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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PHILLIP SEMPER, an individual; COREY JOHNSON, an individual; ASHLEY MEDLOCK, an individual; MICHAEL GREEN, an individual; DEMARLO RILEY, an individual; CLINTON REECE, an individual; LONICIA BOWIE, an individual;

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, in its official capacity; ANDREW BAUMAN, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; MATTHEW KRAVETZ, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; SUPREET KAUR, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; DAVID JEONG,

Case No.: 2:20-cv-01875-JCM-EJY

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; THERON YOUNG, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; DOE LVMPD GANG TASK FORCE OFFICERS 1-10; DOE LVMPD OFFICERS 1-10; DOELVMPD SUPERVISORS 1-5; DOE RIOEMPLOYEES 1-10,

Defendants.

Plaintiffs, through counsel, Christopher M. Peterson of the ACLU of Nevada, pursuant to FRCP 56, moves this Court for an order granting summary judgment. This motion is based on this notice, the memorandum of points and authorities filed herein, the declaration(s) filed by Plaintiffs, the exhibits filed herein, the statement of uncontroverted facts and conclusions of law, the pleadings previously filed in this action, and any oral argument permitted at the hearing on this motion.

DATED this 15th day of March, 2024.

ACLU OF NEVADA

/s/ *Christopher M. Peterson*
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs request that the Court grant summary judgment on Plaintiff's claims brought pursuant to 42 U.S.C. § 1983 as follows:

- For Plaintiffs' Second Cause of Action pursuant to the Fourteenth Amendment, Plaintiffs Bowie, Johnson, Medlock, and Riley against Defendant LVMPD;
- For Plaintiffs' Third and Fourth Causes of Action pursuant to the First Amendment, all Plaintiffs against Defendant LVMPD;
- For Plaintiffs' Fifth and Sixth Causes of Action pursuant to the Fourth Amendment for unlawful seizure and search, all Plaintiffs against Defendants LVMPD, Bauman, Young, and Kravetz;
- For Plaintiffs' Seventh and Eighth Causes of Action pursuant to the Fourth Amendment for prolonged detention, Plaintiffs Bowie, Medlock, Reece, and Riley against Defendants LVMPD and Bauman.

There is no genuine issue of fact precluding summary judgment on these claims on behalf the identified Plaintiffs against the identified Defendants for violations of the First, Fourth, and Fourteenth Amendments of the United States Constitution. Plaintiffs ask that the Court find in their favor and award declaratory and injunctive relief pursuant to this motion.

PLAINTIFF'S STATEMENT OF MATERIAL FACTS

I. August 19, 2018, incident at the Rio Hotel and Casino.

On August 19, 2018, all Plaintiffs were at the Rio Hotel and Casino in Room 2037. (Ex. 1, Information Collection Form, LVMPD 000284–286). Plaintiffs were attending a party celebrating Cory Bass's birthday. (2d Am. Compl. Exhibits, ECF No. 89-1, Exhibits 2–7 at ¶ 5 (Affidavits of Bowie, Green, Reece, Riley, Johnson, and Medlock), Exhibit 1 at ¶ 6 (Affidavit of Connie Semper)). There were at least thirty-two people, including Plaintiffs and Cory Bass, in Room 2037 at 2:43 AM

on August 19, 2018. (Ex. 1 at LVMPD 000284–286; Ex. 2, Deposition of Mathew Kravetz at 152:13–153:12, 221:24–222:18). Room 2037 was a suite the size of a "fairly large house", with multiple bedrooms, a kitchen area, and long hallways. (Ex. 2, Deposition of Mathew Kravetz at 139:20–140:14).

Defendant LVMPD is a law enforcement agency that is a political subdivision of the State of Nevada. (2d Am. Compl. ¶ 16, ECF No. 89; LVMPD Defs.' Answer to Pls.' 2d Amend. Compl. ¶ 4, ECF No. 114). On August 19, 2018, Defendants Bauman, Kravetz, Kaur, and Young were officers employed by Defendant Las Vegas Metropolitan Police Department (LVMPD). (2d Am. Compl. ¶ 23, ECF No. 89; LVMPD Defs.' Answer to Pls.' 2d Amend. Compl. ¶ 10, ECF No. 114). On August 19, 2018, Defendant Bauman, Kravetz, Kaur, and Young operated as a FLEX team assigned to LVMPD's Convention Center Area Command and dressed in green LVMPD uniforms which were typically worn by LVMPD FLEX team members. (2d Am. Compl. ¶ 53 & 56, ECF No. 89; LVMPD Defs.' Answer to Pls.' 2d Amend. Compl. ¶ 16, ECF No. 114). Defendant Bauman was the supervisor of this FLEX team. (Ex. 3, Deposition of Andrew Bauman at 13:2–7; 170:14–16).

Nicholas Brigandi, a detective with LVMPD's Central Intelligence Unit, contacted Bauman via phone on or about August 19, 2018. (Ex. 4, *State of Nevada v. Semper*, 18F15424X, Las Vegas Justice Court Township, Reporter's Transcript of Evidentiary Hearing March 7, 2019, Bauman testimony, ACLUNV 000214, 107:10-15). Brigandi informed Bauman that Brigandi believed that a party was being held at the Rio Hotel and Casino. (Ex. 4, Bauman testimony, ACLUNV 000214, 107:10-15). Brigandi stated that he had observed on social media a photograph of Cory Bass and other individuals in the elevator lobby of that hotel. (Ex. 5, Deposition of Nicholas Brigandi, 147:17–25); (Ex. 4, Bauman testimony, ACLUNV 000214, 107:10-15). None of the Plaintiffs were depicted in the photograph. (Ex. 5, Deposition of Nicholas Brigandi, 147:17–25). No criminal activity was depicted in the photograph. (Ex. 5, Deposition of Nicholas Brigandi, 165:5–9; Ex. 4, Bauman testimony, ACLUNV 000232, 125:7-16). Brigandi informed Bauman that the suspected party was a

birthday party for Cory Bass, an alleged gang member. (Ex. 3, Deposition of Andrew Bauman at 26:8–11).

Based on the information provided by Brigandi, Defendants Bauman, Kaur, Kravetz, and Young travelled to the Rio Hotel and Casino. (Ex. 3, Deposition of Andrew Bauman at 41:6–23). Upon arrival at the Rio, Bauman informed Rio security supervisor John Carlisle and/or other Rio hotel security that LVMPD had reason to believe there was a "gang party" taking place on the premises. (Ex. 4, Bauman testimony, ACLUNV 000215, 108:3-10). Rio security supervisor John Carlisle escorted Defendants Bauman, Kravetz, Kaur, and Young to Room 2037. (Ex. 4, Bauman testimony, ACLUNV 000217–219, 110:2–112:23). At that time, Defendants were unaware that any of the Plaintiffs were inside Room 2037. (Ex. 3, Deposition of Andrew Bauman at 85:3–17). At that time, Defendants were unaware that any of the Plaintiffs had outstanding warrants. (Ex. 3, Deposition of Andrew Bauman at 85:19–22). Defendant Bauman was considered the supervisor on scene for LVMPD. (Ex. 3, Deposition of Andrew Bauman at 170:14).

Defendants Bauman, Kravetz, Kaur, and Young came into contact with the Plaintiffs between 2:43 PM and 2:48 PM. (Ex. 3, Deposition of Andrew Bauman at 68:10–68:15). Security and the LVMPD officers arrived at Room 2037, and John Carlisle knocked on the door. (Ex. 6, LVMPD BWC 00049, Kravetz, Matthew at 00:40). An occupant of Room 2037 answered the door. (Ex. 6 at 00:44). Once the door was opened, Carlisle spoke to the person who opened the door for approximately 43 seconds. (Ex. 6 at 00:40–1:25). Carlisle said to that person, "We had some noise complaints, we're going to be asking you to shut down the party and everybody leave." (Ex. 6 at 00:43). The person at the door told Carlisle that this was the first time the occupants of Room 2037 had heard of a noise complaint and that he would turn the music down if it was a problem. (Ex. 6 at 00:52). In response, Carlisle repeated to the person at the door that everyone would have to leave. (Ex. 6 at 01:01).

Carlisle did not explain why the guests were being evicted rather than receiving a warning. (Ex. 6 at 00:40–1:25). Carlisle kept the door to Room 2037 open during the conversation. (Ex. 6 at 00:40–1:25). Carlisle did not say anything to any occupant of Room 2037 about the use or presence of marijuana. (Ex. 6 at 00:40–1:25). Carlisle did not speak to anyone else in Room 2037 other than the occupant that answered the door. (Ex. 6 at 00:40–1:25). Carlisle did not read anyone in Room 2037 a formal trespass warning before LVMPD officers entered the room. (Ex. 6 at 00:40–1:25; *see also* Ex. 2, Deposition of Mathew Kravetz at 133:25 – 135:2; Ex. 7, Deposition of Supreet Kaur at 127:7–21).

Approximately 46 seconds after Carlisle first knocked on the door of Room 2037, Defendants Kravetz and Young entered Room 2037. (Ex. 6 at 1:25)**.** When Defendant Young entered, it became clear that Carlisle had been speaking with Cory Bass and Carlos Bass as those were the only two people standing by the front entrance. (Ex. 9, LVMPD BWC 000074, Young, Theron 0243 at 1:20); (Ex. 8, Photographs of Room 2037 Occupants, *compare* LVMPD 000325 & LVMPD 00328 (contemporaneous photographs of Cory and Carlos Bass) *with* LVMPD 000334 (Bowie and Green), LVMPD 000325 (Medlock and Semper), LVMPD 000326 (Johnson), LVMPD 000328 (Reece), LVMPD 000330 (Riley)). Defendant Bauman stood in the doorway of Room 2037. (Ex. 3, Bauman Deposition at 100:11–13). Carlisle did not ask or otherwise indicate that Defendants Bauman, Kravetz, Kaur, Young, or any other LVMPD officer should enter into Room 2037. (Ex. 6 at 00:40–1:25). Defendants were aware that the party was a birthday party for Cory Bass prior to contacting the people in Room 2037. (Ex. 3, Deposition of Andrew Bauman at 26:8–11; Ex. 4, Kravetz testimony, ACLUNV000151, 44:21–25). Upon Defendants Kravetz and Young entering into Room 2037, Defendant Bauman announced, "Everyone is being evicted." (Ex. 9 at 1:30).

Defendants Bauman, Kravetz, and Young then ordered everyone in Room 2037 to line up in a single line at the suite's front door. (Ex. 4, Bauman testimony, ACLUNV 000222 115:14-16); (Ex. 6 at 00:40–1:25); (Ex. 9 at 1:30). All Plaintiffs complied with the order to line up. (Ex. 3, Deposition

of Andrew Bauman at 101:24 – 102:11; Ex. 4, Bauman testimony, ACLUNV 000134, 134:11-25; *see generally* Ex. 6; Ex. 9). Upon entering the room, an LVMPD officer detained Cory Bass and removed him from the room before removing any other occupants. (Ex. 6 at 01:28). Of the men depicted in the photograph observed by Detective Brigandi on social media, only Cory Bass was inside of Room 2037 when Defendants entered the room. (Ex. 3, Deposition of Andrew Bauman at 118:9-119:12). LVMPD officers made no effort to determine whether the other men besides Cory Bass who had been visible in the photograph seen by Detective Brigandi on social media were in Room 2037 prior to detaining all of the people in the room. (Ex. 3, Deposition of Andrew Bauman at 118:9-119:12). After Defendants Young and Kravetz entered Room 2037, none of the occupants, including the Plaintiffs, were free to leave. (Ex. 4, Bauman Testimony, ACLUNV 000252, 145:2-9; Ex. 9 at 00:40 (Defendant Young barring Plaintiff Medlock from leaving room), at 03:22 (Defendant Young telling Plaintiff Reece he could not leave the room)).

Defendants Bauman, Kravetz, Young, and Kaur have offered the following allegations to justify the initial detention of Plaintiffs: (1) they smelled marijuana coming from Room 2037, (2) they saw marijuana smoke coming from Room 2037, (3) they observed an occupant or occupants of Room 2037 argue with Carlisle, and (4) they observed a firearm on social media. (Ex. 10, Andrew Bauman's Answers to Plaintiffs First Set of Interrogatories at 9:17–10:10; Ex. 11, Supreet Kaur's Answers to Plaintiffs First Set of Interrogatories at 8:3–8:23; Ex. 12, Matthew Kravetz's Answers to Plaintiffs First Set of Interrogatories at 8:3–8:23; Ex. 13, Theron Young's Answers to Plaintiffs First Set of Interrogatories at 8:3–8:23). At the time Defendants Bauman, Young, and Kravetz ordered the occupants of Room 2037 to line up, the Defendants had no reason to believe that the individual Plaintiffs possessed marijuana other than the alleged marijuana smell and smoke in Room 2037. (Ex. 3, Deposition of Andrew Bauman at 131:8–133:6, 133:20–21, 138:15 –18, 139:4–6, 139:22–24; 140:6–8, 140:21–22; *see also* Ex. 2, Deposition of Mathew Kravetz at 155:8 – 159:20; Ex. 7, Deposition of Supreet Kaur at 168:12 – 170:3; Ex. 14, Deposition of Theron Young at 153:9–176:13).

At the time Defendants Bauman, Young, and Kravetz ordered the occupants of Room 2037 to line up, the Defendants had no reason to believe that the Plaintiffs were in possession of a firearm other than the photograph observed by Brigandi that did not depict any of the Plaintiffs. (Ex. 3, Deposition of Andrew Bauman at 133:4–7, 133:25–134:3, 138:23–25, 139:19–21, 139:25–140:2, 140:9–11, 140:18–20; *see also* Ex. 14, Deposition of Theron Young at 153:9–176:13). At that time Defendants Bauman, Young, and Kravetz ordered the occupants of Room 2037 to line up, the Defendants had not observed the Plaintiffs interact with Carlisle or any other Rio employee. (Ex. 3, Deposition of Andrew Bauman at 131:8–133:6, 133:20–21, 138:15 –18, 139:4–6, 139:22–24; 140:6–8, 140:21–22; *see also* Ex. 2, Deposition of Mathew Kravetz at 155:8–159:20; Ex. 7, Deposition of Supreet Kaur at 125:11–126:16; Ex. 14, Deposition of Theron Young at 153:9–176:13). Multiple guests, including Plaintiff Johnson, asked Defendants why they were being detained. (Ex. 6 at 9:30; Ex. 9 at 2:13). In total, at least thirty-two (32) people occupying Room 2037 were detained. (Ex. 1 at LVMPD 000284–286; Ex. 2, Deposition of Mathew Kravetz at 152:13 –153:12, 221:24–222:18).

After the people in Room 2037 lined up, LVMPD officers brought each person in Room 2037, including the Plaintiffs, out into the hallway one-by-one. (Ex. 3, Deposition of Andrew Bauman at 144:15–145:6). As LVMPD officers removed the partygoers from the room, the officers subjected many of the partygoers to pat downs. (Ex. 3, Deposition of Andrew Bauman at 145:7–10). After the Plaintiffs were removed from Room 2037 and potentially subject to a pat down, LVMPD officers sat the Plaintiffs in the hallway outside of Room 2037. (Ex. 3, Deposition of Andrew Bauman at 145:7–10). Body worn camera footage depicts Plaintiffs Green, Medlock, Reece, and Riley handcuffed while detained by LVMPD. (Ex. 15, LVMPD BWC 000023, Grimes, Patrick 0248, 4:32 (Clinton Reece handcuffed), 6:43 (Michael Green handcuffed)); (Ex. 16, LVMPD BWC 000059, Mills, Phillip 0334, 01:00 (Demarlo Riley handcuffed), 21:40–21:52 (Ashley Medlock handcuffed)).

Defendant Bauman directed LVMPD officers to collect identification from every person sitting in the hallway, including Plaintiffs. (Ex. 3, Deposition of Andrew Bauman at 144:17–19,

145:11–13). Once officers collected identification, Defendant Bauman directed LVMPD officers to run records checks and collect information to complete field interview cards on every person sitting in the hallway, including Plaintiffs. (Ex. 3, Deposition of Andrew Bauman at 144:13 – 21, 145:11–12). Defendants were aware that the field interview cards were unrelated to the crimes that LVMPD was supposedly investigating the Plaintiffs for. (Ex. 2, Deposition of Mathew Kravetz at 237:3–7; Ex. 3, Deposition of Andrew Bauman at 168:7–15). Yet LVMPD officers collected identification from all occupants of Room 2037, including the Plaintiffs. (Ex. 7, Deposition of Supreet Kaur at 180:21–23). LVMPD officers ran records checks for each Plaintiff multiple times. (Ex. 17, Criminal History Searches for Plaintiffs, LVMPD 000558–569); *see also* Ex. 7, Deposition of Supreet Kaur at 180:24–181:2 (stating that all occupants of Room 2037 had their information ran in LVMPD's databases)). LVMPD officers conducted field interviews questioning Plaintiffs about matters unrelated to the alleged crimes. *See* Ex. 14, Deposition of Theron Young at 279:1–17 (directing officers to interview detainees to establish that attendees knew each other); Ex. 16 at 01:00 (Demarlo Riley questioned), at 21:52 (Ashley Medlock questioned). None of the Plaintiffs were free to leave at least until LVMPD officers completed their records check and Rio security had provided a formal trespass warning. (Ex. 3, Deposition of Andrew Bauman at 149:6–11, 232:15–22).

If LVMPD officers determined that an occupant of Room 2037 had a prior felony conviction, Defendant Bauman directed the officers to hold that occupant until a DNA buccal swap was completed. (Ex. 3, Deposition of Andrew Bauman at 172:13–173:18). LVMPD officers did not investigate whether the Plaintiffs unlawfully possessed cannabis in Room 2037 after the Plaintiffs were removed from the room. (Ex. 3, Deposition of Andrew Bauman at 171:14 – 172:12; Ex. 18, Deposition of Blake Walford at 288:3–290:15 (stating that the Gang Unit did not investigate anyone for drug related offenses)). Besides collecting DNA buccal swaps, LVMPD officers did not investigate whether Plaintiffs Bowie, Green, Medlock, Reece, or Riley possessed any firearms on August 19, 2018. (Ex. 3, Deposition of Andrew Bauman at 172:12–173:24).

When Plaintiff Bowie exited Room 2037, Defendant Bauman frisked Bowie for weapons. (Ex. 6 at 2:49). At that time Defendants had no factual basis to believe Bowie was armed. (Ex. 3, Deposition of Andrew Bauman at 163:5–7). At that time Defendants had no factual basis to believe that Bowie was a danger to the officers or anyone else. (Ex. 3, Deposition of Andrew Bauman at 163:5–7). Plaintiff Bowie was placed under arrest at 4:41 AM for an outstanding warrant. (Ex. 19, Temporary Custody Records at LVMPD 000026; Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 234:19–235:16). Defendant Young completed a field interview card for Plaintiff Bowie. (Ex. 20, August 19, 2018, Field Interview Cards at LVMPD 000376–77). Though he is listed under "Interviewed [sic] Completed By", Defendant Young did not interview Plaintiff Bowie prior to completing the field interview card and does not know who interviewed her. (Ex. 14, Deposition of Theron Young at 285:1–6). Defendant Young marked Bowie's interview card as "Yes" under "Gang Activity"; "Affiliate" under "Gang Affiliate/Member"; "Corey Bass" under "Affiliate Name"; "Affiliates w/ Gang", "Arrested w/ Gang", and "Reliable Source" under "How Determined"; and "Hillside Gangster Crips" under "Gang Name". (Ex. 20 at LVMPD 000376–77). Defendant Young wrote "Arrested for warrants at Gang Party where 5 firearms were recovered at Rio Hotel held by Carlos and Corey Bass." Under "Subject Narrative". (Ex. 20 at LVMPD 000376–77). Defendant Young did not provide any information that Plaintiff Bowie either engaged in any criminal activity on August 19, 2018, or took any action to support the Hillside Gangster Crips or any other gang. (*See* Ex. 20 at LVMPD 000376–77). Defendant Young did not provide any information that Plaintiff Bowie knew or should have known that Cory Bass had been designated as a gang member. (Ex. 20 at LVMPD 000376–77). Based upon this field interview card, LVMPD employee Sharon Mendoza entered Plaintiff Bowie into GangNet as a gang member affiliate/associate. (Ex. 21, LVMPD's Supplemental Answers to Plaintiffs' Third Set of Interrogatories at 4:3-13). Plaintiff Bowie was not notified that she had been designated a gang member affiliate/associate in GangNet. (Ex. 21 at 4:3-13).

When Plaintiff Green exited Room 2037, an LVMPD officer frisked Green for weapons. (Ex. 15 at 6:43 (Michael Green handcuffed)). This frisk was completed under Defendant Bauman's supervision and while Bauman was present. (Ex. 15 at 2:50 (Bauman directing Grimes to "take over" handcuffing and frisking occupants of Room 2037)). At that time Defendants had no factual basis to believe Green was armed. (Ex. 3, Deposition of Andrew Bauman at 163:8–13). At that time Defendants had no factual basis to believe that Green was a danger to the officers or anyone else. (Ex. 3, Deposition of Andrew Bauman at 163:14–16). Plaintiff Green was placed under arrest at 4:30 AM for an outstanding warrant. (Ex. 19 at LVMPD 000029; Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 234:5–11).

Plaintiff Medlock was placed under arrest at 4:30 AM for an outstanding warrant. (Ex. 19 at LVMPD 00023; Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 234:12–15). Defendant Young completed a field interview card for Plaintiff Medlock. (Ex. 20 at LVMPD 000375). Though he is listed under "Interviewed [sic] Completed By", Defendant Young did not interview Plaintiff Medlock prior to completing the field interview card and does not know who interviewed her. (Ex. 14, Deposition of Theron Young at 285:1–6). Defendant Young marked Plaintiff Medlock's interview card as "Yes" under "Gang Activity"; "Affiliate" under "Gang Affiliate/Member"; "Corey Bass" under "Affiliate Name"; "Affiliates w/ Gang" and "Arrested w/ Gang" under "How Determined"; and "Hillside Gangster Crips" under "Gang Name". (Ex. 20 at LVMPD 000375). Defendant Young wrote "Arrested for warrants at Gang Party where 5 firearms were recovered at Rio Hotel held by Carlos and Corey Bass" and "[c]laims to be sister of Corey Bass" under "Subject Narrative" of Plaintiff Medlock's field interview card. (Ex. 20 at LVMPD 000375). Defendant Young did not provide any information Plaintiff Medlock engaged in any criminal activity or took another action to support a criminal gang. (Ex. 20 at LVMPD 000375). Defendant Young did not provide any information that Plaintiff Medlock knew or should have known that Cory Bass had been designated as a gang member. (Ex. 20 at LVMPD 000375). Based upon this field interview card,

LVMPD employee Sharon Mendoza entered Plaintiff Medlock into GangNet as a gang member affiliate/associate. (Ex. 21 at 11:21–12:2). Plaintiff Medlock was not notified that she had been designated a gang member affiliate/associate in GangNet. (Ex. 21 at 11:21–12:2).

When Plaintiff Reece exited Room 2037, an LVMPD officer frisked Reece for weapons. (Ex. 15 at 4:32). This frisk was completed under Defendant Bauman's supervision and while Bauman was present. (Ex. 15 at 2:50 (Bauman directing Grimes to "take over")). At that time Defendants had no factual basis to believe Reece was armed. (Ex. 3, Deposition of Andrew Bauman at 163:17–19). At that time Defendants had no factual basis to believe that Reece was a danger to the officers or anyone else. (Ex. 3, Deposition of Andrew Bauman at 163:20–22). Plaintiff Reece had been detained for at least an hour when LVMPD officers removed his handcuffs at approximately 3:49 AM and allowed him to leave the Rio property. (Ex. 22, LVMPD BWC 00046 Kaur, Supreet 0343, 3:30 (Reece released from handcuffs with timestamp at "T10:49:30Z"); Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 91:5–7 (identifying timestamp on body worn cameras as "zulu" time, i.e. UTC)).

When Plaintiff Riley exited Room 2037, an LVMPD officer frisked Riley for weapons. (Ex. 24, LVMPD BWC 000054, Marcolini, Christopher 0249, 8:20). Defendant Bauman directed an LVMPD officer to pat down Riley as he exited Room 2037 and stood immediately adjacent in the doorway of Room 2037 as the pat down was conducted. (Ex. 24 at 8:20). At that time Defendants had no factual basis to believe Riley was armed. (Ex. 3, Deposition of Andrew Bauman at 163:17–19). At that time Defendants had no factual basis to believe that Riley was a danger to the officers or anyone else. (Ex. 3, Deposition of Andrew Bauman at 163:20–22). Plaintiff Riley was detained until at least 6:30 AM, when LVMPD officers collected a DNA buccal swap sample from him. (Ex. 25, Riley Buccal Swap Kit, LVMPD 004987). Defendant Young completed a field interview card for Plaintiff Riley. (Ex. 20 at LVMPD 000384–85). Though he is listed under "Interviewed [sic] Completed By", Defendant Young did not interview Plaintiff Riley prior to completing the field

interview card and does not know who interviewed him. (Ex. 14, Deposition of Theron Young at 285:1–6). Defendant Young marked Riley's interview card as "Yes" under "Gang Activity"; "Member" under "Gang Affiliate/Member"; "Affiliates w/ Gang", "Arrested w/ Gang", and "Reliable Source" under "How Determined"; and "Squad Up" under "Gang Name". (Ex. 20 at LVMPD 000384–85). Defendant Young wrote "Contacted at Rio Hotel where 5 firearms were recovered at gang party held by Carlos and Corey Bass" and "Riley is a Squad Up Gang Member" under "Subject Narrative". (Ex. 20 at LVMPD 000384–85). Defendant Young did not provide any information Plaintiff Riley engaged in any criminal activity or take action to support the Squad Up gang or any other gang. (Ex. 20 at LVMPD 000384–85). Based upon this field interview card, LVMPD employee Sharon Mendoza entered Plaintiff Bowie into GangNet as a gang member. (Ex. 21 at 19:3–10). Plaintiff Riley was not notified that he had been designated a gang member in GangNet. (2d Am. Compl. Exhibits, ECF No. 89-1, Exhibits 7 ¶ 26 (Affidavit of Demarlo Riley)). Reviewing Plaintiff Riley's field interview card during his deposition, LVMPD's 30(b)(6) designee stated "[he didn't] see this as being a good initial designation card" and "[he] did not care for it, but [he could] see how it could be entered into the system is where it falls on that line." (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 200:12 – 13, 200:20–201:3).

Defendant Young completed a field interview card for Plaintiff Johnson. (Ex. 20 at LVMPD 000379-80). Though he is listed under "Interviewed [sic] Completed By", Defendant Young did not interview Plaintiff Johnson prior to completing the field interview card and does not know who interviewed him. (Ex. 14, Deposition of Theron Young at 285:1–6). Defendant Young marked Johnson's interview card as "Yes" under "Gang Activity"; "Affiliate" under "Gang Affiliate/Member"; "Corey Bass" under "Affiliate Name"; "Affiliates w/ Gang" and "Arrested w/ Gang" under "How Determined"; and "Hillside Gangster Crips" under "Gang Name". (Ex. 20 at LVMPD 000379-80). Defendant Young wrote "Arrested for CCW F/A at Rio Gang party held by Carlos and Corey Bass" under "Subject Narrative". (Ex. 20 at LVMPD 000379-80). Based upon this

field interview card, LVMPD employee Sharon Mendoza entered Plaintiff Johnson into GangNet as a gang member affiliate/associate. (Ex. 21 at 9:11–24). Plaintiff Johnson was not notified that he had been designated a gang affiliate/associate in GangNet. (Ex. 21 at 9:11–24).

In whole or in part, Officer Young nominated every Plaintiff for either gang member or affiliate designation due to their presence at the party, and Plaintiffs' presence at the party was used as a justification in every instance for their designation as either gang members or affiliates in GangNet. (Ex. 20 at LVMPD 000372, LVMPD 000375, LVMPD 000376–77, LVMPD 000379-82, LVMPD 000384–85, LVMPD 000388-89 (marking "Affiliates w/ Gang" for every cards "How Determined" and referencing the party in every subject narrative)); (Ex. 21 at 4:3-13, 6:24–7:7, 9:11–24, 11:21–12:2, 14:14–21, 19:3–10, 21:3–17 (taking into consideration Plaintiffs' presence at the party to justify designation in GangNet)). Officer Young cited at least two criteria to justify his nominations for every Plaintiff, but only sought gang member designations for Plaintiffs Green, Reece, and Riley. (Ex. 20 at LVMPD 000372, LVMPD 000375, LVMPD 000376–77, LVMPD 000379-82, LVMPD 000384–85, LVMPD 000388-89).

II. Defendant LVMPD's Unified Problem Abatement Concept training

Defendant LVMPD trains its officers on the Unified Problem Abatement Concept ("UPAC"). (Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 131:10–133:16). The UPAC is also known as the "party crashers protocol". (Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 133:3–133:8). Defendant LVMPD has a PowerPoint presentation that is presented to officers that receive the UPAC training. (Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 138:15–21). LVMPD 000229–253 is an accurate copy of that PowerPoint presentation. (Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 138:15–21; Ex. 27, Unified Problem Abatement Concept Presentation). The PowerPoint presentation is the only part of the UPAC training that is required to be presented. (Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 170:20–23). The PowerPoint presentation of the UPAC found at

LVMPD 000229–253 completely and accurately reflects Defendant Bauman's understanding of the training he received on UPAC. (Ex. 28, Andrew Bauman's Answers to Plaintiffs' First Set of Requests for Admissions at 2:6–11; Ex. 29, Andrew Bauman's Answers to the Plaintiffs' Second Set of Interrogatories at 2:4–18).

Bauman has repeatedly testified that the techniques he used to detain the Plaintiffs were based on Defendant LVMPD's UPAC or "party crashers" training. (Ex. 3, Deposition of Andrew Bauman at 148:10–150:3; Ex. 4, Bauman testimony, ACLUNV 000252–254, 145:18–147:9). Defendant LVMPD authorizes its officers to initially detain everyone at a party or gathering when implementing the UPAC even if the officers do not have reasonable suspicion that all of the attendees have committed or are about to commit a criminal offense. (Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 146:10–148:23). When Bauman ordered every person in Room 2037 to line up, he did so based on his understanding of the training he had received from LVMPD on the UPAC. (Ex. 3, Deposition of Andrew Bauman at 148:5–7; Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 148:11–15, 149:11–16). LVMPD's UPAC training advises its officers "obtain [] identification", "complete field interview cards" and "issue applicable citations" prior to release when processing "party attendees". (Ex. 27 at LVMPD 000241–242). When Bauman ordered LVMPD officers to collect identification and information from all the occupants of Room 2037, including the Plaintiffs, this was based Bauman's understanding of LVMPD's training on the UPAC. (Ex. 3, Deposition of Andrew Bauman at 148: 15–19). When LVMPD officers detained the occupants in the hallway outside Room 2037 and only released individuals after completing a records check, this was based on Bauman's understanding of the UPAC. (Ex. 3, Deposition of Andrew Bauman at 149:17–25, 150:1-3).

III. Defendant LVMPD's gang member and gang member affiliate designation process

"GangNet is a securely networked Intelligence database" that "specifically documents members, associates, and affiliates of criminal street gangs and is used to collect descriptions, tattoos,

affiliations, locations, vehicles, [field interview cards], criminal histories and activities." (Ex. 30, Gang Vice Bureau Section Manual, LVMPD 005321). GangNet is a criminal intelligence system subject to federal regulations imposed by 28 CFR § 23. (Ex. 30 at LVMPD 005321).

The database "is shared with other law enforcement agencies in and out of the state." (Ex. 30 at LVMPD 005321; Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 129:15–21). GangNet is comprised of multiple nodes where law enforcement agencies may enter information into the database. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 127:16–130:6). GangNet nodes are located in Southern Nevada, Central Nevada, New Mexico, Washington, and Arizona. (Ex. 21 at 25:10–24). Defendant LVMPD manages GangNet's Southern Nevada node. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 131:16–132:11). In managing GangNet's Southern Nevada node, Defendant LVMPD is required to comply with 28 CFR § 23. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 131:16–132:11).

While LVMPD manages the Southern Nevada node of the GangNet database, other local, state, and federal agencies besides LVMPD can access the information submitted by LVMPD into the database. (Ex. 30 at LVMPD 005322–23; Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 129:7–21, 139:2–7, 140:4–21). These Nevada agencies include Nevada Department of Public Safety, Nevada Department of Corrections, Reno Police Department, the Nevada Attorney General's Office, Nye County, North Las Vegas Police Department, Henderson Police Department, Lincoln County Sheriff, Clark County School District Police Department, Boulder City Police Department, City of Las Vegas Detention and Enforcement, and the Mesquite Police Department. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 135:24–136 (stating that Henderson and Clark County School District can nominate people for designation in GangNet); Ex. 30 at LVMPD 005322–23 (recognizing NDPS, NDOC, RPD, and the Attorney General's Office as providing Nevada GangNet oversight); Exs. 31–37 (Interlocal agreements providing access to Nevada agencies)). Federal agencies also have access to the information submitted by LVMPD into

GangNet. (Ex. 38–39, Agreements with Federal Bureau of Investigation, United States Marshal Service). Out-of-state agencies, specifically agencies in California and Arizona, have access to information submitted by LVMPD into GangNet. (Ex. 40–41, Agreements with CalGang and Arizona Department of Safety). The Sheriff's and Chiefs' Association, a nongovernmental entity, also has access to GangNet. (Ex. 30 at LVMPD 005322–23 (recognizing the association as providing Nevada GangNet oversight)). Defendant LVMPD does not know how many agencies have access to GangNet through the Central Nevada, Washington, and Arizona nodes. (Ex. 21 at 25:17–24).

Defendant LVMPD uses its authority to enter information to the Southern Nevada node of the GangNet system to designate gang members and affiliates. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 124:10–18; 126:21–127:8). Using this authority, Defendant LVMPD had designated over 11,000 people as "gang members" and over 2,000 as "gang affiliates as of January of 2021. (Ex. 48, Gang Liaison Officer Training, LVMPD 002792). Under LVMPD Policy 5/206.16, a "gang member" is any person who satisfies any two of the following criteria:

1) Self-admits gang membership to an officer and the admission is "credible".
2) The person is or has been arrested alone or with known gang members for offenses which are committed in furtherance of the gang.
3) The person has been identified as a gang member by a "reliable source/informant," and "additional factors can be articulated to corroborate the claim". The policy describes parents, teachers, law enforcement officers, and judges as reliable sources.
4) The person has been identified as a gang member by a "source/informant of untested reliability" and "additional factors can be articulated to corroborate claim". The policy does not explain whether the "additional factors" for criteria #3 are different than criteria #4.
5) The person is wearing "gang attire" and the officer can corroborate that the style of attire is worn to represent or identify the subject as a member of a gang.

6) The person has gang specific tattoos which can be articulated to represent or identify the person as a gang member.

7) The person has been seen displaying symbols and/or hand signs which can be articulated to represent or identify the person as a gang member.

8) The person affiliates with known gang members and the officer can identify the affiliate by name and connection to specific gang.

9) The person self-admits during classification at the Clark County Detention Center or any local, state, or federal correction facility. Unlike criteria #1, this criteria does not require that the admission be "credible".

(Ex. 43, LVMPD Policy 5/206.16 at LVMPD 000392). LVMPD Policy 5/206.16 defines "additional factors" that corroborate gang membership as required by criteria #3 and #4 as "frequenting a known gang area, non-specific gang related tattoos, previously identified in a crime report, intelligence report, or any other official report of a law enforcement agency." (Ex. 43 at LVMPD 000392).

Designation as a gang member means that Defendant LVMPD considers the person actively involved in a criminal gang. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 186:2–5 (clarifying that "the ones that are there [in the system] are active and street gangs and doing community crime in our community")). Defendant LVMPD does not consider people who were once members of gangs but are no longer actively involved to be "gang members" as used in LVMPD Policy 5/206.16. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 186:2–5 (clarifying that "the ones that are there [in the system] are active and street gangs and doing community crime in our community")). However, after initial designation as a gang member, Defendant LVMPD will re-designate a person as a gang member if the person meets only one "gang member" criteria as described in LVMPD Policy 5/206.16. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 179:5–15). Notably, LVMPD believes that designation as a "gang member" is sufficient to satisfy the "danger" prong justifying a *Terry* frisk. (Ex. 23, Deposition of LVMPD

30(b)(6) Designee (Landon Reyes) at 179:8–12).

LVMPD Policy 5/206.16 defines an "gang affiliate/associate" as "an individual, other than an identified gang member, who affiliates/associates with an active gang member(s) and the relationship can be clearly identified." This definition functions identically to criteria #8 under the definition of "gang member". (Ex. 43 at LVMPD 000392; Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 104:19–22). LVMPD Policy 5/206.16 does not define the following terms:

- "self-admittance" as used in criteria #1 and #9;
- "credible" as used in criteria #1;
- "reliable" as used in criteria #2;
- "gang attire" as used in criteria #5;
- "gang specific tattoo" as used in criteria #6;
- "symbols and/or hand signs which can be articulated to represent or identify [the person] as a gang member" as used in criteria #7;
- "affiliate" as used in criteria #8;
- "gang area" and "non-specific gang related tattoos" as used for "additional factors" for corroboration.

(Ex. 43 at LVMPD 000392). Defendant LVMPD does not have an official list or similar resource for its employees describing what clothing would qualify as "gang attire" under any given circumstance. (Ex. 14, Deposition of Theron Young at 303:15–306:9; Ex. 18, Deposition of Blake Walford at 113:18–116:24). Defendant LVMPD does not have an official list or similar resource describing what tattoos would qualify as "gang specific" or "non-specific gang related" tattoos. (Ex. 14, Deposition of Theron Young at 308:6–13; Ex. 18, Deposition of Blake Walford at 113:18–116:24; *see* Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 97:2–97:8). Defendant LVMPD does not have an official list or similar resource for its employees describing what places qualify as "gang areas". (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 111:17–112:7).

LVMPD's definition of "gang affiliate" or criteria #8 for "gang member" designation does not exempt association with family members or association for the purpose of protected First Amendment activity from designation. (Ex. 43 at LVMPD 000392); *see* (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 102:18 – 102:24). An LVMPD officer does not need to establish that the association is related to criminal or gang activity. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 114:12–115:21). An LVMPD officer may determine that a person is "affiliated" with a gang pursuant to criteria #8 or the definition of "gang affiliate or associate" based on any relationship to a person who has been designated as a gang member, including familial relationships such as a relationship as siblings or parent-child. (Ex. 43 at LVMPD 000392); *see* (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 103:8–103:13 (presence in car with brother sufficient to justify designation)). An LVMPD officer may nominate a person for designation as a gang member of a gang based on criteria related to a different gang that is the basis for nomination. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 81:13–18, 82:9–82:17 (designation as a "Rollin' 60's Crip" based upon association with a "Hillside Gangster Crip"), 205:10–206:6 (designation as a "Gerson Park Kingsman" based upon association with a "Hillside Gangster Crip")). An LVMPD officer may determine that a person is an affiliate of a designated gang member even if that person is unaware of the designated gang member's status. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 102:25–103:3). LVMPD officers may effectively recycle an old admittance or designation to justify extending a designation because LVMPD considers GangNet a "reliable source". (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 79:3–8). LVMPD officers may choose not to designate an individual as a "gang member", "gang associate", or "gang affiliate" even if that individual satisfies the criteria as described. (Ex. 18, Deposition of Blake Walford at 124:15–125:10). Defendant LVMPD does not require that an officer provide any basis to show that a potential designee has committed a crime or has been involved in criminal activity before designating that person a gang member or affiliate. (Ex. 26, Deposition of

LVMPD 30(b)(6) Designee (Fred Haas) at 115:10–21, 119:14–122).

If an LVMPD officer decides to nominate a person for designation as a "gang member", "gang associate", or "gang affiliate", the officer completes a document known as a field interview card describing the designation, the criteria supporting the designation, and factual basis the officer has for satisfying the criteria. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 66:18–68:21). If the officer marks "Yes" next to "Gang Activity" on a person's field interview card, the card is routed to LVMPD's Gang Section. (Ex. 44, GangNet Gatekeeper Entry Instructions, LVMPD 005263). Defendant LVMPD allows any patrol or corrections officer to submit field interview cards to nominate a person for designation as a gang member or associate. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 58:12–18). An officer is not required to have any additional training than that provided in academy prior to submitting field interview cards to the Gang Section. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 58:19–23). Defendant LVMPD accepts field interview cards nominating its subject for designation even from officers who did not interview the subject and have not identified the source of their information. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 116:10-15; 198:22–199:5).

An employee in LVMPD's Gang Section reviews each Field Interview card to ensure that Field Interview card provides a factual basis for the relevant criteria before the person's information on the card is submitted to GangNet. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 124:22–125:8). Defendant LVMPD does not require that the Gang Section employee verify the accuracy of the card's information prior to submission. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 61:23–62:2). Defendant LVMPD does not require the Gang Section employee verify that the information contained in the card was derived from a legal source (i.e. not the result of a constitutional violation), nor does LVMPD have any means to verify that information in GangNet came from a legal source. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 168:12–169:1).

If a person is designated a gang affiliate, Defendant LVMPD does not provide notice of the designation. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 170:15–171:1). If a person is designated a gang member, Defendant LVMPD's policy is to send a written letter to the last known address of the person notifying them of the designation. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 171:2–22). Defendant LVMPD makes no other effort besides a single written letter to notify a person of gang member designation. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 171:2–22). There is no way for a person to verify that they have been entered into GangNet if they do not receive this notification. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 172:6–17).

Defendant LVMPD will remove a person's information from GangNet after five years pass from that person's last contact with law enforcement. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 131:16–25). If Defendant LVMPD re-designates a person as a gang member after the initial designation, Defendant LVMPD will extend the removal period for another five years. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 179:5–15). If a person is re-designated a gang member, Defendant LVMPD will not notify the person of the re-designation. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 57:6–14).

If Defendant LVMPD designates a person as a gang affiliate, Defendant LVMPD does not provide any opportunity for that person to have their information removed from GangNet before the entry falls out after five years. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 173:11–17). If Defendant LVMPD designates a person as a gang member, Defendant LVMPD allows for such designees to petition to have their information removed from GangNet. (Ex. 43 at LVMPD 000393). There is no set standard for LVMPD personnel to use in determining whether a designee is entitled to have their information removed from GangNet. (Ex. 43 at LVMPD 000393). Defendant LVMPD also has no set standard for what evidence a gang member designee may offer to have their information removed from the GangNet database. (Ex. 43 at LVMPD 000393). If Defendant LVMPD

denies a designee's request to remove information from GangNet, the designee has no right to appeal. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 178:4–5).

In theory, LVMPD Policy 5/206.16 requires LVMPD personnel to "periodically to remove and destroy any misleading, obsolete, or otherwise unreliable information in accordance with 28 CFR part 23." (Ex. 43 at LVMPD 000394). However, LVMPD policy does not define how often the sweeps must occur or what standard or methods are used to determine whether information in the system is "misleading, obsolete, or otherwise unreliable." (Ex. 43 at LVMPD 000394). According to LVMPD, this in practice consists of (1) a quarterly audit by California's Department of Justice where that agency reviews 15–25 field interview cards for accuracy and (2) random audits by LVMPD supervisors whose scope are not set by policy. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 182:12 – 183:23, 186:16–187:5). But at least as recently as 2021, LVMPD's database contained over 13,000 designees. (Ex. 48 at LVMPD 002914). LVMPD does not know how many designations have been removed from GangNet due to these audits. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 185:7–14).

In addition to her designation as an affiliate for attending Cory Bass's birthday party on August 19, 2018, Plaintiff Bowie has been designated an affiliate on two other occasions. (Ex. 21, at 3:21-4:2, 4:14–25). On both occasions, Plaintiff Bowie was not accused of any criminal conduct. (Ex. 21 at 3:21-4:2, 4:14–25); (Ex. 45, Lonicia Bowie Field Interview Cards at LVMPD 004866, LVMPD 004868–69). Defendant LVMPD first designated Plaintiff Bowie a gang affiliate in GangNet because she was "stopped in a car with a known gang member" on February 14, 2018. (Ex. 21 at 3:21-4:2). Defendant LVMPD later designated Plaintiff Bowie a gang affiliate in GangNet because she told an LVMPD officer that "she does not associate with gangs, but her brother-in-law is a known gang member" during a traffic stop on November 5, 2019. (Ex. 21 at 4:14–25; Ex. 45 at LVMPD 004868–69). Plaintiff Bowie was not provided notification of her designation on either occasion. (Ex. 21 at 3:21-4:2, 4:14–25).

On March 11, 2022, Defendant Young nominated Plaintiff Reece for re-designation as a gang member by completing a field interview card and marking "Yes" on "Gang Activity". (Ex. 21 at 15:19–16:2; Ex. 46, Clinton Reece Field Interview Cards LVMPD 005450). For criteria for designation, Defendant Young marked "Affiliates w/ Gang" and "Tattoo". (Ex. 46 at LVMPD 005450). As the only apparent basis for the "affiliates w/ gang" criteria, Defendant Young wrote that Reece was stopped "leaving the funeral of Demetreus Beard." (Ex. 46 at LVMPD 005450). Based on the information provided in Defendant Young's field interview card, LVMPD employee Sharon De La Fuente extended Reece's gang member designation. (Ex. 21 at 15:19–16:2). In his field interview card, Defendant Young did not accuse Plaintiff Reece of any criminal conduct or taking any action in support of a criminal gang. (Ex. 46 at LVMPD 005450).

IV. Defendant LVMPD's policies regarding "gang funerals"

It is the practice of Defendant LVMPD to surveil "gang funerals". (Ex. 30 at LVMPD 005309). Funerals deemed "gang funerals" by Defendant LVMPD may include funerals for people designated as gang members or have "strong" "gang ties". (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 47:21–48:7). Defendant LVMPD may deem a funeral a "gang funeral" based upon "who is going to show up for the funeral." (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 48:5–48:7). Surveillance of gang funerals include "deter[ing] any potential disorder, gather[ing] intelligence, and conduct[ing] proactive stops." (Ex. 30 at LVMPD 005309). When surveilling a gang funeral, Defendant LVMPD advises its officers to "monitor social media", "monitor the vigil, viewing and funeral" and "document with an officers report and photos." (Ex. 42, Gang Liaison Officer Training Lesson Plan (revised 2.19.21) at LVMPD 002914; Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 86:5–89:9, 93:16–94:11).

Defendant LVMPD photographs and documents people who attend a gang funeral even if those people are not engaging in criminal conduct. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 68:23–69:23; 94:14–95:17). Defendant LVMPD documents the license plates and

clothing of funeral attendees even if the attendee is not engaging in criminal activity. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 67:1–10). When attendees leave a gang funeral, Defendant LVMPD will stop an attendee for "suspicious behavior" even if that behavior does not suggest criminal activity. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 96:17–98:5). Defendant LVMPD considers wearing clothing honoring a deceased person previously designated a gang member to be gang attire. (Ex. 18, Deposition of Blake Walford at 98:7–23); Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 67:1–68:17).

Plaintiff Reece has been stopped multiple times by LVMPD officers leaving funerals where LVMPD has documented Plaintiff Reece as engaging in "Gang Activity". (Ex. 46 at LVMPD 005448, 005450). In addition to his detention on March 11, 2022, leaving the funeral of Demetrius Beard, Plaintiff Reece was detained on November 25, 2017, leaving a "GPK-related funeral." (Ex. 46 at LVMPD 005448). Though Plaintiff Reece was not accused of any criminal activity at that time, Defendant LVMPD's officer deemed the stop as involving "Gang Activity" and marked "Yes" next to "Gang Activity". (Ex. 46 at LVMPD 005448). This information was entered by LVMPD into GangNet. (Ex. 21 at 14:1–6).

On December 11, 2020, Plaintiff Riley was stopped by Defendant LVMPD officers leaving a vigil. (Ex. 49, Demarlo Riley Field Interview Cards at LVMPD 004842). Though Plaintiff Riley was not accused of any criminal misconduct or furthering the interest of a gang, an LVMPD officer still documented the stop as "Gang Activity". (Ex. 49 at LVMPD 004842). Defendant LVMPD included this stop in Plaintiff Riley's file in GangNet. (Ex. 21 at 15:11–16). LVMPD has admitted that it considered the funeral of Demetrius Beard as referenced in LVMPD 005448 and the vigil referenced in LVMPD 004842 to be "gang funerals" as used in LVMPD 002792. (Ex. 50, LVMPD Responses to Plaintiffs' First Set of Requests for Admissions (Dated Sept. 27, 2023) at 17:19–26, 19:15–23).

LEGAL STANDARD

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). The moving party bears the initial burden of establishing there is no genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). To defeat a motion for summary judgment, the responding party must present admissible evidence sufficient to establish any of the elements that are essential to the moving party's case and for which that party will bear the burden of proof at trial. *See id.*; *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989). The Court may grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show the movant is entitled to summary judgment and if the responding party fails to properly address the moving party's assertion of fact as required by Rule 56(c). *See* Fed. R. Civ. P. 56(e).

The responding party cannot point to mere allegations or denials contained in the pleadings. It is not enough for the non-moving party to produce a mere "scintilla" of evidence. *Celotex Corp*., 477 U.S. at 252. Instead, the responding party must set forth, by affidavit or other admissible evidence, specific facts demonstrating the existence of an actual issue for trial. *KRL v. Moore*, 384 F. 3d 1105, 1110 (9th Cir. 2004).

ARGUMENT

An individual defendant is liable pursuant to 42 U.S.C. §1983 if they are "a person who, under color of [law], subjects [. . .] any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." An individual who, as a superior, "participated in or directed" actions by his subordinates that violated the Constitution is liable for their subordinates' actions. *Taylor*, 880 F.2d at 1045.

"[M]unicipalities may be liable under § 1983 for constitutional injuries pursuant to (1) an official policy; (2) a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision or act by a final policymaker." *Horton v. City of Santa Maria*, 915 F.3d 592, 602-03 (9th Cir. 2019). "A policy is a deliberate choice to follow a course of action made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Long v. Cty. of L.A.*, 442 F.3d 1178, 1185 (9th Cir. 2006) (quotation and ellipsis omitted). A municipality may also be liable for a constitutional violation if the violation is ratified by an official policy maker. *Hunt v. Davis*, 749 F. App'x 522, 525 (9th Cir. 2018).

Pursuant to 42 U.S.C. §1983, all Plaintiffs are entitled to summary judgment against Defendants Bauman, Young, Kravetz, and LVMPD for the violation of Plaintiff's Fourth Amendment rights to be free from unreasonable searches and seizures, and against Defendant LVMPD for the violation of Plaintiff's First Amendment right to expressive and intimate associations. Furthermore, Plaintiffs Bowie, Medlock, Johnson, Semper, and Riley are entitled to summary judgment against Defendant LVMPD for the violation of their Fourteenth Amendment right to due process.

I. The Plaintiffs are entitled to summary judgement for their Fifth, Sixth, Seventh, and Eighth Causes of Action due to violations of their Fourth Amendment rights.

The Fourth Amendment guarantees a person's right to be free from "unreasonable searches and seizures." U.S. Const. amend IV. Plaintiffs are entitled to summary judgment for the Fifth and Sixth Causes of Action as the indisputable facts establish that the Defendant officers lacked a sufficient basis to detain any of the Plaintiffs. Plaintiffs Bowie, Green, Reece, and Riley are also entitled to summary judgment for the Fifth and Sixth Causes of Action due to officers frisking them without requisite reasonable suspicion. Plaintiffs Bowie, Green, Reece, Riley, and Medlock are entitled to summary judgment for the Seventh and Eighth Causes of action due to officers detaining them well beyond the scope of an investigatory stop.

A. All Plaintiffs are entitled to summary judgment for the Fifth and Sixth Causes of Action against Defendants Bauman, Kravetz, Young, and LVMPD because the officers detained the Plaintiffs pursuant to LVMPD policy without individualized reasonable suspicion as required by the Fourth Amendment.

An investigatory stop is considered a seizure under the Fourth Amendment, and such a stop must be supported by reasonable suspicion that the person seized committed, or was about to commit, a crime. U.S. Const. amend. IV; *United States v. Smith*, 633 F.3d 889, 892 (9th Cir. 2011). "Without reasonable suspicion, a person may not be detained even momentarily." *Smith*, 633 F.3d at 892. An officer only has reasonable suspicion to support an investigatory stop if he has "specific, articulable facts, which, together, with objective and reasonable inferences, form a basis for suspecting that a particular person is engaged in criminal conduct." *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000)(quotation marks omitted). A "inchoate and unparticularized suspicion" or "hunch" by the officer is not enough to establish reasonable suspicion, and "the mere subjective impressions of a particular officer" is insufficient to justify an investigatory stop. *Id.* at 1191. "Importantly, reasonable suspicion must be individualized." *Thomas v. Dillard*, 818 F.3d 864, 877 (2016).

On August 19, 2018, Defendants Bauman, Kravetz, and Young detained everyone in Room 2037, including the Plaintiffs, by entering Room 2037, ordering everyone inside to line up, and processing everyone from inside the suite into the outside hallway one at a time. (Ex. 4 at ACLUNV 000222, 115:11–16; Ex. 6 at 1:25; Ex. 9 at 1:30). When they detained everyone in Room 2037, the Defendant officers lacked reasonable suspicion that the Plaintiffs had committed a criminal offense. At the time they issued and enforced the order to line up, the officers did not even know that the individual Plaintiffs were present. (Ex. 3, Deposition of Andrew Bauman at 85:3–17**).** According to their testimony, Defendant officers had no evidence that the Plaintiffs had personally committed or were about to commit a criminal offense and relied only on (1) a general smell and "cloud" of marijuana in Room 2037, (2) that someone in Room 2037 besides the Plaintiffs may have been in possession of a firearm, and (3) that a Rio employee had said to Cory Bass that the people inside of Room 2037 would need to leave to justify the Plaintiffs' detention.

First, these facts are insufficient to show that *any* crime had occurred. Possession and consumption of marijuana were legal under Nevada law in 2018, and Nevada law specifically barred state law enforcement, including the Defendants, from prosecuting legal marijuana possession and consumption. NRS 453D.110 (2017) (repealed and replaced by NRS 678D.200) (specifically exempting the personal possession or use of marijuana as a basis for "prosecution or penalty" or "seizure or forfeiture of assets" by any Nevada political subdivision). While the Rio may have had the authority to evict the occupants of Room 2037, there is no evidence that any occupants had received a trespass warning as described in NRS 207.200 prior to the Plaintiffs being detained. Finally, firearm possession was not only legal but a constitutional right in Nevada, *see* Nev. Const. art. 1, § 11, and LVMPD officers had no evidence that any person who may have possessed a firearm in Room 2037 did so unlawfully.

Second, even if LVMPD had evidence that someone had committed a criminal offense, the Defendants still lacked individualized suspicion that the Plaintiffs had committed a crime. LVMPD officers cannot justify detaining the Plaintiffs for the alleged criminal activity of Mr. Bass or any other third party. Considering that Room 2037 was a multiroom suite the size of a "house" containing at least 32 people when the officers entered the room (Ex. 1; Ex. 2, Deposition of Mathew Kravetz at 139:20–140:14, 152:13 –153:12, 221:24–222:18), any generalized smell of marijuana in Room 2037 would be insufficient to establish individualized suspicion of the Plaintiffs. *See Torres v. City of L.A.*, 548 F.3d 1197, 1207 n.7 (9th Cir. 2008) (observing that "mere presence [in a place] in which a crime is being committed is not an offense."). The undisputable facts establish that Defendants Bauman, Kravetz, and Young lacked individualized reasonable suspicion that the Plaintiffs either committed a criminal offense or were about to commit an offense when they seized the Plaintiffs, violating Plaintiffs' rights under the Fourth Amendment.

Defendant LVMPD is liable for this constitutional violation as the individual Defendants relied on an LVMPD policy known as the Unified Party Abatement Concept (UPAC) or

"partycrashers protocol" in initially detaining the Plaintiffs. Defendant Bauman, who was supervising Kaur, Kravetz, and Young on August 19, 2018, admitted to being trained on the UPAC prior to the incident. Bauman testified repeatedly that he relied on that training when his team detained everyone in Room 2037 and brought each person out one-by-one into the hallway. (Ex. 3, Deposition of Andrew Bauman at 148:1–149:25; Ex. 4 at ACLU 000252–254 145:22–147:19). LVMPD confirmed that its UPAC training taught officers that the officers should detain everyone at a subject party when implementing the UPAC regardless of whether the officers had individualized reasonable suspicion to justify the detention. (Ex. 23 Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 146:10–148:23). Without requiring individualized suspicion, LVMPD is training its officers to violate the Fourth Amendment and is liable to the Plaintiffs.

B. Plaintiff Bowie, Green, Reece, and Riley are entitled to summary judgment for the Fifth and Sixth Causes of Action against Defendant Bauman due to Bauman and officers directed by Bauman frisking them without reasonable suspicion.

A pat down for weapons "requires reasonable suspicion a suspect is armed and presently dangerous to the officer or to others." *Thomas*, 818 F.3d at 876. "A lawful frisk does not always follow from a justified stop," rather "each element, the stop and the frisk, must be analyzed separately; the reasonableness of each must be independently determined." *Id.* Similar to an investigative detention, the officer "must be able to point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion [of a frisk]", "[a] mere inchoate and unparticularized suspicion or hunch that a person is armed and dangerous does not establish reasonable suspicion." *Id.* In particular, "there must be adequate reason to believe the suspect is armed." *Id.*

Though Plaintiffs Bowie, Green, Reece, and Riley were all subject to pat downs, no officer had reasonable suspicion to believe that any of these Plaintiffs were either armed or dangerous. Bauman personally patted down Plaintiff Bowie. (Ex. 6 at 2:49). While other LVMPD officers patted down Plaintiffs Green, Reece, and Riley, Defendant Bauman as supervising officer directed the pat

down of those Plaintiffs. (Ex. 3, Deposition of Andrew Bauman at 170:14 (supervising officer on scene)); (Ex. 15 at 2:50 (Bauman orders LVMPD officer to continue handcuffing and frisking occupants of Room 2037), 4:32 (frisk of Reece), 6:43 (frisk of Green)); (Ex. 24 at 8:30 (frisk of Riley)). Due to his status as supervising officer, his direction to officers to conduct the frisks, and his presence as the frisks occurred, Defendant Bauman is either directly liable or liable as a supervisor for the pat downs of Bowie, Green, Reece, and Riley.

C. Plaintiffs Bowie, Green, Medlock, Reece, and Riley are entitled to summary judgment for the Seventh and Eighth Causes of Action against Defendants Bauman, Young, and LVMPD for prolonging their detention in violation of the Fourth Amendment.

A *Terry* stop "is by its very nature of temporary duration and limited in its intrusiveness on the liberty of the suspect being investigated." *United States v. Thomas*, 863 F.2d 622, 628 (9th Cir. 1988). Even if an officer's initial detention of a person is lawful, "[t]he scope of the detention must be carefully tailored to the underlying justification," and "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983). "On-scene investigation into other crimes" that detour from that mission and "safety precautions taken in order to facilitate such detours" are impermissible under the Fourth Amendment. *Rodriguez v. United States*, 575 U.S. 348, 356 (2015). Rather, an officer may only detain a person as long as there is reasonable suspicion to justify the detention; if reasonable suspicion dissipates, the stop must end. *See Thomas*, 818 F.3d at 878 n. 8 ("Under the totality-of-the-circumstances analysis, additional facts may sufficiently dispel an officer's suspicion.").

After removing everyone from Room 2037 and conducting pat down searches, LVMPD officers continued to detain the Plaintiffs. The Plaintiffs were initially detained between 2:43 AM and 2:48 AM. (Ex. 2, Deposition of Mathew Kravetz at 73:9–19); (Ex. 3, Deposition of Andrew Bauman at 69:7–15). At approximately 3:50 AM, LVMPD released Plaintiff Reece, over an hour after his initial detention. (Ex. 22 at 3:30). According to LVMPD documentation, Plaintiffs Bowie, Medlock,

and Green were arrested on unrelated traffic warrants almost two hours after their initial detention at 4:41 AM, 4: 30 AM, and 4:30 AM respectively. (Ex. 19 at LVMPD 000023, LVMPD 000026, LVMPD 000029). And Plaintiff Riley was detained until at least 6:30 AM, almost four hours after his initial detention. (Ex. 25). During this time, LVMPD officers failed to conduct any investigation into the criminal offenses that the Defendant officers allege as the basis for the initial detention of Plaintiffs Bowie, Medlock, Green, Reece, or Riley. These detentions, lasting several hours and without any investigation into alleged criminal conduct, were unconstitutionally prolonged in violation of the Fourth Amendment.

Even if the officers had reasonable suspicion to initially detain the Plaintiffs to investigate the use of marijuana or potential trespass allegations, they could not require the Plaintiffs to provide their physical identification. *United States v. Landeros*, 913 F.3d 862, 869 (2019) ("As authoritatively interpreted by the Nevada Supreme Court, the statute required only that a suspect disclose her name—not produce a driver's license or any other document."). And the underlying basis for detaining the Plaintiffs would not authorize the officers to complete a records check because a records check would have been, unlike running the identification of a driver pulled over for a traffic violation, irrelevant to the investigation of the crimes supposedly under investigation. *See Matthews v. Las Vegas Metro. Police Dep't*, No. 2:18-cv-00231-RFB-DJA, 2021 U.S. Dist. LEXIS 19529, at *13 (D. Nev. Feb. 1, 2021) (noting that running records checks during traffic violations intended to serve the objective of traffic enforcement "ensuring that vehicles on the road are operated safely and responsibly" rather than investigating crime). The Ninth Circuit has specifically found that records checks "aimed at detecting evidence of ordinary criminal wrong doing" violate the Fourth Amendment when they prolong a person's detention. *United States v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015).

Yet Defendant Bauman specifically ordered all of the partygoers, including the Plaintiffs, detained until everyone's identification had been collected and their records searched. (Ex. 3, Deposition of Andrew Bauman at 144:13–21, 145:11–13, 149:6–11). And LVMPD officers followed

those orders, conducting multiple records checks on the Plaintiffs. (Ex. 7, Deposition of Supreet Kaur at 180:21–23; Ex. 17 at LVMPD 000558–569). Plaintiffs' detentions, lasting several hours and without any investigation into supposed basis for the Plaintiffs' detention, were unconstitutionally prolonged in violation of the Fourth Amendment.

Defendant LVMPD is liable as the prolonged detentions were the direct result of LVMPD's UPAC training. Once all partygoers are detained, the UPAC training directs LVMPD officers to "obtain identification" and "complete interview cards" before releasing attendees. (Ex. 27 at LVMPD 000241–242). Unlike its instructions on identifying which partygoers to frisk, the UPAC training does not limit this process to subjects where the officers have reasonable suspicion. *Compare* (Ex. 27 at LVMPD 000241–242) *with* (Ex. 27 at LVMPD 000240). Bauman testified that he directed the Plaintiffs detained, their identification collected, and record checks completed based upon the UPAC training he previously received. (Ex. 3, Deposition of Andrew Bauman at 149:15–150:3). As Plaintiffs Bowie, Medlock, Green, Reece, and Riley were detained well beyond the limits justified by the alleged basis of their detention and that unconstitutional extension was due to the UPAC training Defendant LVMPD provided to Bauman, LVMPD is liable for the Plaintiffs' prolonged detention.

II. Plaintiffs are entitled to summary judgment for the Third and Fourth Causes of Action due to Defendant LVMPD's violations of their First Amendment rights.

The First Amendment protects the right to associative conduct convened for the purpose of First Amendment activity, i.e. expressive association. *Dible v. City of Chandler*, 502 F.3d 1040, 1050 (9th Cir. 2007). The right to expressive association necessarily includes "the right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends," *Santopietro v. Howell*, 857 F.3d 980, 989 (9th Cir. 2017). "Association for the purpose of engaging in protected activity is itself protected by the First Amendment." *Id.* at 989. To determine whether a gathering is protected as an expressive association, the Court must ask (1) did the

participants intentionally gather, and (2) was the purpose of the gathering to engage in conduct protected under the First Amendment. *See id.* at 989–92 (finding that two street performers dressing up in costume, taking photographs with tourists, and soliciting tips together were engaged in expressive association).

The First Amendment also grants "the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State," i.e. the right to intimate association. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). While protecting any relationship "sufficiently personal or private" pursuant to the standard set forth in *Rotary Club*, this right undisputably protects parent-child relationships, cohabitating family members, and unrelated roommates. *See Bd. Of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 546 (1987) (providing standard for determining whether particular relationship is a protected intimate association); *Keates v. Koile*, 883 F.3d 1228 (9th Cir. 2018) (parent-child); *Moore v. East Cleveland*, 431 U.S. 494, 503–04 (1977) (cohabitating family members); *Fair Housing Council of San Fernando Valley v. Roommate.com LLC*, 666 F.3d 1216, 1221 (9th Cir. 2012) (unrelated roommates).

The federal regulations governing GangNet also bar law enforcement agencies from "collect[ing] or maintain[ing] criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity." 28 CFR § 23.20(b) (2024).

Defendant LVMPD violated the Plaintiffs' right to engage in expressive association when LVMPD's employees, following LVMPD policy, designated the Plaintiffs as gang members and affiliates expressly because the Plaintiffs attended a birthday party, which is a form of expressive association. Defendant LVMPD again violated Plaintiff Reece's right to expressive association by

extending his designations as gang members specifically because the Plaintiffs attended funerals, another form of expressive association.

Defendant LVMPD continues to chill Plaintiffs Green, Reece, and Riley's right to engage in both expressive and intimate association because the agency's policy designates any person as a gang member or affiliate any person who affiliates or associates for any purpose, without exemptions for protected associations, with any person designated as a gang member.

Finally, Defendant LVMPD chills expressive association for all Plaintiffs because the agency's express policy of targeting people attending broadly defined "gang-related" funerals with pretextual stops and investigations chills the Plaintiffs' right to attend and host such funerals.

A. All relevant Plaintiffs are entitled to summary judgment for the Third Cause of Action because Defendant LVMPD designated the Plaintiffs as gang members and associates for engaging in protected expressive association.

"The First Amendment [. . .] restricts the ability of the State to impose liability on an individual solely because of his association with others." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918–19 (1982).

On August 19, 2018, the Plaintiffs had gathered in Room 2037 to celebrate the birthday of Cory Bass. This gathering was as expressive association as defined by *Santopietro* in that the occupants had gathered intentionally, and they had gathered to expressly communicate the message "happy birthday". The partygoers and even the LVMPD officers were aware that the gathering was meant to celebrate Cory Bass's birthday. (Ex. 3, Deposition of Andrew Bauman at 26:8–11; Ex. 4 at ACLUNV 000151, 44:21–25). LVMPD officers had no reason to believe that the party had any other purpose than to celebrate Bass's birthday, yet LVMPD employees designated all Plaintiffs as either gang members or affiliates expressly due to the Plaintiffs' presence at the party. (Ex. 20 at LVMPD 000372, LVMPD 000375, LVMPD 000376–77, LVMPD 000379-82, LVMPD 000384–85, LVMPD 000388-89); (Ex. 21 at 4:3-13, 6:24–7:7, 9:11–24, 11:21–12:2, 14:14–21, 19:3–10). These designations were based in whole or in part on "affiliation" and conformed with LVMPD's

written policy as LVMPD's policy does not define what constitutes an "affiliation" or "association" nor does it limit what affiliations and associations may justify designation. (Ex. 43 at LVMPD 000392).

In addition to receiving designations due to attending Bass's birthday party, Plaintiffs Reece also had his designation as a gang member extended expressly because he attended a funeral. As this Court previously observed, funerals are a form of expressive association: they are gatherings to grieve the death of colleagues, friends, family members. Order at 9:23-10:12, ECF No. 113**.** LVMPD renewed Reece's designation as a gang member on March 11, 2022. (Ex. 21 at 15:19–16:2). In documenting Reece as a "gang member", the designating officer identified "affiliates with gang" as a basis for the designation and offered "leaving Funeral of known gang member Demetrius Beard" as the facts supporting that criteria. (Ex. 46 at LVMPD 005450). "Based on this information" an LVMPD employee extended Reece's designation, (Ex. 21 at 15:19–16:2), which is not at odds with LVMPD's policy that considers any affiliation with a designated gang member for any reason a justification to extend a designation. Extending Reece's designation as a "gang member" because he attended a funeral necessarily violated Reece's right to expressive association.

B. Plaintiffs are entitled to summary judgment for the Fourth Cause of Action because Defendant LVMPD's policies chill protected expressive and intimate association.

State action that "would chill or silence a person of ordinary firmness from future First Amendment activities" violates the First Amendment. *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000). Even informal government means of "coercion, persuasion, or intimidation" can "chill" speech in violation of the First Amendment. *White*, 227 F.3d at 1228. Investigating an individual for engaging in activity protected by the First Amendment is sufficient to establish a "chilling" violation even if there is no subsequent prosecution. *See id.* at 1228 (finding that an investigation by a government agency "unquestionably chilled the plaintiffs' exercise of their First Amendment rights."). And in the context of the right to associate, exacting scrutiny is triggered by state action

which "*may* have the effect of curtailing the freedom to associate." *Ams. For Property Found. V. Bonta*, 141 S. Ct. 2373 (2021). It is not necessary for a plaintiff to show that policy caused a specific person to change their course of conduct to establish a chilling claim; rather state action that "creates an unnecessary risk of chilling" violates the First Amendment. *See id.* at 2388–89 (finding that a state law requiring organizations to disclose donor information violated the First Amendment without determining whether the law in fact changed donor conduct).

Defendant LVMPD's policies and practices chill Plaintiffs Green, Reece, and Riley's right to protected association by designating anyone who associates with any person designated as a gang member in GangNet as either gang members or associates and does not exclude association for intimate or expressive purposes. Defendant LVMPD's policies and practices also chill all Plaintiffs' right to expressive association by targeting people who attend funerals deemed "gang funerals" with surveillance and pretextual stops.

i. Defendant LVMPD chills Plaintiffs Green, Riley and Reece's right to intimate and expressive association through its policy of designating any person affiliating or associating with designated gang member for any purpose as gang affiliates or members.

Plaintiffs Green, Riley, and Reece have been designated as "gang members" by LVMPD. According to LVMPD policy, this means that any person that Green, Riley, or Reece "associate" or "affiliate" with is subject to designation a gang affiliate or, if the person satisfies a second criteria, as a gang member. (Ex. 43 at LVMPD 000392; *see* Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 103:8–103:13 (presence in car with a family who is a designated gang member sufficient to justify designation as affiliate)). LVMPD policy does not exempt relationships such as parent-child, cohabitating family members, or roommates that are undisputably protected as intimate associations from serving as a basis for designation. (Ex. 43 at LVMPD 000392; *see* Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 103:8–103:13). LVMPD Policy 5/206.16 also fails to make any exemptions for protected expressive associations such as political activity or

musical performances. (Ex. 43 at LVMPD 000392). As the aftermath of August 19, 2018, made clear, if Plaintiff Green, Reece, or Riley host a birthday party for themselves, all in attendance risk designation as gang members and gang associates. Forcing Plaintiff Green, Reece, and Riley to decide between placing family, roommates, and other innocent associates at risk of designation or avoiding any such associates necessarily chills engaging in protected associations.

ii. Defendant LVMPD chills all Plaintiffs right to expressive association through its policy of targeting attendees of "gang funerals" with surveillance and pretextual stops.

LVMPD's policies related to gang funerals chill expressive association. LVMPD's surveils funerals LVMPD deems to be "gang funerals." (Ex. 30 at LVMPD 005309). LVMPD has an inclusive definition of "gang funeral", including funerals for people deemed "gang members", people that have "gang ties", or even funerals for people disassociated from gangs but may have gang related people attend. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 47:21–48:7). Surveillance of such funerals includes "deter[ing] any potential disorder, gathering intelligence, and conduct[ing] proactive stops." (Ex. 30 at LVMPD 005309). In surveilling designated funerals, LVMPD officers document the attendees. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 68:23–69:23; 94:14–95:17). This includes documenting license plate numbers and photographing the participants in the funeral. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 67:1–10). Photographs are not limited to documenting criminal behavior but who is "socializing" with whom at the funeral. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 95:1–8). This documentation is not limited to investigating known offenses or offenses occurring at the funeral but also potential future offenses. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 64:9–15). LVMPD will also document people attending funerals that LVMPD believes do not "belong there" or even prevent that person's attendance entirely. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 95:2–17) LVMPD targets funeral attendees for "proactive stops" if they exhibit "suspicious behavior." (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn

Price) at 96:17–98:5). LVMPD conducts these stops based on behaviors not limited to those indicative of criminal activity, such as having a medical episode. (Ex. 47, Deposition of LVMPD 30(b)(6) Designee (Shawn Price) at 97:17 – 98:5).

The Plaintiffs do not need to show that these policies have previously harmed them to establish a chilling claim, but the application of these policies to the Plaintiffs is not theoretical. Plaintiff Reece has been detained leaving funerals deemed gang related by LVMPD twice. (Ex. 46 at LVMPD 005448, LVMPD 05450). Plaintiff Riley has also been stopped by LVMPD officers leaving a vigil deemed gang related by LVMPD. (Ex. 49 at LVMPD 004842). In each instance Reece and Riley were stopped for alleged traffic violations only to have LVMPD officers complete FI cards documenting the interaction that resulted in additional entries in LVMPD GangNet system. (Ex. 21 at 15:11–16, 14:1–6, 15:19–16:2). In all instances, LVMPD considered the funeral events to be "gang funerals" (Ex. 50 at 17:19–26, 19:15–23; Ex. 46 at LVMPD 005448 (referring to event as a "GPK-related funeral"). LVMPD's policy regarding gang related funerals chills expressive association for all Plaintiffs in violation of the First Amendment.

III. Plaintiffs Riley, Bowie, Medlock, and Johnson are entitled to summary judgment for their Second Cause of Action against Defendant LVMPD because LVMPD designated them as gang members and affiliates without due process.

A defendant government is liable pursuant to the Due Process Clause of the Fourteenth Amendment when the plaintiff has "(1) a liberty or property interest protected by the Constitution," (2) the government deprives that interest, and (3) that deprivation occurred without proper process." *Fikre v. FBI*, 35 F.4th 762, 776 (9th Cir. 2022).

A. Plaintiffs' designation as gang members and affiliates in LVMPD's GangNet database deprived the Plaintiffs of a cognizable liberty interest.

Under the "stigma plus" doctrine, plaintiffs are deprived of a cognizable liberty interest when they suffer a "reputational harm caused by the government" in conjunction with an "alteration or extinguishment of a 'right or status previously recognized by state law." *Fikre*, 25 F.4th at 776.

Plaintiffs' designation as gang members and affiliates is a reputational harm caused by the government as such a designation is inherently stigmatizing. *Medrano v. Salazar*, No. 5:19-cv-00549-JKP, 2020 U.S. Dist. LEXIS 20923, at *16 (W.D. Tex. Feb. 5, 2020); *Pedrote-Salinas v. Johnson*, No. 17 C 5093, 2018 U.S. Dist. LEXIS 85912, at *14 (N.D. Ill. May 22, 2018). Furthermore, LVMPD's inclusion of the Plaintiffs in GangNet is inherently stigmatizing because any person familiar with that database would know GangNet must comply with federal regulation 28 CFR § 23, and according to 28 CFR § 23, an agency may only enter data about an individual into a database like GangNet if the agency has reasonable suspicion that the person has engaged in criminal conduct. 23 CFR § 23.20(a) (2024) ("A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity."). LVMPD has entered the Plaintiffs into GangNet on multiple occasions as gang members or affiliates. (*See generally* Ex. 21).

LVMPD has also undisputably published the Plaintiffs' designations to third parties. Dissemination of a plaintiff's information to another governmental agency is sufficiently public to establish a stigma plus claim, particularly in the context of disclosing gang designations to other governmental entities even if those designations are not disclosed to the lay public. *See Progeny v. City of Wichita*, No. 6:21-cv-01100-EFM-ADM, 2024 U.S. Dist. LEXIS 16377, at *22 (D. Kan. Jan. 30, 2024) ("[T]he consensus among courts appears to be that intra-governmental disclosures of an individual's gang-member designation are sufficiently public to damage one's reputation."); *Medrano*, 2020 U.S. Dist. LEXIS 20923, at *6 n. 3 ("A stigmatizing label can be sufficiently public even when the government shares it only with other governmental entities and agencies on a "need to know" basis."); *Pedrote-Salinas*, 2018 WL 2320934, at *5 (holding defendant sufficiently publicized plaintiffs' inclusion in a gang database when they shared the information with immigration officials). LVMPD has entered Plaintiffs Bowie, Medlock, Johnson, Semper, and Riley as either gang

affiliates or members into GangNet. LVMPD has admitted that outside agencies have access to this information both in internal documents and through its 30(b)(6) designee. (Ex. 30 at LVMPD 005322–23; Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 129:7–21, 139:2–7, 140:4–21).

Finally, both gang member and affiliate designations impact a designee's rights and statuses under Nevada and federal law. Gang affiliate and member are legal statuses expressly recognized by Nevada law. NRS 176.153 expressly identifies affiliation with or membership in a criminal gang as a status that must be disclosed in presentencing reports in criminal cases in state court. Status as a "gang member" or "gang affiliate" subjects a designee to "gang enhancement" sentences under Nevada law. *See* NRS 193.168(1) (subjecting defendant to additional liability for actions taken "in affiliation with [] a criminal gang"). Designation, and re-designation in particular, also implicates Plaintiffs rights under NRS 179A.500, which expressly grants people designated as "suspected members and affiliates of a criminal gang" in a "gang database" like GangNet the right to (1) contest their designation as a gang affiliate, (2) request the removal of their designation from the gang database, and (3) have their information deleted from the database no later than five years after their last contact with law enforcement. Designating someone a "gang affiliate" or "gang member" *per se* alters the Plaintiffs legal status (i.e. from no status to a designation) and their rights under NRS 179A.500 (i.e. extending the time their information is in the database when otherwise entitled to deletion).

Designation as a gang member has additional implications. As it is a criminal act under Nevada law for anyone to sell or otherwise provide a firearm to a person designated as a "gang member," such a designation necessarily impinges on a designee's right to bear arms. NRS 202.362. The Nevada's State Board of Parole is authorized to restrict parolees, as a matter of statute, from associating with designated "gang members" with no exceptions if that authority is exercised. NRS 213.1263. People designated as gang members are singled out for special civil injunctions and

damages under Nevada nuisance law. NRS 244.35705; NRS 268.4128. Looking beyond Nevada to other states with access to LVMPD's GangNet database, Arizona statute authorizes that state's Department of Public Safety (the entity that has access to LVMPD's GangNet) to hire vendors to actively monitor "criminal street gang members" like registered sex offenders. Ariz. Rev. Stat. § 13-3829. LVMPD itself believes that a gang member designation alters a designee's rights under the Fourth Amendment, as the agency considers the *Terry* frisk of a designated gang member justified if an officer has reasonable suspicion that the person is armed because the gang member designation alone satisfies the "dangerousness" prong. *See Thomas*, 818 F.3d at 876 (requiring reasonable suspicion that subject is armed and dangerousness to justify *Terry* frisk); (Ex. 23, Deposition of LVMPD 30(b)(6) Designee (Landon Reyes) at 179:8–12)).

Turning back to Bowie, Johnson, Medlock, and Semper, an individual designated as a "gang affiliate" is at higher risk of designation as a "gang member" designation and the full panoply burdens that come with that heightened designation due to criteria #8 under LVMPD Policy 5/206.16. Fear of such a designation necessarily leads individuals to avoid wearing colors or images they may otherwise wear to avoid "gang attire," tattoo on their body to avoid "gang specific" or "non-specific, gang related" tattoos, making gestures that may be misconstrued as "symbols and/or hand signs" representing a gang, or travelling to areas designated as "gang areas" or otherwise risk a "gang member" designation and the additional legal burdens imposed by that designation. *See Progeny*, 2022 U.S. Dist. LEXIS 4677, at *36–37 (D. Kan. Jan. 10, 2022) (finding that these restrictions, in addition to an identifiable stigma, where sufficient to satisfy the "stigma plus" requirements because the "designation [on a gang list] has the effect of restricting Plaintiffs' ability to do significant things that they otherwise have the right to do freely."). This concern is not theoretical. As seen from Plaintiff Bowie, Johnson, and Medlock's field interview cards, Defendant Young could have sought a gang member designation on August 19, 2018, as he identified at least two criteria for designation for each Plaintiff designated as a gang affiliate, which would have been sufficient for a gang member

designation according to LVMPD's designation policy. (Ex. 20 at LVMPD 000376–77, LVMPD 000375, LVMPD 000379-80; Ex. 43 at LVMPD 000392).

B. Plaintiffs have been deprived of this liberty interest due to Defendant LVMPD's employees following LVMPD's policies.

Defendant LVMPD is a government agency. As the Plaintiffs' designation as gang members and affiliates is the direct result of Defendant LVMPD's employees carrying out LVMPD's policies, Defendant LVMPD is responsible for the designation of Plaintiffs Bowie, Johnson, Medlock, Riley, and Semper as gang members and gang associates, respectively.

C. Defendant LVMPD failed to provide adequate procedural protections to the Plaintiffs prior to designating the Plaintiffs gang members and affiliates.

To determine whether the government has offered adequate procedural protections prior to deprivation, a court must balance (1) the private interest affected by the official action; (2) the risk of erroneous deprivation and the probable value of additional procedural safeguards; and (3) the governmental interest, including the fiscal and administrative burdens of additional procedures." *Humphries v. Cty. of L.A.*, 547 F.3d 1117, 1121 (9th Cir. 2008). In evaluating the risk of erroneous deprivation, "perhaps the most important" factor, the inquiry is whether "considering the current process, what is the chance the state will make a mistake?" Id. at 1121. "The procedural due process inquiry is made case-by-case based on the total circumstances." Id. (quotation omitted).

i. Plaintiffs have a strong interest in avoiding designation as gang members and affiliates.

The Plaintiffs' interest in avoiding a gang member or affiliate designation is obvious. As discussed in Section III.A, other courts have observed, such designations effectively accusing the Plaintiffs of supporting or participating in criminal activity are inherently stigmatizing. *Medrano*, 2020 U.S. Dist. LEXIS 20923, at *16; *Pedrote-Salinas v. Johnson*, No. 17 C 5093, 2018 U.S. Dist. LEXIS 85912, at *14 (N.D. Ill. May 22, 2018). These designations also carry explicit legal

consequences under state laws in Nevada as well as Arizona, which has access to GangNet. *See* NRS 176.153 (required disclosure in state presentencing reports); 193.168(1) (gang enhancement penalties); NRS 179A.500 (prolonged presence in criminal intelligence databases); NRS 202.362 (limitations on access to firearms); NRS 213.1263 (restricting contact with parolees); NRS 244.35705 & NRS 268.4128 (special injunctive civil action and related penalties for "criminal gang members"); Ariz. Rev. Stat. § 13-3829 (registry for "criminal gang members" comparable to sex offender registry). The designations carry clear secondary effects, such as having parties designated "gang parties" or funerals designated "gang funerals" and thereby being subjected to increased surveillance from law enforcement agencies. Though the Plaintiffs have a strong interest in not receiving an erroneous "member" or "affiliate" designations, the LVMPD's process to designate people as gang members or affiliates carries a significant risk of error.

ii. LVMPD's current process for designating people as gang members or affiliates carries significant risk of error, as seen in the process's application to the Plaintiffs.

According to LVMPD policy, any patrol or corrections officer may nominate a person to be designated as a gang member or affiliate. (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 58:12–18). To nominate a person for designation, an officer:

1. marks "yes" next to "Gang Activity" to route the card to LVMPD's Gang Unit,
2. indicates whether the person is a gang member or affiliate,
3. identifies either (1) the designated gang member the nominated affiliate associates with and the member's gang or (2) the gang the nominated member belongs to
4. if nominating a person for gang membership, identifies the two gang member criteria provided by LVMPD 5/206.16;
5. if extending a pre-existing gang member designation, identifies only one criteria provided by LVMPD 5/206.16; and
6. provides a narrative explaining the factual basis for the designation.

(Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 66:18–68:21, 179:5–15; Ex. 44 at LVMPD 005263; Ex. 43 at LVMPD 000392) An LVMPD officer may nominate someone for designation even if there is no evidence that the person has either committed a criminal offense or taken any action to assist a criminal gang, directly contravening the federal regulations governing GangNet. (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 114:12–115:21); 23 CFR § 23.20(a) (2024). An LVMPD officer may base a nomination on information that they have no personal knowledge of and are not even required to identify the source of their information. Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 116:10-15; 198:22–199:5. An LVMPD officer is not required to have any formal training related to gangs outside that provided at the academy before nominating someone for designation. Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 58:19–23. Even if a person otherwise qualifies for designation, an officer can decide not to nominate that person for designation. (Ex. 18, Deposition of Blake Walford at 123:18–125:10).

To nominate someone as either a gang member or affiliate, an LVMPD officer must satisfy the criteria for nomination, but LVMPD's criteria for members and affiliates is incredibly broad and inevitably sweeps in people who are innocent of any criminal activity. LVMPD does not impose any limitation on what "affiliation" or "association" justifies designation; being related to a "gang member" or engaging in constitutionally protected association can result in designation. (Ex. 43 at LVMPD 000392; *see* Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 102:18–102:24) An LVMPD officer may nominate a person for designation even if the person is unaware that their associate is registered as a "gang member". (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 102:25–103:3)

To designate a person a full-fledged gang member, an LVMPD officer only needs to identify two of the following criteria:

1. "Self-admittance to an officer and the admission is credible."
2. "Subject is or has been arrested alone or with known gang members for offenses which are committed in furtherance of a gang."
3. "Subject has been identified as a gang member by a reliable source/informant, and additional factors can be articulated to corroborate the claim. Examples of a reliable source/informant are: parent, teacher, law enforcement officer, judge." Additional factors include "frequenting known gang area, non-specific gang related tattoos, [or] previously identified in a crime report, intelligence report, or any other official report of a law enforcement agency."
4. "Subject has been identified as a gang member by a source/informant of untested reliability and additional factors can be articulated to corroborate the claim."
5. "Wearing gang attire and can be articulated to corroborate that the style of attire is worn to represent or identify the subject as a member of a gang."
6. "Subject has gang specific tattoos which can be articulated to represent or identify the subject as a gang member."
7. "Subject has been seen displaying symbols and/or hand signs which can be articulated to represent or identify the subject as a gang member."
8. "Subject affiliates with known gang members and the officer can identify the affiliates by name and connection to a specific gang."
9. "Self-admittance during detention classification at CCDC or any local, state, or federal correction facility."

(Ex. 43 at LVMPD 000392). The "additional factors" referenced in Criteria #3 and #4 include "frequenting a known gang area", "non-specific gang related tattoos", and "previously identified in a crime report, intelligence report, or any other official report of a law enforcement agency". (Ex. 43 at LVMPD 000392). Oddly, LVMPD considers prior designations in GangNet a "reliable source", and a self-admittance documented in GangNet can justify a future designation. (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 79:3–8).

Similar to nominating for affiliate designation, any association with a designated gang member, regardless how innocent, may satisfy LVMPD's gang member criteria. (Ex. 43 at LVMPD

000392; Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 104:19–22 (criteria is the same as affiliate definition)). And like its broad association criteria, LVMPD's other gang member criteria sweep in either innocent conduct or behavior that is not indicative of current gang membership. A person's designation as a member of one gang may be based upon information indicating they belong to a different gang entirely. (*See* Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 205:10–206:6 (designation as a "Gerson Park Kingsman" based upon association with a "Hillside Gangster Crip")). LVMPD has no established list or definition for what constitutes a "credible" admission, a "reliable source/informant", "gang attire", "gang specific tattoos", gang related "symbol", or a gang related "hand sign", though these are all independent bases for designation. (Ex. 43 at LVMPD 000392). LVMPD also instructs its officers to consider "known gang areas" and "non-specific gang related tattoos" when nominating a person for designation though again LVMPD has no set list or definition defining these terms. (Ex. 43 at LVMPD 000392). Considering that LVMPD does not require its officers to have any particular training or experience before nominating people for designation, these broad, vague criteria invite inconsistent and erroneous application.

LVMPD's Gang Unit reviews gang "member" or "affiliate" nominations prior to formal designation, but this step provides no meaningful check on erroneous designations. The reviewing employee is only required to review the information provided on the field interview card. (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 124:22–125:8) Reviewers are not required review any other documents such as incident reports, body worn camera, or CAD logs prior to formally designating a person as a "gang affiliate" in the GangNet system to ensure that the card is accurate or came from a legal source. (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 61:23–62:2, 168:12–169:1).

According to LVMPD's written policy and Nevada state law, a person designated as a gang member or affiliate has the right to (1) notice of that they have been designated as a gang member

or affiliate, (2) challenge the validity of that designation, and (3) be removed from GangNet after five years unless they have their designation renewed. (Ex. 43 at LVMPD 000393–94); NRS 179A.500. However, LVMPD has admitted without reservation that it disregards its own policies and Nevada law: people designated as "gang affiliates" do not receive notice, have no opportunity to challenge their designation, and will not be removed from GangNet until five years passes. (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 170:15–171:1, 173:11–17). In other words, LVMPD refuses "gang affiliate" designees any notice or opportunity to be heard, fundamental principles underpinning constitutional due process. Considering that LVMPD's only means to remove an inaccurate designation for gang affiliates from GangNet would be California's quarterly 15-25 card audit for a database containing over 13,000 designees as of 2021 and random audits by LVMPD supervisors undefined by policy, (Ex. 26, Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 182:12 – 183:23, 186:16–187:5), a person subject to an inaccurate gang affiliate designation has no meaningful recourse prior to the five year deletion deadline.

LVMPD claims it follows its written policy in sending people designated as gang members notice via mail of that designation, but the agency does not have a written policy to record when such a letter is sent, the contents of that letter, or even the address that the letter was sent to. (*See* Ex. 43). LVMPD provides no means for a person to determine if they have been designated if notice fails to reach them. (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 172:6–17). LVMPD only sends notice for the initial designation, and no notice is provided if LVMPD restarts the five-year period prior to deletion by extending a person gang member designation. (Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 57:6–14). LVMPD allows people designated as gang members to challenge their designation but provides no standard that a person must meet to successfully have their designation removed from the database and no right to appeal. (Ex. 43 at LVMPD 000393; Ex. 26 Deposition of LVMPD 30(b)(6) Designee (Fred Haas) at 178:4–5).

1. Erroneous designation of Plaintiffs Bowie, Johnson, and Medlock as gang "affiliates".

On or about August 19, 2018, Defendant Thereon Young submitted field interview cards to LVMPD Gang Unit nominating Plaintiffs Bowie, Medlock, and Johnson for designation as gang affiliates. (Ex. 20 at LVMPD 000375–77, LVMPD 000379-80). Young submitted these nominations even though he did not actually interview Plaintiffs Bowie, Medlock, or Johnson. (Ex. 14 Deposition of Theron Young at 285:1–6). For Plaintiffs Bowie and Johnson, Young based his nomination solely on their presence at the Rio party; he did not offer explanation as to how they were related to Cory Bass, or any other person designated as an "active gang member". (Ex. 20 at LVMPD 000376–77, LVMPD 000379-80). For Plaintiff Medlock, Young nominated her for designation based upon her presence at the party and her familial relationship to Cory Bass. (Ex. 20 at LVMPD 000375). In nominating Bowie and Medlock for designation, Young did not identify any criminal conduct that they were investigated for. (Ex. 20 at LVMPD 000375–77). Young did not identify any basis to believe that Plaintiffs Bowie, Johnson, or Medlock were in any way supporting a criminal gang. (Ex. 20 at LVMPD 000375–77, LVMPD 000379-80). Based upon the field interview card submitted by Young, Defendant LVMPD formally designated Plaintiffs Bowie, Medlock, and Johnson as gang affiliates in the GangNet database. (Ex. 21 at 4:3-13, 9:11–24, 11:21–12:2). Plaintiffs Bowie, Johnson, and Medlock were never given notice about their designations nor given the opportunity to petition for their file to be removed from GangNet. (Ex. 21 at 4:3-13, 9:11–24, 11:21–12:2).

On two other occasions, Defendant LVMPD designated Plaintiff Bowie a "gang affiliate". Similar to the August 19, 2018, designation, Defendant Bowie was not accused of any criminal behavior or supporting the activities of a criminal gang on either occasion. (Ex. 45 at LVMPD 004866, LVMPD 004868–69). In the first instance, Bowie was designated a gang affiliate for driving in a car with a person who had been designated a gang member. (Ex. 45 at LVMPD 004866). In the second instance, Bowie was designated a "gang affiliate" because she allegedly told officers during a traffic stop that her brother-in-law was a "Hillside Gangster Crip." (Ex. 45 at LVMPD 004868–

69). Her brother-in-law was not present during the traffic stop and Bowie explicitly stated that she does not associate with gangs. (Ex. 45 at LVMPD 004868–69). Similar to the August 19, 2018, incident, LVMPD did not notify Bowie of the designations, nor did it provide her an opportunity to petition to have her file removed from GangNet. (Ex. 21 at 3:21-4:2, 4:14–25).

2. Erroneous designation of Plaintiff Riley as a gang member and inclusion in GangNet.

On August 19, 2018, Defendant Young nominated Plaintiff Riley for designation as a "Squad Up" gang member in LVMPD's GangNet database. (Ex. 20 at LVMPD 000384–85). Young based this nomination on three criteria: "affiliates with gang", "admitted", and "reliable source". (Ex. 20 at LVMPD 000384–85). In his factual narrative to support these criteria, Young stated that Riley was contacted "at gang party held by Cory and Carlos Bass" and that "Riley [was] a Squad Up Gang Member." (Ex. 20 at LVMPD 000384–85). He did not provide any description of Riley's alleged self-admission or the "reliable source" identifying Riley as a gang member. (Ex. 20 at LVMPD 000384–85). Riley was not accused of any criminal conduct or other activity supporting a criminal gang. (Ex. 20 at LVMPD 000384–85). However, LVMPD employee Sharon Mendoza accepted the nomination and formally designated Riley a gang member. (Ex. 21 at 19:3–10). This was Riley's initial designation in GangNet as a gang member. (Ex. 21 at 19:3–10).[1]

As made clear in his testimony, Young had no actual basis for Riley's nomination. Young never interviewed Riley and so could not have heard Riley make any admission. (Ex. 14, Deposition of Theron Young at 285:1–6). Cory and Carlos Bass, who Riley was allegedly affiliated with, were designated members of the "Hillside Gangster Crips", not "Squad Up". (Ex. 20 at LVMPD 000380-81 (Carlos and Corey Bass field interview cards). There was no "reliable source" identifying Riley

[1] Prior to August 19, 2018, LVMPD had submitted seven other entries for Riley in GangNet. Considering that LVMPD has not indicated that any of these entries resulted in a gang member designation and the related field interview cards did not request designation Plaintiff Riley assumes that these did entries did not result in a designation.

as a gang member. (Ex. 20 at LVMPD 000384–85). Even though this was Riley's initial designation as a gang member, he did not receive notification of the designation, and LVMPD has no record that the agency made any efforts to notify Riley. (Ex. 21 at 19:3–10).

Looking at the field interview cards filed for Plaintiffs Bowie, Johnson, and Medlock, it is apparent that Defendant Young's nomination of Riley was arbitrary. Though Young identified multiple criteria for Bowie, Johnson, and Medlock that would have justified nominating those parties for gang member designation according to LVMPD's policies, they were only nominated for an affiliate designation. Riley, who satisfied no more criteria than those Plaintiffs, received a gang member designation. Yet this arbitrary nomination was permissible under LVMPD policy.

LVMPD's designation of Riley as a gang member in the agency's GangNet database system and multiple entries into GangNet without any designation violated Riley's constitutional right to due process.

iii. Governmental burden

No government interest justifies LVMPD's failure to provide additional procedural safeguards against erroneous designations or comply with state law and federal regulation.

Many improvements would cost LVMPD nothing because they simply require LVMPD to improve their written policy. Placing additional restrictions on what criteria officers may use to nominate a person for designation would cost nothing. Requiring officers to provide the factual basis for a nomination and where the officer learned those facts would cost nothing. Tightening the current criteria so that only people engaging in criminal conduct or other activities supporting criminal gangs would be designated as affiliates or members would cost nothing. Tightening the current criteria so that the designation directly relates to *current* gang membership or affiliation would cost nothing. Restricting the designation process so that LVMPD would only enter a person into GangNet if LVMPD had reasonable suspicion that the person was involved in criminal activity as required by 28 CFR 23 would cost nothing. Providing a clear standard for removal from the database would cost

nothing.

While requiring LVMPD Gang Unit employees to review supporting documentation prior to designation to ensure accuracy may have a cost, this cost would be offset by the reduction in nominations and improved accuracy provided by the above changes in policy. Increasing the accuracy of field interview cards would also ease the cost in maintaining consistent and up-to-date lists of attire, tattoos, symbols, and hand signs ascribed to specific gangs to ensure consistency in nominations and designations.

Finally, LVMPD has an interest in complying with federal regulation and Nevada law, which would necessarily require LVMPD to change its current policies regarding criteria used for designation, review process prior to formal designation, notification to designees, and when entries will be removed from the database.

IV. Plaintiffs are entitled to injunctive and declaratory relief.

If the Court finds in favor of Plaintiffs on any of the above claims against Defendant LVMPD, the Plaintiffs are entitled to declaratory and injunctive relief.

A. Plaintiffs are entitled to injunctive relief.

"To obtain injunctive relief for a violation of § 1983, a plaintiff must establish: (1) actual success on the merits; (2) that it has suffered an irreparable injury; (3) that remedies available at law are inadequate; (4) that the balance of hardships justify a remedy in equity; and (5) that the public interest would not be disserved by a permanent injunction." *Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 730 (9th Cir. 2022) (quotation omitted). Assuming that the Court finds in favor of any of the above claims against Defendant LVMPD, Plaintiffs satisfy these requirements.

If the Court finds Defendant LVMPD liable under any of the Plaintiffs' § 1983 claims, Plaintiffs have necessarily satisfied the second and fifth requirements. "[T]he deprivation of constitutional rights unquestionably constitutes irreparable injury," and "evidence of an ongoing constitutional violation (i.e. a policy or practice) satisfies the second element of the injunctive relief

test." *Id.* at 731 (quotation omitted). As to the public interest requirement, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Id*. (quotation omitted). To find against Defendant LVMPD for any of the above claims, the Court necessarily will have found that the Plaintiffs' constitutional rights had been violated and that violation was caused by Defendant LVMPD's policies or practices.

Other remedies available at law are inadequate. Compensation alone cannot end LVMPD's current unconstitutional policies and practices. No other remedy can remove the Plaintiffs' information from LVMPD's GangNet or their wrongfully collected DNA samples from LVMPD's CODIS database. No other remedy can prevent LVMPD from designating Plaintiffs Green, Reece, and Riley's friends and family as gang affiliates in GangNet due to Plaintiffs' gang member designation or remove designations that were the result of unconstitutional practices. *See* 28 CFR § 23.20(d) (2024) ("A project shall not include in any criminal intelligence system information which has been obtained in violation of any applicable Federal, State, or local law or ordinance."). No other remedy can prevent LVMPD from targeting Plaintiffs or their loved one's funerals for surveillance, pretextual stops, and other aggressive law enforcement tactics.

Finally, the balance of hardships justifies a remedy in equity. Compared to Plaintiffs' interest in ending the constitutional harms they continue to suffer, LVMPD has no interest in continuing to act in an unconstitutional manner. LVMPD may protest that it needs these policies at issue to protect the public, but as currently enacted, the policies are unconstitutional because they involve the surveillance and investigation of activities that are not criminal and the designation of people as criminals without any evidence of criminal activity. As such, LVMPD's current implementation of UPAC, gang designation, and funeral surveillance policies is not tailored to promote public safety. Balance of hardships favors the Plaintiffs.

B. Plaintiffs are entitled to declaratory relief under the Declaratory Judgment Act, 28 USC §§ 2201 and 2202.

"[C]ourts have generally recognized two criteria for determining whether declaratory relief is appropriate; (1) when the judgment will serve a useful purpose in clarifying and settling legal relations in issue, and (2) when it will terminate and afford relief from uncertainty, insecurity, and controversy giving rise to the proceeding." *Bilbrey v. Brown*, 738 F.2d 1462, 1470 (9th Cir. 1984). Even under circumstances where a plaintiff may not receive other relief such as damages, "a court declaration is a message not only to the parties but also to the public and has significant educational and lasting importance." *Id.* at 1971. Declaratory relief is particularly appropriate when "the controversy [] is of sufficient immediacy and reality to warrant" such relief and to prevent future unconstitutional conduct. *See id.* (finding that declaratory relief appropriate to prevent future violations of the Fourth Amendment).

Granting the Plaintiffs' declaratory relief will serve a useful purpose in resolving whether LVMPD's current policies, including the UPAC, LVMPD's process for designating people as gang members and affiliates, and LVMPD's surveillance of funerals, are constitutional. These policies continue to impact the Plaintiffs and other Nevadans; in particular LVMPD's policies governing are impacting thousands of people designated in GangNet as either members and affiliates without due process or even notice. If LVMPD's policies are unconstitutional, declaratory relief would necessarily establish that LVMPD must change those policies and further unconstitutional action by the agency pursuant to those policies.

CONCLUSION

Plaintiffs are entitled to partial summary judgment on their claims as laid out in this motion. They request that this Court grant judgment in their favor and the Court order the injunctive and declaratory relief that they are entitled to.

DATED this 15th day of March, 2024.

ACLU OF NEVADA

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Motion for Summary Judgment** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on November 1, 2022. I further certify that all participants in the case are registered CM/ECF users, and that service will be accomplished on all participants by:

☒ CM/ECF

☐ Electronic mail; or

☐ US Mail or Carrier Service

/s/ Suzanne Lara
An employee of ACLU of Nevada

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