

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JULIE NEVAREZ, INDIVIDUALLY, AND
ON BEHALF OF HER MINOR CHILDREN,
BN, MN, AND GN; and DE'ANDRE WILLIS,

Plaintiffs,

Civil Action No.: 2:21-cv-1855

v.

Judge: Sarah S. Vance

DANA COLEMAN, JOHN BOLGIANO,
COREY DUPLANTIS, DEREK SCHLESINGER,
WALTER TENNEY, SIDNEY THERIOT, TYLER
FITCH, TIMOTHY SOIGNET, ANTHONY DORRIS,
AND JUSTIN LEONARD, INDIVIDUALLY; MART BLACK,
AS RECORDS CUSTODIAN FOR TERREBONNE
PARISH CONSOLIDATED GOVERNMENT; and
JOHN DOE OFFICERS,

Magistrate Judge: Dana Douglas

Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs Julie Nevarez—individually, and on behalf of her minor children, BN, MN, and GN—and De'Andre Willis are the surviving wife and children of decedent Miguel Nevarez (“Miguel”). They file this Second Amended Complaint through undersigned counsel, stating in support:

INTRODUCTION

1. This case is devastating—not merely because Plaintiffs tragically lost their husband and father, but because of *how* they lost him. The Defendant Officers—John Bolgiano, Corey Duplantis, Derek Schlesinger, Walter Tenney, and Sidney Theriot (together, “Defendant Officers”)—and John Doe Officers responded disproportionately and egregiously to an encounter that should never have resulted in Miguel’s death.

2. Miguel was sitting in the driver's seat of his car, which was parked in reverse in his own driveway, when Defendant Tenney approached him to investigate reports of gunshots in the area. Miguel reportedly declined to get out of his car to speak with Tenney. Tenney did not see a gun or observe Miguel committing any crime. Yet, when Miguel did not get out of his car, Tenney responded by escalating the encounter and turning it into a SWAT scene, replete with dozens of heavily-armed officers from the Houma Police Department (the "Houma Police" or "HPD") and Terrebonne Parish Sheriff's Office (the "TPSO"). This SWAT team surrounded Miguel's home, holding him at gunpoint as they ordered him to get out of the car. An armored "BearCat" truck was also parked in the driveway, blocking Miguel's car, with one or more Defendant Officers and Doe Officers pointing assault rifles down at him from the truck. All the while, no officer saw Miguel with a gun.

3. The scene ended in a firing squad, with the Defendant Officers and Doe Officers repeatedly and unjustifiably applying excessive deadly force to Miguel after he was already incapacitated. In short, despite surrounding Miguel for almost two hours and *not once observing him with a gun*, the ill-trained, ill-disciplined, and ill-supervised Defendant Officers and Doe Officers failed to de-escalate the encounter and instead each subsequently shot at Miguel multiple times. Despite subduing Miguel immediately, the Defendant Officers and Doe Officers continued to fire, striking Miguel at least 17 times in total. Each shot reflects a separate instance of excessive and deadly force.

4. Compounding the egregious circumstances of Miguel's killing, dozens of Doe Officers, Defendant Dana Coleman (Chief of the HPD), and Defendant Timothy Soignet (Sheriff of the TPSO) stood by idly as these tragic acts unfolded. Defendants Coleman and Soignet watched Defendant Officers and Doe Officers first unconstitutionally seize Miguel and then

escalate the situation into one that employed repeated unnecessary, unjustified, unwarranted and excessive use of deadly force. Defendants Coleman and Soignet made no meaningful attempts to de-escalate the situation nor to prevent or halt Defendant Officers' and Doe Officers' plainly excessive uses of force. Indeed, the HPD and TPSO's response lacked any clear leadership, failed to adhere to the agencies' own policies and procedures, and unreasonably and unduly deprived Miguel of his constitutional rights and, ultimately, his life.

5. Houma Police apparently deferred to the Louisiana State Police ("LSP") to "investigate" the circumstances of Miguel's death. LSP's "investigation" was dubious at best, consisting solely of cherry-picked information, conflated timelines, and other transparent efforts to peddle a manufactured narrative that Miguel desired "suicide by cop" and to suggest, incredibly, that his alleged suicidal ideations alone justified the responding officers' actions. In fact, in the hours and days after Miguel's death, LSP conducted unconstitutional searches of: (i) the car Miguel was in during the incident, (ii) the home he shared with his wife and children, and (iii) his wife's cell phone, which was unlawfully seized on the night Miguel was killed to prevent Mrs. Nevarez from communicating with her husband. Upon information and belief, LSP conducted each and every one these searches not for the purpose of seeking evidence related to any alleged crimes, but rather to search for information supporting a defensive narrative to retroactively justify the excessive use of force that caused Miguel's death and/or to intimidate his surviving family members.

6. But whether Miguel was suicidal is a prototypical red herring that detracts from the more poignant issues about *what happened* in the last few seconds of Miguel's life, and that Defendant Officers and Doe Officers were unreasonable in firing their weapons at him. LSP's investigation into this issue was cursory at best, designed to exculpate the HPD and TPSO from

its inception. The LSP remained unconcerned throughout its investigation with determining whether the HPD or TPSO's "use of force" was actually reasonable at all. Rather, the LSP misframed its investigation (and its various search warrant requests) as an active criminal investigation into an alleged "aggravated assault upon a peace officer" to bootstrap a presumption of propriety onto the HPD and TPSO's actions. In fact, there was no legitimate basis for conducting an investigation into an alleged "aggravated assault upon a peace officer" when the person alleged to have committed the assault was killed at the scene before the requests for search warrants were made. If there was no live defendant to charge, what was the real purpose of the supposed investigation?

7. The alleged "aggravated assault upon a peace officer"—and LSP's investigation of it—was a subterfuge, concocted and used by the LSP to retroactively justify the HPD and TPSO in killing Miguel. LSP found no wrongdoing by HPD or TPSO—an unsurprising conclusion from a department that has recently received national attention (after investigations by the Associated Press and federal authorities) for covering up and "rubberstamping" its excessive force investigations. Indeed, LSP did not formally interview the Defendant Officers and Doe Officers until *weeks* after the incident, giving them ample time to talk to each other and rehearse the versions of events that would be recounted on video. Sure enough, the videotaped interviews of the Defendant Officers by LSP investigators averaged merely 8 to 15 minutes per interview and include abbreviated accounts of the shooting with each officer using the same language.

8. Consistent with its propensity for cover-ups and its failure to discipline officers who violate citizens' constitutional rights, LSP, alongside Terrebonne Parish Consolidated Government ("TPCG"), has refused to respond in full to Plaintiffs' public records requests, including Plaintiffs' requests for the body-worn camera footage of the six Defendant Officers who

shot at and killed Miguel. While LSP did produce some investigation materials to Plaintiffs, what was produced appears to be incomplete: for example, much of the body-worn camera footage produced from responding officers appears selectively edited or recorded.

9. Plaintiffs, Miguel's surviving wife and children, now seek to hold these officers accountable for violating Miguel's constitutional rights by unreasonably seizing him, searching his and his family's property, using excessive force against him, brutally taking his life without legal justification, and then refusing to produce public records in connection with his death.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. sections 1331, 1343, and 1988.

11. Plaintiffs further invoke this Court's supplemental jurisdiction pursuant to 28 U.S.C. section 1367 to adjudicate claims arising under state law.

12. Venue is proper in the Eastern District of Louisiana under 28 U.S.C. section 1391 as a substantial part of the events or omissions of which Plaintiffs complain occurred in Terrebonne Parish, Louisiana, which sits in this Court's jurisdiction.

PARTIES

13. Plaintiffs are the surviving, lawful descendants of decedent Miguel.

14. Plaintiff Julie Nevarez appears individually as Miguel's surviving, lawful wife, and on behalf of her and Miguel's minor children, Plaintiffs BN, MN, and GN.

15. Plaintiff De'Andre Willis is Miguel's biological son who is a competent adult and appears on his own behalf.

16. Defendant Chief Dana Coleman is the decisionmaker for the Houma Police Department, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Coleman is named in his individual capacity and was at all pertinent times acting under the color of state law and the authority of the Houma Police Department.

17. Defendant Officer John Bolgiano was at all pertinent times acting under the color of state law and the authority of the Houma Police Department, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Bolgiano is named in his individual capacity.

18. Defendant Officer Corey Duplantis was at all pertinent times acting under the color of state law and the authority of the Houma Police Department, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Duplantis is named in his individual capacity.

19. Defendant Officer Derek Schlesinger was at all pertinent times acting under the color of state law and the authority of the Houma Police Department, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Schlesinger is named in his individual capacity.

20. Defendant Officer Walter Tenney was at all pertinent times acting under the color of state law and the authority of the Houma Police Department, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Tenney is named in his individual capacity.

21. Defendant Officer Sidney Theriot was at all pertinent times acting under the color of state law and the authority of the Houma Police Department, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant S. Theriot is named in his individual capacity.

22. Defendant Officer Tyler Fitch was at all pertinent times acting under the color of state law and the authority of the Terrebonne Parish Sheriff's Office, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Fitch is named in his individual capacity.

23. Defendant Timothy Soignet is the Sheriff of the Terrebonne Parish Sheriff's Office and therefore the governing authority and decisionmaker for the same. Upon information and belief, Soignet is a citizen within this Court's jurisdiction. Soignet is named in his individual capacity and was at all pertinent times acting under the color of state law and the authority of the Terrebonne Parish Sheriff's Office.

24. Mart Black, in his official capacity as records custodian for TPCG, is, upon information and belief, a citizen within this Court's jurisdiction.

25. Defendant Anthony Dorris was at all pertinent times acting under the color of state law and the authority of LSP, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Dorris is named in his individual capacity.

26. Defendant Justin Leonard was at all pertinent times acting under the color of state law and the authority of LSP, and, upon information and belief, is a citizen within this Court's jurisdiction. Defendant Leonard is named in his individual capacity.

27. Defendants John Doe Officers, who are sued in their individual capacities, at all relevant times, were employed as officers by TPCG with the Houma Police Department, TPSO, or LSP. Plaintiffs are unaware of the names and capacities of Doe Officers and therefore sue Doe Officers by such fictitious names. On information and belief, Doe Officers are citizens within this Court's jurisdiction. Plaintiffs will amend this Complaint to state the true name and capacity of Doe Officers when such have been ascertained. Doe Officers are liable jointly, severally, and *in solido* for the unconstitutional and tortious conduct set forth below in those claims in which they are named.

FACTS

A. Miguel's Killing

28. On October 13, 2020, a woman called 911 to report that she had heard two gun shots. At approximately 8:57 p.m., the caller also advised that, while she did not see anyone actively shooting a gun, a boy had been on a bike on or around Roosevelt Street in Houma, Louisiana at 6 p.m. and had been firing a gun.

29. At 9:00 p.m., HPD officer Tenney responded to the area. He arrived on Polk Street where Miguel resided, nearly 0.5 miles east of Roosevelt Street. When Tenney first encountered Miguel, Miguel was sitting in the driver's seat of his car, which was parked in reverse facing the street in the private, fenced-in driveway of his own property. The gate to the driveway was open, and Tenney reportedly approached Miguel on foot in or near the driveway, instructing Miguel to come speak with him. When Miguel reportedly declined, Tenney drew his service weapon and called for backup.

30. In sum, by 9:02 p.m., *two minutes* after arriving at the scene, Tenney had, without any basis in fact, characterized Miguel as "uncooperative" and reported that Miguel possibly had a gun in his car. Tenney reported this despite the fact that he had *not* laid eyes on a gun.

31. Around this time, Tenney, still standing at the head of Miguel's driveway, was joined by at least HPD officers Bolgiano and Adam Guillot, who also began holding Miguel at gunpoint.

32. Tenney next reportedly pulled a police car in front of the driveway to block Miguel's car from leaving.

33. By 9:04 p.m., Tenney and Doe Officers characterized Miguel as having "barricaded" himself in his car. This is a mischaracterization as Miguel was simply sitting inside

the car, occasionally playing music and dancing to it. The only “barricading” that occurred that night was caused by Defendant Officers and Doe Officers blocking Miguel’s driveway and cordoning off the streets surrounding his property.

34. Houma Police now claim they seized Miguel because a neighbor allegedly informed Tenney that Miguel had been doing “target practice” in his backyard (a misdemeanor in Louisiana) even though Tenney had not seen as much himself. Despite the fact that they had not witnessed a gun or any illegal behavior, Defendant Officers and Doe Officers continued to escalate the situation. They blocked off the surrounding streets so that only the officers and other authorized personnel could approach the scene. They also called for backup and SWAT teams from the TPSO as early as 9:10 p.m.—a mere 10 minutes after Tenney arrived at the scene.

35. In total, nearly fifty (50) officers from HPD and TPSO reported to the scene, including a purported negotiator, Lt. Travis Theriot, who did not engage meaningfully with Miguel while he was in his car. Defendant Officers and Doe Officers intentionally illuminated Miguel’s car with numerous spotlights from their police vehicles to blind and limit his view, obscuring Miguel’s vision (and awareness) of the extent of the police response at his home.

36. When Mrs. Nevarez arrived and tried to access Miguel and her home, a Doe Officer denied her access to the street. Lt. T. Theriot approached Mrs. Nevarez to speak with her about the situation, during which she identified herself as Miguel’s wife. As they spoke, her phone began ringing with a call from Miguel. Lt. T. Theriot seized Mrs. Nevarez’s phone at that time, refusing to return it to her or to allow her and Miguel to speak. Mrs. Nevarez’s cell phone was never returned to her that night, even as Miguel continued to attempt to contact her. Rather, Mrs. Nevarez’s cell phone was seized for no other purpose than to prevent her from communicating with Miguel while he was in his car.

37. At approximately 9:44 p.m., HPD substituted Tenney's police unit with a BearCat, an armored truck belonging to TPSO to continue blockading Miguel's car in the driveway. This was the only "barricade" at the site.

38. During the approximately 45 minutes it took to surround Miguel, no one responding on scene, including Defendant Officers, Doe Officers, Coleman, or Soignet saw Miguel with a gun. Nor were there any meaningful attempts to de-escalate the situation or any cogent planning or preparation for a non-lethal conclusion to the HPD and TPSO's response.

39. Defendant Duplantis, who was perched atop the armored turret of the BearCat towering over Miguel's car, alleges he used the lens on a short-barrel assault rifle to look directly into Miguel's car. Duplantis could see so well from his overwatch position that he observed a bandage on Miguel's finger. But he reported that he *never* saw a gun in the car.

40. In fact, by 10:24 p.m., a minute before Miguel reportedly got out of the car, not a single officer had seen Miguel with a gun.

41. At 10:26 p.m., Defendant Officers reported that Miguel allegedly got out of the car and ran west towards the back of his house—*away from the officers surrounding him*. Importantly, Miguel was running within (and stayed within) the fenced-in portion of his own property. When he ran towards the back of the house, HPD officers Tenney and Sidney Theriot were waiting on the outside of the back fence on the west side of the home. Their presence would not have previously been known to or observed by Miguel based on where he was seated in the car.

42. Officer S. Theriot alleged that superiors had instructed him to shoot Miguel with what Defendant Officers described as a 40 mm "less lethal" impact munition. Use of this weapon was allegedly intended to deter Miguel from trying to enter the back of his house. "Less lethal" munitions provide a significant risk of catastrophic injury or death per the application of extreme

and acute kinetic force (*i.e.*, potential strikes to the head or vital organs). Tenney was assigned as Theriot's "lethal cover."

43. Tenney and S. Theriot were the *only* individuals deployed to the back of the home. No other HPD, TPSO, or other SWAT assets, canine units, other less-lethal options, or any other additional cover were deployed to the rear flank, leaving a glaring and obvious hole in the responding officers' security perimeter that risked (and did result in) their total loss of tactical control.

44. As instructed, but in the absence of first providing Miguel with any verbal or other commands, officer S. Theriot reportedly fired the 40 mm when he allegedly saw Miguel running toward the west side of the house. He reportedly struck Miguel at least once, claiming that he heard Miguel "yell" in response. Tenney also heard the yell and reported that he saw Miguel buckle over and stumble in response to being hit.

45. Even though he witnessed this response, Tenney nonetheless chased Miguel further alongside the house, blocking Miguel's escape and forcing him *toward* the other responding officers of whom Miguel was unaware. Tenney attempted to tase Miguel during his pursuit, but claims he did not make a "good connection" with the taser. Conversely, S. Theriot reported that the taser caused Miguel to stumble again. In fact, Miguel collapsed to the ground shortly after Tenney deployed his taser.

46. Neither the purported negotiator, Lt. T. Theriot, nor Tenney or S. Theriot, ever commanded Miguel to stop, to get down, or to otherwise surrender himself.

47. Around the time that Tenney tased Miguel, HPD officer Bolgiano left the cover of the police car shielding him, stating that he mistakenly thought the distinct crackles of the taser and the muffled, dull thud of the "less lethal" impact munition were gun shots. Bolgiano ran

towards the southwest (front) corner of the house, proceeding blindly toward the unknown rather than maintaining a defensive position.

48. After Tenney tased Miguel, Defendant Officers reported that Miguel regained his footing and, as he was rounding the front corner of the house (and still within his own, fenced-in property), allegedly raised a gun towards Bolgiano, who was now allegedly facing Miguel from the street. (Upon information and belief, discovery will contradict Bolgiano's allegation.) Notably, Duplantis later explained that because the Defendant Officers and Doe Officers had intentionally illuminated Miguel's car with numerous spotlights to blind and limit his view, Miguel likely could not see, and thus did not know, that officers had taken cover on the southwest side of the home as he was running towards it.

49. Bolgiano may have been the first to fire his weapon, shooting Miguel as Miguel emerged from the west side of the house. Bolgiano did not report how many times he believed he fired his weapon at Miguel but conceded it was enough for him to empty his magazine and conduct a tactical reload during the shooting.

50. After Tenney tased Miguel and caused him to stumble, Tenney had time to switch back to his firearm, continue pursuing Miguel toward the police cordon of which he was unaware, and—still giving no commands to Miguel—fire at least three to four rounds from behind Miguel when Miguel reached the front of the house.

51. Based on the evidence LSP collected and the autopsy report assessing Miguel's death, Bolgiano and Tenney collectively shot at Miguel approximately 20 times.

52. Defendant Schlesinger, who was allegedly to Bolgiano's right, also reported firing his assault rifle at least two to three times at Miguel and, upon information and belief, may have done so after both Tenney and Bolgiano had already started firing.

53. Duplantis, who was to Bolgiano's and Schlesinger's far right, providing overwatch from atop the BearCat, reported firing his assault rifle "downwards" at Miguel three to four times.

54. Yet of the three assault rifles used by Defendant Officers Schlesinger, Duplantis, and Fitch, LSP reported collecting fourteen spent casings and expended live rounds fired from just *one* of them, and at least three spent casings from the other two.

55. Other Doe Officers may have also fired at Miguel.

56. Seventeen of the total shots fired by Defendant Officers and Doe Officers struck Miguel—even though Defendant Officers collectively reported only firing eight to eleven shots. Notably, Miguel was shot from *behind* at least seven times, including in his back, legs, and buttocks, with many shots front and back fired from downward trajectories.

57. Defendant Officers and Doe Officers then handcuffed Miguel as he lay limp and dying in his own front yard. Doe Officers and Fitch then cut off Miguel's clothing, stripping him naked, to count his gunshot wounds. From afar, Fitch and these Doe Officers might have looked like they were "providing aid," but their body-worn cameras, and the audio recorded thereon, reveal that their sole concern was assessing the damage they had inflicted. Miguel was unambiguously immobilized and struggling to breathe, but his eyes were open initially, and he was still alive. Yet not one Doe Officer nor Fitch can be heard addressing Miguel at all in the more than 10 minutes that they were counting their shots and the resulting entry and exit wounds in Miguel's body.

58. No one made *any* effort to ensure that Miguel was continuing or could continue to breathe. No one tried to maintain or monitor his airway. No one kept Miguel from moving or bothered to secure his head or neck. In fact, Fitch and the Doe Officers did the exact opposite, carelessly moving, lifting and shifting Miguel, causing his head to jerk, turn, and even bump into

Fitch's knee at one point as they rolled him onto his stomach and further constricted his airways. They then cut Miguel's shirt off of his limp and still-handcuffed arm to look for gunshots on his back, wrenching and yanking awkwardly at Miguel's body. Rather than acting to assist Miguel and perhaps saving his life, Fitch and the Doe Officers continued to count the number of shots that had hit Miguel until the responding emergency medical technicians (EMTs) arrived. The EMTs then reported that Miguel was dead upon their arrival.

59. There was a substantial delay between the time Miguel was shot and when he received meaningful medical assistance or attention. By then it was already too late.

60. Doe Officers then transported Mrs. Nevarez to the HPD station, refusing to inform her of her husband Miguel's death until they could confine her in a controlled, near-custodial interview setting her several hours later. Because Mrs. Nevarez had been deprived of her cell phone, she also had no way of communicating with any of her family members who were at the scene, either to ask them what had happened or to update them of her own whereabouts or wellbeing.

B. The Post-Incident Search Warrants

61. Houma Police Administration requested LSP investigate Miguel's death.

62. In the early hours of October 14, 2020, just hours after Miguel was killed and pronounced dead on the scene, Defendant Leonard, an LSP State Trooper, secured a search warrant for the Nevarez home and the car Miguel had been seated in, which was registered to Mrs. Nevarez.

63. Defendant Leonard attested that he sought the search warrant in connection with an active criminal investigation of an alleged "aggravated assault upon a peace officer" under Louisiana R.S. 14:37.2. The search warrant sought to search the Nevarez home for:

Any and all weapons to include firearms, ammunition, items pertaining to weapons and/or ammunition, video surveillance recording devices, electronic devices that

may store messages and/or video, handwritten notes and/or any and all evidence pertaining to the shooting. Also requested in this search warrant is the curtilage within the property to include the white Mitsubishi sedan.

64. In the affidavit to obtain the search warrant, Defendant Leonard swore probable cause existed for the requested search, based on the following alleged facts:

On Tuesday, October 13th, 2020, members of the Louisiana State Police Criminal Investigations Division - Houma Field Office (LSP-CID) were notified of an officer involved shooting (OIS) at the residence of 356 Polk Street. The initial complaint was that of a subject armed with a weapon illegally [*sic*] discharging the weapon. Officers with Houma Police Department (HPD) and Terrebonne Parish Sheriff's Office (TPSO) responded and made contact with the subject at 356 Polk Street.

During the course of the investigation, the subject barricaded himself inside of a white Mitsubishi sedan backed in the driveway. Attempts to negotiate with the subject were unsuccessful [*sic*]. The subject later exited the vehicle and several less lethal attempts were made which yielded negative results. The subject then presented a firearm toward officers. Several members of HPD and TPSO responded to the threat and discharged their weapons. The subject was struck and succumbed to his injuries.

65. Defendant Leonard's summary account of the events of October 13, 2020 in his affidavit is misleading—rife with linguistic flourish and omissions of material fact intended to bootstrap “probable cause” to search the Nevarez home where none existed. Defendant Leonard presented a deliberately incomplete record to the magistrate judge to obtain the warrant he desired. For example, in his affidavit, Defendant Leonard:

- a. Represents that he was engaged in an active investigation of an alleged “aggravated assault upon a peace officer,” rather than a responsive use of force investigation concerning the officer involved shooting death of Miguel;
- b. Represents that the officer involved shooting occurred “at the residence of 356 Polk Street,” without specifying that all relevant events occurred *outside* the Nevarez residence;
- c. Omitted that 356 Polk Street was Miguel's own home and residence;

- d. Vaguely asserts that officers were called to 356 Polk Street in response to a (impliedly criminal) “complaint” of “a subject armed with a weapon illegally discharging the weapon” in the neighborhood, without specifying that the initial call(s) to law enforcement referred to an individual—reportedly a boy on a bike riding around Roosevelt Street—engaged in “target practice” or other non-threatening use of a firearm (constituting a misdemeanor under Louisiana law at worst);
- e. Represents that HPD and TPSO officers “responded [to the call] and made contact with the subject at 356 Polk Street” without specifying the nature of the police response or the contact, the HPD and TPSO’s failure to engage with Miguel, their rapid escalation of events, that Miguel was attempting to flee and run *away* from officers when he was shot, that Miguel *never attempted to enter his home*, and, again, that all relevant events occurred entirely *outside* the Nevarez residence;
- f. Adopts the HPD and TPSO’s defensive narrative wholesale, representing that “[d]uring the course of” HPD and TPSO’s investigation “the subject barricaded himself inside” of the car, giving the false impression that Miguel was hostile and threatening to police during the encounter, whereas he was in fact approached initially as he was sitting in the car listening to music; indeed, Miguel was only “barricaded” in the car insofar as the HPD and TPSO held Miguel at gunpoint and deliberately blocked him into the driveway at 356 Polk Street with their patrol cars minutes after their arrival, later swapping in the TPSO’s heavily-armored BearCat;
- g. Omits any information suggesting that Miguel may have been suffering from a mental health crisis or other condition during the encounter;

- h. Omits any reference to the HPD and TPSO officers' apparent frustration with Miguel during the encounter;
- i. Represents that "[a]ttempts to negotiate [with Miguel] were unsuccessful" while omitting any details as to the duration of those negotiations or how the police escalated the situation by, *inter alia*, blinding Miguel with spotlights, obfuscating the scope of the police presence at 356 Polk Street, and refusing to provide Miguel any opportunity to speak with his loved ones or anyone else present that actually knew him, again giving the impression of hostility;
- j. Represents that Miguel "later exited his vehicle" without specifying that the HPD and TPSO were *advancing upon Miguel* at the time with their rifles drawn, dogs barking, and the armored BearCat rumbling down upon him, and omits that Miguel was attempting to *run away* from the HPD and TPSO officers' advance when he exited the car;
- k. Omits that no officers ever issued Miguel a warning to stop, to get down, or to otherwise surrender himself to police;
- l. Omits that, for over an hour, no responding HPD or TPSO officers ever saw a firearm in Miguel's possession until, allegedly, moments before his death;
- m. Omits any reference or acknowledgement of the HPD and TPSO's infirm tactical posture at 356 Polk Street or the scale of their militarized response;
- n. Omits that HPD and TPSO officers *actively pursued* Miguel when he exited the car, needlessly exposing themselves from cover and chasing Miguel toward one another's positions and into one another's lanes of fire;

- o. Represents that “several less lethal attempts were made which yielded negative results,” giving the impression of an uncontrollable subject, without specifying that Tenney reported Miguel did, in fact, stumble to the ground in response to the less lethal rounds fired upon him;
 - p. Represents that Miguel “presented a firearm toward officers,” giving the impression that Miguel willfully threatened officers without specifying that Miguel was scrambling to run *away* and was suddenly cut off by, at least, HPD Officers Tenney, Theriot, and Bolgiano, causing him to pivot and change directions in attempt to *avoid* them;
 - q. Represents that officers “responded to the threat and discharged their weapons,” *presuming* the existence of said “threat” and failing to specify the factual context, scope, or duration of the HPD and TPSO’s lethal response;
 - r. Represents only that Miguel was “struck” and “succumbed to his injuries,” rather than specifying that Miguel was killed and pronounced dead on-scene, well *before* Defendant Leonard applied for the search warrant; and
 - s. Represents that the LSP sought to search the Nevarez home for firearms, munitions, communications and notes “related” to the alleged “aggravated assault upon a peace officer,” without specifying that the firearm allegedly presented in the encounter was already recovered outside the residence on the front lawn, nor alleging that anyone still living—let alone residing in the home—had anything to do with the alleged “aggravated assault upon a peace officer” underlying the warrant.
66. Defendant Leonard’s affidavit purposefully gave the impression that the LSP was actively investigating a criminal complaint—“aggravated assault upon a peace officer”—against

a live suspect that occurred “at the residence” of 356 Polk Street. Defendant Leonard knew this was a cover story, turning on just one of many disputed material issues of fact concerning the events of October 13, 2020, *i.e.*, whether or not Miguel actually did raise a weapon toward officers.

67. In order to obtain the warrant, Defendant Leonard’s affidavit adopted the HPD and TPSO’s narrative wholesale, painting Miguel as an aggressive and intransigent “subject” who: (i) indisputably “barricaded himself” in the car, (ii) could not be negotiated with or taken down by “less lethals,” and (iii) ultimately “presented a firearm” to officers without provocation. Defendant Leonard’s affidavit intimated that the shooting occurred “at” or within the Nevarez residence, did not explain that the HPD and TPSO’s encounter with Miguel occurred entirely *outside* of his home, nor provide any basis for why evidence relevant to those events would be located or should be sought *within*—particularly since Miguel had died and could not be prosecuted. Indeed, Defendant Leonard sought the intrusive and unfounded warrant despite knowing that: (1) his official purpose was to investigate the HPD and TPSO’s use of force against Miguel, not a criminal complaint concerning an alleged “aggravated assault upon a peace officer”; and (2) no matter *what* “supporting evidence” could have been found in the home pursuant the warrant concerning such alleged assault, neither the HPD, TPSO, nor LSP could charge Miguel with a crime posthumously, obviating the need for such evidence.

68. Based on the search warrant of the Nevarez home and car, LSP seized from the home an Ezviz DVR player related to the home’s surveillance system, and from the car, Miguel’s cell phone and a medical document from South Central Louisiana Human Services Authority, among other things. They admittedly found nothing else of any purported evidentiary value.

69. Five days later, on October 19, 2020, Defendant Dorris, also an LSP State Trooper, sought a second search warrant concerning Mrs. Nevarez’s cell phone, which Doe Officers had

unlawfully seized the night Miguel was killed to prevent Mrs. Nevarez from communicating with her husband. The search warrant sought to seize and examine data on the phone, including:

1. Any voice messages, text message, phone numbers, pictures, GPS, and other electronic data and or media contained within the hardware, or cellular operating system of the cellular phone that identifies the owner and or possessor of the cellular phone.
2. Any and all voice messages, text messages, phone numbers, pictures, GPS, and other electronic data and or media contained within the hardware, software, and or microprocessors of the cellular phone related to the below listed crimes.
3. Any Voice messages, text message, phone numbers, pictures, GPS, and other electronic data and or media contained within the Mini Secure Digital (MiniSD), MultiMedia Card Mobile (MMCmobile), or any other types of card slots support removable memory cards or specialized peripherals, such as an SDIO Wi-Fi card and or cellular operating system related to the below listed crimes.
4. Any photographs, text messages, phone logs, or GPS information located within the internal memory of the cellular phone related to the below listed crimes.
5. Any and all hidden, erased, compressed, password protected, and/or encrypted files as they relate to the below listed crimes.
6. Photographs of the interior and exterior of the cellular phone[.]
7. DNA swabs both interior and exterior of the cellular phone[.]
8. Latent prints of both interior and exterior of the cellular phone[.]
9. Any and all voice messages, text message, phone numbers, pictures, GPS, and other electronic data and or media contained within Wireless communications such as infrared (i.e., IrDA) or Bluetooth that may be built in the device related to the below listed crimes.
10. Personal Information Management (PIM) applications that includes phonebook and date book facilities, and a means to synchronize PIM information with a desktop computer.

70. As with Defendant Leonard's earlier application, Defendant Dorris' search warrant affidavit states the above property constitutes evidence of aggravated assault upon a peace officer pursuant to Louisiana R.S. 14:37.2.

71. Defendant Dorris incorporated the summary, misleading facts narrative laid forth in Defendant Leonard’s earlier affidavit that painted Miguel as dangerous and combative. Defendant Dorris added only minimal details concerning the actual use of Mrs. Nevarez’s phone during the events of October 13, 2020:

During the course of the investigation, NEVAREZ barricaded himself inside of a white Mitsubishi sedan backed in the driveway. Attempts to negotiate with NEVAREZ were unsuccessful. NEVAREZ later exited the vehicle and several less lethal attempts were made which yielded negative results. ***NEVAREZ then presented a firearm toward officers.*** Several members of HPD and TPSO responded to the threat and discharged their weapons. NEVAREZ was struck and succumbed to his injuries.

During negotiations with NEVAREZ, his wife’s cellular phone was used to make contact with him. The phone was secured as evidence after the incident. A search warrant is being applied for [*sic*] to locate any and all evidence that may aid the Louisiana State Police in ***their active investigation of the crime of LRS 14:37.2 Aggravated Assault Upon a Peace Officer***, to include Owner/User data, Owner’s phone number, SMS Messages, MMS Messages, Emails, Call History and Data, Phonebook and/or Contacts list(s), Digital photographs and/or video(s), Web browser history, geo-location data, wireless internet network data, and any other data the phone/device may contain that may aid in the investigation.

(Emphasis added.)

72. Besides repeating Defendant Leonard’s misrepresentations, Defendant Dorris:
- a. Failed to specify *who* used Mrs. Nevarez’s phone to communicate with Miguel—Lt. T. Theriot—or to explain why a search of the phone would be necessary where Lt. T. Theriot could attest to the substance of his communications with Miguel;
 - b. Failed to specify *how* the categories of information sought would be relevant to the alleged crime of “aggravated assault upon a peace officer,” other than the implication that they might constitute “planning” communications or documents;

- c. Failed to specify that Miguel’s cell phone was already collected from the scene pursuant the earlier search warrant for the car, obviating any need to search Mrs. Nevarez’s phone for evidence of her own communications with Miguel; and
- d. Failed to specify that Miguel was killed and pronounced dead on the scene, further obviating any perceived “need” to search Mrs. Nevarez’s phone in connection with an alleged criminal violation that could not be charged against her late husband.
- e. Moreover, nothing in the affidavit or in any other submission to the magistrate even suggested that there was anyone *other than* Miguel involved in the alleged “aggravated assault upon a peace officer.” Absent any such suggestion, there was no basis for searching Mrs. Nevarez’s phone.

73. Unsurprisingly, Dorris reported that he found “nothing of evidentiary value” on Mrs. Nevarez’s phone—*i.e.*, no text messages to support their narrative that Miguel intended to seek suicide by cop or that he planned an “aggravated assault” upon law enforcement. It is unclear what evidence they could have found on her phone.

74. Tellingly, Dorris later applied for a search warrant to search Miguel’s own cell phone on November 12, 2020—nearly a month after Miguel’s death, and only once the invasive search of Mrs. Nevarez’s phone proved fruitless. Dorris’ affidavit in support of that search warrant relied on the same incomplete, summary narratives and purported criminal “investigation” set forth in the preceding warrants.

75. Doe Officers from LSP conducted the searches of the Nevarez home, car, and Mrs. Nevarez’s cell phone, though it is unclear exactly who did so given the LSP’s factually inconsistent records. Dorris reported that he and an Investigator Mike Garner conducted the searches of the Nevarez home and car and collected the evidence seized therein, while Leonard attested that he

conducted and terminated those same searches. To date, LSP has not returned any items seized from the Nevarez home or car.

76. Leonard and Dorris knowingly and intentionally submitted affidavits containing false or insufficient factual statements and material omissions to procure the search warrants, building up the narrative of an active criminal investigation where there was none. Upon information and belief, the true purpose of these searches was the vain hope to secure any sensitive, private, or salacious material to support the LSP's defensive "suicide by cop" narrative, to otherwise impugn Miguel's character, or to embarrass and intimidate his surviving family members. No magistrate judge, presented with a full accounting of the material facts of October 13, 2020, would ever find "probable cause" to issue these warrants in pursuit of a baseless criminal investigation that could not be used to prosecute Miguel for any crime. Rather, the magistrate would appreciate the LSP's search warrant applications for what they were: cynical ploys to paper over and justify the HPD and TPSO's systemic failings.

C. General Allegations on Policy and Practice

77. On information and belief, HPD and TPSO have an unwritten policy and practice of violating individuals' constitutional rights through the use of excessive and deadly force and unreasonable seizures—and, with the support of LSP, these constitutional violations go investigated uncritically, if at all, and therefore unpunished.

78. Indeed, HPD and TPSO are known and frequently sued for alleged violations of the Fourth Amendment for unreasonable searches and seizures, and excessive force, including deadly force.¹

¹ See, e.g., *Orellana v. Terrebonne Par. Consol. Gov't*, CV 18-11673, 2019 WL 6036711, at *4 (E.D. La. Nov. 14, 2019) ("Without a reasonable belief of future harm, [Officer Derek] Schlesinger's removal of A.L. from school was a violation of A.L.'s Fourth Amendment right."); *Tillman v. Carpenter*, CV 15-4588, 2017 WL 2226210, at *1 (E.D. La. May 22, 2017) (denying defendant's motion to dismiss a

79. When such civil rights violations are “investigated,” HPD, upon information and belief, assigns such investigations to LSP based on a Memorandum of Understanding entered into between both agencies. But LSP is itself under a federal “pattern and practice” investigation for both police brutality and potential coverups, including LSP’s proclivity for deflecting blame and impugning victims as was done here. A recent Associated Press investigation has revealed that LSP has an extensive history of rubberstamping its investigations. According to a recent Associated Press report:

When [excessive force] footage is recorded, the agency [LSP] routinely refuses to release it. And a recently retired [LSP] supervisor who oversaw a particularly violent clique of troopers told internal investigators this year that it was his “common practice” to rubber-stamp officers’ use-of-force reports without reviewing body-camera video.²

80. Predictably, LSP’s investigation of Miguel’s death found that none of the Defendant Officers committed any wrongdoing. By the same token, based on LSP’s investigation report, LSP did not investigate Miguel’s death in earnest. Defendant Officers did not even appear to give statements to LSP until the end of October 2020 at the earliest, two weeks after killing Miguel on October 13, with many “investigatory” interviews conducted only in November or later. The vast majority of these interviews were completed in less than fifteen (15) minutes, with many clocking below even ten. Their collective narrative: an “agitated,” “erratic” Miguel “barricaded” himself inside of his car and repeatedly invited the Defendant Officers and Doe Officers to shoot

section 1983 claim for emotional distress arising from allegations that the Terrebonne Parish sheriff and two deputies used excessive, deadly force against a minor victim and falsely arrested four others during a September 2015 incident in Houma, and subsequently dismissing case following settlement).

² Jim Mustian and Jake Bleiberg, *Beatings, buried videos a pattern at Louisiana State Police*, <https://apnews.com/article/police-beatings-louisiana-video-91168d2848b10df739d73cc35b0c02f8> (last visited September 27, 2021). See also Associated Press & Jim Mustian, *Louisiana state police undergo review after string of beatings of Black motorists*, <https://www.wvlv.com/article/news/crime/la-state-police-undergo-outside-review/289-d40aaa9c-91a3-49e2-8f3a-3cb2c7883dcb> (last visiting March 24, 2021) (“The Louisiana State Police have hired an outside consultant to conduct a top-to-bottom review of the scandal-plagued agency....”).

him because he wanted “suicide by cop.” These obviously scripted, quoted terms were used as a litany by Defendant Officers and Doe Officers to justify their violations of Miguel’s constitutional rights.

81. Furthermore, LSP initially provided only copies of statements by the specific Defendant Officers—*i.e.*, only those who LSP admitted fired their weapons. Conspicuously absent from LSP’s initial production were statements from any of the other officers, including, by way of example: Defendant Chief Coleman and Defendant Sheriff Soignet, both of whom were present and presumably giving orders; Lt. T. Theriot, the alleged negotiator; and Lt. Karl Beattie, who was reportedly in command for at least a portion of the incident. LSP has since produced a more complete report but only *after* Plaintiffs commenced this litigation and, like the Defendant Officers’ statements, the other interviewed officers likewise use the same rehearsed language characterizing Miguel as “suicidal,” “erratic,” and “barricaded” in his car. These statements conveniently (and universally) distort the temporal aspects of these events, ignoring the many opportunities and failures of HPD and TPSO to bring the standoff they initiated to a peaceful resolution. None of the body camera footage produced to date demonstrates that the Defendant Officers and Doe Officers were legally justified in shooting and killing Miguel. Instead, it demonstrates that this violent outcome could have been entirely avoided with even a modicum of professional competence or compassion.

D. Public Records Requests

82. Because of Defendant Officers’ and Doe Officers’ actions leading up to Miguel’s death, and the clearly self-serving narrative of events Defendant Officers reported to LSP, Plaintiffs submitted public records requests for more information about the circumstances of

Miguel's killing—including, most notably, requests for the body-worn camera footage from each of the Defendant Officers who admitted to firing their weapons at Miguel.

83. Plaintiffs, through their agent, undersigned counsel, submitted their first public records request to the TPCG record custodian, Defendant Mart Black, in a letter dated March 11, 2021. This records request sought:

1. Body, backseat, and dash camera footage of the incident from all law enforcement sources and agencies, including the Houma Police Department;
2. All police reports and witness statements related to the incident;
3. Internal Affairs or Public Integrity Bureau complaint and the result of their complaint (i.e. an internal investigation), if applicable, and any other similar documents pertaining to an internal investigation related to the incident, Miguel Nevarez, and the events that led to his death;
4. All records regarding disciplinary proceedings instituted and/or complaints filed against the officers involved in the incident;
5. Any records sufficient to identify every officer present during the incident;
6. All records regarding citations issued by the law enforcement agency for the charges brought against Miguel Nevarez in connection with the incident, including all records indicating the charge for aggravated assault upon a peace officer;
7. All records that resulted from or were seized as a result of the execution of any search warrants in connection with the incident; and
8. A recording of the 911 call for service on October 13, 2020 related to the incident.

84. In a letter dated, April 19, 2021, counsel for TPCG's record custodian, Herbert & Marceaux, LLC, responded, stating that TPCG would produce some but not all of the requested records.

85. TPCG ultimately did *not* provide:
- Any dash-camera footage;
 - All of the body-worn camera footage;

- Any of the police reports or witness statements;
- Any internal reports by the Houma Police;
- Any records of disciplinary proceedings instituted and/or complaints filed against Defendant Officers and Doe Officers;
- Any records indicating any citations or charges against Miguel in connection with the incident, including all records indicating the charge for aggravated assault upon a peace officer;
- Any records that resulted from or were seized as a result of the execution of any search warrants in connection with the incident; or
- The recording of the 911 call for service on October 13, 2020 related to the incident.

86. The records TPCG did provide included Defendant Officers' cursory written statements to LSP during its criminal "investigation" of Miguel's death. Those records stated LSP's investigation closed November 20, 2020, just over a month after Miguel was killed. The video footage TPCG provided depicted only some of the events preceding Miguel's death. The videos did not show a beginning-to-end depiction of the night's events; nor did they show any alleged "agitation" and "erratic" behavior. Most critically, TPCG did not produce Defendant Officers' and Doe Officers' body-worn camera footage showing their respective shots at Miguel.

87. Of the records TPCG declined to produce were seven body-worn camera videos that TPCG stated "would violate the reasonable expectation of privacy for the following individuals if released publicly: 1. the family of Miguel Nevarez . . . , [and] 2. one witness identifying herself as Miguel Nevarez's girlfriend or wife [Plaintiff Julie Nevarez]." But TPCG explained it would release these videos if "notarized waivers and releases from these individuals whose privacy we are protecting" were provided. This missing footage presumably depicts the final seconds of Miguel's life, including when Miguel allegedly exited his car and was subsequently shot by Defendant Officers and Doe Officers.

88. On June 28, 2021, Miguel's wife, Plaintiff Julie Nevarez, through undersigned counsel, submitted a notarized waiver and release to TPCG's records custodian just as requested, swearing under oath that she was Miguel's wife and authorizing TPCG to release the footage of her and Miguel. Plaintiffs also included a second request for information to TPCG's records custodian, seeking:

1. All policies, manuals, handbooks, and similar materials of the Houma Police Department pertaining to: (a) de-escalation practices and procedures, (b) encounters with individuals who are actually or purportedly suicidal and/or experiencing a mental health crisis, (c) negotiating with suspects, and (d) use of force practices and procedures;
2. The digital audio recordings taken in relation to the internal investigation of the incident, ...;
3. All police reports or similar documents made concerning or pertaining to Mr. Nevarez in October 2020;
4. All dash camera footage from the incident;
5. All witness statements taken concerning the incident, including but not limited to those by [M. Naquin] and Julie Nevarez;
6. All documents and photographs related to or concerning the gun allegedly seized from Mr. Nevarez on October 13, 2020;
7. All records regarding disciplinary proceedings instituted and/or complaints filed against officers Corey Duplantis, Walter Tenney, Derek Schlesinger, and John Bolgiano;
8. Documents sufficient to show what other officer-involved shootings, if any, these officers, Corey Duplantis, Walter Tenney, Derek Schlesinger, and John Bolgiano, have been involved in since their employment at the Houma Police Department;'
9. All records regarding citations issued for the charges brought against Miguel Nevarez in connection with the incident that led to his death including all records indicating the charge for aggravated assault upon a peace officer; and
10. All records that resulted from or were seized as a result of the execution of any search warrants in connection with the incident.

89. Nearly a month later—well past the statutorily required response time—TPCG’s records custodian did not produce the seven videos or any of the above-requested information, or otherwise acknowledge the affidavit from Mrs. Nevarez. Rather, the custodian responded: “[T]his matter is a State Police investigation and that agency would have all the witness statements and evidence. Unfortunately, we do not know the name of the individual with LSP who is handling this investigation.”

90. Plaintiffs submitted the same records request initially sent to TPCG to LSP’s records custodian, Defendant Manale, on May 21, 2021. He also responded to Plaintiffs’ public records request late, on June 10, 2021, and similar to the TPCG records custodian, stated: “Please be advised that the information you seek is still under investigation and then will be submitted to the handling District Attorney’s office. As such, it is not public at this time pursuant to La. R.S. 44:3(A)(1).” (Such a response is consistent with the Associated Press’s recent investigation into LSP, which found that it is a common pattern and practice for LSP to allow the “most violent videos” to “languish[] for years, lost or ignored in a digital vault. Louisiana State Police troopers and top brass alike would often look the other way”³)

91. On August 6, 2021, Plaintiffs’ counsel renewed its public records request in an email to both TPCG and LSP, stating “[their] clients, Mr. Nevarez’s family, should know what investigation is being conducted and why it is precluding compliance with their records requests.” When Plaintiffs’ counsel also pointed out that previously produced LSP documents showed the LSP investigation had already closed in November 2020, LSP refused to respond and instead directed Plaintiffs to the Terrebonne Parish District Attorney’s Office, which similarly did not

³ Mastian, *et al.*, *supra* note 2.

respond to Plaintiffs' inquiry. On August 13, 2021, TPCG's records custodian changed his position, responding:

I have been informed that the Police Chief is gathering the requested information and will deliver it to the Parish Attorney (copied on this email) who will review it before its release. As to the length of time needed, I cannot say for sure, but it is my understanding that the matter is being expedited. While it was my initial understanding, based on information from HPD, that this matter was under investigation, I think the Parish Attorney will need to confirm whether this is still the case.

92. Despite these representations, Plaintiffs received no further information or updates over the next 30 days. Plaintiffs once again followed up with TPCG's custodians record, who responded that "there is very little [he] can do about it at this time," incredibly blaming the TPCG's prolonged failures on the later occurrence of Hurricane Ida.

93. On September 24, 2021, LSP's record custodian advised Plaintiffs' counsel that LSP has a 19-page report that is responsive to Plaintiffs' records request. But LSP did not address the other requested records, including Plaintiffs' request for the body-worn camera footage of the Defendant Officers and Doe Officers who shot at Miguel.

94. To date, Plaintiffs have not received all of the records requested from TPCG and LSP, including, most importantly, *all* of the body-worn camera footage showing the Defendant Officers and Doe Officers firing their weapons at Miguel. Moreover, much of the body-worn camera footage produced appears incomplete or selectively edited, capturing only the *aftermath* of Miguel's death and not reflecting his actual killing.⁴ Accordingly, both entities' records custodians have denied Plaintiffs the right to inspect the requested records.

⁴ By way of illustration, Plaintiffs specifically note that the body-worn footage produced from officer Duplantis, who was positioned on top of the TPSO's armored BearCat and reported clear views of Miguel, portrays Duplantis walking about the crime scene well after the conclusion of the shooting. No footage was produced from Duplantis reflecting his overwatch viewpoint of the scene or reflecting Duplantis' admitted acts in firing upon Miguel. That is a gross (and apparently intentional) oversight.

CAUSES OF ACTION

Count I – 42 U.S.C. § 1983 Unreasonable Seizure and/or False Arrest in Violation of the Fourth Amendment (Against Defendant Officers and Doe Officers)

95. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

96. Defendant Officers and Doe Officers reportedly first arrived at Miguel's home at 9:01 p.m. on October 13, 2020. By 9:02 p.m., Tenney and Doe Officers had already begun holding Miguel at gunpoint, and shortly thereafter, they used a police car to block Miguel's car in his driveway. These actions made it clear to any reasonable person that Miguel was not free to leave. Defendant Officers and Doe Officers subsequently substituted the police car that was blocking Miguel's car from exiting with TPSO's armored BearCat, which was occupied by Doe Officers and Duplantis, who drew down on Miguel with assault rifles. Duplantis's rifle and the armored SWAT truck likewise made it clear to any reasonable person that Miguel was not free to leave. Upon information and belief, Bolgiano, Schlesinger, and Doe Officers also stood behind their police units in front of Miguel's home, holding their guns to Miguel throughout the incident, and the HPD and TPSO deliberately blinded Miguel with spotlights, further making it clear to a reasonable person that he was not free to leave.

97. It is clearly established law that if an officer exercises too much authority, too soon, a seizure is unconstitutional. That's what happened here. Defendant Officers and Doe Officers stopped and unreasonably seized Miguel almost immediately upon encountering him in his open, but fenced-in driveway without any reasonable suspicion that a crime had been committed or was about to be committed. As soon as Tenney approached Miguel in his driveway, a seizure occurred, and Fourth Amendment protections were triggered. Defendant Officers and Doe Officers further

unreasonably and unconstitutionally seized Miguel as they continued to block him in his driveway and subsequently used repeated excessive and deadly force against him, resulting in his needless and tragic death.

98. Additionally, or alternatively, Defendant Officers and Doe Officers falsely arrested Miguel by detaining him in his driveway with no probable cause. When Tenney arrived in front of Miguel's driveway, he had no probable cause to arrest Miguel, having reported that he did not see a gun or observe Miguel committing, or about to commit, any crime. No officer thereafter reported witnessing Miguel violating or about to violate any law, or that he possessed a gun. The lack of probable cause to arrest Miguel should have been evident to any reasonable person based on the facts and circumstances within Defendant Officers' and Doe Officers' knowledge at the time.

99. At the time, Defendant Officers and Doe Officers were acting under the color of state law, wearing their department-issued uniforms and body armor, bearing state-issued firearms and other weaponry and holding themselves out as police officers. They did not rely on specific and articulable facts or probable cause that reasonably warranted seizing, arresting, or using repeated excessive and deadly force against Miguel, thereby violating his Fourth Amendment rights.

100. Defendant Officers' and Doe Officers' conduct was objectively unreasonable in light of clearly established law providing that individuals have a right to be free from unreasonable searches, seizures, false arrests, and excessive use of deadly force.

101. As a direct and proximate result of the Defendant Officers' and Doe Officers' misconduct, Miguel suffered substantial and irrevocable damages, including death.

102. As a direct and proximate result of Defendant Officers' and Doe Officers' misconduct causing Miguel's death, Plaintiffs suffered and continue to suffer damages including pain and suffering, grief, loss of enjoyment of life, severe emotional distress, loss of companionship, loss of support, other similar damages, as well as expense damages, including for funeral and burial costs.

**Count II – 42 U.S.C. § 1983 Unreasonable Searches in Violation of the Fourth Amendment
(Against Leonard, Dorris, and Doe Officers)**

103. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

104. The search warrants obtained by LSP on October 14 and 19, 2020, respectively, to search Mrs. Nevarez and Miguel's home, the car Miguel was in, which was registered to Mrs. Nevarez, and Mrs. Nevarez's cell phone, were unlawful as no probable cause could exist for these warrants.

105. Leonard and Dorris knowingly, intentionally, and with reckless disregard for the truth submitted affidavits containing false and/or insufficient factual statements and material omissions to procure the search warrants. By way of example, and as previously discussed, both Dorris and Leonard misrepresented that the search warrants were for "their active investigation of the crime of LRS 14:37.2 Aggravated Assault Upon a Peace Officer." But this charge is based on the Defendant Officers' disputed allegation that Miguel raised a gun towards them in the yard of the Nevarez home, where and at which point the HPD and TPSO killed Miguel. Moreover, Dorris and Leonard reported recovering the gun Miguel had allegedly aimed immediately after the shooting, with all relevant events occurring *outside* the Nevarez home and car. No probable cause—and therefore no supportable factual statements by Leonard—could exist to justify an invasive search warrant for evidence of aggravated assault on a peace officer within the Nevarez

home, the car, and certainly not within the digital contents of Mrs. Nevarez's unduly seized cell phone.

106. Leonard also used vague facts to suggest probable cause existed to search the Nevarez home and car, stating, among other things, that: (i) LSP responded to an officer involved shooting "at the residence of 356 Polk Street"; (ii) "[t]he initial complaint" precipitating the shooting "was that of a subject armed with a weapon illegally [*sic*] discharging the weapon"; (iii) officers "responded and made contact with the subject at 356 Polk Street"; and (iv) "[d]uring the course of the investigation, the subject barricaded himself inside of a white Mitsubishi sedan backed in the driveway" before he (v) "exited the vehicle", (vi) "presented a firearm toward officers", and (vi) was "subdued" by the HPD and TPSO. These statements not only paint an unsubstantiated picture of Miguel as aggressive and hostile to the police response at his home, but also: (i) leave open where the alleged events occurred (*i.e.*, within the residence or wholly within the curtilage of the property); (ii) obfuscates the protracted timetable on which they occurred; (iii) carefully omits any suggestion of the HPD and TPSO's militarized response, failure to engage or communicate effectively with Miguel, or their rushed and tactically unsound advance upon him; (iv) omits that the HPD and TPSO actively pursued and killed Miguel as he ran away from them; (v) omits that Miguel never "barricaded" himself inside his car and that he had merely been sitting in the car, including when he was first approached by HPD; and (vi) fails to disclose that Miguel was pronounced dead before the LSP commenced its purported investigation and applied for the warrants.

107. In total, Defendant Leonard's warrant application was designed to suggest probable cause existed to search inside the home, despite none of the relevant events occurring there, there being no exigencies compelling police entry to the residence, and it being impossible to

posthumously assess any charges against Miguel. The Nevarez home—including the kitchen, bathroom, bedrooms, and living room—was unlawfully searched and photographed pursuant to the search warrant Leonard procured.

108. Likewise, Dorris submitted an affidavit containing similar false, insufficient, and misleading statements to secure an overbroad search warrant not only for photographs, GPS information, and other irrelevant information from Mrs. Nevarez’s cell phone but also for personal biometric information including DNA swabs and fingerprints. For instance, Dorris swore that the phone was used to “contact” Miguel and “secured as evidence *after* the incident.” This is patently false; it is undisputed that Mrs. Nevarez’s phone was seized *during* the incident, confiscated by the HPD, and that the cell phone was still in HPD’s and/or LSP’s possession at the time the affidavit was executed because they had *refused to return it* to Mrs. Nevarez despite her many requests. Not only was there no legal basis to seize Mrs. Nevarez’s cell phone in the first place, there was absolutely no probable cause to justify searching it after the fact. There was no indication the phone was used by anyone or for any purpose during or after the incident other than Lt. T. Theriot’s brief and abortive communication with Miguel, to which Lt. T. Theriot was competent to attest, and the LSP’s performative criminal investigation does nothing to change that. Indeed, Dorris ultimately reported that he found “nothing of evidentiary value” on Mrs. Nevarez’s phone—that is, he did not find any text messages from Miguel that could support the HPD, TPSO, and LSP’s contrived tale of “suicide by cop” effected by “aggravated assault upon a peace officer.”⁵

109. Doe Officers, who, upon information and belief, were employed by LSP, searched Mrs. Nevarez and Miguel’s home, the car, and Mrs. Nevarez’s cell phone pursuant to the search warrants, seizing various items in the process—none of which have been returned. As a direct and

⁵ Significantly, Dorris reached the same conclusion about Miguel’s own phone, finding “nothing of evidentiary value” therein.

proximate result of the searches, none of which were supported by probable cause, Mrs. Nevarez suffered and continues to suffer substantial damages, including compensatory damages, impairment to her reputation, personal humiliation, and mental and emotional injury, and she seeks punitive damages for the unconstitutional searches.

**Count III – 42 U.S.C. § 1983 Excessive Force
(Against Defendant Officers and Doe Officers)**

110. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

111. With no legal cause, Defendant Officers and Doe Officers used repeated excessive and deadly force against Miguel. Among other things, Defendant Officers and Doe Officers subjected Miguel to at least 19 instances of excessive force, including when each of them used repeated deadly force against Miguel *after* they had already shot him with a 40 mm weapon and tased him.

112. The first instance of excessive force occurred when officer S. Theriot fired the “less lethal” 40 mm at Miguel and did so without first issuing any commands to Miguel to stop or to surrender himself. This use of force was unreasonable for numerous reasons, including the fact that Defendant Officers and Doe Officers alleged that Miguel was running towards the back of his home—*away* from them and the confrontation.

113. Both Tenney and S. Theriot reported that the 40 mm incapacitated Miguel, causing him to stumble and “yell”, at which time Miguel posed no threat of serious physical harm to Defendant Officers and Doe Officers. Yet, they continued to use excessive force against Miguel, all while failing to give him any warnings or commands.

114. The second instance of excessive force occurred when Tenney further tased Miguel, also without warning or command, incapacitating him and causing him to stumble to the ground, showing Miguel posed no threat of serious physical harm to Defendant Officers and Doe Officers.

115. Despite Miguel having been incapacitated on two separate occasions, Tenney, Bolgiano, Duplantis, Schlesinger, and Doe Officers then each used repeated excessive deadly force against an incapacitated Miguel, again having failed to issue any warnings or commands to him before doing so. Just *one* time can an officer be heard telling Miguel to “drop the gun” they had perceived—but the Defendant Officers were already firing before this officer could even finish, having ambushed Miguel and giving him no time to comply with any instruction. Miguel fell to the ground within the first second of being shot, visibly incapacitated with no gun in his hands, yet Defendant Officers continued to riddle his body with shots for at least three more seconds, including shooting him at least two additional times in his legs when he was indisputably prone and not moving.

116. It is clearly established law that after a suspect has been incapacitated, an officer cannot continue using deadly force as Defendant Officers and Doe Officers did here. Furthermore, an exercise of force that is reasonable at one moment can become unreasonable in the next if the justification for the use of force has ceased. Each of the 17 shots that struck Miguel therefore represents a separate, legally distinct exercise of deadly force, each of which was alone capable of fully incapacitating (or killing) Miguel. Each and every shot fired upon Miguel following his incapacitation is distinctly unreasonable and excessive.

117. Defendant Officers and Doe Officers, who were acting under the color of state law, and acting with deliberate indifference, deprived Miguel of the rights, privileges, and immunities

afforded to him under the Constitution and laws of the United States, including those under the Fourth and Fourteenth to the Constitution.

118. Defendant Officers' and Doe Officers' actions reflect their reckless disregard for Miguel's constitutional rights and his humanity; and, the willful, cruel, and unconscionable actions of Defendant Officers and Doe Officers warrant punitive damages for the incredible suffering caused to Miguel's widow and children.

**Count IV – Wrongful Death
(Against Defendant Officers, Doe Officers, Coleman, and Soignet)**

119. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

120. Defendant Officers and Doe Officers are liable jointly, severally, and *in solido* for wrongfully causing Miguel's death. They each used unjustifiable deadly force against him multiple times with deliberate indifference to his constitutional rights and humanity, including their callous disregard for his medical needs after they each shot him.

121. Coleman and Soignet, in their individual capacities, are also jointly and severally liable for wrongfully causing Miguel's death—where they participated in and ratified the events leading up to Miguel's death and acted with deliberate indifference to his humanity and the constitutional violations Miguel experienced, including the multiple instances of deadly force.

122. The actions of Defendant Officers, Doe Officers, Coleman, and Soignet were the proximate cause of the damages suffered by Miguel and Plaintiffs. The unreasonable seizures, including his death, and repeated uses of excessive and deadly force by Defendant Officers and Doe Officers, under the authority and presence of Coleman and Soignet, proximately caused Miguel to be physically injured to the point of death and experience conscious pain and suffering, and severe emotional distress before he died.

123. Plaintiffs are entitled to recover for Miguel's wrongful death, including general damages and other compensable injuries. These damages and compensable injuries include pecuniary losses such as funeral and burial expenses, lost benefits, and the value of Miguel's household services. Plaintiffs have also suffered damages in the form of loss of love, affection, companionship, and support. Additionally, the willful, cruel, and unconscionable actions of Defendant Officers, Doe Officers, Coleman, and Soignet warrant punitive damages for the incredible suffering caused to Miguel's widow and children.

**Count V – Supervisory Liability
(Against Coleman and Soignet)**

124. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

125. Coleman, individually, is and was Chief of Houma Police during the incident and is vicariously liable for all conduct of, or attributable to, Defendant Officers and the 20 or so Doe Officers of the Houma Police Department who were on scene when Miguel was killed. Coleman, who was also on scene affirmatively participating during the encounter with Miguel, failed to supervise or otherwise act to prevent 25 or more of his officers, including Defendant Officers and Doe Officers, from violating Miguel's constitutional rights on multiple occasions, beginning with the unconstitutional seizure of Miguel in his driveway and ending with 17 instances of deadly force. In doing so, Coleman acted with deliberate indifference to his officers' repeated violations of Miguel's constitutional rights. A causal link exists between Coleman's failures to supervise, or otherwise act, and the violation of Miguel's constitutional rights where the Defendant Officers and Doe Officers unlawfully seized then shot and killed Miguel unjustifiably.

126. Soignet, individually, is also vicariously liable for all conduct of, or attributable to, Defendant Officers and Doe Officers, including the two dozen TPSO Doe Officers who were at

the scene and aiding the Houma Police in their unconstitutional seizures of Miguel. TPSO Doe Officers, as well as Soignet, who was also on scene affirmatively participating during the encounter with Miguel, assisted in seizing Miguel unconstitutionally by blocking him in his driveway, surrounding his home, and holding him at gunpoint alongside Houma Police. The armored BearCat that blockaded Miguel in his driveway was TPSO property under Soignet's authority. Soignet failed to supervise or otherwise act to prevent these Doe Officers of TPSO, as well as Duplantis who was inside of the BearCat and among the officers who shot Miguel, from violating Miguel's constitutional rights. A causal link exists between Soignet's failures to supervise, or otherwise act, and the violation of the Miguel's constitutional rights where the Defendant Officers and Doe Officers unlawfully seized then shot and killed Miguel unjustifiably. Soignet's failure to supervise the Defendant Officers and Doe Officers, including Officer Duplantis who fired his weapon several times from the top hatch of the TPSO BearCat amounts to deliberate indifference.

127. Both Coleman and Soignet failed to instruct the Defendant Officers and Doe Officers against unreasonably seizing Miguel and authorized or allowed them to use excessive and deadly force against Miguel repeatedly. Additionally, Coleman and Soignet failed to provide clear leadership during the incident or to implement constitutional procedures, which all but guaranteed the resulting use of excessive force against and unjustified killing of Miguel. Coleman and Soignet's failures in leadership included but were not limited to an inability or refusal to provide the officers at the scene with any guidance, commands, signals, and instructions about where the officers should be positioned, when they could and should leave cover, and what the plan was for if or when Miguel attempted to exit the car. That is, Coleman and Soignet fundamentally failed to secure the scene by erecting a disorganized, uncoordinated, and porous perimeter.

128. As such, the scene devolved into chaos and confusion when Miguel did exit the car, with the Defendant Officers' and Doe Officers' slapdash and panicked responses leading to their use of repeated and excessive deadly force against Miguel.

129. Several HPD and/or TPSO officers advanced haphazardly toward Miguel and the car as he exited it. Other responding officers, including but not limited to Bolgiano, Schlesinger, and Fitch, eagerly abandoned their cover position to join in a reckless rush toward the Nevarez home—despite contradictory calls from other Doe Officers to “let him [Miguel] go.” The responding officers' unsound advances created (i) dangerous crossfire among their own members and (ii) a firing squad perfectly poised to ambush Miguel as he ran toward his home, unaware of their presence.

130. The absence of any plan or strategy for if Miguel exited the car was apparent, and the tragic result of Miguel's death was a direct consequence of Coleman's and Soignet's failures in their duties as supervisors on scene. Their willful, cruel, and unconscionable actions and omissions warrant punitive damages for the incredible suffering caused to Miguel's widow and children.

**Count VI – Survival Action
(Against Defendant Officers and Doe Officers)**

131. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

132. Plaintiffs, as Miguel's surviving wife and children, have standing to bring this claim under to La. C.C. Art. 2315.1 A(1) (“If a person who has been injured by an offense or quasi offense dies, the right to recover all damages for injury to that person, his property or otherwise, caused by the offense or quasi offense, shall survive for a period of one year from the death of the

deceased in favor of: The surviving spouse and child or children of the deceased, or either the spouse or the child or children.”).

133. Defendant Officers and Doe Officers, who were acting under the color of state law, deprived Miguel of the rights, privileges, and immunities afforded to him under the Constitution and laws of the United States, including those under the Fourth and Fourteenth Amendments to the Constitution. Among other things, Defendant Officers and Doe Officers, acting with deliberate indifference, subjected Miguel to unreasonable seizures and repeated excessive and deadly force.

134. As explained, Defendant Officers’ and Doe Officers’ conduct ultimately caused Miguel’s death. These defendants not only lacked any regard for Miguel’s humanity, but they also acted in callous disregard and with deliberate indifference to the rights afforded to him under the Constitution, including to be free from unreasonable seizure and excessive and deadly force. Their wrongful acts and omissions were willful, oppressive, malicious, and shocking to ordinary citizens’ conscience, all of which warrant an award of punitive damages against each of the Defendant Officers and Doe Officers.

Plaintiffs have suffered, and continue to suffer, damages as result, including pain and suffering, grief, loss of enjoyment of life, severe emotional distress, loss of companionship, loss of support, and other similar damages.

**Count VII – 42 U.S.C. § 1983 Failure to Intervene/Bystander Liability
(Against Defendant Officers, Coleman, Soignet, and Doe Officers)**

135. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

136. Coleman and Soignet, in their individual capacities, and Doe Officers knew that Defendant Officers and Doe Officers were violating Miguel’s constitutional rights by unreasonably seizing him in his driveway.

137. Each Defendant Officer likewise knew that they and other Doe Officers were violating Miguel's constitutional rights by unreasonably seizing him in his driveway.

138. Defendant Officers, Coleman, Soignet, and Doe Officers had a reasonable opportunity to intervene and prevent the unreasonable seizure during the nearly two hours that Miguel was unlawfully seized and held at gunpoint. However, they—with deliberate indifference to and reckless disregard for Miguel's constitutional rights, safety, and humanity—committed, or allowed to be committed, an unreasonable seizure that deprived Miguel of his constitutional rights, including by allowing each Defendant Officer and Doe Officer to provoke and escalate the seizure into multiple instances of unreasonable deadly force.

139. Any reasonable police officer in Defendant Officers', Coleman's, Soignet's, and Doe Officers' positions would have known that the initial seizure of Miguel was unreasonable in light of the circumstances and thus that they had an affirmative duty to take reasonable measures to intervene.

140. As a direct and proximate result of the unreasonable failures to intervene by Defendant Officers, Coleman, Soignet, and Doe Officers, Miguel was subjected to an unlawful seizure when he was detained and falsely arrested without any reasonable articulable suspicion or probable cause and subsequently was subjected to at least 19 instances of excessive force, including deadly force. Their wrongful acts and omissions were willful, oppressive, malicious, and shocking to ordinary citizens' conscience, all of which warrant an award of punitive damages against each of the Defendant Officers and Doe Officers.

141. Plaintiffs have also suffered, and continue to suffer, damages as result, including compensatory damages, pain and suffering, grief, loss of enjoyment of life, severe emotional distress, loss of companionship, loss of support, and other similar damages.

**Count VIII – Battery
(Against Defendant Officers and Doe Officers)**

142. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

143. Defendant Officers and Doe Officers battered Miguel, causing his death. As explained, they intentionally and without Miguel’s consent used harmful and offensive conduct against him, including when Defendant Officers and Doe Officers unlawfully shot him with a 40 mm “less lethal” weapon, tased him, and then each shot him multiple times. Each of these uses of force was excessive and resulted from escalation and provocation solely by Defendant Officers and Doe Officers.

144. In doing so, Defendant Officers and Doe Officers injured Miguel and Plaintiffs, who are therefore entitled to general and compensatory damages.

**Count IX – Assault
(Against Defendant Officers, Coleman, Soignet, and Doe Officers)**

145. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

146. Defendant Officers, Coleman (individually), Soignet (individually), and Doe Officers, as explained, intentionally used harmful and offensive conduct against Miguel, including when Defendant Officers and Doe Officers unlawfully shot him with a 40 mm “less lethal” weapon, tased him, and then each shot him multiple times. Defendant Officers, Coleman, Soignet, and Doe Officers placed Miguel in reasonable apprehension of receiving that harmful and offensive conduct by blocking his car in his own driveway with an armored SWAT truck, blinding him with spotlights, depriving him of any chance to talk to his wife, Mrs. Nevarez, during a

moment of crisis, and surrounding him with numerous police units and dozens of heavily-armed officers who eagerly drew down on him from the outset.

147. In doing so, Defendant Officers and Doe Officers injured Miguel and Plaintiffs, who are therefore entitled to general and compensatory damages.

**Count X – Violation of Louisiana Public Records Law
(Against Black and Manale)**

148. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

149. Each person's right to examine public documents is preserved by Article XII, § 3 of the Louisiana Constitution and the Public Records Law, La. Stat. § 44:31, *et seq.* In connection with Miguel's death, Plaintiffs, through undersigned counsel, sought the previously listed public records from the records custodians of TPCG and LSP, Defendants Black and Manale, respectively, under Louisiana's Public Records Law.

150. To date, portions of the requested public records still have not been received, including, importantly, *all* of the videos believed to show the Defendant Officers and Doe Officers shooting at Miguel.

151. Further, neither custodian produced the requested records within five days of receipt of Plaintiffs' requests to access the public records, nor did either custodian provide Plaintiffs' counsel a written estimate of the time reasonably necessary for collection, redaction, examination, or review of the request. The custodians have: (i) unreasonably delayed producing the requested records, (ii) arbitrarily and capriciously withheld the requested records, and (iii) unreasonably and arbitrarily failed to respond to the request as required by Louisiana R.S. 44:3.

152. Accordingly, Plaintiffs have been deprived of their rights under the Louisiana Public Records Law and are entitled to injunctive relief and/or issuance of a writ of mandamus,

attorneys' fees and costs, and damages, including the attorneys' fees incurred for bringing this action should the withheld records plainly contradict any of Plaintiffs' claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that after due proceedings, the Court enter judgment in their behalf and against all Defendants, jointly, severally, and *in solido*, as follows:

1. Compensatory damages, including funeral and burial costs for Miguel Nevarez;
2. Reasonable attorneys' fees and costs, including in relation to Plaintiffs' Public Records Requests;
3. Injunctive relief and/or issuance of a writ of mandamus for copies of the foregoing requested public records;
4. Punitive damages; and
5. All other relief that this Court deems just and proper.

/s/ E. Bridget Wheeler

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**Admitted pro hac vice*

***Pro hac vice pending*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2022, I caused a true and correct copy of the Plaintiffs' Second Amended Complaint to be filed via the Court's CM/ECF system, serving all enrolled counsel of record.

/s/ *Xakema Henderson*
Xakema Henderson