

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

JACINTA DANKS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CASE NO.: 2:21-cv-1806
PHILLIP GRAYSON, DANIEL GRAYSON,	)	
CHASE LAWLER, NICHOLAS	)	JUDGE: HON. CARL BARBIER
GAGLIANO, NATHAN HODGES, JOSHUA	)	
ZURITA, BRITTANY MAYER, JEFFREY	)	MAGISTRATE: HON. JANIS VAN MEERVELD
FITZMORRIS, BRANDON MCCORMICK,	)	
VICTORIA SCHOEN, MICHAEL J.	)	<b>FIRST AMENDED COMPLAINT</b>
GLASER, and THE CITY OF KENNER,	)	
	)	<b>JURY TRIAL DEMANDED</b>
Defendants.	)	

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**FIRST AMENDED COMPLAINT**

COMES NOW Plaintiff Jacinta Danks (“Ms. Danks”), by and through her undersigned counsel and brings this First Amended Complaint against three individual defendants, seven bystander defendants, the City of Kenner (“Kenner”), and Police Chief Michael J. Glaser (“Police Chief Glaser”). Defendants Phillip Grayson (“P. Grayson”), Daniel Grayson (“D. Grayson”), and Chase Lawler (“Lawler”) are herein collectively referred to as the “Individual Defendants,” while Defendants Nicholas Gagliano (“Gagliano”), Nathan Hodges (“Hodges”), Joshua Zurita (“Zurita”), Brittany Mayer (“Mayer”), Jeffrey Fitzmorris (“Fitzmorris”), Brandon McCormick (“McCormick”), and Victoria Schoen (“Schoen”) are collectively referred to herein as the “Bystander Defendants.” Ms. Danks hereby states and alleges as follows:

## INTRODUCTION

1. This case arises out of the excessively violent treatment of an unarmed vehicle passenger. On the night in question, October 10, 2020, Plaintiff Jacinta Danks, a five-foot-two woman with no criminal record, was riding in the passenger seat of a vehicle her brother was driving as the two, along with another passenger, reminisced and mourned the recent passing of the Danks' younger brother.

2. As the car drove through a residential Kenner neighborhood, the lights of a Kenner Police Department ("Kenner PD") vehicle started to flash. When the three were pulled over, the officer noted that the car had a recently expired temporary license plate. As the police arrested her brother for conduct that had nothing to do with Ms. Danks, she remained in the passenger seat, unarmed and attempting to cooperate with law enforcement with her hands up where the police could see them. She expected that she would be free to go after answering some questions.

3. Nonetheless, despite the lack of any active resistance or aggressive conduct on the part of Ms. Danks during the arrest of her brother, multiple officers from Kenner PD rushed to Ms. Danks' side of the car. Ms. Danks was terrified and sat frozen where she was, with her hands in the air and seatbelt on, unable to understand the Individual Defendants' shouts. Ms. Danks feared for her life.

4. After the car door was opened, Ms. Danks was grabbed and pulled by her hair, shirt, and leg out of the vehicle, causing her to be choked by the seatbelt.

5. The Individual Defendants violently yanked Ms. Danks out of the car, causing her foot to be caught in the car door, and battering her arm so badly it left lasting bruising.

6. After yanking her from the vehicle, the Individual Defendants proceeded to throw Ms. Danks to the ground, causing an ongoing back injury. They handcuffed her while she was face down on the ground. Defendant Lawler then used his foot to step on Ms. Danks' back, pressing her further against the pavement so that she could not move.

7. The way in which the Individual Defendants handled Ms. Danks caused her pants to slide down, leaving her underwear and menstruation exposed to onlookers. Ms. Danks remained

exposed and immobile on the ground for a substantial amount of time, during which time the Individual Defendants ignored her pleas to pull up her pants. This caused Ms. Danks extreme humiliation and embarrassment, as would be expected when a woman's private areas and menstruation are exposed while pinned down like an animal.

8. The Individual Defendants confiscated Ms. Danks' cell phone and new designer wallet and took her to the jail barefoot after refusing to help put her shoes back on. Neither the Individual Defendants nor the Kenner PD ever returned Ms. Danks' cell phone or wallet, forcing her to replace them at her own cost.

9. The Individual Defendants had no justification for throwing her to the ground and stepping on her. Rather, this is a clear case of police overstepping boundaries, assuming Ms. Danks must have been guilty of something due to her association with the driver, her brother.

10. The Bystander Defendants could have stepped in to prevent the excessive use of force against Ms. Danks. But they stood by and did not intervene. For a substantial time none even assisted pulling up her pants to prevent her private areas and menstruation from being exposed despite her pleas for assistance.

11. The violent and humiliating—and excessive—force applied to Ms. Danks not only left her physically injured, but also caused her significant and ongoing trauma. As someone who had never been in trouble with the law, and who was always cooperative and supportive of law enforcement, the extreme and unreasonable nature of this incident has made Ms. Danks traumatized, anxious and now terrified of the police. Additionally, Ms. Danks has ties to the Kenner area, such as the location of her brother's grave within a few miles of where the incident occurred, and a church attended by relatives of Ms. Danks. Ms. Danks fears being subject to another extreme and unreasonable traffic stop and fears retaliation by the Individual and Bystander Defendants any time she is in the area.

12. The Fourth Amendment guarantees a clearly established right to be free from excessive force at the hands of the police.

13. The Individual Defendants violated Ms. Danks' clearly established Constitutional rights by their use of excessive force against her after forcibly removing her from the vehicle.

14. This suit seeks to hold the Individual Defendants accountable for their blatant violations of Ms. Danks' Fourth Amendment rights, the Bystander Defendants accountable for standing by and permitting those violations, and Defendants City of Kenner and Police Chief Glaser accountable for failing to provide obviously needed officer training that would have prevented the use of excessive force against her.

### **JURISDICTION AND VENUE**

#### **Federal Question Jurisdiction under 28 U.S.C §§ 1331 and 1343**

15. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343 because Ms. Danks' claims arise under the Constitution and laws of the United States, including under 28 U.S.C. §§ 1983 and 1988.

16. This Court has supplemental jurisdiction over all other claims asserted under the laws of the State of Louisiana pursuant to 28 U.S.C. § 1367, because they arise out of the same operative facts and are so related to the federal claims that they are part of the same case or controversy.

#### **Diversity Question Jurisdiction under 28 U.S.C § 1332(a)**

17. In the alternative, jurisdiction is proper under 28 U.S.C. § 1332(a) because there is complete diversity between the parties and the amount in controversy exceeds \$75,000, excluding interest and costs. According to 28 U.S.C. § 1332(a), this Court maintains "original jurisdiction of all civil actions where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States."

18. Plaintiff is a citizen of and domiciled in the State of Missouri.

19. Upon information and belief, the Individual Defendants, Bystander Defendants, and Police Chief Glaser are residents of the State of Louisiana, and so domiciled.

20. The City of Kenner is a municipality organized and incorporated under the laws of the State of Louisiana and located within this State.

**Venue**

21. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred in the City of Kenner, where the unlawful incident took place, which is located in the Eastern District of Louisiana. On information and belief, the Individual Defendants and Bystander Defendants are all residents of the Eastern District of Louisiana. Venue is thus also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because the Individual and Bystander Defendants reside in this district.

**PARTIES**

22. Plaintiff Jacinta Danks is an individual who resides in Missouri.

23. Defendant P. Grayson was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

24. Defendant D. Grayson was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

25. Defendant Lawler was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

26. Defendant Gagliano was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

27. Defendant Hodges was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

28. Defendant Zurita was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

29. Defendant Mayer was, at all relevant times herein, a Crime Technician with the Kenner PD acting in the course and scope of her employment and under color of state law at all times relevant to this Complaint. She is sued in her individual capacity.

30. Defendant Fitzmorris was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

31. Defendant McCormick was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of his employment and under color of state law at all times relevant to this Complaint. He is sued in his individual capacity.

32. Defendant Schoen was, at all relevant times herein, an officer with the Kenner PD acting in the course and scope of her employment and under color of state law at all times relevant to this Complaint. She is sued in her individual capacity.

33. Defendant City of Kenner is a municipality in Jefferson Parish, Louisiana and has been duly incorporated. It is a municipality for purposes of 42 U.S.C. § 1983. Kenner PD is a department of the City of Kenner and it exercises the law enforcement authority of the City.

34. Defendant Michael J. Glaser was, at all relevant times, the Chief of Police of the City of Kenner. As Chief of Police, Glaser was the chief law enforcement officer of the City and all law enforcement authority was vested in him. Upon information and belief, Police Chief Glaser's responsibilities include but are not limited to the hiring, training, supervision, discipline, administration, policies, customs, practices, operations, management, and control of Kenner PD and its officers, including Defendants P. Grayson, D. Grayson, Lawler, Gagliano, Hodges, Zurita, Mayer, Fitzmorris, McCormick, and Schoen. As a matter of federal law, Police Chief Glaser is liable for his own actions as final policymaker. As a matter of Louisiana state law, he is liable for his own actions and is vicariously liable for the actions of the other Defendants. Police Chief Glaser is sued in his official capacity.

**FACTUAL ALLEGATIONS**

***Defendant P. Grayson Conducts a Traffic Stop and Ms. Danks Cooperates***

35. On the night of October 10, 2020, Ms. Danks, her brother Ernest Danks (“Mr. Danks”), and Damien Dennis, a friend of Mr. Danks, were driving around Kenner residential neighborhoods in Mr. Dennis’ car. The three were reminiscing and mourning the tragic loss of the Danks’ younger brother, Jimmie Danks, who had died less than a month earlier at the age of thirty-one.

36. While driving through the residential neighborhood of Kenner, the lights of a Kenner PD cruiser began flashing behind the car. Mr. Danks pulled the car over on Clay Street, off of the Jefferson Highway.

37. The traffic stop was initiated, upon information and belief, by Defendant P. Grayson because allegedly he saw a temporary paper license plate affixed to the rear windshield of the vehicle that he determined had expired four days earlier.

38. After pulling over on the side of the street, Mr. Danks fled from the car and Defendant P. Grayson chased after him, while Mr. Dennis remained seated in the back of the car, and Ms. Danks remained in the passenger seat with her seatbelt fastened and hands up, eager to cooperate with law enforcement. Ms. Danks held her cellphone in one hand and a new designer wallet in the other so that the police would see that she did not have a weapon and wanted to cooperate.

39. After apprehending Mr. Danks, Defendant P. Grayson, joined by Defendants Lawler and D. Grayson, rushed to the passenger side of the car. At least one of the Individual Defendants had their gun pointed at Ms. Danks. They began yelling at Ms. Danks—who had been sitting with her hands in the air—but she could not make out what they were saying.

40. Ms. Danks was disoriented and frightened by the Individual Defendants’ aggressive shouting and the manner in which they approached her side of the car. Momentarily paralyzed by fear, Ms. Danks—who was sitting still with her hands up—found herself unable to immediately

speak or open the door.<sup>1</sup> Eventually, she managed to unlock and open the door. The Individual Defendants seized this opportunity to reach in and violently grab her.

41. The Individual Defendants made no attempt to negotiate or even converse with Ms. Danks to find out if she was okay and physically able to unbuckle her seatbelt and step out of the car.

42. Upon information and belief, each of the Bystander Defendants was in a position to intervene when Ms. Danks was sitting with her hands up in the passenger seat, and then again after she was pulled from the vehicle. But at no point did any of the Bystander Defendants attempt to take any measure to de-escalate the situation or otherwise protect Ms. Danks from the Individual Defendants' subsequent unreasonable conduct and excessive use of force.

***A Struggle Ensues then the Individual Defendants Extract Ms. Danks from the Vehicle***

43. According to Defendant P. Grayson, as he was attempting to unbuckle the seatbelt and remove Ms. Danks from the vehicle, she struggled with him and bit his hand.

44. After Defendant P. Grayson unbuckled the seatbelt all three Individual Defendants violently pulled her from the car.

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<sup>1</sup> It is well established that a paralyzing freeze response may occur when a person feels so overpowered, overwhelmed, or trapped, that they feel there is no option to either flee or fight. *See* Thierry Steimer, *The biology of fear-and anxiety related behaviors*, 4(3) NATIONAL LIBRARY OF MEDICINE, at 231-49 (2002) (finding that “[p]assive coping strategies, such as immobilization or freezing, are usually elicited when threat is inescapable, and are usually characterized by autonomic inhibition (hypotension, bradycardia), and a more pronounced increase in the neuroendocrine response (activation of the hypothalamopituitary-adrenal axis and increased glucocorticoid secretion)”). *See also* Patrik Vuilleumier, *Hysterical Conversion and Brain Function*, 150 NATIONAL LIBRARY OF MEDICINE, at 309-29 (2005) (establishing that fear elicits characteristic patterns of defensive behavior, including freezing); Christopher Bergland, *Neuroscientists Discover the Roots of “Fear-Evoked Freezing,”* PSYCHOLOGY TODAY (May 1, 2014), <https://www.psychologytoday.com/us/blog/the-athletes-way/201405/neuroscientists-discover-the-roots-fear-evoked-freezing> (reporting that “[f]or the first time, neuroscientists at the University of Bristol have identified a brain pathway that may be the root of the universal response to freeze in place when we are afraid. Their revolutionary study—released on April 23, 2014—discovered a chain of neural connections stemming from the cerebellum. *When activated by a real or imagined threatening stimuli, these neural connections can cause the body to automatically freeze.*”) (emphasis added).



45. As she was being forcibly removed, Ms. Danks' foot got caught between the cabin of the car and the car door.

***Ms. Danks is Thrown to the Ground, Placed in Handcuffs, and Subjected to Public Humiliation***

46. After Ms. Danks was removed from the vehicle, the Individual Defendants threw her body forcefully face first to the ground. One of the Individual Defendants removed Ms. Danks' phone and wallet from her hands and then proceeded to handcuff her hands behind her back.

47. While Ms. Danks was handcuffed and lying face down on the ground, Defendant Lawler then stepped on Ms. Danks' back, pressing her further towards the ground, so hard that she could not move.

48. After the Individual Defendants pulled Ms. Danks from the vehicle, her pants came down, exposing her underwear and menstruation to the Individual and Bystander Defendants, as well as the neighbors who had come outside to see what was happening.

49. Restrained by handcuffs and Defendant Lawler's foot, Ms. Danks was unable to pull her pants back up. She was mortified that onlookers were witnessing her exposed body, especially given that she was menstruating.

50. The Individual and Bystander Defendants kept Ms. Danks handcuffed and face down on the ground as Defendant Lawler's foot pressed into her back for approximately five minutes or more.

51. All the while, Ms. Danks begged the Individual Defendants and Bystander Defendants to pull her pants up. They did not initially respond to her repeated pleas. Instead, they watched for an extended period of time as she squirmed in an attempt to do so herself. Eventually, someone pulled her pants up.

52. From her vantage point on the ground, Ms. Danks could see the police handling her phone, apparently pressing a button on it. Either Defendant Schoen or Defendant Mayer told Ms. Danks that the phone would be taken to the jail where she was headed.

53. The Kenner PD did not return Ms. Danks' cell phone or wallet to her and have not provided any information concerning either item.

***Ms. Danks is Transported to Jail and Charged with Resisting Arrest and Battery of a Police Officer***

54. Eventually, Defendant Lawler yanked Ms. Danks to her feet. It was only then that she was patted down, either by Defendant Schoen or Defendant Mayer, and read her *Miranda* rights. She was charged with resisting arrest and assaulting an officer.

55. Defendant Lawler then walked Ms. Danks, barefoot and handcuffed, to the back of a patrol car. He threw her shoes in the back seat of the car, ignoring her request for him to at least position them so that she could put them back on.

56. Defendant Lawler proceeded to transport Ms. Danks to the City of Kenner jail.

57. The charge against Ms. Danks for resisting arrest subsequently was dismissed. She was convicted of assaulting Defendant P. Grayson under La.R.S. 14:34.2. Ms. Danks does not challenge that conviction by way of this action.

***Ms. Danks Suffers Physical and Emotional Injuries as a Result of the Incident***

58. For weeks after the incident and as a result of her treatment, Ms. Danks experienced physical pain, including a bruised handprint on her arm that lasted multiple weeks. Ms. Danks' back pain caused by being thrown to the ground and stepped on is ongoing. Whether sitting or standing, she feels pain in her back. That pain often shoots up from the middle of her back to the top of her shoulders.

59. Ms. Danks also suffered serious emotional trauma and continues to experience mental anguish over her treatment at the hands of the police. She had always considered herself someone who cooperates with law enforcement and does not understand why she was subjected to such aggressive tactics, excessive use of force and public humiliation.

***Ms. Danks' Complaints Concerning the Incident have Gone Unheeded***

60. On October 19, 2020 Ms. Danks sent an email to the Kenner PD at kpd@kenner.la.us detailing her mistreatment by the police and her confusion about what had occurred. A true and correct copy of the October 19, 2020 email is attached hereto as Exhibit A.

61. Ms. Danks followed up with Kenner PD about her mistreatment again via phone and was informed that she should submit a Citizen's Complaint Form. On November 24, 2020 Ms. Danks submitted an official Citizen's Complaint to Kenner PD via email to cbates@kennerpd.com. A true and correct copy of Ms. Danks' November 24, 2020 email and attached complaint is attached hereto as Exhibit B.

62. As of the filing of this Complaint, Ms. Danks has yet to receive any response to her email or the Citizen's Complaint that she filed.

***Kenner PD has a History of Violence and Does Not Provide Any Training on How to Treat Passengers and Avoid Excessive Force During Traffic Stops***

63. The abuse that Ms. Danks endured at the hands of Kenner PD is a continuation of a history and pattern of intentional discriminatory treatment that she and others from the Black community are forced to endure in Kenner, Louisiana.

64. The area of Kenner, Louisiana is known for racial profiling and the use of excessive force by police.

65. Since January 1, 2018, there have been numerous complaints concerning use of force filed with Kenner PD.

66. For example, Defendant Zurita had a complaint for inappropriate use of physical force in October 2016. Defendant P. Grayson had a complaint for alleged excessive force/disputed arrest on October 11, 2020—the day after Ms. Danks unlawful arrest. Defendant Lawler had a complaint for alleged false arrest/use of force in April 2021.

67. A public record request was sent pursuant to Louisiana Public Records Act § 44:1 *et seq.* on July 14, 2021 to the Kenner PD via e-mail and U.S. Certified Mail. Requests 8, 9, and 10 sought records from 2018 to present documenting, inter alia, any: (1) formal trainings Kenner PD

officers received in relation to the treatment of passengers during traffic stops, and all related course materials; and (2) formal trainings Kenner PD officers received in relation to excessive force during traffic stops and all related course materials.

68. On August 10, 2021, Kenner PD responded that Kenner PD was unable to provide documents in response to these requests because they do not exist.

## **FEDERAL CLAIMS**

### **COUNT I**

#### **42 U.S.C. § 1983 – Unlawful Seizure (Excessive Force) in Violation of the Fourth Amendment (Against the Individual Defendants)**

69. Ms. Danks hereby incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

70. The Individual Defendants, at all times relevant hereto, were acting under color of state law in their capacities as officers of the Kenner PD, and their acts and omissions were conducted within the scope of their employment.

71. The Fourth Amendment guarantees a clearly established right to be free from excessive force at the hands of the police. *See, e.g., Tarver v. City of Edna*, 410 F.3d 745, 753-54 (5th Cir. 2005). This includes the right to be free from excessive force in connection with a legitimate arrest. It was clearly established in the caselaw at the time of Ms. Danks' arrest that an officer intentionally inflicting harm upon an arrestee is unconstitutional when the arrestee has been subdued. *See, e.g., Bush v. Strain*, 513 F.3d 492, 498-99 (5th Cir. 2008).

72. Any reasonable police officer knew or should have known of the right to be free from excessive force at that time of the complained of conduct as this right was clearly established at that time.

73. The reasonableness of a police officer's use of force depends upon (i) the severity of the crime at issue, (ii) the extent to which the suspect poses an immediate threat to the safety of the officers or others, and (iii) whether the suspect is actively resisting or attempting to evade arrest by flight.

74. After Ms. Danks was pulled from the car and restrained, she was violently thrown to the ground, handcuffed—and while she lie face down, subdued and exposed—Defendant Lawler stepped on Ms. Danks' back.

75. For several minutes, Ms. Danks remained face down on the ground with her private parts exposed and Defendant Lawler posed atop of her, even as residents of the neighborhood came outside of their homes to observe the scene. Despite Ms. Danks' verbal pleas to be lifted off the ground and receive help pulling her pants up, Defendant Lawler continued to press his foot onto Ms. Danks' back, causing her physical pain and subjecting her to unnecessary public humiliation.

76. No reasonable police officer in the Individual Defendants' position could have believed that under the circumstances there was a lawful justification to employ the amount of force they exerted against Ms. Danks.

77. The Individual Defendants' actions and use of force as described herein were objectively unreasonable in light of the facts and circumstances confronting them and accordingly violated Ms. Danks' Fourth Amendment rights.

78. The Individual Defendants are not entitled to qualified immunity for their conduct, because their use of force against Ms. Danks violated Ms. Danks' clearly established constitutional rights and was objectively unreasonable.

79. As a direct and proximate result of the Individuals Defendants' excessive force, Ms. Danks suffered actual physical and emotional injuries, and other damages and losses as described herein entitling her to compensatory and special damages, in amounts to be determined at trial.

80. Ms. Danks is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, prejudgment interest and costs as allowable by federal law.

81. In addition to compensatory, economic, consequential and special damages, Ms. Danks is entitled to punitive damages against each of the Individual Defendants under 42 U.S.C. § 1983, in that the actions of each Individual Defendant were taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Ms. Danks.

**COUNT II**  
**42 U.S.C. §1983 – Failure to Intervene in Use of Excessive Force**  
**(Against the Bystander Defendants)**

82. Ms. Danks hereby incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

83. The Bystander Defendants, at all times relevant hereto, were acting under color of state law in their capacities as officers of the Kenner PD, and their acts and omissions were conducted within the scope of their employment.

84. The Bystander Defendants witnessed the use of excessive force by the Individual Defendants against Ms. Danks and had sufficient time to intervene in order to prevent or mitigate injury to her.

85. Any reasonable police officer in the position of the Bystander Defendants would have recognized that the force being used against Ms. Danks was unconstitutionally excessive. It was clearly established in the caselaw at the time that “[a]n officer is liable for failure to intervene when that officer: (1) knew a fellow officer was violating an individual’s constitutional rights, (2) was present at the scene of the constitutional violation, (3) had a reasonable opportunity to prevent the harm but nevertheless, (4) chose not to act.” *Joseph ex rel. Joseph v. Bartlett*, 981 F.3d 319, 343 (5th Cir. 2020); *accord Hamilton v. Kindred*, 845 F.3d 659, 663 (5th Cir. 2017); *Carroll v. Ellington*, 800 F.3d 154, 171 (5th Cir. 2015); *Kitchen v. Dallas County*, 759 F.3d 468 (5th Cir. 2014); *Hale v. Townley*, 45 F.3d 914, 919 (5th Cir. 1995).

86. The Bystander Defendants are not entitled to qualified immunity for their conduct, because their failure to intervene despite the opportunity to do so when they knew the Individual Defendants were violating Ms. Danks’ constitutional rights, deprived Ms. Danks of her clearly established constitutional rights and was objectively unreasonable.

87. As a direct and proximate result of the Bystander Defendants’ failure to take any action to prevent harm to Ms. Danks, Ms. Danks suffered actual physical and emotional injuries,

and other damages and losses as described herein entitling her to compensatory and special damages, in amounts to be determined at trial.

88. Ms. Danks is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, prejudgment interest and costs as allowable by federal law.

89. In addition to compensatory, economic, consequential and special damages, Ms. Danks is entitled to punitive damages against each of the Bystander Defendants under 42 U.S.C. § 1983, in that the actions of each Bystander Defendant were taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Ms. Danks.

**COUNT III**  
**42 U.S.C. § 1983 – Monell Liability for Failure to Train**  
**(Against City of Kenner and Police Chief Glaser)**

90. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

91. Section 1983 permits municipal liability for inadequate police training where the failure to train amounts to deliberate indifference to the constitutional rights of persons with whom the police come into contact. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Ms. Danks brings this claim against the City of Kenner and Police Chief Glaser for the Kenner PD's failure to train its police officers and specifically, the Individual Defendants and Bystander Defendants, on how to treat passengers in traffic stops, avoiding the excessive use of force during traffic stops, and intervening when other officers use excessive force.

92. Police Chief Glaser and the City of Kenner are responsible for the policies and practices of the Kenner PD, including training of Kenner police on avoiding constitutional violations.

93. Upon information and belief based on records and responses provided by Kenner PD in response to public records requests, Police Chief Glaser and the City of Kenner do not train Kenner PD officers on how to treat passengers during traffic stops.

94. Upon information and belief based on records and responses provided by Kenner PD in response to public records requests, Police Chief Glaser and the City of Kenner do not train Kenner PD officers on avoiding excessive use of force during traffic stops.

95. Upon information and belief based on records and responses provided by Kenner PD in response to public records requests, Police Chief Glaser and the City of Kenner do not train Kenner PD on intervening when other officers use excessive force.

96. Police Chief Glaser and the City of Kenner failed to train Kenner PD officers, including Individual Defendants and Bystander Defendants, on how to properly treat passengers during traffic stops, avoid the excessive use of force during traffic stops, and intervene when other officers use excessive force, despite traffic stops being a recurring feature in Kenner PD officers' duties.

97. A highly predictable consequence of Police Chief Glaser's and the City of Kenner's decision to provide no training to the Kenner police force on how to treat passengers during traffic stops, avoid the excessive use of force during traffic stops, and intervene when other officers use excessive force, is that Kenner PD officers will violate individuals' Fourth Amendment rights in connection with traffic stops.

98. Even if Kenner PD had an effective use of force policy in place as of October 10, 2020, Kenner PD nevertheless did nothing to ensure the policy was followed by its officers. Kenner PD's failure to train its officers on how to treat passengers during traffic stops, avoid the excessive use of force during traffic stops, and intervene when other officers use excessive force, caused Ms. Danks' rights to be violated as described above.

99. Given the frequency with which Kenner PD officers conduct traffic stops, electing to not provide any traffic stop training concerning use of force and treatment of passengers amounts to deliberate indifference to the rights of individuals subjected to the traffic stops, including Ms. Danks—because the potential for Fourth Amendment violations was obvious and highly predictable to the department.



100. Upon information and belief based on responses to public records requests, Defendants City of Kenner and Police Chief Glaser took no action in response to Ms. Danks' complaints about the Kenner PD's violations of her constitutional rights.

101. By refusing to train and failing to correct the misconduct of Kenner PD officers, Defendants City of Kenner and Police Chief Glaser ratified the other Defendants' misconduct, such that it became de facto official policy or custom for law enforcement to engage in misconduct with impunity.

102. Police Chief Glaser's and City of Kenner's failure to train constitutes their official policy and custom. Given the obvious need to train police officers who routinely conduct traffic stops on the constitutional constraints on the use of force during traffic stops, their failure to train was deliberately indifferent to Ms. Danks' constitutional rights. *See Littell v. Hous. Indep. Sch. Dist.*, 894 F.3d 616, 624-25 (5th Cir. 2018). As such, Defendants City of Kenner and Police Chief Glaser are liable to Plaintiff Danks under 42 U.S.C. § 1983.

103. As the direct and proximate result of Police Chief Glaser's and City of Kenner's lack of training, Ms. Danks suffered actual physical and emotional injuries, and other damages and losses as described herein.

104. Ms. Danks seeks a declaration that failing to train Kenner PD officers on how to treat passengers and how to avoid excessive force during traffic stops violated her Fourth Amendment rights. She further seeks an injunction requiring Police Chief Glaser and City of Kenner to implement traffic stop training for all Kenner PD officers upon hiring and at least once per year thereafter.

**COUNT IV**  
**Declaratory Judgment Pursuant to 28 U.S.C. § 2201**  
**(Against all Defendants)**

105. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

106. There is an actual controversy between the parties relating to their legal rights and duties under the U.S. Constitution.

107. In particular, Ms. Danks asserts that the conduct of the Individual Defendants, Bystander Defendants, Police Chief Glaser and City of Kenner, as alleged herein violated her rights under the Fourth and/or Fourteenth Amendments.

108. Ms. Danks therefore seeks a declaration of the rights and duties of the parties under the U.S. Constitution pursuant to 28 U.S.C. § 2201.

**STATE CLAIMS**

**COUNT V**

**Assault**

**(Against the Individual Defendants)**

109. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

110. Ms. Danks asserts violations of Louisiana law relative to intentional torts by the Individual Defendants, all of whom were acting at all relevant times under the color of state law and within the course and scope of their employment with the Kenner PD.

111. The Individual Defendants intentionally threatened to cause Ms. Danks physical injury when they rushed in an aggressive fashion towards the passenger side of the car, where Ms. Danks was sitting, one with a gun pointed at her, and then reached into the vehicle.

112. Ms. Danks was in reasonable apprehension of physical injury when the Individual Defendants rushed in an aggressive fashion towards the passenger side of the car, where Ms. Danks was sitting, yelled at her, and then proceeded to reach in.

113. As a direct and proximate result of this assault, carried out in reckless disregard and without justification, Ms. Danks suffered actual physical, emotional, and economic harm, and is entitled to damages in an amount to be proven at trial.

**COUNT VI**  
**Battery**  
**(Against the Individual Defendants)**

114. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

115. Ms. Danks asserts violations of Louisiana law relative to intentional torts by the Individual Defendants, all of whom were acting at all relevant times under the color of state law and within the course and scope of their employment with the Kenner PD.

116. The Individual Defendants intentionally inflicted excessive use of force against Ms. Danks after she had been removed from the vehicle by violently throwing her to the ground, and stepping on her even after she was handcuffed and pinned to the ground and she had long since ceased resisting.

117. As a direct and proximate result of this battery, carried out in reckless disregard and without justification, Ms. Danks suffered actual physical, emotional, and economic harm, and is entitled to damages in an amount to be proven at trial.

**COUNT VII**  
**Conversion**  
**(Against the Individual Defendants)**

118. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

119. It is well established that “[p]roperty seized in connection with a criminal proceeding which is not to be used as evidence or is no longer needed as evidence shall be returned to the owner.” *Thomas v. St. Charles Parish*, 613 So.2d 698, 699 (La. Ct. App. 1993) (quoting *Jordan v. City of Baton Rouge*, 529 So.2d 412, 414 (La. Ct. App. 1989); La. R.S. 15:41).

120. Every jail and police station are legally obligated to keep a list of property taken from arrestees. La. C. Cr. P. Art. 228 (2019).

121. On October 11, 2020, the Individual Defendants intentionally took possession of Ms. Danks' cell phone and wallet. They never returned these items to Ms. Danks and, upon information and belief based on the records produced by the Kenner PD, they did not log them into evidence.

122. At all times related to this action, Ms. Danks was the legal owner of the cell phone and wallet that the Individual Defendants seized. By seizing and permanently depriving Ms. Danks of possession of her property, the Individual Defendants committed the tort of conversion.

123. The Individual Defendants' continued exercise of dominion over Ms. Danks' property is not within the scope of their lawful powers and duties.

124. Although Individual Defendants deny having custody of Ms. Danks' possessions, some of the contents of the wallet they claim not to have possessed were later returned to Ms. Danks.

125. As a direct and proximate result of this conversion, Ms. Danks suffered actual economic harm and is entitled to damages in an amount to be proven at trial.

**COUNT VIII**  
**Intentional Infliction of Emotional Distress**  
**(Against the Individual Defendants)**

126. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

127. Ms. Danks asserts violations of Louisiana law relative to intentional torts by the Individual Defendants, all of whom were acting at all relevant times under the color of state law and within the course and scope of their employment with the Kenner PD.

128. Once the Individual Defendants removed Ms. Danks from the vehicle, instead of ordering her to sit on the curb or securing her in a police vehicle, the Individual Defendants threw Ms. Danks to the ground in such a way that her pants came down, exposing her private areas and menstruation to many people. When Ms. Danks was on the ground and handcuffed, Defendant Lawler pinned her down by standing on her back with his foot. Ms. Danks remained exposed and immobile on the ground for a substantial amount of time, during which the Individual Defendants ignored Ms. Danks' pleas to pull up her pants. This caused Ms. Danks extreme humiliation and

embarrassment, as would be expected when a woman's private areas and menstruation are exposed while pinned down like an animal.<sup>2</sup>

129. The Individual Defendants are directly responsible for the physical injuries Ms. Danks suffered to her back as a result of being thrown violently and then pinned to the ground. On top of her physical injuries, Ms. Danks suffered anguish, humiliation, and severe emotional distress from being pinned to the ground by Defendant Lawler's foot while her pants had fallen from her waist, revealing her underwear and menstruation, and having her pleas for help unheeded for some time.

130. The aforesaid physical and psychological injuries sustained by Ms. Danks were caused wholly by reason of the intentional and/or reckless acts of the Individual Defendants as described herein.

131. The Individual Defendants' conduct was extreme and outrageous. They intended that their conduct would cause Ms. Danks emotional distress, or knew that their conduct was substantially certain to cause Ms. Danks severe emotional distress.

132. As a direct and proximate result of the conduct described herein, Ms. Danks has suffered actual emotional harm and is entitled to damages in an amount to be proven at trial.

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<sup>2</sup> The United Nations has established that "[h]uman rights are rights that every human being has by virtue of his or her human dignity. Menstruation is intrinsically related to human dignity. . . ." United Nations Population Fund, *Menstruation and human rights – Frequently asked questions*, UNFPA (June 2021). When such basic human dignity is violated, it causes deep emotional distress which some have found is akin to physical torture. See e.g., JAMA and Archives Journals, *Psychological And Physical Torture Have Similar Mental Effects*, SCIENCE DAILY (Mar. 6, 2007) (reporting on a study where several scholars interviewed survivors of torture from Sarajevo in Bosnia and Herzegovina. The study found that aggressive interrogation techniques or detention procedures involving deprivation of basic needs, exposure to adverse environmental conditions, forced stress positions, hooding or blindfolding, isolation, restriction of movement, *forced nudity*, threats, *humiliating treatment* and other psychological manipulations do not appear to be substantially different from physical torture in terms of the extent of mental suffering they cause, the underlying mechanisms of traumatic stress and their long-term traumatic effects); *Fionnuala Ni Aolain, Sexual Torture, Rape, Gender-Based Violence in the Senate Torture Report Just Security*, JUST SECURITY (February 26, 2015) (establishing that forced nudity is now recognized by regional and international criminal courts as reaching the threshold for torture, inhuman, and degrading treatment and as a stand-alone sexual harm).

**COUNT IX**  
**Negligent Infliction of Emotional Distress**  
**(Against the Individual Defendants)**

133. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

134. Ms. Danks asserts violations of Louisiana law relative to negligent torts by the Individual Defendants, all of whom were acting at all relevant times under the color of state law and within the course and scope of their employment with the Kenner PD.

135. Each Individual Defendant owed a duty to Ms. Danks to conduct traffic stops, arrests, and detentions in a reasonable manner. Despite this duty, the Individual Defendants unnecessarily and violently threw Ms. Danks to the ground, where Defendant Lawler used his foot to keep her pinned to the ground. Defendant Lawler continued to stand on Ms. Danks' back even after she was handcuffed. While the Individual Defendants threw Ms. Danks to the ground, her pants came loose and exposed her a highly private area of her body, revealing her menstruation to the Individual Defendants, Bystander Defendants, and others. Ms. Danks could not pull her own pants back up as she was handcuffed and pinned to the ground. Ms. Danks was mortified that observers could plainly see her exposed body, Ms. Danks was also acutely aware and distressed that people could see her menstruation. Ms. Danks begged the Individual Defendants to help her pull up her pants, but they ignored her pleas for a significant amount of time. By treating Ms. Danks in this manner, each of the Individual and Bystander Defendants breached their duty of care to her. This breach of care was both the cause-in-fact and legal cause of Ms. Danks' extensive physical injuries to her back, emotional distress, and resulting damages.

136. The aforesaid physical and psychological injuries sustained by Ms. Danks were caused wholly by reason of the negligent acts of the Individual Defendants as described herein.

137. As a direct and proximate result of Individual Defendants' breach of their duty of care, Ms. Danks suffered actual emotional harm and is entitled to damages in an amount to be proven at trial.

**COUNT X**  
**Negligence**

**(Against the Individual Defendants and the Bystander Defendants)**

138. Ms. Danks hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

139. The Individual Defendants and the Bystander Defendants owed a duty to Ms. Danks to avoid excessive force and use no more than reasonable force when getting her to exit the vehicle.

140. Ms. Danks is five feet, two inches tall and weighed at the time of the incident approximately 150 pounds. Before the Incident, Ms. Danks had not been arrested, charged, or convicted of any crimes. At the time of the stop, Ms. Danks remained in the passenger seat with her seatbelt on and her hands in the air.

141. The Individual Defendants breached their duty to her when after Ms. Danks was already removed from the vehicle, they proceeded to throw her to the ground, ignoring her pleas to have her pants pulled up and instead subjecting her to public humiliation.

142. The aforesaid physical and psychological injuries sustained by Ms. Danks were caused wholly or exacerbated by the negligent acts of the Individual Defendants and the Bystander Defendants.

143. As a direct and proximate result of the acts of the Individual Defendants and the omissions of the Bystander Defendants described therein, Ms. Danks suffered actual physical, emotional, and economic harm. She is entitled to damages in an amount to be proven at trial.

**COUNT XI**

**Vicarious Liability**

**(Against City of Kenner and Police Chief Glaser)**

144. Ms. Danks hereby incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

145. Under La. R.S. § 9:3921(A), “every master or employer is answerable for the damage occasioned by his servant or employee in the exercise of the functions in which they are employed.”

The doctrine of vicarious liability may also be imposed for intentional torts. *See* 1 LOUISIANA TORT LAW § 13.01 (2020).

146. At all relevant times, the Individual Defendants and Bystander Defendants were employed by and/or acting on behalf of Kenner PD. The Kenner PD is a department of the City of Kenner. Defendant Glaser is Police Chief in the City of Kenner and he heads Kenner PD. Kenner police officers act under the direction, control, and supervision of Defendant Glaser.

147. At all relevant times, the Individual Defendants and Bystander Defendants were acting within their respective capacities, course and scopes of their employment with Kenner PD and/or accomplished the acts stated herein by virtue of their job-created authority.

148. The Individual Defendants and Bystander Defendants intentionally, negligently, and/or recklessly directly and proximately caused physical and emotional injury to Ms. Danks.

149. Therefore, Defendants City of Kenner, and Police Chief Glaser are liable under the laws of vicarious liability, including the doctrine of respondeat superior for the tortious actions and inactions of the Individual Defendants and the Bystander Defendants as described herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Jacinta Danks respectfully requests that the Court enter judgment in her favor and against Defendants P. Grayson, D. Grayson, Lawler, Gagliano, Hodges, Zurita, Mayer, Fitzmorris, McCormick, Schoen, Glaser, and Defendant City of Kenner, and award the following relief:

- A. Compensatory and special damages (all Counts other than Counts VI and VII);
- B. Declaratory relief under 28 U.S.C. § 2201 that Defendants' conduct violated Ms. Danks' Fourth and/or Fourteenth Amendment rights;
- C. Injunctive relief requiring, among other things, that the City of Kenner and the Kenner Police Chief implement training on how to treat passengers during traffic stops to ensure their constitutional rights are not violated and how to avoid excessive use of force during traffic stops;
- D. Punitive damages under 42 U.S.C. § 1983;



- E. Any and all equitable relief as deemed appropriate by this Court;
- F. Attorney's fees and costs pursuant to 42 U.S.C. § 1988;
- G. Prejudgment interest; and
- H. Any other relief this Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby requests a jury trial in this matter.

Dated: June 28, 2022

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