a seizure, without probable cause was clearly established at the time of Ms. Fogleman-Laxey's arrest and detention.

159. Arresting Officers and Defendant Officers knew or should have known that Ms. Fogleman-Laxey's arrest was without probable cause. Any reasonable police officer in Arresting Officers' shoes would have known from the facts at the scene of the BBQ protest that Ms. Fogleman-Laxey's BBQ grill was *not* obstructing a passageway and would know that arresting or detaining her for said violation was without probable cause and a violation of her clearly established constitutional rights.

160. Arresting Officers and Defendant Officers violated Ms. Fogleman-Laxey's Fourth Amendment right to be free from unreasonable and unlawful searches and seizures by detaining and conducting an invasive strip search in the Correction Center. The strip search conducted by Defendant Officers took place in blatant disregard of official Sheriff's Office policy.

161. Arresting Officers and Defendant Officers violated Ms. Fogleman-Laxey's Fourth Amendment rights by detaining her in the Correction Center in clear violation of the COVID Intake Policy and Judge Castle's order. Additionally, this detention was also a violation of the customs, policies, and procedures only persons arrested for active violent conduct were detained at the Correction Center.

162. Upon information and belief, the Arresting Officers and Defendant Officers engaged in the actions described above at the direction of and with support of Mayor Guillory, Chief Morgan, and Sheriff Graber.

163. This count is actionable also actionable under the Louisiana Constitution, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 6
**MONELL CLAIM FOR VIOLATIONS OF FIRST, FOURTH, AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983
(AGAINST CONSOLIDATED GOVERNMENT AND SHERIFF GARBER)**

164. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and

incorporates them here by reference as if fully set forth herein.

165. Under *Monell v. Dep't. of Social Services*, 436 U.S. 658, 694 (1976), “[t]o establish municipal liability under §1983, a plaintiff must show that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right.” *Piotrowski v. City of Hous.*, 237 F.3d 567, 578 (5th Cir. 2001) (citing *Monell*, 436 U.S. at 694). There are five types of official “policies” that meet *Monell’s* first element: (1) formal policies; (2) de facto policies and customs; (3) failure to train and/or failure to supervise; (4) single decision by a final policymaker; and (5) ratification of a subordinate’s unconstitutional act.

166. The decisions to arrest and prosecute Ms. Fogleman-Laxey for engaging in constitutionally protected acts were made by decision makers with final authority to establish Consolidated Government policy with regards to the arrest and prosecution of Ms. Fogleman-Laxey. Mayor Guillory, as the final decision maker for the Consolidated Government on law enforcement and prosecution of criminal charges, ordered and/or directed Chief Morgan and the Police to arrest Ms. Fogleman-Laxey, Sheriff Garber and the Sheriff’s Department to detain her, and DA Landry to prosecute her. Mayor Guillory issued these orders and/or directives without a just cause, reason, or legal basis for the action because Ms. Fogleman-Laxey exercised her constitutionally protected rights near his house during the BBQ protest and/or at the Patriots meeting.

167. Alternatively: (1) Chief Morgan, the final decision maker on law enforcement in the City of Lafayette, ordered his Arresting Officers and Defendant Officers to arrest Ms. Fogleman-Laxey where they had no probable cause or other justifiable reason to do so because Ms. Fogleman-Laxey exercised her constitutionally protected rights near Mayor Guillory’s house during the BBQ protest; (2) Sheriff Garber, the final decision maker on law enforcement in the

Parish of Lafayette, ordered his Defendant Officers to detain Ms. Fogleman-Laxey in violation of Correctional Center's COVID Intake Policy and in flagrant disregard for Ms. Fogleman-Laxey's heightened risk of complications from COVID-19 due to her pre-existing conditions because Ms. Fogleman-Laxey exercised her constitutionally protected rights near Mayor Guillory's house during the BBQ protest; and (3) DA Landry, the final decision maker on prosecutorial discretion, filed formal charges against Ms. Fogleman-Laxey because Ms. Fogleman-Laxey exercised her constitutionally protected rights near Mayor Guillory's house during the BBQ protest and/or during the Acadiana Patriots meeting. All said actions were taken without a just cause, reason, or legal basis for the action.

168. The Consolidated Government had de facto policies, customs, practices to use state law, including Title 14, §§ 14:100.1 and 14:103 of the La. Rev. Stat., to arrest peaceful protestors exercising their constitutionally protected First Amendment rights to speak out against racial injustice and/or police brutality. The Police and Sheriff's Office, two entities within the Consolidated Government, had a de facto policy and/or custom, as explained by Chief Morgan, to charge protestors with disturbing the peace and/or obstructing a public passageway when protestors engaged in constitutionally protected First Amendment activities they did not like, including Ms. Fogleman-Laxey's BBQ protest. Upon information and belief, these de facto policies, customs, practices were instituted and/or ratified by Mayor Guillory, Chief Morgan, Sheriff Garber, and/or DA Laundry. This de facto policy and/or custom contradicts written policies to treat all persons fairly, to only use force proportionally and when necessary, and to only arrest and detain alleged violent offenders.

169. The Consolidated Government also had de facto policies, customs, and or practices to engage in the excessive use of force and/or retaliatory arrests against peaceful protestors

demonstrating against racial injustice and/or police brutality. Upon information and belief, these de facto policies, customs, practices were instituted and/or ratified by Mayor Guillory, Chief Morgan, Sheriff Garber, and/or DA Laundry. Defendant Officers' unconstitutional arrest of Ms. Fogleman-Laxey reflects the Consolidated Government's deliberate indifference to the unconstitutional customs and practices of the Police, Sheriff's Office, and District Attorney's Office, including but not limited to: (1) falsely arresting individuals for speech allegedly in violation of the general disturbing the peace or obstruction of the passageway statutes without probable cause, in violation of the First and Fourth Amendment; (2) enforcing said statutes and other similar statutes in a manner that infringes on the rights of free speech, expression, and assembly and as an improper means for retaliating against protected expression and activity, in violation of the First Amendment; and (3) pursuing baseless municipal prosecutions for alleged violations of said statutes and other similar statutes, without probable cause, with malice, and for improper retaliatory purposes. Despite having notice of these continuing, widespread, and persistent de facto policies, customs, and patterns of biased policing and prosecution, the Consolidated Government has failed to take appropriate action to discipline and correct said behavior by the Police, Sheriff's Office, and District Attorney's Office—resulting in the constitutional harm to Ms. Fogleman-Laxey and the risk of future harm to other similarly situated persons.

170. In addition, by refusing to discipline Arresting Officers and Defendant Officers in response to their conduct during Ms. Fogleman-Laxey's arrest, the Consolidated Government, Chief Morgan, and Sheriff Garber ratified the Arresting Officers and Defendant Officers' wrongful conduct, such that it continued the de facto official policies, customs, and practices previously described.

171. Defendants' actions described above were official policies promulgated by the Consolidated Government's policymakers that were the moving force behind the violation of Ms. Fogleman-Laxey's constitutional rights under the First, Fourth, and Fourteenth Amendments. Said violations caused Ms. Fogleman-Laxey harm, injury, and loss of liberty and have chilled her future exercise of constitutionally protected rights for fear that she will be harmed, injured, and deprived of liberty by the Defendants. Defendants are liable to her under 42 U.S.C. § 1983.

172. This count is actionable also actionable under the U.S. Constitution, 42 U.S.C. § 1983, and common law

COUNT 7
MALICIOUS PROSECUTION
(AGAINST DEFENDANTS MAYOR GUILLORY AND DA LANDRY)

173. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

174. Under Louisiana law, the elements of malicious prosecution are: "(1) the commencement or continuance of an original criminal or civil judicial proceeding; (2) its legal causation by the present defendant in the original proceeding; (3) its bona fide termination in favor of the present plaintiff; (4) the absence of probable cause for such proceeding; (5) the presence of malice therein; and (6) damage conforming to legal standards resulting to plaintiff." *Lemoine v. Wolve*, 168 So.3d 362, 367 (La. 2015).

175. Defendants' actions constitute malicious prosecution because:

- a. Criminal proceedings for obstructing a public passageway and disturbing the peace were instituted against Ms. Fogleman-Laxey in the 15th Judicial District Court of Lafayette, Louisiana.
- b. The criminal proceedings were instituted by or at the insistence of the Mayor

and DA Landry.

- c. The criminal proceedings were terminated in Ms. Fogleman-Laxey's favor, with all charges dropped on February 9, 2021.
- d. Under Louisiana law, lack of probable cause and malice are presumed and the burden is shifted to Defendants where charges are dismissed prior to trial. *Zerbe v. Town of Carencro*, 884 So.2d 1224, 1231 (La. App. 3 Cir. Oct. 6, 2004).
- e. Defendants lacked probable cause for the commencement of proceedings for obstructing a public passageway and disturbing the peace.
- f. Defendants did not have reasonable grounds to believe that Ms. Fogleman-Laxey was obstructing a public passageway, as described in L.A. Rev. Stat. § 14:100.1, because several vehicles and persons, including the police officers, traversed the public sidewalk, street, and road where she set up her BBQ equipment during her protest unimpeded and with ease.
- g. Defendants lacked probable cause because it is unreasonable for Defendants to have held an honest belief that Ms. Fogleman-Laxey's BBQ pit, which was placed directly behind her truck and narrower in width than the truck, was obstructing the public road.
- h. As a direct and proximate result of Defendants' conduct, Ms. Fogleman-Laxey has suffered damages including, without limitation, physical pain, mental anguish, and continual loss of reputation in the community. She is entitled to special damages amounting to legal fees in this proceeding and in her criminal proceedings.

176. Further, Defendants' malicious prosecution of Ms. Fogleman-Laxey occurred in tandem with the violations of her rights protected by the United States and Louisiana Constitutions.

177. Defendants are liable for malicious prosecution as a matter of federal law, actionable under 42 U.S.C. § 1983, for violation of Ms. Fogleman-Laxey's Fourth Amendment rights to be free of unreasonable search and seizure. *Whittington v. Maxwell*, 455 F. App'x 450, 457 (5th Cir. 2011).

178. Alternatively, Defendants are liable for malicious prosecution as a matter of Louisiana common law. *Lemoine v. Wolve*, 168 So.3d 362, 367 (La. 2015).

179. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 8
FALSE ARREST / FALSE IMPRISONMENT UNDER LOUISIANA LAW
(AGAINST ARRESTING OFFICES AND DEFENDANT OFFICERS)

180. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

181. Under Louisiana law, the elements of a tort claim for false arrest or imprisonment are “(1) the detention of a person; and (2) the unlawfulness of the detention.” *Parker v. Town of Woodworth*, 86 So. 3d 141, 144 (La. App. 3 Cir. Mar. 7, 2012). Under Louisiana law, “[f]alse arrest and imprisonment occur when one arrests and restrains another against his will without a warrant or other statutory authority[.] That statutory authority is La.C.Cr.P. art. 213, and it requires that the peace officer have ‘reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer.’ La.C.Cr.P. art. 213(3). Reasonable cause to arrest without a warrant is the equivalent of probable cause to obtain an arrest warrant.” *Dyas v. Shreveport Police Dep’t*, 136 So.3d 897, 903 (La. App. 2 Cir. Feb. 26, 2014).

182. A Defendant Officer placed Ms. Fogleman-Laxey in a police car and took her to the police station. At the station, said officer handcuffed Ms. Fogleman-Laxey to a wall. She was then driven to the Correctional Center, a jail operated by the Sherriff, where she was held until her release hours later.

183. Ms. Fogleman-Laxey's arrest was instituted without probable cause because she was not obstructing any passing traffic on the street, her truck was not obstructing any traffic on the street, and the BBQ grill that was placed directly behind her parked truck was also not blocking nor obstructing any traffic on the street. Moreover, at no point was there probable cause to believe that Ms. Fogleman-Laxey was disturbing the peace.

184. As a direct and proximate result of Defendants' conduct, Ms. Fogleman-Laxey has suffered damages including, without limitation, physical pain, mental anguish, and continual loss of reputation in the community.

185. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101-5113, and common law.

COUNT 9
ABUSE OF PROCESS UNDER LOUISIANA LAW
(AGAINST DEFENDANTS MAYOR GUILLORY, CHIEF MORGAN, ARRESTING
OFFICERS, DEFENDANT OFFICER DOES, AND DA LANDRY)

186. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

187. Under Louisiana law, the elements of an abuse of power claim are: "(1) the existence of an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular prosecution of the proceeding." *Phillips v. Whittington*, No. 17-1524, 2020 U.S. Dist. LEXIS 200918, at 110-11 (W.D. La. Oct. 28, 2020); *see also Taylor v. State*, 617 So. 2d 1198, 1206 (La. App. Ct. 1993) (stating that "defendant did not follow proper rules of procedure as he

initiated an investigation without reasonable suspicion”).

188. Defendants’ actions constitute abuse of process because:

- a. At the request of the Mayor, Defendants removed Ms. Fogleman-Laxey from a public roadway without a legal basis for doing so.
- b. Defendants removed Ms. Fogleman-Laxey from a public roadway to save the Mayor the embarrassment, personally and politically, of having a protest in the public road in front of his home.
- c. Defendants removed Ms. Fogleman-Laxey from a public roadway for ulterior purposes without a legal basis for arresting her.
- d. Defendants did not follow the proper process “in the regular prosecution of the proceeding” when Defendants:
 - i. Initiated the arrest without a demonstrated reasonable suspicion;
 - ii. Removed Mr. Harvin, a Consolidated Government employee and potential participant, from the scene in advance of the arrest;
 - iii. Did not allow Ms. Fogleman-Laxey to relocate the BBQ grill;
 - iv. Seized property, specifically a mobile cell phone, that was recording the BBQ protest and the Defendant Officers’ actions when the phone was not on Ms. Fogleman-Laxey’s person at the time of arrest;
 - v. Held Ms. Fogleman-Laxey in the Correctional Center in violation of the COVID Intake Policy and other policies and orders for a period of time without her consent and without probable cause during a global pandemic;
 - vi. Denied Ms. Fogleman-Laxey the ability to wear clean or otherwise sufficient personal protective equipment while being held without her

consent in the Correctional Center—thus exposing her to a deadly disease.

189. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 10
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS UNDER LOUISIANA LAW
(AGAINST DEFENDANTS MAYOR GUILLORY, CHIEF MORGAN, ARRESTING
OFFICERS, DEFENDANT OFFICERS, SHERIFF GRABER, AND DA LANDRY)**

190. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

191. A cause of action for intentional infliction of emotional distress is viable in Louisiana when the plaintiff can demonstrate: (1) the defendant’s conduct was extreme and outrageous; (2) that the emotional distress suffered by the plaintiff was severe; and, (3) that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct. *Harvey v. Dietzen*, 716 So. 2d 911, 916 (La. App. 4 Cir. 1998);

192. The Defendants violated Louisiana law by committing intentional torts while acting within their authority as public officials.

193. At all relevant times, the Defendants were acting under the color of state law.

194. Defendants desired to inflict severe emotional distress on Ms. Fogleman-Laxey or knew that severe emotional distress would be certain or substantially certain to result from their acts or omissions.

195. Defendant Mayor Guillory’s conduct to order an unlawful arrest of a peaceful civilian was extreme and outrageous.

196. Defendant DA Landry’s conduct to use his prosecutorial discretion to charge Ms. Fogleman-Laxey with baseless charges was extreme and outrageous.

197. As a direct and proximate result of Defendants misconduct, Ms. Fogleman-Laxey has experienced physical harm, reputational harm, economic harm, and emotional harm, including depression, anxiety, and sleeplessness.

198. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 11
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS UNDER LOUISIANA LAW
(AGAINST DEFENDANTS MAYOR GUILLORY, CHIEF MORGAN, ARRESTING
OFFICERS, DEFENDANT OFFICERS, SHERIFF GRABER, AND DA LANDRY)**

199. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

200. A negligent infliction of emotional distress claim is viable when the plaintiff can demonstrate: (1) the defendant had a duty to conform his conduct to a specific standard of care; (2) the defendant failed to conform his conduct to the appropriate standard; (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries; (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries; and, (5) actual damages. *Covington v. Howard*, 146 So. 3d 933, 937 (La.App. 2 Cir. 2014).

201. Each Arresting Officer and Defendant Officer owed a duty of care to Ms. Fogleman-Laxey to act reasonably under the circumstances.

202. Each Arresting Officer and Defendant Officer also owed a duty of care to Ms. Fogleman-Laxey to intercede to prevent the use of unreasonable and excessive force by the other Arresting Officers and Defendant Officers on Ms. Fogleman-Laxey, and each of the Arresting Officer and Defendant Officers was in a position to intercede to prevent the use of such unreasonable force.

203. By refusing to accommodate Ms. Fogleman-Laxey's pre-existing back injury, and

by forcibly keeping Ms. Fogleman-Laxey in a prison cell against the COVID-19 Intake Policy, refusing to provide Ms. Fogleman-Laxey adequate personal protection equipment, performing a strip search of Ms. Fogleman-Laxey in violation of policy, each Arresting Officers and/or Defendant Officer breached their duty of care to Ms. Fogleman-Laxey by failing to act reasonably under the circumstances. Arresting Officers and Defendant Officers used unreasonable and excessive force against Ms. Fogleman-Laxey, an individual whom the Arresting Officers and Defendant Officers knew had a pre-existing back injury. The Defendant Officers' use of force was also unreasonable and excessive in view of, among other factors, the non-violent nature of the alleged offense, the minimal chance of and lack of any attempt by Ms. Fogleman-Laxey to escape by flight, and the lack of any actual or potential weaponry near Ms. Fogleman-Laxey.

204. Each Arresting Officer and Defendant Officer was in a position to intercede to prevent the use of unreasonable and excessive force by the other Arresting Officers and/or Defendant Officers on Ms. Fogleman-Laxey. By failing to intercede when the other Defendant Officers used such unreasonable and excessive force, each Arresting Officer and/or Defendant Officer breached their duty of care to Ms. Fogleman-Laxey.

205. The Arresting Officers and/or Defendant Officers' use of unreasonable and excessive force on Ms. Fogleman-Laxey had a strong likelihood of causing, and was a direct and proximate cause of, Ms. Fogleman-Laxey's genuine and serious emotional injury and psychiatric distress. Ms. Fogleman-Laxey continues to suffer from severe anxiety, depression, humiliation, anguish, and loss of enjoyment of life as she is essentially home bound out of fear of retribution and retaliation.

206. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 12
NEGLIGENT HIRING, RETAINING, AND SUPERVISION
(AGAINST DEFENDANTS CONSOLIDATED GOVERNMENT, CHIEF MORGAN,
AND SHERIFF GARBER)

207. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

208. This is an action for damages against Defendants for the retaliatory arrest, unlawful search and seizure, false arrest and imprisonment, abuse of process, intentional infliction of emotional distress, and negligent infliction of emotional distress committed by Defendant Officers, including but not limited to Lieutenant Carsten, against Ms. Fogleman-Laxey.

209. The elements of a negligent hiring, training, and or supervision claim under Louisiana Law are: (1) defendant had a duty to confirm their conduct to a specific standard; (2) defendant failed to conform their conduct to that standard; (3) defendant's substandard conduct was a cause in fact of the plaintiff's injuries; (4) defendant's substandard conduct resulted in plaintiff's injuries; and (5) plaintiff suffered damages. *Adams v. City of Shreveport*, 269 F. Supp. 3d 743, (W.D. La. 2017); *see also Gomez v. Galman*, No. 20-30508, 2021 WL 5371112, at *6-7 (5th Cir. Nov. 18, 2021).

210. At all times relevant hereto, the employees of Consolidated Government, including Lieutenant Carsten, as well as unknown Arresting and Defendant Officers, were acting under the color of state law and within the scope of their employment with the Consolidated Government.

211. At all times relevant, it was the duty of Arresting Officers and Defendant Officers to refrain from violating Ms. Fogleman-Laxey's right to freely speak and assemble peacefully and to be free from unreasonable search and seizure, false arrest and imprisonment, abuse of process, intentional infliction of emotional distress, and negligent infliction of emotional distress.

212. Arresting Officers and Defendant Officers breached that duty by wrongfully arresting Ms. Fogleman-Laxey, detaining her, and strip searching her, despite their knowledge that Ms. Fogleman-Laxey was not dangerous or violent as outlined more fully above. The Arresting Officers and Defendant Officers status provided them a unique opportunity to commit these wrongs upon Ms. Fogleman-Laxey.

213. Prior to the aforementioned misconduct against Ms. Fogleman-Laxey, the Consolidated Government, Chief Morgan, and Sheriff Garber had a duty to use reasonable care to properly screen, train, hire, supervise and control their agents, employees, police officers, and sheriff's deputies, including Arresting Officers and Defendant Officers.

214. Notwithstanding said duty, the Consolidated Government, Chief Morgan, Mayor Guillory, and Sheriff Garber breached their duty by committing one or more of the following acts or omission:

- a. Failed to properly train police officers on adhering to established First, Fourth, and Fourteenth Amendment principles, including allowing citizens to peacefully exercise their rights to assemble, petition government, and speak freely on public streets.
- b. Failed to properly train its police officers in the use of reasonable force;
- c. Provided inadequate training regarding appropriate detention for traffic violations;
- d. Provided inadequate training regarding how to intervene to stop other officers from wrongfully arresting, detaining, and imprisoning suspects;
- e. Employed and retained as police officers, such as Arresting Officers and Defendant Officers, who the Consolidated Government, Chief Morgan, and Sheriff Graber knew or reasonably should have known had dangerous propensities for abusing

their authority and for using excessive force on suspects and other citizens;

- f. Inadequately supervised, trained, controlled, assigned, and/or disciplined personnel the Consolidated Government, Chief Morgan, and Sheriff Graber knew or in the exercise of reasonable care should have known had the aforementioned propensities and character traits;
- g. Failed to supervise their personnel, police officers, and sheriff's deputies in their use of force against citizens;
- h. Failed to properly pre-screen candidates for employment with the Consolidated Government, Police Department, and Sheriff's Office;
- i. Failed to discover that Arresting Officers and Defendant Officers were unfit to remain in a law enforcement position within the Consolidated Government, Police Department, and Sheriff's Office; and/or
- j. Retained Arresting Officers and Defendant Officers in a law enforcement position within the Consolidated Government, Police Department, and Sheriff's Office despite the knowledge that said officers were unfit for such a position.
- k. Failed to act on knowledge of officer misconduct by decertifying officers in order to prevent them from being rehired and continuing to engage in misconduct.⁶⁸

215. As a direct and proximate foreseeable result of the Defendant Officers' violations, as set forth above, Ms. Fogleman-Laxey suffered injuries, including physical injuries, physical pain and suffering, mental pain and suffering, emotional distress, disability, and the loss of a normal life.

⁶⁸ Kimbriell Kelly, Wesley Lowery, and Steven Rich, *Forced out over sex, drugs and other infractions, fired officers find work in other departments*, THE WASHINGTON POST (Dec. 28, 2017), available at https://www.washingtonpost.com/investigations/forced-out-over-sex-drugs-or-child-abuse-fired-officers-find-work-in-other-departments/2017/12/22/e0512774-d3a7-11e7-95bf-df7c19270879_story.html?tid=ss_mail.

216. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 13
STATE LAW VICARIOUS LIABILITY AGAINST
(DEFENDANTS CONSOLIDATED GOVERNMENT AND SHERIFF GARBER)

217. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

218. At all relevant times, Arresting Officers and Defendant Officers were employed by and/or acting on behalf of the Consolidated Government, Police Department, and/or Sheriff's Office.

219. At all relevant times, Arresting Officers and Defendant Officers were acting under color of law and within their respective capacities, courses, and scopes of their employment with the Consolidated Government, Police Department, and Sheriff's Office and/or accomplished the acts stated herein by virtue of their employment-created authority. In addition, upon information and belief, Arresting Officers and Defendants Officers took the actions that violated Ms. Fogleman-Laxey's constitutional rights, state-law rights, and caused her injury, as alleged in this First Amended Complaint, at the direction of Mayor Guillory, Chief Morgan, and/or Sheriff Graber.

220. Arresting Officers and Defendant Officers intentionally, negligently, recklessly, directly, and/or proximately caused physical and emotional injury to Ms. Fogleman-Laxey, including both acts of omission and acts of commission.

221. Therefore, the Consolidated Government and Sheriff's Office are liable under the laws of vicarious liability for the actions and inactions of the Arresting Officers and Defendant Officers as described herein.

222. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

COUNT 14
**FAILURE TO INTERVENE IN USE OF EXCESSIVE FORCE AND
CONSTITUTIONAL VIOLATIONS (AGAINST ARRESTING OFFICERS AND
DEFENDANT OFFICERS)**

223. Ms. Fogleman-Laxey repeats and re-alleges the preceding allegations and incorporates them here by reference as if fully set forth herein.

224. Arresting Officers witnessed the use of excessive force by their colleagues against Ms. Fogleman-Laxey and had ample time to intervene in order to prevent or mitigate injury to her.

225. Any reasonable police officer in the position of Arresting Officers would have recognized that the force being used against Ms. Fogleman-Laxey was unconstitutionally excessive and would have known that they had a duty to take reasonable measures to prevent harm to Ms. Fogleman-Laxey.

226. Arresting Officers failed to take any action to prevent harm to Ms. Fogleman-Laxey and thereby proximately caused unconstitutionally excessive force to be inflicted upon Ms. Fogleman-Laxey. That unconstitutional force resulted in grave physical injuries psychiatric distress to Ms. Fogleman-Laxey.

227. Arresting Officers further witnessed the arrest of Ms. Fogleman-Laxey for violation of a statute for which Arresting Officers knew or should have known there existed no probable cause and a clear violation of her First Amendment rights to free speech and peacefully assemble, and their state constitutional counterparts. Arresting Officers had ample time to intervene in order to prevent Ms. Fogleman-Laxey's unconstitutional arrest and booking but failed to do so.

228. Any reasonable police officer in the position of Arresting Officers would have recognized that the unconstitutional seizure and arrest of Ms. Fogleman-Laxey was taking place

at the scene of the incident and would have known that they had a duty to take reasonable measures to prevent such a constitutional violation.

229. Any reasonable police officer in the position of Defendant Officers position would have known that the Ms. Fogleman-Laxey's detention was in violation of her constitutional rights and would have have known that they had a duty to take reasonable measures to prevent harm to Ms. Fogleman-Laxey.

230. In depriving Ms. Fogleman-Laxey of her rights under the United Sates and Louisiana Constitutions, the Arresting Defendants acted under color of law in their respective capacities as Sheriff/Police Officers, and their actions and omissions were conducted within the scope of their respective employment duties and, upon information and belief, at the behest of Mayor Guillory, Chief Morgan, and Sheriff Graber.

231. This count is actionable under 42 U.S.C. § 1983, La. Rev. Stat. §§ 5101–5113, and common law.

PRAYER FOR RELIEF

Wherefore, in light of the foregoing, Ms. Fogleman-Laxey respectfully requests that this Court enter judgment against each Defendant, jointly and severally, and award the following relief in an amount to be determined at trial for the violations of Ms. Fogleman-Laxey's constitutional, statutory, and common-law rights:

- a. Compensatory damages to be developed during discovery and proven at trial;
- b. Punitive damages against the Defendants sued in their individual capacity.
- c. A declaration that La. Rev. Stat. §§ 14:103 and 14:100.1, facially and/or as applied, violate the rights to free speech, peacefully assemble, and petition the government under the U.S. and Louisiana constitutions.

- d. A permanent injunction or other order preventing Defendants from using La. Rev. Stat. §§ 14:103 and 14:100 to violate the rights to free speech, peacefully assemble, and petition under the U.S. and Louisiana constitutions.
- e. Reasonable attorneys' fees and costs as provided under 42 U.S.C. § 1988;
- f. A declaration that the Consolidated Government, Police, and Sheriff's Office, their officers, agents, and employees have engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States;
- g. Order that Consolidated Government, Police, and Sheriff's Office, their officers, agents, and employees to adopt and implement policies, training, accountability systems, and practices to remedy the constitutional and statutory violations described herein, and to prevent Defendants, their officers, agents, and employees from depriving persons of rights privileges, or immunities secured or protected by the Constitution or laws of the United States; and
- h. Such other relief as this Court may deem just and proper.

Date: December 9, 2021

Respectfully submitted,

/s/ Megan E. Snider

Megan E. Snider

LA. Bar No. 33382

Nora Ahmed*

New York Bar No. 5092374

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**Pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 9, 2021, a copy of the above and foregoing First Amended Complaint was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all known counsel of record via the Court's electronic filing system.

/s/ Fabio Dworschak

Exhibit A

IN THE CRIMINAL DISTRICT COURT
OF THE FIFTEENTH JUDICIAL DISTRICT
IN AND FOR THE PARISH OF LAFAYETTE
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA

VERSUS

DOCKET NUMBER: MD-176409

TARA FOGLEMAN-LAXEY

* * * * *

The above-captioned case came up for sentencing at the Lafayette Parish Courthouse, Lafayette, Louisiana, before the Honorable Royal D. Colbert, District Judge, of the above-styled court, on Monday, February 8, 2021, pursuant to notice.

APPEARANCES:

FOR THE STATE:

MR. LANCE BEAL
ASSISTANT DISTRICT ATTORNEY
LAFAYETTE DISTRICT ATTORNEY'S OFFICE
600 Jefferson Street, Suite 810
Lafayette, Louisiana 70501

FOR TARA FOGLEMAN-LAXEY:

MR. MARCUS ALLEN
MARCUS ALLEN LAW OFFICES
413 Lee Avenue
Lafayette, Louisiana 70501

REPORTED BY: CHARLOTTE A. HOFFMAN

CHARLOTTE A. HOFFMAN
OFFICIAL REPORTER
LAFAYETTE, LOUISIANA
337-654-8542

1 OPEN COURT
2 HONORABLE ROYAL D. COLBERT, DISTRICT JUDGE, PRESIDING
3 MONDAY, FEBRUARY 8, 2021
4 HEARING

5 * * * * *

6
7 THE COURT: Okay, I see Mr. Allen and Mr.
8 Beal. So, I think we now have Ms. Fogleman-
9 Laxey. Mr. Beal, I don't have a file on
10 this. What is this? State of Louisiana
11 versus --

12 MR. BEAL: Yes, Your Honor. Lance Beal,
13 on behalf of the State of Louisiana.

14 MR. ALLEN: Marcus Allen, on behalf of
15 Tara Fogleman-Laxey.

16 MR. BEAL: Your Honor, this is going to
17 be under Docket Number MD-176409. It's
18 actually at this time -- Ms. Laxey is
19 scheduled to be arraigned tomorrow, however,
20 in co-operation with the victim, the State
21 has come to an agreement that we will dismiss
22 the charges with prejudice against Ms. Laxey,
23 in exchange for a civil stay-away order
24 against the Mayor President, Josh Guillory.
25 She's to remain a hundred feet away from Mr.
26 Guillory and his family, and a hundred feet
27 away from his residence. In addition, this
28 will not infringe upon her right to petition
29 and her right of freedom of speech to attend
30 City Council meetings, Parish Council
31 meetings, or any other type of public event
32 in a public capacity.

1 THE COURT: Mr. Allen?

2 MR. ALLEN: Your Honor, in response, we
3 have agreed to do this. My client has
4 continued to stay away from Mr. Guillory
5 since she's bonded out. She does have a
6 concern with the dismissal, in that she does
7 want to have the destruction of her finger
8 prints and any of her information. Since
9 this is a dismissal, she doesn't want that to
10 have to follow behind her.

11 THE COURT: I agree.

12 MR. BEAL: I have to no objection to
13 that.

14 MR. ALLEN: Other than that, we're fine.

15 THE COURT: Ms. Laxey, do you have
16 anything you want to say?

17 THE COURT: The floor is yours.

18 MS. LAXEY: I do. Do I need to stand,
19 out of respect?

20 THE COURT: No, ma'am.

21 MS. LAXEY: Okay. Although I appreciate
22 Mr. Beal and what he just said, I need to
23 make it clear that, "with the co-operation of
24 the victim", there was no victim in this
25 situation. And I highly doubt that our Mayor
26 Parish President, pushed to have the charges
27 dropped, when clearly, he probably pushed the
28 issue for the charges to be accepted, to try
29 to teach me a lesson. So, I feel it's
30 important to state that. Justice for
31 Trayford Pellerin.

32 THE COURT: I'm assuming that this is a

1 stipulation, am I right? Mr. Beal? Mr.
2 Allen?

3 MR. BEAL: Yes, Your Honor.

4 MR. ALLEN: It is, Your Honor.

5 THE COURT: And the Court accepts the
6 stipulation, with the caveat, that Court
7 costs are split with both parties. This is
8 the arena for politics. I highly doubt that
9 Mr. Guillory, who is an Army-trained officer,
10 with several deployments, is afraid of Ms.
11 Fogleman. The Court is not the place for the
12 political stunts. I don't think we need to
13 adjudicator of public opinion, or any such
14 matter, in the realm. However, with the
15 agreement, it's my understanding that the
16 stay-away order, again, cannot and will not
17 infringe on her right of redress at City
18 Council, or refer her from any City Council
19 or public open meeting. Is that correct?

20 MR. BEAL: Yes, Your Honor. That is
21 correct. We will ensure that Ms. Fogleman
22 has -- Ms. Laxey has full -- nothing
23 infringes upon her right to petition, her
24 right to freedom of speech or redress, in any
25 form or fashion.

26 THE COURT: And, again, the civil stay-
27 away order does not -- while I agree that it
28 should apply to Josh, and Mr. Guillory's wife
29 and children. Again, totally understandable,
30 but Mr. Guillory is a public servant, elected
31 by the people of Lafayette, which, I believe
32 Ms. Fogleman is a person with the right to

1 vote in Lafayette Parish. So, he serves at
2 her whim. He is like I am. He is an elected
3 official. So, I am going to state that, one,
4 the civil stay-away order will expire within
5 365 days. Number one. And it applies only
6 to his wife and his children, not to Mr.
7 Guillory. She can -- while I would ask her
8 not to redress him in his private capacity,
9 if he is somewhere, i.e., any public forum
10 where he is speaking in his capacity as the
11 Mayor President, this civil stay-away order
12 will not apply. Are we clear with that?

13 MR. BEAL: Yes, Your Honor.

14 THE COURT: Having said that, again, as
15 long as it doesn't infringe on her right of
16 speech, or right to traverse, or her right to
17 redress, the Court will accept the
18 stipulation.

19 MR. ALLEN: Thank you, Your Honor.

20 MR. BEAL: Thank you, Your Honor.

21 THE COURT: And ask that y'all keep your
22 political squabbles out of this Court.

23 MR. ALLEN: Thank you.

24 MR. BEAL: And, Your Honor, just to be
25 clear, we do dismiss both charges;
26 obstruction of public passage and disturbing
27 the peace, under Docket Number MD-176409.

28 THE COURT: Done. Ms. Charlotte, are we
29 off the record?

30 MS. FOGLEMAN: Wait, I'm sorry. He said
31 something about, in any capacity; like at any
32 other meetings, not just City Council and

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Town Hall.

MR. BEAL: Correct.

THE COURT: But, if he's at another
Patriot's meeting, I'm coming.

(HEARING CONCLUDED)

PARISH OF LAFAYETTE

STATE OF LOUISIANA

I, Charlotte A. Hoffman, hereby certify that I am a duly appointed, certified, and acting official court reporter of the 15th Judicial District Court for the Parishes of Acadia, Lafayette and Vermilion, State of Louisiana.

I further certify that the foregoing 7 pages are a true and correct transcript of the proceedings had in the above-entitled cause; that the testimony of said transcript was reported by me by stenomask and transcribed by myself or under my personal direction and supervision, and that same constitutes a total transcription of the requested material in the above-entitled matter to the best of my ability and understanding.

Lafayette, Louisiana, this 1st day of September, 2021.

CHARLOTTE A. HOFFMAN, CCR
OFFICIAL COURT REPORTER
CERTIFICATE NUMBER 91191

CHARLOTTE A. HOFFMAN
OFFICIAL REPORTER
LAFAYETTE, LOUISIANA
337-654-8542

Exhibit B



LAFAYETTE PARISH SHERIFF'S OFFICE CORRECTIONS DIVISION POLICY AND PROCEDURES	Section/Policy: J-2800
Subject: SEARCHES	Number of Pages: 11
References: ACA: 4-ACRS-2C-02; 4-ACRS-2C-04; 4-ACRS-2C-06; 4-ALDF-2C-01; 4-ALDF-2C-03; 4-ALDF-2C-04; 4-ALDF-2C-05; State Statute: 14:402 – Contraband Federal Law: PREA (Prison Rape Elimination Act of 2003): §115.15 Corrections Division Policy and Procedure: J-0100; J-0200; J-0800; A-6200	
Approved by: Jail Commander: Director of Corrections:	
Revision/Review dates: Originated: 03/13/02; Revised: 11/04/02; Reviewed: 06/18/03; Reviewed: 06/30/04; Revised: 07/07/03; Revised: 08/28/03; Revised: 06/08/04; Revised: 07/03/04; Revised: 05/26/05; Reviewed: 06/30/05; Reviewed: 06/30/06; Reviewed: 05/01/07; Reviewed: 04/18/08; Revised: 11/12/08; Revised: 07/19/10; Revised: 06/10/11; Revised: 03/10/15; Revised: 10/05/15	

J-2800

POLICY:

Designated facility staff shall conduct searches of the facility and offenders to control contraband and provide for its disposition. These policies shall be made available to staff and offenders, reviewed at least annually, and updated when necessary. (4-ACRS-2C-02; 4-ALDF-2C-01)

J-2801

DISCUSSION:

To provide for the safe and secure working and living environment, searches of the facility and persons entering the facility are required. With the elimination of gender specific duty assignments in male housing units, it is necessary, in order to effectively control contraband, to allow for cross gender pat searching of male offenders by female staff. Care shall be taken to treat offenders with humanity and dignity while providing for a safe environment. Searches shall be conducted courteously, professionally,

and in such a way as to allow the offender as much dignity as possible consistent with the nature of the procedure.

J-2802 **DEFINITIONS:**

A. Contraband:

Any item, which is not specifically issued or authorized by the institution, or any authorized item that has been altered for other than their intended purpose; or approved items in excess of authorized amounts. (14:402)

1. Narcotics, hallucinogens, intoxicating beverages, legal or illegal drugs and/or their paraphernalia;
2. Weapons or plans for their manufacture;
3. Perishable goods, including food or beverages;
4. Any item that can be shown to threaten the security, safety, or good order of the facility;
5. Evidence of a crime.

B. Pat Search:

A systematic search of a clothed person for contraband prior to entering a secure area.

C. Inventory/Custody Search:

A systematic search where an offender is allowed to retain only authorized items of personal property. All unauthorized property is inventoried, receipted, and secured by the facility.

D. Clothing Search:

A systematic search of an offender's clothing, in the presence of the offender, prior to being transferred from Intake/Booking to an offender housing unit.

E. Strip Search:

A systematic visual examination of the unclothed body of an offender, inclusive of body cavities.

F. Body Cavity:

Body openings, such as the anus, vagina, inside of the ear, inside of the nose and mouth.

G. Manual Body Cavity Search (4-ACRS-2C-04; 4-ALDF-2C-05):

A digital or instrument search of a body cavity for the purpose of discovering contraband. A physician always conducts manual examinations and never by an employee of the Sheriff's Office.

H. Housed Population:

All offenders assigned a bed in the facility.

I. Reasonable Suspicion:

A level of suspicion based upon direct observation of an offender's conduct or demeanor, which can be articulated and could lead a reasonable person to conclude that an individual may be concealing contraband.

J. Exigent Circumstances:

Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

J-2803 **RULES:**

- A. All persons conducting searches shall receive related training during recruit training.
- B. Female staff shall be authorized to conduct pat searches of offenders of either sex. (PREA: §115.15(b)-1)
- C. Male staff shall be authorized to conduct pat searches on male offenders only. (PREA: §115.15(b)-1)
- D. Facility staff shall not witness clothing or strip search of an offender of the opposite sex unless exigent circumstances exist.
- E. Staff shall conduct all searches with the maximum amount of respect and dignity afforded to the offender.
- F. Pat searches shall take place:
 - 1. Upon admission to the facility; (J-0100)

2. Anytime an offender exits their assigned housing unit at the Lafayette Parish Correctional Center;
 3. Prior to any offender returning to their assigned housing unit at the Lafayette Parish Correctional Center;
 4. Prior to any offender being transported out of the facility;
 5. When any offender worker arrives at and/or departs from any housing unit area at the Lafayette Parish Correctional Center;
 6. When a staff member has reasonable suspicion that an offender is concealing contraband;
 7. At irregular intervals to discourage the transportation of contraband throughout the facility. (4-ACRS-2C-02)
- G. Inventory/custody searches shall take place:
1. Upon admission to the facility; (J-0100)
 2. Prior to any offender being moved into a Special Management Unit.
 - a. If the offender is being placed into Disciplinary Detention, he/she shall only be allowed to keep facility issued items, personal hygiene items, religious materials, legal paperwork, and personal correspondence.
 - b. If the offender is being moved into high observation holding for health care reasons, additional limitations may apply. Housing unit staff shall consult with health care staff or the on-duty supervisor for special instructions.
- H. Clothing searches shall be conducted:
1. During the post-booking process prior to any offender being escorted to an offender housing unit;
 2. When there is reasonable suspicion that an offender is concealing contraband not disclosed by the inventory/custody search.
- I. Strip searches shall be authorized when any of the following conditions exist: (4-ALDF-2C-03; 4-ALDF-2C-04)

1. During the post-booking process prior to any offender being escorted to an offender housing unit when:
 - a. The offender's current charge is violent, weapon, or drug related;
 - b. The offender has a criminal history consisting of violent, weapon, or drug related arrests;
 - c. The offender has a history of possessing or manufacturing contraband while housed in the facility.
 - d. If an offender refuses to be strip searched, established policy and procedures shall be adhered to. (J-0200)
2. When there is reasonable suspicion that an offender is concealing contraband not disclosed by the inventory/custody search or clothing search:
 - a. Immediately notify the on-duty supervisor, who shall determine if the strip search should be conducted;
 - b. The least evasive form of search shall be conducted;
 - c. Document on an Incident Report.
3. After an offender has contact with the public;
4. Upon return of any offender and/or offender worker that has exited the secure perimeter of the facility;
5. During probable cause shakedowns.

J. Exceptions:

1. Facility staff shall be prohibited from having any physical contact with an offender during a strip search, unless the action of the offender during the search threatens the security or safety of the facility, staff, offender or others.
2. If an offender's actions require physical contact during a strip search, the person conducting the search shall obtain assistance from personnel of the same sex as the offender to complete the search. (4-ACRS-2C-06; PREA: §115.15(c)-1)

3. All exceptions shall be documented on an Incident Report. (A-2700; PREA: §115.15(c)-1)
- K. Visual inspection of offender body cavities shall be conducted based on a reasonable suspicion that the offender is carrying contraband or other prohibited material and shall be documented on an Incident Report. Reasonable suspicion shall not be required when: (PREA: §115.15(c)-1)
1. An offender has been in contact with the general public;
 2. An offender that has exited the secure perimeter of the facility is returning.
- L. Manual or instrument inspection of body cavities shall be conducted in private by a University Hospital & Clinics physician and only under all of the following circumstances: (4-ACRS-2C-05; 4-ALDF-2C-05)
1. When there is reasonable belief that the offender is concealing contraband; and
 2. Upon authorization from the Jail Commander or on-duty supervisor.
- M. At the request of the on-duty supervisor, assistance from canine units shall be available from the Sheriff's Office, Patrol Division, Special Services Section.
- N. Searching or physically examining a transgender offender for the sole purpose of determining the offender's genital status is prohibited. (J-0800; PREA: §115.15(e)-1)

J-2804 PROCEDURES:

- A. General conditions for searching:
1. Be systematic; begin in one place and proceed in an orderly manner;
 2. If you are not "sure", start over;
 3. Keep all of the offender's property in a place visible to the offender, but out of their reach;
 4. Any contraband found during searches shall be processed in the following manner: (4-ACRS-2C-03)

- a. Any items not included on a list of authorized possessions issued to offenders, but not illegal in nature shall be placed in the offender's property;
- b. Any illegal contraband shall be inventoried and placed in an appropriate evidence locker by the discovering staff member; (A-6200)
- c. If directed by the on-duty supervisor, criminal charges procedures shall be initiated regarding the discovery and disposition of any illegal contraband. (A-6200)

B. Method for conducting a pat search:

1. The arrestee or offender shall be instructed to assume a wall or standing search position;
2. The staff member shall then "pat" the subjects clothing and torso, paying particular attention to the armpits, belt line, small of back, groin areas, back of knees, and shoe area.

C. Method for conducting an inventory/custody search:

1. The staff member shall remove from the offender, or shall have the offender remove, all items from pockets and remove any hat, cap, jacket, or coat, and all items shall be inspected;
2. The offender shall then be instructed to assume a wall or standing search position;
3. The staff member shall visually inspect the offender's ears, nose and mouth and then "pat" the offender's clothing and torso, paying particular attention to the armpits, belt line, small of back, groin area, and back of knees;
4. After "patting" the outside of a pocket area, the staff member shall cautiously reach into the pocket to assure that it is empty;
5. The offender shall then be instructed to remove his/her footwear;
6. The staff member shall closely inspect the footwear and also the offender's feet, paying particular attention to the bottom, sides, and area between the toes;
7. Upon completion of the search, the staff member shall return those items that are allowed. Such items shall be limited to:

- a. One plain wedding band;
 - b. Approved items relating to the offender's religious exercise;
 - c. Any necessary paperwork.
8. If a staff member has reasonable suspicion that an offender is concealing contraband not disclosed by a pat or inventory/custody search, he/she shall:
- a. Place the offender in a secure area away from all other offenders;
 - b. Immediately summon the on-duty supervisor;
 - c. If directed by the on-duty supervisor, conduct a strip search and complete an Incident Report, which articulates the reasonable suspicion and the results of the search. (A-2700)
- D. Method for conducting a clothing search:
1. A staff member of the same sex shall conduct the search;
 2. The staff member shall escort the offender into a private area;
 3. The offender shall remove his/her clothing, one article at a time and, in the offender's presence, the staff member shall search each item;
 4. The offender shall remove his/her underwear, turn the item inside out and shake it vigorously;
 5. The staff member shall place all of the offender's personal clothing in the appropriate property bag;
 - a. Approved items relating to the offender's religious exercise may be retained by the offender.
 6. The staff member shall issue a uniform to the offender and instruct him/her to get dressed;
 7. If the staff member has reasonable suspicion that an offender is concealing contraband not disclosed during the clothing search the staff member shall:

- a. Place the offender in a secure area away from all other offenders;
 - b. Immediately summon an on-duty supervisor;
 - c. If directed by the on-duty supervisor, conduct a strip search, document such on the offender's Behavioral Sheet, and complete an Incident Report, articulating the reasonable suspicion and the results of the search.
- E. Method for conducting a strip search:
1. A staff member of the same sex shall conduct the strip search: (4-ACRS-2C-06; PREA: §115.15(a)-1)
 - a. The on-duty supervisor shall determine a transgender offender's physical sexual make-up by interviewing the offender and asking questions in accordance with established policy; (J-0800)
 - b. The on-duty supervisor shall advise staff on the proper searching requirements. (J-0800)
 2. The search shall be conducted out of view of others, unless the offender's behavior at the time requires the presence of additional staff;
 3. Staff shall not have any physical contact with the offender during the strip search;
 4. The offender shall be instructed to remove all items of clothing. Each item shall be thoroughly searched by the staff member;
 5. The staff member shall then visually inspect the offender's mouth, nostrils, and ears without having physical contact. The offender shall be instructed to run their fingers through their hairs while at the same time shaking the head vigorously from side to side;
 6. The offender shall then extend their arms over the head while the staff member inspects the armpits, navel, and remaining parts of the torso;
 7. The offender shall then bend over at the waist, spreading the cheeks of the buttocks and the staff member shall visually inspect the offender's groin and anus area;

8. After the offender resumes the upright position, the staff member shall visually inspect the genitalia area:
 - a. Male offenders shall be instructed to lift their penis and scrotum;
 - b. Female offenders shall be instructed to squat in a crouched position and cough.
9. The offender shall be instructed to lift one foot at a time, bending at the knee as the staff member visually inspects the bottom of each foot, as well as the area between the toes;
10. Upon completion of the search, the offender shall have their clothing returned, or be issued a uniform.
11. If the search was conducted due to reasonable suspicion, a notation shall be made on the offender's Behavioral Sheet and an Incident Report shall be submitted. (A-2700)
12. Any exceptions to the above method shall be documented on an Incident Report. (A-2700; PREA: 115.15(c)-1)

F. Body cavity search:

1. If an object is protruding from a body cavity or a staff member has reasonable suspicion that an offender has contraband hidden within a body cavity, the offender shall be asked to voluntarily remove it.
2. If the offender refuses, the staff member shall, while maintaining constant observation, immediately summon the on-duty supervisor and place the offender in a secure area away from all others.
3. If the on-duty supervisor authorizes and orders a body cavity search, the offender shall be transported to University Hospital & Clinics for removal of the item by a physician.
4. The search shall be noted on the offender's Behavioral Sheet and staff shall document on an Incident Report, at a minimum, the following information: (A-2700; PREA: 115.15(c)-1)
 - a. Name of the supervisor authorizing the search;
 - b. Date and time of the search;
 - c. Reason for the search;

- d. Name of the physician conducting the search;
- e. Exact location of the search;
- f. Results of the search.

J-2805 STAFF PROCEDURES:

- A. All offenders shall be subject to a clothing search during the post-booking process but prior to being assigned to any offender housing unit.
- B. All clothing searches and/or strip searches conducted during the post-booking process that are in any way out of the ordinary (refusals, contraband detected, etc.) shall be documented on an Incident Report. (A-2700; PREA: 115.15(c)-1)
 - 1. Prior to searching an offender during the post-booking process, Intake/Booking staff shall:
 - a. Review the approved Initial Search Form in order to base their decision on whether a clothing search or strip search is needed;
 - b. Circle and initial, on the Initial Search Form, the type of search that shall be conducted by the Property Office staff member.
 - c. Place the Initial Search Form in the offender's housing file and deliver the housing file to the Property Office.
 - 2. Supervisors shall:
 - a. Be notified by staff upon reasonable suspicion that an offender(s) is concealing contraband that cannot be disclosed by a pat or inventory/custody search.
 - b. Make the decision on whether to strip search an offender(s) based on reasonable suspicion.
 - c. If needed, direct staff to document strip searches on an Incident Report and/or begin criminal charges procedures.