

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

GEORGE ALVAREZ
Plaintiff

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VS.

Civil Action No. _____

**THE CITY OF BROWNSVILLE, CHIEF
CARLOS GARCIA, JAILER JESUS ARIAS,
SERGEANT DAVID INFANTE, LIEUTENANT
HENRY ETHERIDGE AND COMMANDER
ROBERT AVITIA**
Defendants

PLAINTIFF'S ORIGINAL COMPLAINT & DEMAND FOR JURY

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW GEORGE ALVAREZ, plaintiff in the above-styled and numbered civil action, and files his Original Complaint against the City of Brownsville, Chief Carlos Garcia, Jailer Jesus Arias, Sergeant David Infante, Lieutenant Henry Etheridge and Commander Robert Avitia and for cause of action would show the Court and Jury the following:

1. This is a case about the filing of a false police report by the police authorities and the unconscionable withholding of exculpatory evidence by the same authorities. As a result of these actions and inactions George Alvarez spent over four (4) years in a Texas State prison. The Texas Court of Criminal Appeals finally EXONERATED Mr. Alvarez on October 13, 2010 making a finding of "Actual Innocence" based on the exculpatory evidence withheld by the Brownsville Police Department. This lawsuit seeks to remedy the harm caused by these unconscionable acts committed by the Defendants.

2. The exculpatory consists of a video recording which was discovered in the Internal Affairs records of the Brownsville Police Department several years after Plaintiff had been sentenced to prison. This video had never been disclosed to anyone outside the Brownsville Police Department, including the prosecution or plaintiff's criminal defense counsel. Said failure to disclose constitutes a violation of plaintiff's civil rights pursuant to *Brady v. Maryland* and its progeny.
3. The unconstitutional and tortious acts of the individual defendant officers and jailers were not isolated incidents. Rather these acts were consistent with a custom and practice of the City of Brownsville Police Department of using coercive tactics, filing false police reports, withholding exculpatory evidence, failing to disclose evidence of crimes committed on its premises by its employees, failing to properly investigate serious crimes, failing to properly train and supervise the jailers and officers in these critical law enforcement responsibilities and failing to arrest and charge its own jailers with assaults committed by the jailers in the presence of other officers.
4. Thus, beyond compensating Mr. Alvarez for the more than 4 years the City stole from him, and his continuing injuries, this action seeks to redress the unlawful municipal customs, policies, patterns and practices pursuant to which defendants, acting under color of law both independently and in concert, violated Mr. Alvarez' clearly established rights as guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.
5. As a result of the defendants' tortious and unconstitutional conduct, George Alvarez was sentenced to eight years in prison and served four before he was declared innocent. Mr. Alvarez seeks relief for the defendants' violation of his rights secured by the Civil Rights

Act of 1871, 42 U.S.C. s 1983, and of the rights secured by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and for rights secured under the laws of the State of Texas. Plaintiff seeks damages, compensatory and punitive, affirmative and equitable relief, an award of costs and attorneys fees, and for such other and further relief as this court deems equitable and just.

I. JURISDICTION AND VENUE

6. This action is brought pursuant to 42 U.S.C. §§1983, 1985, 1986, and 1988, the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and pursuant to the common law of the State of Texas. Jurisdiction is conferred upon by this Court by 28 U.S.C. §§1331, 1332 and 1343.
7. Venue is proper in the Southern District of Texas as all actions of which Plaintiff complains occurred in Cameron County, Texas.

II. PARTIES

8. Plaintiff, George Alvarez is and was at all times material to this complaint, a citizen of the United States and resident of the State of Texas.
9. Defendant, THE CITY OF BROWNSVILLE (herein "BPD"), is an incorporated municipality of the State of Texas, situated primarily in Cameron County, Texas. At all relevant times alleged herein, the City of Brownsville was acting under the color of state law and by and through its agents or employees, who were also acting under color of state law and within the course and scope of their agency or employment. Defendant Brownsville may be served by serving Estella Von Hatten, City Secretary, City of Brownsville, 1034 East Levee Street #100, Brownsville, Texas.

10. Defendant, Chief Carlos Garcia, is a resident of Cameron County, Texas. At all relevant times alleged herein, Chief Carlos Garcia, was acting under the color of state law. He is sued in both his individual and official capacity. Defendant Garcia may be served by serving Estella Von Hatten, City Secretary, City of Brownsville, 1034 East Levee Street #100, Brownsville, Texas.
11. Defendant, Jesus Arias, is a resident of Cameron County, Texas. At all relevant times alleged herein, Defendant Arias was acting as a jailer for the City and acting under the color of state law. He is sued in both his individual and official capacity. Defendant Arias may be served by serving Estella Von Hatten, City Secretary, City of Brownsville, 1034 East Levee Street #100, Brownsville, Texas.
12. Defendant, David Infante, is a resident of Cameron County, Texas. At all relevant times alleged herein, Defendant Infante was acting under the color of state law. He is sued in both his individual and official capacity. Defendant David Infante may be served by serving Estella Von Hatten, City Secretary, City of Brownsville, 1034 East Levee Street #100, Brownsville, Texas.
13. Defendant, Henry Etheridge, is a resident of Cameron County, Texas. At all relevant times alleged herein, Defendant Etheridge was acting under the color of state law. He is sued in both his individual and official capacity. Defendant Etheridge may be served by serving Estella Von Hatten, City Secretary, City of Brownsville, 1034 East Levee Street #100, Brownsville, Texas.
14. Defendant, Robert Avitia, is a resident of Cameron County, Texas. At all relevant times alleged herein, Defendant Avitia was acting under the color of state law. He is sued in both his individual and official capacity. Defendant Avitia may be served by serving

Estella Von Hatten, City Secretary, City of Brownsville, 1034 East Levee Street #100, Brownsville, Texas.

III. GENERAL ALLEGATIONS

15. Plaintiff alleges generally that BPD Jailer, Jesus Arias, assaulted him and used excessive force while he was a pre-trial detainee at the Brownsville City Jail located on 600 East Jackson Street, Brownsville, Texas. Plaintiff further alleges that Defendant Arias and Defendant Brownsville and its Police Officers filed a false police report in which they accused him of committing the felony offense of assault on a public servant. Further, such defendants knew of the existence of an exculpatory video depicting the incident and failed to disclose said video. At the time of the actions at issue, Defendant Arias and the Defendant Police Officers were in the employ of the City of Brownsville Police Department.
16. Defendant BPD is liable for its official policies and practices that failed to adequately train Jailer Arias and the Defendant Police Officers and failed to ensure they were knowledgeable and skilled in official policies, procedures and techniques relating to detention, use of force, and disclosure of evidence. Further, Defendant BPD's detention policies and ordinances failed to provide for the proper supervision from the commencement of the assault and use of excessive force to the failing to disclose exculpatory evidence. This failure to supervise and/or train includes a failure to discipline and/or to intervene and stop the defendant jailers from continuing their unconstitutional course of actions. Plaintiff alleges that these policies and practices of the Defendant BPD were unconstitutional on their face. In these failings, Defendants violated the Constitutional rights of Plaintiff George Alvarez.

17. Defendants are further liable for fabricating charges against Plaintiff in violation of Plaintiff's constitutional rights. Defendants filed the false allegation of felony assault of a public servant against the Plaintiff. Plaintiff was found "ACTUALLY INNOCENT" of the charges. Defendant Brownsville's official municipal policies and/or widespread custom of failing to train its officers on the proper method of investigating and filing criminal cases were promulgated with deliberate indifference to the known or obvious consequences those constitutional violations such as Plaintiff's, would result.

IV. FACTUAL ALLEGATIONS

SYNOPSIS

18. The Texas Court of Criminal Appeals, on a Writ of Habeas Corpus petition, ordered plaintiff's post-conviction acquittal and his immediate release from a Texas state penitentiary. By then the plaintiff had served 4 years of an 8 year sentence on a conviction for assaulting a peace officer, a jailer at the BPD city jail. The High Court set him free based on a jail video that clearly showed not only that the plaintiff did not commit the assault, but instead showed that the jailers had assaulted him. However, this video had been hidden by the police department, even though everyone from the assaulting jailers and up the chain of command knew about its existence and of its exonerating nature. None of them ever disclosed it to the Cameron County Grand Jury, the District Attorney's office or to the plaintiff throughout the plaintiff's conviction and his subsequent time in the penitentiary.
19. It took litigation in another similar case where the Brownsville police department's jailers also assaulted another inmate to uncover the video in this case. In that case the jailers assaulted the inmate, and then they filed a false police report claiming that he had

assaulted them. There they also withheld a video that demonstrated that the charge was false from the Cameron County Grand Jury, the District Attorney's office and the plaintiff in that matter. During the litigation in that case the undersigned attorney discovered the hidden video that later formed the basis for the Court's acquittal of the plaintiff.

THE ARREST OF GEORGE ALVAREZ

20. On the night of November 27, 2005, Plaintiff, George Alvarez, a 17 year old high school student, was arrested by Defendant City of Brownsville Police Department (BPD) for suspicion of committing the misdemeanor crime of burglary of a motor vehicle. Plaintiff Alvarez was placed in a jail cell at the Brownsville Police Department located on 600 E. Jackson Street, Brownsville, Texas.
21. The defendant BPD categorizes and operates this jail as a minimum risk detention facility designed to hold detainees only until they are arraigned. A magistrate judge appears every morning and arraigns the detainees and sets bonds for their release. Thereafter, Defendant BPD transfers the detainees who do not post a bond to the Cameron County Detention Center.
22. While in the jail cell, the Plaintiff tried to use a telephone located inside the cell. Defendant BPD placed this telephone there so that the detainees can make calls to family members or attorneys. However, the telephone is frequently inoperable, a fact that the jailers know, but the detainees do not. Therefore, several detainees try to make phone calls, are not able to do it, and in their helplessness end up tapping the apparatus against the wall unit to get a dial tone or yelling for someone from the jail to fix the phone. The

plaintiff did the same. He could not use the telephone and became frustrated with it. According to the jailers, he then began banging the earpiece against the wall unit.

23. Allegedly, due to the plaintiff's phone behavior, the defendant jailer Jesus Arias, (Arias), decided to take the plaintiff out of this cell and to put him in another cell with no phone. Three jailers, including Arias, went into the cell to remove the Plaintiff. However, when the Plaintiff attempted to speak to them, Arias suddenly lurched on the Plaintiff from behind and then seized him by the neck in an illegal choke hold.
24. Plaintiff, a 17 year old scrawny kid who stands about 5' 4' and weighed about 135 lbs, was yanked up and back by his neck with great force by Jailer Arias, who weighs over 200lbs. Plaintiff was in great pain as he was being placed in this lateral vascular neck restraint and he struggled in order to breathe. Jailer Arias did not release this lateral vascular neck restraint and eventually brought the Plaintiff down to the floor as the plaintiff struggled to breathe.
25. On the ground, Defendant Arias continued to choke Plaintiff and cutoff his air supply. Other jailers were present and were pulling Plaintiff's arms back as he was being choked by Jailer Arias. Plaintiff was then handcuffed and shackles were placed on his legs as Jailer Arias continued choking Plaintiff on the floor of the City Jail.
26. Jailer Arias eventually released the lateral vascular neck restraint and all the Jailers then lifted Plaintiff and threw him inside another cell. Plaintiff was left on the floor with his hands cuffed behind his back and shackles on his legs. Jailer Arias went back to his station where he sat down and appears on video to be smiling and laughing with the other jailers.

THE FILING OF THE FALSE FELONY POLICE REPORT

27. Jailer Arias and Defendant BPD then set about a series of events that led to Plaintiff's unconstitutional imprisonment. Jailer Arias called fellow BPD employee, Police Officer James Brown, and filed an assault case against George Alvarez.
28. Officer Brown prepared a report solely based on the version of events given to him by Jailer Arias and his fellow jailers. He never spoke to the Plaintiff to get his version of the events. His report merely recites what he was told by the Jailers that Plaintiff "immediately resisted" and "had to be taken to the ground." The report fails to mention that the Plaintiff merely stopped to ask the Jailer a question it also fails to mention that it was Jailer Arias who approached Plaintiff from behind and placed Plaintiff in an illegal lateral vascular neck restraint. It also failed to mention that it was Arias not Plaintiff that initiated the physical contact.
29. Defendant BPD then presented Jailer Arias' offense report against Plaintiff to the District Attorney's Office. The Cameron County District Attorney's Office then presented it to the Cameron County Jury. Based on Defendant BPD's investigation of the offense and the self-serving statements of the jailers, the Grand Jury had no choice but to return a felony indictment against Plaintiff for Assault on a Public Servant. The District Attorney's Office and the Grand Jury were not aware that Defendant BPD had hid a CD recording of the incident from them.

THE HIDDEN CD RECORDING

30. Defendant BPD's jail is equipped with cameras placed at different locations throughout the jail. This allows the jailers to monitor all activity inside the cells from their stations. On the day of the jailers' assault of the plaintiff the cameras were on as normal.

Therefore, the jail cameras recorded the assault that the jailers committed on the Plaintiff. All of the defendants, including Arias, his supervisors and superiors, Sergeant David Infante, Lieutenant Henry Etheridge, Police Commander Robert Avitia and the BPD Chief of Police Carlos Garcia, knew of the cameras and that they captured images of the inmates and the conduct of its jailers toward these inmates. This is because they can view the camera's images from their computer monitors installed for this purpose, and because they viewed the CD that recorded the assault.

31. Defendant BPD conducts internal affairs investigations any time that jailers engage in use of force. The focus of the internal investigation is to determine if Jailer Arias acted appropriately in his use of force against the plaintiff. In doing so the above defendants became aware that defendant Arias had assaulted the plaintiff. They also became aware that Arias had filed false charges against Plaintiff. Finally, they became aware that a CD existed which recorded the assault and exonerated the plaintiff of the false accusation. Defendant BPD created an internal report in which the criminal charge against Plaintiff is referenced and so is their review of the exculpatory CD.
32. However, all the above defendants failed to arrest or even discipline Arias, concluding instead that his actions were appropriate. Moreover, in spite of their awareness that Arias had committed an assault and filed false charges, none of the defendants gave a copy of the CD to the District Attorney's Office nor did BPD mention it in any of their reports to the same office. Instead, the BPD buried the exculpatory CD in their private internal affairs files. Moreover, none of the acting supervisors intervened to stop the criminal process set about by the false police report.

THE CONVICTION AND SENTENCING OF PLAINTIFF

33. The District Attorney's Office and the Cameron County Grand Jury were not aware of the CD that the Brownsville Police Department withheld from them. Neither was the attorney that represented the plaintiff aware of this video. Therefore, the case file in the Court, on which all parties relied on to determine the best course of action for the plaintiff to take, contained only the self-serving statements of the Arias and two other jailers stating that the Plaintiff assaulted Arias and that Plaintiff was violent, combative and argumentative.
34. Plaintiff George Alvarez proceeded to go to court and face his felony charge. Faced with the statements of the three (3) jailers against his word, Plaintiff pled guilty. His alternative was to go to trial and run the high risk that a jury would believe the jailers and punish him with a high number of years of imprisonment. Plaintiff's criminal defense counsel was able to secure him a probation term of eight (8) years. For plaintiff, this was as good as having been sentenced to the penitentiary. At the time, he was battling a drug addiction and shortly after being convicted he was accused of violating his probation. Plaintiff was sentenced to eight (8) years in prison on the original false charge.

THE DISCOVERY OF THE EXCULPATORY CD THROUGH LITIGATION OF A SIMILAR CASE

35. Plaintiff's incident was not an isolated one. Defendant BPD engaged in this type of conduct on several other occasions. Through a similar lawsuit, it was discovered that Defendant BPD had several other CD recordings of jailer violence secretly stored away in its internal affairs records. None of these incidents have been reported to any outside agency. None of the jailers involved have ever arrested and charged with assault. Most

importantly, BPD has never disclosed any of these videos to anyone. It was through this similar lawsuit, that the undersigned discovered the Exculpatory CD that led to Plaintiff's exoneration.

36. While Plaintiff was serving his sentence in prison, Detainee Jose Lopez filed this similar lawsuit against Defendant BPD for use of excessive force by its jailers, for the withholding of video evidence, and for the filing of fabricated charges against him. It was during the discovery phase of the Jose Lopez litigation, that the video of Plaintiff Alvarez was discovered amongst the BPD's internal affairs records. These records had been previously ordered produced by the Federal Court in response to Lopez's Motion to Compel Discovery from the City of Brownsville.
37. Detainee Lopez's incident is so bizarrely similar to that of Plaintiff that it must be discussed. Jose Lopez was arrested on May 8, 2006 and was taken to the same Brownsville City Jail as was Plaintiff George Alvarez. While in jail, Detainee Lopez was apparently attempting to use the inoperable phone that was located inside his jail cell. After several unsuccessful attempts to place a phone call, Detainee Lopez became frustrated with the inoperable phone. According to the Jailers, he had to be removed from his jail cell and placed in another cell in order to protect the phone.
38. The Jailers alleged that Detainee Lopez became combative and had to be physically subdued. Jailer Jesus Arias was one of the jailers that pulled Detainee Lopez to the floor. Afterwards, Jailer Arias alleged that he had been assaulted by the detainee Lopez and initiated a felony criminal charge against Jose Lopez for assaulting a public servant.
39. Again, a Brownsville Police Officer was called to prepare an offense report. Similarly to the Plaintiff's case, the Jailer and the police officer knew that there was a video

recording, but no one makes any reference to the video. The supervisors, who also know of the video, are informed of the criminal charges, but they also withhold the video and fail to make it part of the offense report. Pursuant to their practice and policy, Defendant BPD then burns a copy of the incident on to a CD and buries it for internal affairs purposes.

40. Similarly to Plaintiff's incident, Detainee Lopez' criminal charge was submitted to the District Attorney's Office which then submitted the case to the Grand Jury to determine if Jose Lopez should be indicted for felony assault on a Public Servant. The Grand Jury in Lopez' incident also never had an opportunity to view or evaluate the way the incident actually occurred as the CD was withheld from them by Defendant BPD. Detainee Lopez was indicted.
41. Detainee Jose Lopez appeared for trial of the offense of Assault of a Public Servant charge. However, unlike Plaintiff, he entered a plea of not guilty and was willing to take his chances before a jury even though at the time he had no idea that a recording existed. He knew that it was basically his word against that of the jailers. Even after the Jury was selected, no one, including Mr. Lopez' criminal defense attorney, knew that a video recording of the incident existed.
42. After Mr. Lopez' criminal trial started, one of the attorneys involved with the case noticed that a report of the incident mentioned a computer monitor. The jailers were then asked about any potential recordings. In response to this request, the Brownsville Police Department produced the video recording of the Jose Lopez incident. It was not until this trial was half-way through that the CD of the Jose Lopez incident first appeared.

43. The statements submitted by Jailer Arias and his fellow jailers state that Detainee Lopez lunged at the jailers and that he swung at Jailer Arias requiring the use of force. The video that surfaced, however, shows Jailer Arias pulling Detainee Lopez from his cell and then dropping him to the ground. Once on the ground, Jailer Arias got on top of 60 year old Detainee Lopez, while another jailer proceeded to pull Lopez's head back from his pony tail. The entire time one jailer has his knee on Detainee Lopez's neck is seen smashing Mr. Lopez's face against the floor of the City Jail. The video was shown to the jury and they returned with a verdict of "Not Guilty" within minutes of viewing the abuse committed by the jailers.
44. This suppression of the Lopez video prompted the filing of a lawsuit against the City of Brownsville for use of excessive force and for withholding exculpatory video evidence from the grand jury that indicted Detainee Lopez. It was during this litigation that the undersigned attorney discovered the video recording of the Alvarez incident. This recording was produced, along with other internal documents, only after the City of Brownsville was ordered by the Federal Court to produce documents responsive to Detainee Lopez's Motion to Compel.
45. Plaintiff George Alvarez's CD was buried inside an internal affairs folder along with the Brownsville Police Report filed against Plaintiff. Counsel for Plaintiff noticed that a police report charging George Alvarez with felony assault was attached to the CD and also noticed that the Police Department withheld the CD and did not include it as part of the police report. A review of the CD quickly revealed its exculpatory content.

THE EXONERATION OF PLAINTIFF

46. Plaintiff filed a Writ of Application for Habeas Corpus seeking his exoneration. The Texas Court of Criminal Appeals, after conducting their own independent examination of Plaintiff's Writ, which included the newly discovered CD, ruled that Plaintiff was "Actually Innocent" of the charges that sent him to prison. Plaintiff was ordered released from his wrongful captivity after unnecessarily spending over 4 years behind bars.

IV CLAIMS FOR RELIEF

VIOLATIONS OF 42 U.S.C. SEC. 1983

A.

Use of Force

47. Plaintiff incorporates by reference all factual allegations of paragraphs above as though fully set forth at length herein and asserts that the same are moving factors which have resulted in the violations of Plaintiff's Constitutional protections.
48. Defendants acting under color of state law deprived Plaintiff of his rights, privileges and immunities secured by the Constitution of the United States, specifically those rights secured by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Said actions by Defendants caused Plaintiff injury and were undertaken pursuant to official municipal policy.
49. By grabbing Plaintiff in an illegal choke hold, as described above, Defendant Arias' conduct constituted wanton, reckless, willful and malicious disregard for Plaintiff's safety and subjected Plaintiff to unreasonable excessive force and great bodily injury. As a direct and proximate result of the unlawful and malicious acts of this defendant, all acts committed under color of their authority as BPD Jailer, Plaintiff suffered injury. The

actions of Defendant Arias were a grossly disproportionate use of force under the circumstances and clearly a violation of plaintiff's Fourth amendment constitutional right to be free from such force.

I. Failure to Train

50. BPD's persistent and widespread policies, practices and/or customs relating to Jailer use of force training were either non-existent or substandard. The jailers have already admitted that they received little or no training from Defendant BPD. With regards to the training that they did receive, they have stated that it was ineffective and irrelevant to the duties required of their job. One of the jailers has previously stated that in the 20 years she has been with Defendant BPD, she has only received training once.
51. BPD's internal affairs records reflect several incidents of jailer violence that went unreported and unpunished. These incidents are similar to that of Plaintiff and some even involve the same Jailer that assaulted Plaintiff. This pattern by BPD of recording and storing these similar incidents demonstrates a pattern, custom, practice and/or policy by BPD of deliberate indifference to the constitutional rights of the detainees in its custody.
52. The use and methods of force by the jailers upon persons in the custody of Defendant BPD is a policy, regulation, and/or decision officially adopted or promulgated by Defendant BPD. The failure to provide proper training regarding use of force with persons in their custody amounts to a deliberate indifference and deprivation of the safety and care of the citizens of Defendant Brownsville and Plaintiff. This deliberate indifference was the moving force and cause of the injuries and damages sustained by Plaintiff.

53. Plaintiff contends that the use of force violation in his case was the obvious consequence of failing to provide specific use of force training to the jailers and to the jail supervisor responsible for evaluating use of force incidents. BPD jailers are not required by BPD to have any type of training in order to obtain employment as jailers. As such, they are unlikely to be familiar with the constitutional constraints on use of force and, absent training cannot obtain that knowledge. BPD's deliberate indifference to this obvious consequence was the moving force and/or cause of Plaintiff's constitutional violations.

2. Failure to Supervise

54. Defendant BPD has a policy of failing to supervise its jailers in that it is the policy of the jail to leave the jail unsupervised after 5:00 p.m. BPD knows that the majority of the arrests occur after 5:00 p.m., yet it is BPD's custom and/or practice to have the Jail Supervisor go home at 5:00 p.m. The failure to supervise is also evident in BPD's policy of failing to monitor the behavior of the jailers through a system by which the Jailers are punished for bad behavior. Instead, the jailers are allowed to act violently without fear of repercussions from Defendant BPD.

55. The use and methods of supervising those who use force upon persons in the custody of Defendant BPD is a policy, regulation, and/or decision officially adopted or promulgated by Defendant BPD. The failure to properly supervise those who use force upon persons in their custody amounts to a deliberate indifference and deprivation of the safety and care of the citizens of Brownsville and Plaintiff. This deliberate indifference was a proximate cause of the injuries and damages sustained by Plaintiff.

56. Plaintiff contends that the use of force violation in his case was the obvious consequence of BPD's failure to supervise jailers. BPD jailers are not required by BPD to have any

type of training in order to obtain employment as jailers. As such, they are unlikely to be familiar with the constitutional constraints on use of force and, absent supervision by those who are familiar with such constraints, will use unconstitutional force upon individuals in their custody. BPD's deliberate indifference to this obvious consequence was the moving force and/or cause of Plaintiff's constitutional violations.

3. Acts by Final Policymakers

57. Defendant supervisors, including Carlos Garcia, Henry Ethridge, Robert Avitia and David Infante were at all relevant times, final policymakers at the Brownsville Police Department, with oversight responsibility Jailer Arias and the other jailers, who used excessive force against Plaintiff. They were responsible for the hiring, training, instruction, supervision and discipline of Jailer Arias and other jailers who used excessive force against Plaintiff.
58. Upon information and belief, there was a custom, policy, pattern and practice in the Brownsville Police Department, by and through its final policy makers, beginning years before the unjust conviction of Plaintiff and continuing into his incarceration, of condoning, encouraging, ratifying and acquiescing in the use of force against suspects.
59. BPD, by and through its final policymakers, and the individual Police Supervisors, failed to adequately train, supervise, and/or discipline officers and jailers concerning proper use of force techniques.
60. By reason of the foregoing, these defendants acted with reckless disregard and deliberate indifference in the supervision, hiring, training, and discipline of the officers and jailers thereby causing the assault of Plaintiff.

61. As a direct and proximate result of said violations, Plaintiff was wrongfully assaulted, and suffered the damages described herein.

B.

Filing False Reports and Failing to Disclose the Exonerating Evidence

62. Plaintiff incorporates by reference all factual allegations of paragraphs above as though fully set forth at length herein and asserts that the same are moving factors which have resulted in the violations of Plaintiff's Constitutional protections.
63. Defendants acting under color of state law deprived Plaintiff of his rights, privileges and immunities secured by the Constitution of the United States; specifically those rights secured by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Said actions by Defendants caused Plaintiff injury and were undertaken pursuant to official municipal policy.
64. Defendant Arias and Defendant BPD, by and through its final policy makers and supervisory personnel, acted and participated in the filing of a false police report which induced felony charges to be made against the Plaintiff and subsequently his arrest and seizure without probable cause. By doing so, said Defendants violated Plaintiff's constitutional rights to be free from false charges, and to be free from arrest or seizure, and the deprivation of his liberty without probable cause. All BPD supervisory personnel herein named viewed the video and the related false police report of the incident and, thus, knew that the police report contained false statements. Further, they knew that the only manner in which probable cause could be demonstrated for this arrest was by not submitting the video along with the report. It is only by eliminating the video that BPD was able to demonstrate probable cause. Nonetheless, BPD failed to disclose the video

through the arrest, the indictment, the trial, the sentencing and the serving of the four (4) year sentence.

65. Moreover, the defendants Chief Carlos García, Sergeant David Infante, Lieutenant Henry Etheridge and Commander Robert Avitia, all knew about the false police report and failed to intervene to stop the criminal process against the plaintiff.
66. Plaintiff's constitutional rights were further violated when all Defendants participated in tainting the Cameron County Grand Jury by failing to present all the facts and by submitting false facts to the Grand Jury. The Defendants tainted the Grand jury by providing biased and false information about the manner in which this incident occurred and by failing to provide certain facts to the grand jury. The most obvious violation of Plaintiff's constitutional rights occurred when the Defendants withheld the exculpatory video from the Cameron County Grand Jury.

1. Failure to Train

67. BPD's policies, practices and/or customs relating to the filing of criminal charges by jailers were also either non-existent or substandard. The jailers have already admitted that they received little or no training from the City of Brownsville. With regards to the training that they did receive, none covered the issues of filing police reports, the gathering of evidence and/or the rules relating to disclosure of evidence pertaining to crimes committed in their presence.
68. All Defendants, acting under color of law, initiated false felony criminal charges against Plaintiff in violation of his rights guaranteed to him by the Fourth, Fifth, Sixth and Fourteenth Amendments to the constitution. All the jailers involved knew that Plaintiff did not strike Jailer Arias. Nonetheless, all Defendants participated in the filing of a

criminal complaint against Plaintiff for assaulting one of BPD's employees. Defendants acted with deliberate indifference towards Plaintiff's constitutional rights.

69. Defendant BPD failed to provide adequate training with regards to evidence disclosure and the rules against filing fabricated charges. This deliberate indifference was a proximate cause of the injuries and damages sustained by Plaintiff. The use and methods of charging of persons in the custody of Defendant Brownsville is a policy, regulation, and/or decision officially adopted or promulgated by Defendant Brownsville. The failure to provide proper training regarding the charging of persons in their custody amounts to a deliberate indifference and deprivation of the safety and care of the citizens of Defendant Brownsville and Plaintiff.
70. Defendant Brownsville failed to adequately review the lack of evidence substantiating the criminal charges filed against Plaintiff. This deliberate indifference was a proximate cause of the injuries and damages sustained by Plaintiff. The manner and methods of filing of arrest reports and filing criminal charges for assaults on its employees is a policy, regulation, decision and/or widespread custom adopted or promulgated by Defendant Brownsville. Defendant Brownsville's deliberate indifference as to these manners and methods constituted a violation of plaintiff civil rights.
71. Plaintiff further contends that the filing of false charges against him was the obvious consequence of failing to provide specific *Brady* training to the jailers, police officers and supervisory personnel. BPD jailers, for example, are not required by BPD to have any type of training in order to obtain employment as jailers. As such, they are unlikely to be familiar with the constitutional requirements of disclosing evidence and, absent training

cannot obtain that knowledge. BPD's deliberate indifference to this obvious consequence caused Plaintiff's constitutional violations.

2. Failure to Supervise

72. Defendant Brownsville failed to provide proper supervision with regards to the rules against filing fabricated charges. This deliberate indifference was a proximate cause of the injuries and damages sustained by Plaintiff. The use and methods of charging of persons in the custody of Defendant Brownsville is a policy, regulation, and/or decision officially adopted or promulgated by Defendant Brownsville. The failure to provide proper supervision regarding the charging of persons in their custody by its own employees amounts to a deliberate indifference and deprivation of the safety and care of the citizens of Defendant Brownsville and Plaintiff.
73. Plaintiff contends that the filing of false charges against him in his case was the obvious consequence of failing to supervise the jailers, police officers and jail supervisor responsible for investigating and filing charges for incidents that occurred on BPD's premises and involved BPD employees. BPD jailers, police officers and even supervisory personnel do not appear to have any training relating to the requirement of filing a proper police report and investigations required to develop probable cause. As such, they are unlikely to be familiar with the constitutional limitations against filing false police reports and, absent supervision cannot obtain that knowledge. BPD's deliberate indifference to this obvious consequence caused Plaintiff's constitutional violations.

3. Acts by Final Policymakers

74. Defendant supervisors, including Carlos Garcia, Henry Etheridge, Robert Avitia and David Infante were at all relevant times, final policymakers at the Brownsville Police Department, with oversight responsibility for the police officers, Jailer Arias and the other jailers, who were involved in the fabrication of charges against Plaintiff. They were responsible for the hiring, training, instruction, supervision, and discipline of the officers and jailer who fabricated the charges against Plaintiff.
75. Upon information and belief, there was a custom, policy, pattern and practice in the Brownsville Police Department, by and through its final policy makers, beginning years before the unjust conviction of Plaintiff and continuing into his incarceration, of condoning, encouraging, ratifying and acquiescing in the failure of its officers to adequately investigate offenses that occurred on its premises to determine their veracity and whether they were based on probable cause.
76. BPD, through its final policymakers, and the individual Police Supervisors, failed to adequately train, supervise, and/or discipline officers and jailers concerning proper investigatory techniques and police reporting requirements.

4. Failure to Investigate

77. The Lopez and Plaintiff's incident also revealed that BPD, by and through its final policymakers, has a policy and/or practice of failing to speak to the individual accused of committing Assaults. In both cases, Defendant BPD failed to speak to either Jose Lopez and George Alvarez in order to get their version of the events. The police officers conducting the investigations seem to be following a city policy and/or practice of assuming that everything BPD's jailers tell them is true.

78. Furthermore, the investigations are biased in that Defendant BPD, by and through its final policymakers, has a policy and/or practice of investigating itself, rather than calling an outside police agency to conduct the investigation and interview witnesses. Such a policy and/or practice results in investigations that are severely compromised and create the inevitable and likely result of constitutional violations such as Plaintiff's.
79. In all incidents of jailer violence, BPD, by and through its final policymakers, has a policy and/or practice of allowing the jailers to prepare their statements in each other's presence. All jailers are required to prepare an IDC (Inter-Departmental Communication); these IDCs are then used by Defendant BPD and its supervisory personnel to determine whether the jailers acted in accordance with the BPD's use of force policies.
80. The City, however, does not supervise the preparation of these key witness statements and even allows the Jailers to prepare them in each other's presence. The jailers have the ability to rewind and play the incident videos in order to better prepare their statements. This procedure ensures that the Jailers are able to easily corroborate each other's versions of the events and further ensures that the investigation will be biased and prejudiced against the accused.
81. Plaintiff contends that the filing of false criminal charges against him in his case was the obvious consequence of failing to investigate offenses that occurred on its premises. Defendant BPD jailers are not required by BPD to have any type of training in order to obtain employment as jailers. As such, they are unlikely to be familiar with the constitutional limitations of filing false reports and, absent training on proper

investigation techniques cannot obtain that knowledge. BPD's deliberate indifference to this obvious consequence caused Plaintiff's constitutional violations.

82. By reason of the foregoing, these defendants acted with reckless disregard and deliberate indifference in the supervision, hiring, training, and discipline of the officers and jailers thereby causing the fabrication of charges that led to his wrongful conviction.
83. As a direct and proximate result of said violations, Plaintiff was wrongfully convicted, and suffered the damages described herein.

C.

Brady Violations

84. Plaintiff incorporates by reference all factual allegations of paragraphs above as though fully set forth at length herein and asserts that the same are moving factors which have resulted in the violations of Plaintiff's Constitutional protections.
85. Defendants acting under color of state law deprived Plaintiff of his rights, privileges and immunities secured by the Constitution of the United States, specifically those rights secured by the Fourth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and *Brady v. Maryland* and its progeny. Said actions by Defendants caused Plaintiff injury and were undertaken pursuant to official municipal policy.

1. Failure to Train

86. The failings of the Brownsville Police Department can be further explained by its policies and practices dealing with exculpatory evidence. BPD has no written policies instructing police supervisors, officers and jailers that they must turn in exculpatory evidence and the constitutional requirement of *Brady*. In addition, BPD has a policy, custom and/or practice of not providing any training to its officers and jailers on the subject of

exculpatory evidence. In fact, Defendant Arias has stated he does not even know what the term “exculpatory” even means.

87. BPD's policies, practices and/or customs relating to Jailer training with regards to disclosure of evidence were also either non-existent or substandard. The jailers have already admitted that they received little or no training from the City of Brownsville. With regards to the training that they did receive, none of it covered *Brady* or disclosure of evidence.
88. Plaintiff contends that the *Brady* violation in his case was the obvious consequence of failing to provide specific training to the police officers, jailers and to the jail supervisor responsible for preparing the police report against Plaintiff. BPD employees do not have *Brady* training prior to being hired by BPD. As such, they are unlikely to be familiar with the constitutional obligations required by *Brady* and, absent training cannot obtain that knowledge. BPD's deliberate indifference to this obvious consequence caused Plaintiff's constitutional violations.

2. Failure to Supervise

89. Even the Jail Supervisor, Defendant Infante, has stated that BPD did not provide him with jail management training. Defendant Infante has also stated that the City failed to provide him with any use of force training. Defendant Infante is the Sergeant directly responsible for jail management and supervision. In essence, not only was he biased since he was being asked to evaluate the performance of jailers under his supervision, but he was also did not have the training necessary in order to properly determine if the use of force was excessive. Due to his lack of training, Defendant Infante was incapable of determining the exculpatory value of the CD in his possession. Defendant Infante has

admitted that the last time he received use of force training was over twenty (20) years ago. As such, Defendant Infante rarely made a finding that his jailers used excessive force and was incapable of determining the exculpatory nature of the videos he constantly reviewed.

90. Plaintiff contends that *Brady* violation in his case was the obvious consequence of BPD's failure to supervise its Police officers and jailers. BPD officers and jailers are not required by BPD to have any type of *Brady* training in order to obtain employment with BPD. As such, they are unlikely to be familiar with the constitutional obligations imposed by *Brady* and, absent supervision by those who are familiar with *Brady*, they will not apply *Brady*. BPD's deliberate indifference to this obvious consequence caused Plaintiff's constitutional violations.

Policy of Failing to Disclose

91. As further example of these blatantly unconstitutional customs, policies, patterns and practices, BPD also had other video recordings of jailer violence besides that of Plaintiff and Detainee Lopez. These other incidents were also secretly stored in the Internal files of the Brownsville Police Department Internal Affairs division. On these videos jailers can be seen using unnecessary and excessive force upon the detainees in their custody. Some of these violent acts even take place in the presence of BPD Officers. On these similar incident videos the officers can be seen watching the jailers assault the detainees, but the officers fail to do anything to assist the detainees.
92. Defendant BPD even keeps an internal list of the incidents involving jailer violence. The Internal Affairs division will document and track incidents wherein a detainee complains or where a jailer reports that he has used force. These use of force logs serve to further

document the Police Department's knowledge of the use of force incidents and their failure to disclose. By the time Plaintiff had been freed from prison, Jailer Arias had already accumulated five (5) use of force incidents on his record. Defendant BPD has a policy and/or practice of not disclosing any of these use of force incidents to any one outside of BPD.

93. BPD also has a policy and practice of not filing any criminal charges against the Jailers who commit these acts of violence and of failing to disclose any of these videos to anyone outside of the Police Department.

4. Policymaker Actions

94. Defendant supervisors, including Carlos Garcia, Henry Etheridge, Robert Avitia and David Infante were at all relevant times, final policy makers at the Brownsville Police Department, with oversight responsibility for the police officers, Jailer Arias and the other jailers, who were involved in the withholding and secreting evidence in violation of Plaintiff's rights under *Brady*. They were responsible for the hiring, training, instruction, supervision, and discipline of the officers and jailers who withheld said evidence.
95. Upon information and belief, there was a custom, policy, pattern and practice in the Brownsville Police Department, by and through its final policy makers, beginning years before the unjust conviction of Plaintiff and continuing into his incarceration, of condoning, encouraging, ratifying and acquiescing in the use of force against suspects and the failure to disclose exculpatory evidence and adequately investigate offenses that occurred on its premises.

96. BPD, through its final policymakers, and the individual Police Supervisors, failed to adequately train, supervise, and/or discipline officers and jailers concerning proper investigatory techniques, evidence collection and evidence disclosure.
97. Upon information and belief, the City of Brownsville, through its final policymakers, and the individual police supervisors failed to adequately screen prospective jailers in order to avoid hiring jailers with a propensity for abusing their authority.
98. By reason of the foregoing, these defendants acted with reckless disregard and deliberate indifference in the supervision, hiring, training, and discipline of the officers and jailers thereby causing the wrongful conviction of Plaintiff.
99. As a direct and proximate result of said violations, Plaintiff was wrongfully convicted, and suffered the damages described herein.

D.

Policymaker's Participation in Crimes Against the Plaintiff

100. Plaintiff incorporates by reference all factual allegations of paragraphs above as though fully set forth at length herein and asserts that the same are moving factors which have resulted in crimes against Plaintiff and violations of Texas Penal Code.
101. Defendant BPD delegated its responsibilities relating to its Jail to Defendant David Infante. Sergeant Infante was responsible for the day to day operations and management of the City Jail where Plaintiff was being detained. One of his responsibilities was to review use of force incidents that occurred in the City Jail and determine if the City's policies and practices relating to use of force were violated. In order to this, it was the BPD's policy and practice to have Defendant Infante review and make a copy the incidents and to compare the incident to IDCs. Defendant Infante would also rely on any

related offense report filed by the City against the Detainee. Though Defendant reviewed several assaults on video he failed to report these crimes and further participated in hiding the evidence of these crimes from outside entities.

102. Defendant Etheridge, the Lieutenant in charge of internal affairs, reviewed and stored all of the use of force investigations. It was his job to store the Plaintiff's video, Detainee Lopez's video and all other use of force video videos. He also kept copies of the police reports that failed to include the videos.

103. As part of his duties, Defendant Etheridge was responsible for providing recommendations to the police chief based on his review of the internal investigations. Defendant Etheridge reviewed several videos of assaults against detainees in the custody of BPD. Defendant Etheridge never made a recommendation that the videos be included with the police reports. He also failed to report these crimes to any police authorities. Defendant Etheridge further failed any recommendations that the jailers be arrested for assaulting the detainees, even though he had video evidence of the assaults.

104. Defendant Robert Avitia was the commander of BPD and as commander he reviewed the police report and the exculpatory CD. In doing so, he participated in the crime of filing a false police report against Plaintiff. He further participated in the crime of failing to report the crime of assault against Plaintiff. As a police officer, it was his duty to initiate a criminal charge against Jailer Arias and to have Arias arrested.

105. Upon information and belief, Defendant Carlos Garcia, also viewed several videos of jailer violence, including that of Plaintiff. Defendant Garcia participated in the filing of a false police report against Plaintiff in that he knew the Plaintiff did not assault Jailer Arias. Defendant Garcia knew that knowingly filing a police report that was not truthful

was a crime and failed to take any measures to prevent the criminal offense from being filed. Defendant Garcia also knew that several other detainees, besides the plaintiff, were assaulted and he failed to arrest and charge the jailers with these crimes.

106. The foregoing actions of the Defendants in this case were violations of the following sections of the Texas Penal Code:

32.46 Securing Execution of Document by Deception

37.09 Tampering with or Fabricating Physical Evidence

37.10 Tampering with Governmental Record

39.03 Official Oppression

39.04 Violations of the Civil Rights of Person in custody

42 U.S.C. Section 1983

Monell Claim Against Defendant City for Unconstitutional Custom, Practice and Policy

107. Plaintiff incorporates fully all of the foregoing as if set forth herein and further alleges:

108. At the time of the conduct complained of herein Defendant BPD, through its policymakers had in force and effect a policy, practice and custom of failing to investigate crimes adequately, fabricating evidence in investigations, and failing to disclose exculpatory and impeachment evidence.

109. The final policymakers of Defendant BPD had actual or constructive knowledge of these unconstitutional practices yet failed to take any reasonable or adequate steps to remedy them.

110. These policies, customs, and practices led Brownsville Police officers and jailers to believe that misconduct would be tolerated and that allegations of abuse of constitutional rights would not be investigated and/or punished. This pattern made it foreseeable that

officers would violate people's constitutional rights in precisely the manner plaintiff's rights were violated, and the City, through its final policymakers were deliberately indifferent to this risk.

111. These policies, customs, and practices of the Police Department as described in this complaint, were the moving force behind Plaintiff's unconstitutional and wrongful incarceration.

112. As a result, Plaintiff suffered the injuries set forth below.

42 U.S.C. Section 1983

Monell Claim Against Defendant City for Unconstitutional Discipline, Training and Supervision of Police Officers and Jailers

113. Plaintiff incorporates fully all of the foregoing as if set forth herein and further alleges:

114. At the time of the conduct complained of herein the City, through its policymakers had in force and effect a policy, practice and custom of failing to properly discipline, supervise, and train Police officers and Jailers including the individual Defendants in this case in the proper way to conduct investigations, and on the duty to disclose Brady Materials. The City failed to ensure that its police officers and jailers would conduct constitutionally adequate investigations, obtain probable cause to ensure that suspects would not be falsely accused; disclose to prosecutors material information favorable to criminal defendants; follow the duties imposed by *Brady v. Maryland*; and never fabricate inculpatory evidence.

115. The final policymakers of the City had actual or constructive knowledge of the unconstitutional practices yet failed to take any reasonable or adequate steps to remedy them.

116. These policies, customs, and practices led Brownsville Police officers and jailers to believe that misconduct would be tolerated and that allegations of abuse of constitutional rights would not be investigated and/or punished. This pattern made it foreseeable that officers would violate people's constitutional rights in precisely the manner plaintiff's rights were violated, and the City, through its final policymakers were deliberately indifferent to this risk.
117. These policies, customs, and practices of the Defendant BPD as described in this complaint, were the moving force behind Plaintiff's unconstitutional and wrongful incarceration.
118. As a result, Plaintiff suffered the injuries set forth below.

VIOLATIONS OF 42 U.S.C. SECTION 1985 (3)

119. The above paragraphs are incorporated herein by reference for all purposes.
120. Defendants, two (2) or more of them conspired for the purpose of:
- (a) depriving Plaintiff of equal protection of law;
 - (b) depriving Plaintiff of due process of law;
 - (c) hindering the authorities from giving or securing equal protection and due process of law to all persons, all to Plaintiff's damage as alleged herein.
121. Defendant Brownsville is directly liable and responsible for the acts of Defendants Arias and its police officers because they repeatedly and with deliberate indifference failed to enforce the laws of the State of Texas and the regulations of Brownsville pertaining to the use of force and deadly force by Brownsville Jailers. Defendant Brownsville condones customs and policies whereby police officers employ excessive and illegal force. All Defendants violated Plaintiff's rights by using excessive force paramount to deadly force

as condoned by Defendant Brownsville, in contravention of the equal protection laws of the United States

DAMAGES

122. Paragraphs 1 through 119 are incorporated by reference for all purposes.
123. As a result of the acts and of Defendants as described above, Plaintiff has suffered severe, debilitating injuries. Plaintiff has sustained permanent bodily impairment and disfigurement, loss of earnings and loss of earning capacity, past and in the future. Plaintiff has experienced great physical pain and mental anguish, and will in all reasonable probability, continue to do so in the future by reason of the nature and severity of his injuries.
124. The defendants conduct demonstrates that Defendants engaged in an unlawful intentional course of conduct with malice and reckless indifference to the federal and state protected rights of Plaintiff. Defendants acted willfully, intentionally and/or with a reckless and callous indifference to the civil rights of Plaintiff. Plaintiff seeks exemplary damages and punitive damages in an amount to be determined by the trier of fact.
125. Plaintiff was required to hire an attorney to defend himself against the false charges against him. Plaintiff hereby sues for those attorney fees.

ATTORNEYS' FEES

126. Pursuant to 42 U.S.C s 1988, Plaintiff requests this court award Plaintiff reasonable and necessary attorneys' fees and expenses which Plaintiff has incurred and will continue to incur during all trial and appellate court proceedings.

PUNITIVE DAMAGES

127. All of the acts committed by the Defendants described herein for which liability is claimed were done intentionally, unlawfully, maliciously, wantonly, and/or recklessly, and said acts meet all of the standards for imposition of punitive damages.

JURY TRIAL REQUESTED

128. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff requests a trial by jury.

WHEREFORE, Plaintiff respectfully prays that Defendants be duly cited to appear and answer herein, and that upon final trial of this cause, Plaintiff recover a judgment against Defendants for:

- a. General and specific damages in the amount of \$8,000,000 and exemplary damages in the amount of \$8,000,000 as set forth herein;
- b. Prejudgment interest and post-judgment interest at the highest rates permitted by law;
- c. Reasonable attorneys' fees to the extent recoverable by law;
- d. All costs of court expended herein;
- e. All other relief, at law or in equity, to which Plaintiff may be justly entitled.

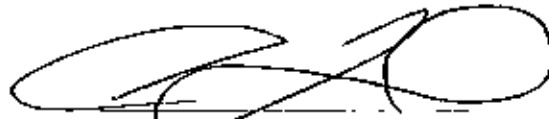
REQUEST FOR PERMANENT INJUNCTION

PLAINTIFF ALSO PRAYS that the Court issue a permanent injunction against the City of Brownsville ordering it to:

- a. Institute training, guidelines, policies and procedures on the use of force for the jailers;
- b. Institute training, guidelines, policies and procedures on the filing of charges against the inmates; and

- c. Institute training, guidelines, policies and procedures on the turning over of evidence that may exonerate inmates of charges made by the jailers.

Respectfully submitted,
LAW OFFICE OF EDDIE LUCIO

A handwritten signature in black ink, appearing to read 'Eddie Lucio', written over a horizontal line.

Eddie Lucio
State Bar No. 00791145
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Brownsville, Texas
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ATTORNEY FOR PLAINTIFF