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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' RESPONSE TO LVMPD
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

ORAL ARGUMENT REQUESTED

1 individually and in his capacity as a Las Vegas
2 Metropolitan Police Department Officer;
3 THERON YOUNG, individually and in his
4 capacity as a Las Vegas Metropolitan Police
5 Department Officer; DOE LVMPD GANG
6 TASK FORCE OFFICERS 1-10; DOE LVMPD
7 OFFICERS 1-10; DOELVMPD
8 SUPERVISORS 1-5; DOE RIOEMPLOYEES
9 1-10,

Defendants.

7 Plaintiffs, through counsel, Christopher M. Peterson of the ACLU of Nevada, pursuant to Fed.
8 R. Civ. P. 56, submit the following response to LVMPD Defendants' Motion for Summary Judgment
9 [ECF No. 142]. This response is based on this notice, the memorandum of points and authorities filed
10 herein, the declarations filed by Plaintiffs, the exhibits filed herein, the statement of uncontroverted
11 facts and conclusions of law, the pleadings previously filed in this action, and any oral argument
12 permitted at the hearing on this motion.

13 DATED this 22nd day of April, 2024.

15 **ACLU OF NEVADA**

16 /s/ Christopher Peterson

CHRISTOPHER M. PETERSON, ESQ.

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SADMIRA RAMIC

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MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

On August 19, 2018, Defendants Bauman, Kravetz, Young, and Kaur, implementing Defendant LVMPD's Unified Party Abatement Concept, subjected Plaintiffs Bowie, Green, Johnson, Medlock, Reece, Riley, and Semper to a mass detention and frisk alongside 25 other partygoers at the Rio Hotel and Casino. Defendants seized and searched the Plaintiffs without individualized suspicion that the Plaintiffs were committing a crime, were armed, or were dangerous.

Because Plaintiffs were attending a birthday party at the Rio for a person LVMPD previously designated as a gang member, Defendant LVMPD designated the Plaintiffs as gang members and affiliates though there was no evidence that the gathering had been anything other than a social event or that the Plaintiffs had been assisting a criminal gang. Defendant LVMPD then uploaded these designations into GangNet, a database accessible by state and federal government agencies throughout the western United States. Additionally, LVMPD employees authorized to speak with the press reported that every person arrested at the August 19th party were gang members while LVMPD simultaneously released the arrested Plaintiffs' information to the public. Defendant LVMPD provided no legal notice or process to the Plaintiffs related to the Plaintiffs' designated as gang members and affiliates in GangNet.

Beyond the August 19th incident, Defendant LVMPD employees have subjected Plaintiffs to surveillance and pretextual stops when Plaintiffs have attended funerals deemed "gang-related" by LVMPD. Pursuant to agency policy, LVMPD officers surveil attendees at such funerals, photographing people in attendance, documenting their license plate numbers, and targeting attendees for pretextual stops as the attendees leave the funeral.

Plaintiffs have filed suit against Defendant LVMPD and its officers challenging the constitutionality of their detention and searches on August 19th, the processes that resulted in their designation as gang members and affiliates, and the policies related to "gang funerals". Plaintiffs also challenge LVMPD's explicit racial categorization of gangs and the gross disparities in the racial demographics of LVMPD's gang member and affiliate designees in regard to Black and African

American people.

In seeking summary judgment, Defendants rely on facts in dispute and inadmissible evidence. In their legal arguments, Defendants inaccurately interpret the relevant law and its application to this matter. While Plaintiffs do not oppose the dismissal of Defendant David Jeong,¹ they respectfully request the Court's deny the rest of LVMPD Defendants' Motion for Summary Judgment.

LEGAL STANDARD

Summary judgment is proper only when a "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). the court must view the evidence in the light most favorable to the non-moving party, drawing all "justifiable inferences" in its favor. *Lister v. City of Las Vegas*, No. 2:21-cv-00589-CDS-MDC, 2024 U.S. Dist. LEXIS 31013, at *5 (D. Nev. Feb. 23, 2024). A party moving for summary judgment bears both the ultimate burden of persuasion and the initial burden of producing the portions of the record that show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "In order to carry its ultimate burden of persuasion on the motion, the moving party must persuade the court that there is no genuine issue of material fact," otherwise summary judgment must be denied. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

DISPUTED MATERIAL FACTS

In their arguments related to Plaintiffs' Fourth Amendment claims, Defendants claim they observed smoke and smelled marijuana upon approaching and entering Room 2037. [ECF No. 142 at 12:14–16]. However, none of the LVMPD officers or Rio staff said anything about marijuana as they passed through the hallway outside of Room 2037, contacted the room's occupants, or processed the occupants out into the hallway. *See* [ECF No. 135, Ex. 6, LVMPD BWC 00049, Kravetz, Matthew 0243, Ex. 9, LVMPD 000074, Young, Theron 0243]. When speaking to Cory Bass, the Rio security official only cited noise complaints as the basis for evicting the occupants even though smoking

¹ Hereafter, when Plaintiffs refer to "Defendants", they are not referring to Defendant Jeong.

1 marijuana would have violated Rio policy. [ECF No. 135, Ex. 6, LVMPD BWC 00049 Kravetz,
 2 Matthew 0243 at 00:40–1:25, Ex. 9, LVMPD 000074, Young, Theron 0243 at 1:30; ECF No. 142–
 3 2, Ex. R, *State v. Semper*, Case No. 18F15424, Vol. I at 13:3 – 9 (testimony of John Carlisle regarding
 4 Rio marijuana policy)]. No smoke is visible in the camera footage from the incident. *See, e.g.*, [ECF
 5 No. 135, Ex. 6, LVMPD BWC 00049, Kravetz, Matthew 0243; Ex. 9, LVMPD 000074, Young,
 6 Theron 0243].

7 Defendants state that Brigandi informed Bauman that there were firearms in Room 2037 prior
 8 to LVMPD officers entering the suite. [ECF No. 142 at 11:6–10]. However, Defendant Bauman
 9 testified that the photograph Brigandi sent him did not depict a gun, and when Brigandi reported
 10 seeing firearms to him, Brigandi did not say who was holding the firearms, what the firearms looked
 11 like, or even where the firearms were located. [ECF No. 148-1, Ex. J, Bauman Deposition at 25:23–
 12 24, 26:14–18, 27:3–7]. Brigandi, who allegedly informed Bauman about seeing firearms on social
 13 media, does not recall telling Bauman about any firearms and testified that if he observed a firearm
 14 in a photograph, he “probably” would have preserved the picture. [ECF No. 146–1, Ex. S, Brigandi
 15 Deposition at 151:5–19, 165:5–9].

16 Defendants state that Semper “noticeably evaded” officers and admitted to possessing a
 17 firearm prior to his frisk. [ECF No. 142 at 55:11–12, 14–15]. However, as seen on the video, Semper
 18 complies when ordered to come out of the hotel room and makes no attempt to walk away from the
 19 officers. [ECF No. 135, Ex. 6, LVMPD BWC 00049 Kravetz, Matthew 0243 at 03:20]. He then stands
 20 still momentarily before Kravetz pulls him to the wall, and he does not resist Kravetz’s redirection.
 21 *Id.* As for Semper admitting to possessing a firearm prior to the frisk, the judge in Semper’s related
 22 criminal matter reviewed the body worn camera and determined that was “simply not the case”
 23 because Semper only made a statement about firearms after the officers began their search.² [*State*
 24 *v. Semper*, Case No. 18F15424, Vol. IV, 17:18 – 18:10, attached as Exhibit 1]. Semper’s Declaration
 25 of Arrest does not describe him as evading or admitting to possessing a firearm. [ECF No. 146–2,

26
 27 ² Statements made after a frisk is initiated cannot serve as the basis for the frisk itself. *See Terry v.*
 28 *Ohio*, 392 U.S. 1, 21 – 22 (1968) (determining reasonable suspicion based upon “the facts available
 to the officer *at the moment of the seizure or search*” (emphasis added)).

1 Ex. W, Declaration of Arrest].

2 Defendants state that Johnson admitted to possessing a firearm prior to officers frisking him.
3 [ECF No. 142 at 47:14–20]. Defendants describe Johnson as stating “413 right here” as Defendants
4 Kravetz and Kaur were “asking [him] to put his hands together.” [ECF No. 142 at 14:19–22].
5 According to Kravetz’s testimony regarding when the frisk began, i.e. when Johnson was lined up
6 against the wall, and as seen on body worn camera, these statements were made after LVMPD officers
7 had begun their search of Johnson. [ECF No. 135, Ex. 6, LVMPD BWC 00049, Kravetz, Matthew
8 0243 at 5:30–6:53; ECF No. 148-2, Ex. K, Kravetz Deposition at 175:14–176:3].

9 Defendants state that they knew Plaintiffs Bowie, Green, and Medlock had outstanding
10 warrants at 3:17 AM, 3:15 AM, and 3:06 AM respectively. [ECF No. 142 at 15:24–26]. However,
11 LVMPD employees conducted multiple record quires related to Plaintiffs Bowie, Green, and
12 Medlock on August 19, 2018. [ECF No. 135, Ex. 17, Criminal History Searches for Plaintiffs, at
13 LVMPD 000559, LVMPD 000562, and LVMPD 000567]. It is not possible from reviewing the query
14 history alone to determine what queries listed, if any, verified that the Plaintiffs had outstanding
15 warrants. *See* [ECF No. 148–2, Ex. K, Kravetz Deposition at 116:10–118:1]. During its deposition,
16 LVMPD only verified that Plaintiffs Bowie, Green, and Medlock were arrested on their warrants at
17 4:41 AM, 4:15 AM, and 4:30 AM. [ECF No. 135, Ex. 19, Temporary Custody Records at LVMPD
18 00023, LVMPD 00026, LVMPD 000029; ECF No. 145–1, Ex. Q, LVMPD 30(b)(6) Deposition (Reyes)
19 at 234:5–235:16].

20 In arguing that Plaintiffs raised their Title VI claims beyond the statute of limitations,
21 Defendants state that Plaintiffs Riley, Green, and Reece knew of their gang member designations in
22 GangNet prior to August 19, 2018. [ECF No. 142 at 27:19–28:2] Yet according to their response to
23 Plaintiff’s Interrogatory No. 29, Defendant LVMPD did not designate Plaintiff Riley as a gang
24 member in GangNet prior to August 19, 2018. [Def. LVMPD’s Supp. Ans. to Pls. 3rd Set of Interrogs.
25 at 16:3–19:16 (only affirmatively stating Riley was designated a gang member for August 19, 2018,
26 incident), attached as Exhibit 2]. Furthermore, while Plaintiffs stated in depositions that they believed
27 LVMPD considered them gang members prior to the August 19, 2018, Plaintiffs were not aware that
28

1 LVMPD had formally designated them as gang members in GangNet until after the birthday party at
 2 the Rio. *See* [ECF No. 143–2, Ex. D, Green Deposition at 115; ECF No. 143–2, Ex. E, Reece
 3 Deposition at 115–117; ECF No. 143–3, Ex. H, Riley Deposition at 104].

4 In arguing that Defendant LVMPD policies related to “gang funerals” serves a significant interest,
 5 Defendant LVMPD relies on testimony from Nicholas Brigandi to claim that it is required to “work”
 6 gang-related funerals to prevent retaliatory shootings. [ECF No. 142 at 36:3–4]. However, LVMPD
 7 denied the accuracy of Brigandi’s statement. [Def. LVMPD Responses to Pls. First Request for
 8 Admissions, Dated September 27, 2023,³ at 12:18–13:8, attached as Exhibit 3].

10 **ADDITIONAL FACTS MATERIAL TO RESPONSE**

11 **I. Facts material to Title VI claim**

12 In 2017, LVMPD signed an agreement with the United States Drug Enforcement
 13 Administration to receive federal funds to pay for office supplies, equipment, training, and overtime
 14 for LVMPD’s Gang Task Force employees. [State and Local Task Force Agreement between the
 15 Drug Enforcement Administration Los Angeles Field Division and Las Vegas Metropolitan Police
 16 Department Program – Funded State and Local Task Force Agreement, dated October 1, 2017,
 17 LVMPD 005518–005524, hereafter “Task Force Agreement, October 1, 2017”, attached at Exhibit
 18 4]. In receiving these funds, LVMPD expressly agreed to comply Title VI, and that agreement was
 19 in effect on August 19, 2018. [*Id.*, LVMPD 005519 at ¶ 10; Def. LVMPD Responses to Pls. First
 20 Request for Admissions, Dated December 18, 2023, Requests No. 144–146, at 43:1–15, attached as
 21 Exhibit 5]. In 2018, Defendant LVMPD signed an agreement with the FBI to receive federal funding
 22 to reimburse overtime pay for employees on the Las Vegas Safe Street Gang Task force. [Federal
 23 Bureau of Investigation Cost Reimbursement Agreement, Dated August 27, 2018, LVMPD 005525–
 24 26, attached as Exhibit 6].

26
 27 ³ Due to a clerical error, there are two sets of requests for admission labelled “Plaintiff’s First Request
 28 for Admissions from Defendant LVMPD”. To avoid confusion, these sets will be referred to by date
 that Defendant LVMPD responded, September 27, 2023, and December 18, 2023, respectively.

Defendant LVMPD expressly categorizes gangs by race and trains its officers on that categorization. [Gang Liaison Officer Training Lesson Plan (revised 2.19.21) at LVMPD 002917–002918, attached as Exhibit 7]. LVMPD does this to assist its new officers in determining whether someone a gang member or affiliate by using their race. [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 273:18–274:5]. LVMPD specifically identifies the Gerson Park Kingsmen and Rollin’ 60’s Crips as “Black” gangs. [Ex. 7, Gang Liaison Officer Training Lesson Plan (revised 2.19.21) at LVMPD 002917–002918]. However, LVMPD is not aware of the actual ethnic composition of those gangs, does not believe they have a racial membership requirement, and knows that the Rollin’ 60’s Crips have white and Latino members. [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 276:12–280:13]. Furthermore, LVMPD does not believe that racial designations have significant value to law enforcement. [*Id.* at 280:21 – 281:2].

In compliance with Fed. R. Civ. P. 26(a)(2), Plaintiffs notified Defendants that they intend to present expert witness testimony in this matter. Dr. Anna Muñoz is a professor of criminology, law, and society at the University of California, Irvine, who specializes in gang profiling, gang enforcement, and gang databases. [Expert Report, *Semper et al. v. LVMPD et al.*, Dr. Ana Muñoz, at Muniz_Rep_1, attached as Exhibit 8]. After reviewing discovery provided in this case, she concluded that LVMPD’s gang member and affiliate designation process is racial biased and discriminates against Black people. *Id.* at Muniz_REP_23–24.

Defendant LVMPD designated all Plaintiffs as gang members or affiliates based on field interview cards related to the August 19, 2018, incident, and Defendants have re-designated Plaintiffs Bowie, Green, and Reece since the August 19, 2018 incident. [ECF No. 135, Ex. 20, August 19, 2018, Field Interview Cards at LVMPD 000372, LVMPD 000375, LVMPD 000376–77, LVMPD 000379–82, LVMPD 000384–85, LVMPD 000388–89; ECF No. 135, Ex. 21 at 3:21–4:25, 6:24–7:7, 9:11–24, 11:21–12:2, 14:14–21, 15:19–16:2, 19:3–10].

II. Facts material to First Amendment claim

Defendant LVMPD policy authorizes its employees to designate people as gang members or affiliates if that person associates with someone who has been designated as a gang member. [ECF

No. 142 at 9:9–12]. Defendant LVMPD does not require the affiliation or association to be related to gang or criminal activity. [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition, 114:12–115:21]. Defendant LVMPD does not exclude any types of affiliation or association from its gang designation criteria. [ECF No. 144–2, Ex. N, LVMPD Policy 5/206.16 at LVMPD 000392]; *see* [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 102:18–24, 103:8–103:13 (presence in car with brother sufficient to justify designation)].

Beyond Defendant LVMPD’s designation policies, Defendant LVMPD surveils and investigates “gang funerals”. [ECF No. 136, Ex. 30, Gang Vice Bureau Gang Section Manual at LVMPD 005309]. Funerals deemed “gang funerals” by Defendant LVMPD may include funerals for people designated as gang members or have “strong” “gang ties”. [ECF No. 136, Ex. 47, LVMPD 30(b)(6) (Price) Deposition 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.” [*Id.* at 48:5–48:7]. Surveillance of gang funerals include “deter[ing] any potential disorder, gather[ing] intelligence, and conduct[ing] proactive stops.” [ECF No. 136, Ex. 30, Gang Vice Bureau Gang Section Manual at LVMPD 005309]. In addition to having a uniformed presence, Defendant LVMPD photographs and documents people who attend a gang funeral, reports their license plates numbers, and even tracks their clothing regardless of whether the attendees are engaging in criminal conduct. [ECF No. 136, Ex. 47, LVMPD 30(b)(6) (Price) Deposition at 47:21–48:7]. When attendees leave a gang funeral, Defendant LVMPD will stop an attendee for “suspicious behavior” even if that behavior does not suggest criminal activity. [*Id.* at 96:17–98:5].

Plaintiff Reece has been stopped multiple times by LVMPD officers leaving funerals, and each time Defendant LVMPD’s officers have claimed that Plaintiff Reece was engaging in “Gang Activity”. [ECF No. 136, Ex. 46, Clinton Reece Field Interview Cards at LVMPD 005448, 005450]. He was not accused of criminal activity on either occasion. *Id.* Both stops were entered by LVMPD into GangNet. [ECF No. 135, Ex. 21 at 14:1–6]. On December 11, 2020, Plaintiff Riley was stopped by Defendant LVMPD officers leaving a vigil. [ECF No. 136, Ex. 49, Demarlo Riley Field Interview Card at LVMPD 004842]. Even though Riley was not accused of any criminal activity, Defendant

1 LVMPD included this stop in Plaintiff Riley's file in GangNet. [ECF No. 135, Ex. 21 at 15:11–16].
 2 LVMPD considered the funeral of Demetrius Beard as referenced in LVMPD 005448 and the vigil
 3 referenced in LVMPD 004842 to be “gang funerals” as used in LVMPD 002792. [ECF No. 136, Ex.
 4 50 at 17:19–26, 19:15–23].

5 **III. Facts material to Fourteenth Amendment claim**

6 Defendant Young and other LVMPD officers completed and filed field interview cards
 7 nominating Plaintiffs for gang member and affiliate designations following policies set by Defendant
 8 LVMPD. [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 58:12–18, 66:18–68:21,
 9 116:10–15, 198:22–199:5 (explaining field interview process for nominating subjects for
 10 designation)]. LVMPD Gang Unit employees reviewed those cards and input the designations into
 11 GangNet also according to Defendant LVMPD's policies. [*Id.* at 61:23–62:2, 124:22–125:8, 168:12–
 12 169:1 (explaining LVMPD's process for reviewing field interview cards and uploading designations
 13 into GangNet)]. The Gang Unit employees, again following LVMPD's policies, then uploaded the
 14 Plaintiffs' designations into GangNet. *See* [ECF No. 135, Ex. 21, at 19:3–10 (entering Riley into
 15 GangNet); ECF No. 146–4, Ex. DD, LVMPD's Ans. to Pls.' Third Set of Interrogs. at 2–19 (entering
 16 other Plaintiffs into GangNet)]; *see* [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at
 17 124:1–125:23 (authorizing Gang Unit employees to upload designation into GangNet following
 18 review)]. Agencies besides Defendant LVMPD have access to the GangNet database. [ECF No. 136,
 19 Ex. 30, Gang Vice Bureau Gang Section Manual at LVMPD 005322–23; ECF No. 144-3, Ex. O,
 20 LVMPD 30(b)(6) (Haas) Deposition at 129:7–21, 139:2–7, 140:4–21].

21 In discussing the August 19, 2018, incident, LVMPD's Gang Unit Captain John Leon stated
 22 to the press that “those arrested were known gang members”, and LVMPD's Convention Center Area
 23 Command Captain John Pelletier stated “[t]hey're documented gang members that pose a threat to
 24 the community.” [*Police: 9 local gang members arrested during party bust at Rio Hotel & Casino*,
 25 Kelsey Thomas, at ACLUNV 000411–12, attached as Exhibit 9; *Las Vegas Metro Police Busts Rio*
 26 *Casino Hotel 'Gang Party'*, Philip Conneller, at ACLUNV 000414, attached as Exhibit 10]. LVMPD
 27 released the booking photographs for everyone arrested at the party, including Plaintiffs Green,
 28

Medlock, Johnson, and Semper. *See generally* [*id.*; *Nine identified after gang party arrests at Rio Las Vegas hotel-casino*, Katherine Jarvis, attached as Exhibit 11]. LVMPD’s 30(b)(6) designee testified that Captains Leon and Pelletier, unlike other officers, were authorized to speak to the media on LVMPD’s behalf and determine what statements would be made to the press. [ECF No. 145-1, Ex. Q, LVMPD 30(b)(6) (Reyes) Deposition at 206:11–207:7]. Another 30(b)(6) designee stated that he was aware of LVMPD officials disclosing gang membership designations to the media under other circumstances. [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 235:5 – 239:16].

IV. Facts material to Fourth Amendment claim

Prior to contacting the occupants of Room 2037, Defendants Bauman, Kravetz, Young, and Kaur had an established system for dealing with hotel parties where they would detain all people present, subject them to frisks, and then hold those people until the officers completed a records search. [ECF No. 148-1, Ex. J, Bauman Deposition at 202:3–24]. The team coordinated with Rio security before contacting the occupants of Room 2037 before implementing this system. [ECF No. 142–2, Ex. R, *State v. Semper*, Case No. 18F15424, Vol. I at 110:2–8].

When Defendants Bauman, Kravetz, and Young entered into Room 2037, Defendants expected everyone to follow their orders to line up, and Plaintiffs were not free to leave. [ECF No. 148-2, Ex. K, Kravetz Deposition at 146:22–147:15; ECF No. 148-1, Ex. J, Bauman Deposition at 101:24–102:2; ECF No. 148-3, Ex. L, Kaur Deposition at 136:7–137:4; ECF No. 144-1, Ex. M, Young Deposition at 114:12–115:5]. Bauman directed the pat down searches of all Plaintiffs. [ECF No. 135, Ex. 15, LVMPD BWC 000023, Grimes 0248 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)]. Bauman directed officers to hold all partygoers, including the Plaintiffs, until all records were run and to continue to detain anyone with a prior felony conviction. [ECF No. 148-1, Ex. J, Bauman Deposition at 144:13–21, 145:1–12]. Young directed officers to interview the partygoers with the specific objective to “tie everyone together”. [ECF No. 144-1, Ex. M, Young Deposition at 279:1–17]. All Defendants participated in collecting identification from the Plaintiffs, running their records, and coordinating field interviews. [ECF No. 148-2, Ex. K, Kravetz Deposition

at 214:5–215:6, ECF No. 148-1, Ex. J, Bauman Deposition at 167:23–168:6; ECF No. 148-3, Ex. L, Kaur Deposition 179:8 – 181:4; ECF No. 144-1, Ex. M, Young Deposition at 185:7 – 186:8].

Bauman directed officers to detain, frisk, and hold the Plaintiffs until their records had been run and field interviews completed based on training he received on LVMPD’s Unified Party Abatement Concept (“UPAC”). [ECF No. 148-1, Ex. J, Bauman Deposition at 148:1–150:3; ECF No. 142–2, Ex. R, *State v. Semper*, Case No. 18F15424, Vol. I at 145:22–147:19]. When UPAC is implemented, LVMPD expressly and intentionally authorizes its officers to detain everyone at a gathering even if individualized reasonable suspicion does not exist for all partygoers. [ECF No. 145-1, Ex. Q, LVMPD 30(b)(6) (Reyes) Deposition at 146:10–148:23]. LVMPD’s UPAC presentation advises its officers to detain partygoers until the officers complete a records check and a field interview. [ECF No. 136, Ex. 27, United Problem Abatement Concept Presentation, at LVMPD 000241–242]. While LVMPD denies that UPAC advises its officers to conduct a pat down search on every person present, Bauman testified that he based his decision to pat down the occupants of Room 2037 on the training he received on the UPAC, and LVMPD has acknowledged that its training varies from instructor to instructor. [ECF No. 145–1, Ex. Q, LVMPD 30(b)(6) (Reyes) Deposition at 170:13–23].

EVIDENTIARY OBJECTIONS

If a party asserts that a fact cannot be genuinely disputed, it “must support the assertion by citing to particular parts of the materials in the record [. . .] or [. . .] showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). “A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible evidence.” Fed. R. Civ. P. 56(c)(2).

Testimony related to photographic evidence of firearms and gang members in Room 2037. To justify the detention and frisk of the Plaintiffs in their motion, Defendants state they knew firearms and designated gang members were present in Room 2037 based on photographs or videos observed on social media. [ECF No. 142 at 10:22–11:10, 13:30–23, 47:7–8]. A party may not admit

evidence describing the content of a photograph without offering the original, a duplicate, or a basis for an exception to this requirement. Fed. R. Evid. 1002; Fed. R. Evid. 1003; Fed. R. Evid. 1004. Defendants have not disclosed these photographs, stating that they no longer have the photographs in their possession and did not subpoena the photographs from the social media company. [ECF No. 146–1, Ex. S, Brigandi Deposition at 147:22–151:19; ECF No. 148-1, Ex. J, Bauman Deposition at 30:24–31:31]. As such, Defendants rely on their own testimony to prove the contents of the photographs. [ECF No. 142 at 10:22–11:10 (citing Brigandi and Bauman testimony)]. As the Defendants have not offered the original, a duplicate, or any basis to believe that an exception defined under Fed. R. Evid. 1004 applies to the photographs, their testimony is inadmissible.

Opinions related to gang surveillance. In seeking summary judgment on Plaintiffs’ First Amendment claims, Defendants rely on the following opinions provided by Nicholas Brigandi:

- “[G]ang members are a reoccurring problem in Las Vegas, constantly involved in violent events.” [ECF No. 142 at 35:26–28].
- “Because [gang members] are a constant problem, LVMPD must keep track of their whereabouts and activities [. . .] include[ing] monitoring [. . .] funerals.” [ECF No. 142 at 35:28–36:2].
- “When a gang member is killed, it becomes necessary for LVMPD to ‘work’ that funeral.” [ECF No. 142 at 36:3–4].
- “[LVMPD’s] presence at the funerals is actually to ensure ‘[participants] are able to mourn and the funeral goes smooth.’” [ECF No. 142 at 36:7–9].
- “Funerals are a hunting ground for gang violence.” [ECF No. 142 at 36:16–17].

These opinions are the province of expert testimony. Fed. R. Evid. 701 (prohibiting lay witnesses to testify to opinions based on “scientific, technical, or other specialized knowledge); *see United States v. Figueroa–Lopez*, 125 F.3d 1241, 1244–46 (9th Cir. 1997) (finding that a witness must qualify as an expert before testifying to specialized law enforcement knowledge related to criminal *modus operandi*); *see also United States v. Holguin*, 51 F.4th 841, 854 (9th Cir. 2022) (applying *Figueroa–Lopez* to gang-related testimony). A lay witness’s opinion cannot support a motion for summary

judgment if that opinion requires expert qualifications. *See Transwestern Pipeline Co. Ltd. Liab. Co. v. 46.78 Acres of Permanent Easement*, 473 F. App'x 778, 779 (9th Cir. 2012) (refusing to consider expert testimony from a witness that has not been qualified). As Defendants have not noticed Brigandi or any other witnesses as experts, these opinions are inadmissible. Fed. R. Civ. P. 26(a)(2); *see Harris v. United States*, 132 Fed. Appx. 183 (9th Cir. 2005) (precluding an expert from testifying due to failure to disclose pursuant to Fed. R. Civ. P. 26(a)(2)).

Designation of Rio as a “high crime area”. [ECF No. 142 at 47:9]. The Defendants assert this fact in their legal arguments but fail to support it with any citation to the record. *Id.* As factual assertions must be supported with a citation to the record, the Court should not consider this factual assertion.

LEGAL ARGUMENTS

I. Defendants are not entitled to judgment on Title VI claims.

Plaintiffs have admissible evidence that LVMPD, as a department, receives federal funding and engages in racial discrimination. As the harm to the Plaintiffs is ongoing, Plaintiffs’ claim is within the statute of limitations.

A. LVMPD receives federal funding to support its gang enforcement program.

In pursuing a Title VI claim against the government, a plaintiff must show that a program or activity of that government receives federal funding. *Barnes v. Gorman*, 536 U.S. 181, 185 (2002); *Alexander v. Underhill*, 416 F. Supp. 2d 999, 1007 (D. Nev. 2006). Programs and activities under Title VI are defined as “all of the operations of [. . .] a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government.” 42 U.S.C. § 2000d-4a; *see also City of L.A. v. Barr*, 941 F.3d 931, 937 (9th Cir. 2019) (applying this expansion to Title VI); *Epileptic Found. v. City & Cty. of Maui*, 300 F. Supp. 2d 1003, 1012 (D. Haw. 2003) (explaining that the legislature added this definition to overrule narrow

1 interpretations of the term “program or activity”).

2 Defendants claim that Plaintiffs must show that federal funding was provided specifically to
 3 GangNet, the Party Crasher Protocol, the CCAC Flex Team, and LVMPD’s Gang Training, but assert
 4 this limitation without citation to legal authority.⁴ The Plaintiffs can show that LVMPD receives
 5 federal funding, and this is sufficient to establish a Title VI claim. According to the definition of
 6 “program or activity”, LVMPD, as a police department, is a “department, agency, ... or other
 7 instrumentality of a State or of a local government.”⁵ See *Braunstein v. Ariz. DOT*, 683 F.3d 1177,
 8 1188 (9th Cir. 2012) (finding that the plaintiff was only required to show that the Arizona Department
 9 of Transportation as a whole received federal funds, not that the specific contract impacting the
 10 plaintiff was federally funded); see also *Gebray v. Portland Int’l Airport*, CV-01-755-ST, 2001 U.S.
 11 Dist. LEXIS 22747, at *17-18 (D. Or. Dec. 21, 2001) (stating that the plaintiff does not need to show
 12 that a specific port authority program received federal assistance, only that the port itself did) (cited
 13 by Defendants, [ECF No. 142 at 6–8]).

14 Not only does LVMPD receive federal assistance, it receives federal assistance specifically
 15 to support its Gang Unit and gang enforcement, and to receive that assistance, it signed agreements
 16 that expressly require it to comply with Title VI.⁶ Additionally, beyond the material disclosed by
 17 Defendant LVMPD in this matter, LVMPD’s receipt of federal funds for its gang and intelligence
 18 programs is well publicized.⁷ See, e.g., *Alexander v. Underhill*, 416 F. Supp. 2d 999, 1010 (D. Nev.
 19 2006) (finding that it is beyond reasonable dispute that the Washoe County School District is a
 20 federally funded entity pursuant to Title VI regulations). This showing is sufficient to support
 21 Plaintiffs’ Title VI claim.

22
 23 ⁴ [ECF No. 142 at 23:12–14].

24 ⁵ Notably, “Department” is in Defendant LVMPD’s name.

25 ⁶ [Ex. 4, Task Force Agreement, October 1, 2017, LVMPD 005519 at ¶ 10].

26 ⁷ See *Attorney General Ford’s Office Secures \$1.2 Million for Gang Suppression in Clark County*,
 Nevada Attorney General’s Office (March 20, 2019) (“Funding will be distributed to the Las Vegas
 Metropolitan Police Department (LVMPD) for overtime costs to contend with gangs and further their
 efforts to dismantle them.”), available at
 27 [https://ag.nv.gov/News/PR/2019/Attorney_General_Ford%E2%80%99s_Office_Secures_\\$1_2_Mil](https://ag.nv.gov/News/PR/2019/Attorney_General_Ford%E2%80%99s_Office_Secures_$1_2_Million_for_Gang_Suppression_in_Clark_County/)
 28 [lion_for_Gang_Suppression_in_Clark_County/](https://ag.nv.gov/News/PR/2019/Attorney_General_Ford%E2%80%99s_Office_Secures_$1_2_Million_for_Gang_Suppression_in_Clark_County/), attached as Exhibit 11;

B. LVMPD's gang policies and practices discriminate based upon race.

Plaintiffs clearly establish that LVMPD engages in racial discrimination through (1) explicitly using racial categories in its gang enforcement and (2) the gross disparity in the racial demographics of LVMPD's gang member and affiliate designations compared to the statistics offered by the Defendant.

1. Defendant LVMPD explicitly intentionally discriminates by race in its trainings related to gang enforcement.

A policy is suspect on its face when it considers race as a factor. *Walker v. Gomez*, 370 F.3d 969, 973-74 (9th Cir. 2004); *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999).

Defendant LVMPD expressly categorizes gangs by race in its trainings.⁸ Defendant LVMPD also trains its officers that race is relevant in determining whether or not to consider someone a gang member or affiliate.⁹ LVMPD has specifically identified the Gerson Park Kingsmen and Rollin' 60's Crips as "Black" gangs.¹⁰ However, LVMPD is not aware of the actual ethnic composition of those gangs, does not believe they have a racial membership requirement, and knows that the Rollin' 60's Crips have white and Latino members.¹¹ Furthermore, LVMPD does not believe that racial designations have significant value to law enforcement.¹²

2. Gross statistical disparities exist in LVMPD's gang member and affiliate designations for people identified as Black and African American.

While Plaintiffs must typically show that the defendants' actions had a discriminatory impact and that the defendants acted with an intent or purpose to discriminate, this is not necessary when a plaintiff can show evidence of "gross statistical disparities." *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 703 (9th Cir. 2009). Gross statistical disparities include when a "clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Evaluating statistical

⁸ [Ex. 7, Gang Liaison Officer Training Lesson Plan (revised 2.19.21) at LVMPD 002917–002918]

⁹ [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 273:18–274:5]

¹⁰ [Ex. 7, Gang Liaison Officer Training Lesson Plan (revised 2.19.21) at LVMPD 002917–002918].

¹¹ [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 276:12–280:13].

¹² [*Id.* at 280:21 – 281:2].

disparities requires “comparison between two groups — those affected and those unaffected by the facially neutral policy.” *Darensburg v. Metro. Transp. Comm’n*, 636 F.3d 511, 519-20 (9th Cir. 2011) (quoting *Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 575 (2d Cir. 2003)).

There are gross disparities between the racial demographics of Clark County, where LVMPD has jurisdiction, and the racial demographics of LVMPD’s gang member and affiliate designations. As of 2021, 59% of the people that LVMPD designated as gang members or affiliates were Black or African American.¹³ By comparison, Black or African American people only comprise 13.6% of Clark County’s over all population according to the United States Census Bureau.¹⁴ Dr. Anna Muniz, an expert in gang profiling and enforcement, determined that this disparity was the direct result of LVMPD’s gang designation policies.¹⁵

Instead of local general population statistics, Defendants ask this Court to refer to statistics from a national FBI database related to gang membership.¹⁶ And yet Defendants’ preferred statistics still support Plaintiffs’ position that LVMPD’s gang member and affiliate designations grossly disproportionately impact Black people.¹⁷ Where only 35.3% of the people in the FBI database cited by LVMPD were Black, Defendant LVMPD’s statistics state that 59% of the people in GangNet are Black,¹⁸ an almost 25 percentage point difference between the two populations. Again, Plaintiffs have evidence of a gross disparities between the percentage of Black and African American people comprising Defendant LVMPD gang designees and both Clark County’s ethnic breakdown and the FBI data regarding statistics on ethnicity for national gang member designations.

C. Plaintiffs’ Title VI claim is not barred by the statute of limitations.

¹³ [Ex. 7, Gang Liaison Officer Training Lesson Plan (revised 2.19.21) at LVMPD 0002914].

¹⁴ [United States Census Bureau, “QuickFacts Clark County, Nevada; United States,” <https://www.census.gov/quickfacts/clarkcountynevada>, attached as Exhibit 12].

¹⁵ [Ex. 8, Report of Dr. Ana Muniz, at Muniz_REP_23–24].

¹⁶ [ECF No. 142 at 25-26].

¹⁷ Defendants err by focusing on statistics for White members, which is only tangentially relevant to this case.

¹⁸ *Compare* [National Youth Gang Survey Analysis: Demographics, National Gang Center, cited at [ECF No. 142 at 26:2–5]], with [Ex. 7, Gang Liaison Officer Training Lesson Plan (revised 2.19.21) at LVMPD 0002914].

1 Title VI claims have same the statute of limitations as 42 U.S.C. § 1983 claims, *Taylor v.*
 2 *Regents of Univ. of California*, 993 F.2d 710, 712 (9th Cir. 1993), and “when the continued
 3 enforcement of a statute inflicts a continuing or repeated harm, a new claim arises (and a new
 4 limitations period commences) with each new injury.” *Flynt v. Shimazu*, 940 F.3d 457, 462 (9th Cir.
 5 2019).

6 When Plaintiffs became aware of designations as gang members and affiliates is irrelevant
 7 because Defendant LVMPD designated the Plaintiffs as gang members and affiliates on August 19,
 8 2018, and continue to designate Plaintiffs as gang members and affiliates.¹⁹ Defendant LVMPD
 9 undisputably designated all Plaintiffs as gang members or affiliates based on field interview cards
 10 filed related to the August 19, 2018, incident, and Defendant Defendants have repeatedly re-
 11 designated Plaintiffs as a gang members and affiliates since that designation.²⁰ This information either
 12 extended an existing designation as a “gang member” or “gang affiliate” or it created a new
 13 designation. Despite Defendants assertions to the contrary, the difference between extending a
 14 designation or creating a new designation is meaningless here, since both would cause the same harm
 15 and stigmatization by extending Plaintiffs designation in GangNet.

16 **II. Defendant LVMPD is not entitled to judgment on the First Amendment claims.**

17 “[Police] may not exercise the awesome power at their disposal to punish individuals for
 18 conduct that is not merely lawful but protected by the First Amendment.” *Velazquez v. City of Long*
 19 *Beach*, 793 F.3d 1010, 1020 (9th Cir. 2015) (quoting *Duran v. City of Douglas*, 904 F.2d 1372, 1378
 20 (9th Cir. 1990)). As the Defendants acknowledge, the government must show that any infringement
 21 upon associations protected by the First Amendment serves an interest unrelated to suppressing
 22 protected activity, that the interest is a compelling government interest, and the infringement is
 23 narrowly tailored to serving that interest. *Roberts v. U. S. Jaycee*, 468 U.S. 609, 623 (1984). This is
 24 an evidentiary burden: the government “must demonstrate that the recited harms are real, not merely

25 ¹⁹ As discussed under “Disputed Material Facts”, Plaintiffs Reece, Green, and Riley dispute that they
 26 were aware of any formal gang member designation by LVMPD.

27 ²⁰ [ECF No. 135, Ex. 20, August 19, 2018, Field Interview Cards at LVMPD 000372, LVMPD
 28 000375, LVMPD 000376–77, LVMPD 000379–82, LVMPD 000384–85, LVMPD 000388–89; ECF
 No. 135, Ex. 21 at 3:21–4:25, 6:24–7:7, 9:11–24, 11:21–12:2, 14:14–21, 15:19–16:2, 19:3–10].

conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Video Software Dealers Ass'n v. Schwarzenegger*, 556 F.3d 950, 962 (9th Cir. 2009); *see Pierce v. Jacobsen*, 44 F.4th 853, 862 (9th Cir. 2022) (finding that government failed to offer evidence that the challenged regulation could not be more narrowly tailored to stated objective); *Sanders County Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 746 (9th Cir. 2012) (finding that the interest asserted by government was compelling but that the government offered no evidence to support its proposition that the interest was related to the regulation).

Plaintiffs have challenged two different LVMPD policies pursuant to the First Amendment. First, LVMPD's policy, as articulated in LVMPD 5/206.16, authorizing the designation of any person associating for any reason with someone designated as a gang member as either a gang member or affiliate. Second, LVMPD's policy to investigate people attending "gang funerals", collect their information, and target them for pretextual stops as they leave the funeral. LVMPD asserts that these policies are related to compelling interests but offer no evidence that these interests are legitimate. LVMPD provides no explanation or supporting evidence for how its policies relate to the stated interests. Finally, LVMPD provides no explanation as to how policies targeting a full range of associations unrelated to criminal activity are narrowly tailored to its stated interests.

A. Defendant LVMPD has not offered any evidence designating gang members and affiliates due to any type of association with a person previously designated as a gang member is a valid infringement on First Amendment rights.

Defendant LVMPD focuses entirely on justifying the named Defendant officers' decision to shut down Cory Bass's birthday party.²¹ It fails to explain what, if any, interest was served by later designating every Plaintiff a gang member or affiliate based upon their attendance at said birthday party without any showing that the party was connected to criminal or gang activity. It also fails to explain more broadly what interest is served by designating people as gang members or affiliates for any association whatsoever, including those unrelated to criminal activity and those that are specifically protected under the First Amendment. As LVMPD fails to identify any interest, it has necessarily failed to show how its policy serves a compelling interest or is narrowly tailored to that

²¹ [ECF No. 142 at 34:23–35:25]

1 interest.

2 To the extent that Defendant LVMPD argues its designation policy is constitutional because
 3 it is not vague, Defendant LVMPD confuses First Amendment vagueness with First Amendment
 4 overbreadth.²² *See O'Brien v. Welty*, 818 F.3d 920, 929–30 (9th Cir. 2016) (explaining the difference
 5 between the two doctrines). Overbreadth applies “when a regulation imposing lawful limits on some
 6 expressive activity” at the same time “reaches too much expression that is protected by the
 7 Constitution.” *Id.* Vagueness applies when an individual could be punished for behavior that they did
 8 not know was illegal, the regulation allows for arbitrary enforcement, and these threats have a chilling
 9 effect on protected activity. *Id.* Only overbreadth is applicable here because LVMPD 5/206.16, on its
 10 face, clearly authorizes gang member and affiliate designations based upon any association or
 11 affiliation with a person previously designated as a gang member and so necessarily sweeps in
 12 protected associations.²³

13 **B. Defendant LVMPD has not offered any evidence that its policies and practices**
 14 **related to “gang funerals” are a valid infringement on First Amendment rights.**

15 Defendant LVMPD states that their policies and practices related to “gang funerals” serve the
 16 compelling interests of preventing gang violence at these funerals and the Las Vegas Valley more
 17 broadly.²⁴ Not only does Defendant LVMPD fail to provide admissible evidence to support these
 18 claims, it also fails to explain how surreptitiously photographing and documenting funeral attendees
 19 for future investigations or targeting attendees with pretextual stops as they leave funerals are related
 20 to these concerns. Additionally, it fails explain how deliberating targeting a form of expressive
 21 association for investigation even when no criminal activity is apparent is narrowly tailored to the
 22 broad goal of preventing “gang violence” and ensuring “safety” in the Valley.

23 _____
 24 ²² [ECF No. 142 at 36:25 – 38:8]. To provide further clarification, Plaintiffs only need to raise an
 25 overbreadth challenge if the Court finds that the policies were constitutional as applied to them. *See*
Green v. Miss USA, LLC, 52 F.4th 773, 800 (9th Cir. 2022) (explaining that an overbreadth challenge
 is a form of third party standing).

26 ²³ [ECF No. 144–2, Ex. N, LVMPD Policy 5/206.16 at LVMPD 000392]; *see* [ECF No. 144-3, Ex.
 27 O, LVMPD 30(b)(6) (Haas) Deposition at 102:18–24, 103:8–103:13 (presence in car with brother
 sufficient to justify designation)]

28 ²⁴ [ECF No. 142 at 35:26–36:9].

Without citing to legal authority, Defendant LVMPD suggests that it may target attendees leaving funerals for pretextual stops without violating the First Amendment when the stops are otherwise lawful.²⁵ Defendant LVMPD is incorrect. Otherwise lawful police activity that targets people because those people have engaged in protected activities violates the First Amendment: “[I]n the First Amendment context, courts must look through forms to the substance of the government conduct.” *White v. Lee*, 227 F.3d 1214, 1228–29 (9th Cir. 2000) (“Informal measures, such as the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation, can violate the First Amendment also.”)(quotation omitted); *see Ballentine v. Tucker*, 28 F.4th 54, 62 (9th Cir. 2022) (recognizing that even an arrest based on probable cause can violate the First Amendment if made in retaliation for engaging in First Amendment activity); *United States v. Steele*, 461 F.2d 1148, 1151 (9th Cir. 1972) (recognizing that otherwise lawful prosecutions that target defendants for engaging in First Amendment activity is unconstitutional). When LVMPD instructs its officers to target funeral attendees for traffic stops, it is not immunized from liability when officers have reasonable suspicion a traffic violation has occurred if the motivation behind the stop is the subject’s participation in protected activity.

III. Defendants are not entitled to judgment on Fourteenth Amendment claims.

A defendant government is liable for violating 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 plaintiff is deprived of a cognizable liberty interest if 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.’” *Id.* The Plaintiffs can establish a due process violation against LVMPD because (1) LVMPD’s gang member and affiliate designations change designees’ legal statuses and rights under Nevada law, (2) publication in document or database is sufficient to establish public disclosure of stigmatizing information, and (3) LVMPD employees designated Plaintiffs as gang members and affiliates then published that information pursuant to LVMPD

²⁵ [ECF No. 142 at 36:14–16].

1 policy.

2 **A. Defendants mischaracterize what constitutes “an alteration of a right or status**
 3 **recognized by state law”.**

4 Under the stigma plus test, “a plaintiff must show the public disclosure of a stigmatizing
 5 statement by the government, the accuracy of which is contested, plus the denial of some more
 6 tangible interest such as employment, *or* the alteration of a right or status recognized by state law.”
 7 *Ulrich v. City & Cty. of S.F.*, 308 F.3d 968, 982 (9th Cir. 2002) (quotation omitted)(emphasis added).
 8 Whether a designation alters a right or status is a matter of pure law: while a party can exercise a
 9 right, they cannot exercise a status. The Defendants argue that the Plaintiffs must also show that they
 10 were denied a tangible interest in addition to showing a change in legal right or status (i.e., the
 11 Plaintiffs were denied access to firearms),²⁶ but this is an alternative means to satisfy the stigma plus
 12 standard, not an additional requirement. *Id.*

13 Practically, Defendants’ interpretation encourages inconsistency between similarly situated
 14 parties raising stigma plus claims for the same designation. According to the Defendants, plaintiffs
 15 too poor to purchase a firearm or previously committed to a mental health facility would be unable
 16 to raise an otherwise valid stigma plus claim for the public disclosure of a false gang member
 17 designation. *See* NRS 202.360(2)(a) (prohibiting a person who “has been committed to any mental
 18 health facility by a court of [Nevada], any other state, or the United States” from owning or possessing
 19 a firearm.”). Rather, a determination as to whether a particular designation alters legal rights or
 20 statuses as a matter of law functionally limits what stigmatizing statements warrant due process
 21 claims while ensuring consistency.

22 **B. Defendant LVMPD’s designations of Plaintiffs necessarily alters Plaintiffs’**
 23 **status under state law because “gang member” and “gang affiliate” are legal**
 24 **statuses recognized in Nevada.**

25 Defendants’ motion argues that LVMPD’s designation has not altered the Plaintiffs’ rights
 26 but focuses exclusively on the right to bear arms. [ECF No. 142 at 30:16–31:8]. Defendants fail to
 27 recognize that its designations implicate the right to bear arms because the designations more broadly

28 ²⁶ *See* [ECF No. 142 at 28:10–13, 30:15–31:8].

1 alter the Plaintiffs' legal statuses.

2 Black's Law Dictionary defines "status" as "[a] person's legal condition, whether personal or
3 proprietary; the sum total of a person's legal rights, duties, liabilities, and other legal relations, or any
4 particular group of them separately considered." Status, Black's Law Dictionary (11th ed. 2019); *see*
5 *Rubio v. Lynch*, 787 F.3d 288, 293-94 (5th Cir. 2015) ("[Status] is generally defined in the legal
6 context as a standing; state or condition, and as the legal relation of an individual to the rest of the
7 community.")(quotations omitted); *Saldivar v. Sessions*, 877 F.3d 812, 816 (9th Cir. 2017) ("Status"
8 generally means "a person's legal condition.") (quotation omitted).

9 When a person is a designated a gang member or affiliate, the "sum total" of their legal rights,
10 liabilities, and relations fundamentally change under Nevada law and the laws of other states that
11 have access to GangNet. Nevada state law repeatedly refers to "gang member" and "gang affiliate"
12 as specific legal statuses that trigger a constellation of legal consequences if ascribed to a person.
13 NRS 176.153 expressly identifies affiliation with or membership in a criminal gang as a status that
14 must be disclosed in presentencing reports in criminal cases in state court. Gang members and
15 affiliates are subject to "gang enhancement" sentences under Nevada law.²⁷ *See* NRS 193.168(1)
16 (subjecting defendant to additional liability for actions taken "in affiliation with [] a criminal gang").
17 The Nevada's State Board of Parole is authorized to restrict parolees, as a matter of law, from
18 associating with designated "gang members" with no exceptions if that authority is exercised. NRS
19 213.1263. "Gang members" are singled out for special civil injunctions and damages under Nevada
20 nuisance law. NRS 244.35705; NRS 268.4128. Looking beyond Nevada to other states with access
21 to LVMPD's GangNet database, an Arizona statute authorizes that state's Department of Public
22 Safety (the entity that has access to LVMPD's GangNet)²⁸ to hire vendors to actively monitor
23 "criminal street gang members" like registered sex offenders. Ariz. Rev. Stat. § 13-3829. And of
24 course, it is a criminal offense to sell or transfer a firearm to a "known member of a criminal gang".

25
26 ²⁷ *See also* [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 249:10–22 (stating that
27 designation as a gang member in GangNet is relevant to the gang enhancement under NRS
193.168(1))]

28 ²⁸ *See* [ECF No. 136, Ex. 41, Agreement with Arizona Department of Public Safety].

1 NRS 202.362(1)(b). LVMPD itself believes that a gang member designation alters a designee's rights
 2 under the Fourth Amendment, as the agency considers the *Terry* frisk of a designated gang member
 3 justified if an officer has reasonable suspicion that the person is armed because the gang member
 4 designation alone satisfies the "dangerousness" prong.²⁹ See *Thomas v Dillard*, 818 F.3d 864, 876
 5 (9th Cir. 2016) (requiring reasonable suspicion that subject is armed and dangerousness to justify
 6 *Terry* frisk).

7 Furthermore, Plaintiffs have rights under Nevada law specifically related to GangNet that
 8 have been altered by LVMPD's designations. Plaintiffs have a right to have their information
 9 removed from GangNet five years from initial designation or from last "contact" with law
 10 enforcement, with "contact" defined as "contact with a local law enforcement agency during the
 11 investigation of a crime or report of an alleged crime." NRS 179A.500. Wrongful re-designation
 12 based on circumstances when no crime is under investigation necessarily infringes on this right.

13 Defendant LVMPD's designation of the Plaintiffs has (1) altered their legal status and (2)
 14 infringed upon their rights under Nevada law.

15 **C. Plaintiff Reece and Riley have been stigmatized by their designation as gang**
 16 **members.**

17 Defendant LVMPD has designated both Reece and Riley as gang members, not merely
 18 affiliates.³⁰ LVMPD admits that this designation is reserved for people who have active membership
 19 in a gang, and under its own policies affiliation is a separate designation.³¹ Yet Defendants claim that
 20 "there is no stigmatization of either Reece or Riley as they knowingly hang out with gang members
 21 on their own violation."³² As LVMPD's own policies recognize that "hanging out" with a designated
 22 gang member by itself is insufficient to designate that person as a gang member.

23
 24 ²⁹ [ECF No. 145-1, Ex. Q, LVMPD 30(b)(6) (Reyes) Deposition, 179:8–12].

25 ³⁰ [ECF No. 135, Ex. 21, LVMPD's Supp. Ans. to Pls.' Third Set of Interrogs., at 19:3–10; ECF No.
 146–4 Ex. DD, LVMPD's Ans. to Pls.' Third Set of Interrogs., at 12:3–16:2].

26 ³¹ [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 186:2–5, 210:13–20; ECF No.
 144–2, Ex. N, LVMPD Policy 5/206.16 (distinguishing between gang members and affiliates)].

27 ³² [ECF No. 142 at 30:7–8].
 28

D. Defendant LVMPD is liable pursuant to *Monell* for the stigma plus violations.

Defendant LVMPD argues that it cannot be held liable pursuant to *Monell* for the Plaintiffs' due process violations.³³ While the basis for this argument is ambiguous, if Defendant LVMPD means that it cannot be held liable as a municipality for a stigma plus violation, this is inaccurate. *See Owen v. Independence*, 445 U.S. 622, 626–29 (1980) (upholding a stigma-plus claim against a municipality); *Ulrich*, 308 F.3d at 983–86 (applying *Monell* liability to a stigma plus claim). If Defendant LVMPD claims that the Plaintiffs' cannot establish a *Monell* violation based upon the evidence in this case, that is also inaccurate.

LVMPD employees designated the Plaintiffs as gang members and affiliates and did so following LVMPD's policies. When Defendant Young and other LVMPD officers completed and filed field interview cards requesting gang member and affiliate designations for the Plaintiffs, they were following Defendant LVMPD's policy.³⁴ When LVMPD Gang Unit employees reviewed those cards and input the designations into GangNet, they were following Defendant LVMPD's policies.³⁵ Defendant LVMPD has not identified how any LVMPD employees deviated from LVMPD's policies in designating the Plaintiffs as gang members and affiliates or in uploading that information into GangNet.

LVMPD employees also disclosed Plaintiffs' designations according to LVMPD policy. If the Plaintiffs can show that LVMPD employees uploaded stigmatizing information into a database accessible by outside agencies, that is sufficient to establish public disclosure. *See Humphries v. County of L.A.*, 554 F.3d 1170, 1188 (9th Cir. 2009) (finding that outside agencies access to CACI database sufficient to establish public disclosure); *see also Foley v. Arostegui*, No. 2:14-cv-00094-RFB-NJK, 2023 U.S. Dist. LEXIS 174971, at *23 (D. Nev. Sep. 29, 2023) (determining that the requisite alteration in legal status was found to be satisfied in *Humphries* by "making the information in the registry available to certain in-state and out-of-state agencies"); *Guzman v. Shewry*, 552 F.3d

³³ [ECF No. 142 at 31:11-13].

³⁴ [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 58:12–18, 66:18–68:21, 116:10–15, 198:22–199:5 (explaining field interview process for nominating subjects for designation)].

³⁵ [*Id.*, at 61:23–62:2, 124:22–125:8, 168:12–169:1 (explaining LVMPD's process for reviewing field interview cards and uploading designations into GangNet)].

941, 956 (9th Cir. 2009) (“Because members of the public can access information in the HIPDB, DHCS's reporting of Guzman's suspension to the HIPDB would constitute publication that deprives him of a protected liberty interest.”); *Cox v. Roskelley*, 359 F.3d 1105, 1112 (9th Cir. 2004) (determining that public disclosure occurred upon inclusion of stigmatizing information in a record eligible for disclosure pursuant to state public records laws). LVMPD employees, following LVMPD’s policies, uploaded the Plaintiffs’ designations into GangNet,³⁶ and outside agencies have access to that database.³⁷

Additionally, [a]n official may be found to have been delegated final policymaking authority where “the official's discretionary decision is [not] ‘constrained by policies not of that official's making’ and ... [not] ‘subject to review by the municipality's authorized policymakers.’” *Ulrich*, 308 F.3d at 986 (9th Cir. 2002). LVMPD’s Captains Leon and Pellitier told the press that everyone arrested at the Rio party were gang members, and LVMPD simultaneously released the booking photographs for everyone arrested at the party, including Plaintiffs Green, Medlock, Johnson, and Semper.³⁸ Captains Leon and Pelletier, unlike other officers, were authorized to speak to the media on LVMPD’s behalf and determine what statements would be made to the press.³⁹ LVMPD also acknowledges that its officials have previously disclosed gang membership designations to the media.⁴⁰

³⁶ See [ECF No. 135, Ex. 21, LVMPD’s Supp. Ans. to Pls.’ Third Set of Interrogs., at 19:3–10 (entering Riley into GangNet); ECF No. 146–4, Ex. DD, LVMPD’s Ans. to Pls.’ Third Set of Interrogs. at 2–19 (entering other Plaintiffs into GangNet); ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition, at 124:1–125:23 (authorizing Gang Unit employees to upload designation into GangNet following review)].

³⁷ [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition, at 129:7–21, 139:2–7, 140:4–21].

³⁸ [Ex. 9, *Police: 9 local gang members arrested during party bust at Rio Hotel & Casino*, Kelsey Thomas, at ACLUNV 000411–12; Ex. 10, *Las Vegas Metro Police Busts Rio Casino Hotel ‘Gang Party’*, Philip Conneller, at ACLUNV 000414; Ex. 11, *Nine identified after gang party arrests at Rio Las Vegas hotel-casino*, Katherine Jarvis.]

³⁹ [ECF No. 145-1, Ex. Q, LVMPD 30(b)(6) (Reyes) Deposition at 206:11–207:7].

⁴⁰ [ECF No. 144-3, Ex. O, LVMPD 30(b)(6) (Haas) Deposition at 235:5 – 239:16].

IV. Defendants are not entitled to judgment on Fourth Amendment claims.

The Plaintiffs have established integral participation from all Defendants in the Plaintiffs’ detentions and frisks as all Defendants admit to participating in Plaintiffs’ initial detention, processing Plaintiffs out of Room 2037, and then continuing Plaintiffs’ detention to collect their identification, run their records, and conduct field interviews. Defendants have not shown that this Court should deviate from the traditional standard requiring an officer to have individualized reasonable suspicion before stopping and frisking a subject. Defendants have not offered any legal authority that a person may be detained based on a general marijuana smell that is not particularized to that person. The Defendant officers are not entitled to qualified immunity as they violated well-established Fourth Amendment principles, and Defendant LVMPD is liable under *Monell* as the Fourth Amendment violations are the direct result of Defendant LVMPD’s Unified Party Abatement Concept, i.e. “Party Crashers”.

A. All Plaintiffs can maintain their Fourth Amendment claims against the Defendants.

“An officer’s liability under section 1983 is predicated on his integral participation in the alleged violation.” *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 n.12 (9th Cir. 2007). However, “integral participation does not require that each officer’s actions rise to the level of a constitutional violation.” *Boyd v. Benton County*, 374 F.3d 773, 780 (9th Cir. 2004). Rather, if an officer has “some fundamental involvement in the conduct that allegedly caused the violation”, that is sufficient to hold the officer liable under 42 U.S.C. § 1983. *Blankenhorn*, 485 F.3d at 481 n.12 (finding that an officer who only assisted in handcuffing the plaintiff could be held liable for Fourth Amendment violations). “[A]n officer could be held liable where he is just one participant in a sequence of events that gives rise to a constitutional violation.” *Nicholson v. City of L.A.*, 935 F.3d 685, 692 (9th Cir. 2019). An officer that participates in initially detaining a plaintiff can be held liable for that plaintiff’s subsequent prolonged detention. *See id.* at 691–92 (denying qualified immunity to an officer on a prolonged detention claim when the officer was involved in the initial detention but then later separated from the detainees). An officer whose instruction to another officer results in a constitutional violation can also be held liable. *See id.* (denying qualified immunity to an officer that

1 instructed another officer to detain the plaintiff).

2 “A person is seized if taking into account all of the circumstances surrounding the encounter,
3 the police conduct would have communicated to a reasonable person that he was not at liberty to
4 ignore the police presence and go about his business.” *United States v. Washington*, 490 F.3d 765,
5 769 (9th Cir. 2007) (citing *Florida v. Bostick*, 501 U.S. 429, 437 (1991)). Defendants infer that
6 Plaintiffs were first detained when the Plaintiffs stepped out of the room.⁴¹ This suggestion is flatly
7 contradicted by their own testimony and the body worn camera. When Defendants Bauman, Kravetz,
8 and Young entered Room 2037 everyone was ordered to line up and no one was free to leave.⁴²

9 Additionally, all Defendants acknowledge continued involvement in the Plaintiffs’ seizure
10 and searches even after the other officers became involved. All Defendants participated in collecting
11 identification from the detained partygoers, running everyone’s records, and coordinating field
12 interviews.⁴³ Bauman directed officers on who to frisk and to hold all partygoers, including the
13 Plaintiffs, until all records were run and to continue to detain anyone with a prior felony conviction.⁴⁴
14 Young directed officers to interview the partygoers to “tie” them all together.⁴⁵ And there is evidence
15 that Defendants Bauman, Young, Kravetz, and Kaur planned to detain everyone in Room 2037, frisk
16 them, and collect their information prior to contacting the people in Room 2037, including but not
17 limited to Bauman’s testimony about developing a “plan of attack” with Rio security and that the
18 process was a “system” his team has used on other occasions,⁴⁶ and this plan manifested itself in the

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20 ⁴¹ [ECF No. 142 at 38:12–14].

21 ⁴² [ECF No. 148-2, Ex. K, Kravetz Deposition at 146:22–147:15; ECF No. 148-1, Ex. J, Bauman
22 Deposition at 101:24–102:2; ECF No. 148-3, Ex. L, Kaur Deposition at 136:7–137:4; ECF No. 144-
23 1, Ex. M, Young Deposition at 114:12–115:5].

24 ⁴³ [ECF No. 148-2, Ex. K, Kravetz Deposition at 214:5–215:6, ECF No. 148-1, Ex. J, Bauman
25 Deposition at 167:23–168:6; ECF No. 148-3, Ex. L, Kaur Deposition 179:8 – 181:4; ECF No. 144-
26 1, Ex. M, Young Deposition at 185:7 – 186:8].

27 ⁴⁴ [ECF No. 135, Ex. 15, LVMPD BWC 000023, Grimes 0248 at 2:50 (Bauman orders LVMPD
28 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); ECF No. 148-1, Ex. J, Bauman Deposition at 144:13–
21, 145:1–12].

⁴⁵ [ECF No. 144-1, Ex. M, Young Deposition at 279:1–17].

⁴⁶ [ECF No. 142–2, Ex. R, *State v. Semper*, Case No. 18F15424, Vol. I at 110:2–8; ECF No. 148-1,
Ex. J, Bauman Deposition at 202:3–24]

1 team worked together to detain the people in Room 2037 without any signal from Rio security or
 2 explanation amongst the team.⁴⁷ And while Grimes, Lobarrio, and other officers may have searched
 3 some of the Plaintiffs, since they were not present when Defendants first made contact with the
 4 Plaintiffs and detained them,⁴⁸ those officers necessarily would have had to rely on direction from
 5 the Defendants to justify searching the Plaintiffs.

6 While the Defendants are correct that Grimes, Lobarrio, and other officers on the scene may
 7 have violated the Plaintiffs' Fourth Amendment rights, the Defendants were integrally involved in
 8 the detentions and frisks of the Plaintiffs and are not off the hook because other officers are also at
 9 fault. All Plaintiffs can maintain Fourth Amendment claims against the Defendants.

10 **B. The Defendants could not detain the Plaintiffs without individualized suspicion.**

11 The Defendants acknowledge that “[a] search and seizure is ordinarily unreasonable in the
 12 absence of individualized suspicion of wrongdoing,” yet request that the Court deviate from this norm
 13 and find the Defendants decision to detain everyone in Room 2037 reasonable without individualize
 14 suspicion because “plaintiffs had active arrest warrants, there were firearms present, [] gang members
 15 had been identified, [and] . . . [a]ll attendees were certainly behaving as a group [. . .]”.⁴⁹

16 As a preliminary matter, Defendants rely on inaccurate and disputed facts to support this
 17 argument. Defendants did not know that anyone in Room 2037 had arrest warrants when they entered
 18 the suite.⁵⁰ As discussed above, Plaintiffs dispute whether Defendants observed marijuana smoke or
 19 smell prior to detaining everyone. Plaintiffs also dispute whether it was reasonable for the Defendants
 20 to believe that there were firearms in Room 2037 or that the party was “gang-affiliated” prior to
 21 detaining everyone.

22 Moreover, Defendants mischaracterize *Carr* and *Lyall*. In *Carr*, the plaintiffs had been

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 24 ⁴⁷ See [ECF No. 135, Ex. 6, LVMPD BWC 00049, Kravetz, Matthew 0243; Ex. 9, LVMPD 000074, Young, Theron 0243].

25 ⁴⁸ [ECF No. 148-1, Ex. J, Bauman Deposition at 77:25 – 78:2 (only identifying Kravetz, Young, and Kaur as LVMPD officers present when the team first arrived at Room 2037)].

26 ⁴⁹ [ECF No. 142 at 41:15–17, 22–25].

27 ⁵⁰ [ECF No. 148-2, Ex. K, Kravetz Deposition at 115:7–14; ECF No. 148-1, Ex. J, Bauman
 28 Deposition at 85:19–22; ECF No. 144-1, Ex. M, Young Deposition at 105:3–6].

1 arrested for rioting, an offense that necessarily implicated group action by the statute’s language, and
 2 the officers offered evidence that they observed the crowd acting as a cohesive unit engaging in
 3 violence or cheering that violence on. i.e. engaging in a crime as a group. *Carr v. District of Columbia*,
 4 587 F.3d 401, 405–07 (D.C. Cir. 2009). Overturning an order granting plaintiffs summary judgment,
 5 the *Carr* court reaffirmed that “probable cause must be particularized” but found that “that showing
 6 is satisfied if the officers have ground to believe all arrested person were part of the unit *observed*
 7 *violating the law.*” *Id.* at 407 (emphasis added); *compare with Barham v. Ramsey*, 434 F.3d 565 (D.C.
 8 Cir. 2006) (denying defendant officer’s motion for summary judgment when officer detained group
 9 when there was only evidence of some individuals engaging in criminal conduct). Here, the
 10 Defendants offer no evidence that they observed anyone, let alone a “unit”, possessing marijuana,
 11 using marijuana, or otherwise engaging in criminal activity.

12 The *Lyall* Court recognized that “a search and seizure is ordinarily unreasonable in the
 13 absence of individualized suspicion of wrongdoing,” and “some quantum of individualized suspicion
 14 is usually a prerequisite to a constitutional search or seizure.” *Lyall v. City of L.A.*, 807 F.3d 1178,
 15 1194 (9th Cir. 2015). The *Lyall* Court also recognized that “*Ybarra* [*v. Illinois*, 444, U.S. 85 (1979)]
 16 stands for the proposition that if a person is simply present in the vicinity of potential criminal activity,
 17 without doing anything else to indicate he is engaging in criminal activity or that he is armed and
 18 dangerous, the police do not have probable cause to search him or reasonable suspicion sufficient to
 19 detain him and frisk him.” *Id.* at 1195. *Lyall* suggests a limited exception to this requirement when
 20 the subjects who were detained were “behaving as a unit and it is not possible to [. . .] for the police
 21 to tell who is armed and dangerous or engaging in criminal acts and who is not.” *Id.* (emphasis added).

22 The Defendants offer no evidence that *Lyall*’s deviation from the typical individualized
 23 requirement is applicable here. In *Lyall*, the crowd actively threatened and physically prevented
 24 officers from detaining a suspect and continuing an active investigation. *Id.* at 1193 (“The officers
 25 testified that the crowd reacted angrily when they attempted to subdue Cortez and that they believed
 26 they were in danger—a belief that was exacerbated when the wooden partition, which they thought
 27 someone had pushed, fell on top of them.”). By comparison, when the Defendants barged into Room
 28

2037 and grabbed Cory Bass for an alleged trespass violation, none of the partygoers prevented the officers from doing so.⁵¹ When ordered to line up, partygoers asked that the Defendants explain why they were being detained but did not act aggressively towards the officers or interfere with the officers.⁵² None of the partygoers threatened the officers or Rio staff, and they generally followed the orders given by police.⁵³ These circumstances clearly diverge from those depicted in *Lyall*. If the Defendants were in fact investigating cannabis, they could have stood by the door as the partygoers left the room and detained people passing by that specifically smelled like marijuana or had committed other criminal offenses.

As the Defendants have not established that this Court should deviate from the norm, the Defendants needed individualized suspicion to detain the Plaintiffs and subject them to a frisk.

C. The Defendants could not frisk the Plaintiffs without individualized suspicion.

The mere presence of narcotics alone does not justify frisking everyone in the vicinity. *See Ybarra v. Illinois*, 444 U.S. 85 (1979) (finding the stop and frisk of a bar patron unconstitutional even though heroin was discovered in at the bar). While the Defendants claim “[c]ourts have routinely approved pat-downs of individuals where narcotics are present”, they offer no legal authority where the general smell of marijuana, even in states where it is illegal under state law, justified a frisk, and all authorities identified narcotics as only one of multiple factors justifying a frisk.⁵⁴

Defendants, citing *Berryhill*, claim that the “Ninth Circuit has [] concluded that a criminal’s companion may be frisked without individualized suspicion.”⁵⁵ *Berryhill* does not support the Defendants claim; the *Berryhill* court actually identified specific facts justifying the contested frisk.

⁵¹ *See* [ECF No. 135, Ex. 6, LVMPD BWC 00049, Kravetz, Matthew 0243; Ex. 9, LVMPD 000074, Young, Theron 0243].

⁵² *See* [ECF No. 135, Ex. 6, LVMPD BWC 00049, Kravetz, Matthew 0243; Ex. 9, LVMPD 000074, Young, Theron 0243].

⁵³ [ECF No. 148-2, Ex. K, Kravetz Deposition at 163:18–10, ECF No. 148-1; Ex. J, Bauman Deposition at 9:21–98:2, 162:3–9; ECF No. 144-1, Ex. M, Young Deposition at 249:12–250:2].

⁵⁴ [ECF No. 142], at 45:16–27]; And when asked “Does smoking marijuana make you armed and dangerous automatically,” Defendant Bauman himself answered “I would say no.” [ECF No. 142–2, Ex. R, *State v. Semper*, Case No. 18F15424, Vol. I at 153:10–12].

⁵⁵ [ECF No. 142 at 46:1–3].

1 *See United States v. Berryhill*, 445 F.2d 1189, 1193 (9th Cir. 1971) (determining that a search was
 2 permissible because defendant was known to keep weapons and wife’s handbag was “reasonably
 3 suspect as the depository of such a weapon”). And if the Ninth Circuit ever agreed with the
 4 Defendants, it unequivocally now requires individualized suspicion. *Thomas*, 818 F.3d at 877
 5 (“Importantly, reasonable suspicion must be individualized: ‘even in high crime areas, where the
 6 possibility that any given individual is armed is significant, *Terry* requires reasonable, individualized
 7 suspicion before a frisk for weapons can be conducted.’” (quoting *Maryland v. Buie*, 494 U.S. 325,
 8 334 n.2 (1990))).

9 The Defendants have offered no individualized justification for frisking Bowie, Green,
 10 Medlock, Reece, or Riley. Defendants have offered no individualized basis to believe that Johnson
 11 was dangerous prior to searching Johnson. As discussed above, Defendants rely on disputed facts in
 12 claiming that there was reasonable suspicion to believe Johnson or Semper was armed or Semper was
 13 dangerous. Defendants are not entitled to summary judgment regarding the frisk of the Plaintiffs.

14 **D. A general smell of cannabis by itself would not justify detaining the Plaintiffs.**

15 Defendants state that under federal law, “marijuana odor is sufficient to satisfy reasonable
 16 suspicion to detain.”⁵⁶ But officers may only detain a person based on odor if the odor is sufficiently
 17 linked to that person. *See United States v. Soyland*, 3 F.3d 1312, 1314 (9th Cir. 1993) (finding that
 18 the odor of marijuana and methamphetamine in a car did not justify arresting the sole passenger
 19 because “[t]here was not a sufficient link between [the passenger] and the odor”). This requirement
 20 is reflected in all the legal authorities cited by Defendants. [ECF No. 142] at 40:7–23. *See United*
 21 *States v. Cephas*, 254 F.3d 488 (4th Cir. 2001) (authorizing the *search* of an apartment due to the
 22 odor of marijuana in the apartment in conjunction with information that the defendant had been
 23 providing marijuana to minors); *United States v. Wright*, 844 F.3d 759, 762–63 (8th Cir. 2016)
 24 (officer had probable cause to arrest defendant because the officer “detected an odor of marijuana
 25 *coming from Wright’s person*”)(emphasis added); *United States v. Humphries*, 372 F.3d 653, 659
 26 (4th Cir. 2004) (“[P]robable cause to believe that marijuana is located in an automobile or an

27 ⁵⁶ [ECF No. 142 at 40:7–8].
 28

apartment may not automatically constitute probable cause to arrest all persons in the automobile or apartment; some additional factors would generally have to be present, indicating to the officer that those persons possessed the contraband.”); *United States v. Perdoma*, 621 F.3d 745, 749 (8th Cir. 2010) (arrest permissible because “the odor of marijuana [was] emanating *from* [the defendant].”) (emphasis added).

Plaintiffs dispute whether the Defendants smelled marijuana or saw smoke coming from Room 2037, but no one disputes that at least 32 people were in Room 2037 when the officers entered the suite and detained everyone.⁵⁷ Defendants also have no evidence that they observed any marijuana odor specifically linked to the Plaintiffs. A general smell, if it existed, would have been insufficient to detain the Plaintiffs.

E. Even if the initial detention had been lawful, the Defendants still unlawfully prolonged the Plaintiffs’ detention.

If probable cause or reasonable suspicion dissipates, officers cannot continue to arrest or detain that person without prolonging the detention in violation of the Fourth Amendment. *Nicholson*, 935 F.3d at 691 (“It is well-established that a person may not be arrested, or must be released from arrest, if previously established probable cause has dissipated.”). And an officer’s additional investigative actions or questions are “permissible only if it was (1) part of the stop’s ‘mission’ or (2) supported by independent reasonable suspicion.” *United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019).

Even if the marijuana was an undisputed fact and the Defendants could have detained the Plaintiffs based on a general marijuana smell, the Defendants still prolonged the Plaintiffs detention in violation of the Fourth Amendment. Defendants not only continued to detain the Plaintiffs after the Defendants had the opportunity to determine whether the marijuana smell came from the Plaintiffs, the Defendants failed to investigate any cannabis related offenses beyond searching Room 2037.⁵⁸

⁵⁷ [ECF No. 135, Ex. 1, Information Collection Form, at LVMPD 000284–286; ECF No. 148-2, Ex. K, Kravetz Deposition at 152:13 –153:12, 221:24–222:18].

⁵⁸ [ECF No. 148-1; Ex. J, Bauman Deposition at 171:14–172:12].

1 Considering that the Defendants had no apparent basis to believe that any cannabis odor came
 2 specifically from the Plaintiffs, especially after they came into close proximity of the Plaintiffs, any
 3 reasonable suspicion to detain would have dissipated. Furthermore, the Defendants engaged in a
 4 series of detours such as lining everyone up, patting down every Plaintiffs, collecting identification
 5 from every person at the party, and completing records checks for every person at the party, without
 6 ever actually investigating the cannabis offense that was the predicate from the Plaintiffs' detention.
 7 The Defendants necessarily prolonged the Plaintiffs' detention in violation of the Fourth Amendment.

8 **F. The Defendants are not entitled to qualified immunity.**

9 The Defendants' qualified immunity arguments hinge entirely on whether an officer can
 10 lawfully detain a person for a marijuana-related offense following the legalization of marijuana in
 11 Nevada. While they presume that whether they smelled marijuana is undisputed, the Defendants fail
 12 to recognize that they violated the Fourth Amendment even if they smelled marijuana.

13 The Fourth Amendment issues in this case are based on well-established law. It is well-
 14 established that an officer must have individualized suspicion that a person has committed or about
 15 to commit a crime to detain that person. *Tarabochia v. Adkins*, 766 F.3d 1115, 1121, 1125–26 (9th
 16 Cir. 2014). It is well-established law that an officer must have individualized reasonable suspicion
 17 that a person is armed and dangerous before subjecting them to a search. *Thomas*, 818 F.3d at 877
 18 (2016). It is well-established law that if an officer conducts an investigative stop, the stop is only
 19 lawful “so long as unrelated inquiries do not measurably extend the duration of the stop”. *Rodriguez*
 20 *v. United States*, 575 U.S. 348, 355 (2015). It is well established that if reasonable suspicion or
 21 probable cause for a detention dissipates, the officer must release the detained person immediately.
 22 *Nicholson*, 935 F.3d at 691 (citing *United States v. Ortiz-Hernandez*, 427 F.3d 567, 574 (9th Cir.
 23 2005)). Defendants are not entitled to qualified immunity for violating these bedrock principles
 24 underpinning the Fourth Amendment.

25 **G. Defendant LVMPD is liable pursuant to *Monell* for the Fourth Amendment**
 26 **violations.**

27 LVMPD's Unified Party Abatement Concept (UPAC) caused the Fourth Amendment
 28 violations alleged by Plaintiffs. Defendant Bauman, who was the supervising officer on scene, was

1 trained on the UPAC prior to the incident and relied on that training to have his team detain everyone
2 in Room 2037, bring each person out one-by-one into the hallway, systematical frisk the partygoers,
3 and not release anyone until after LVMPD officers collected their information, ran a criminal records
4 check, and were subject to field interviews.⁵⁹

5 LVMPD confirmed that its UPAC training teaches officers that they should detain everyone
6 at a party when implementing the UPAC regardless of whether the officers has individualized
7 reasonable suspicion to justify the detention.⁶⁰ Without requiring individualized suspicion, LVMPD
8 is training its officers to violate the Fourth Amendment. While LVMPD's 30(b)(6) designee
9 effectively claimed that Bauman misunderstood the training in regards to pat downs, pointing out that
10 the training materials explicitly require reasonable suspicion to justify pat downs, the 30(b)(6)
11 designee also testified that trainers may deviate from what is presented in the presentation, putting
12 whether Bauman received alternative instruction in dispute.⁶¹ Finally, unlike its instructions on
13 identifying which partygoers to frisk, the UPAC training does not limit this process to subjects where
14 the officers have reasonable suspicion.⁶² As Plaintiffs were detained well beyond the limits justified
15 by the alleged basis of their detention and that unconstitutional extension was due to the UPAC
16 training Defendant LVMPD provided to Bauman, LVMPD is liable for the Plaintiffs' prolonged
17 detention.

18
19
20 [REMAINDER OF PAGE LEFT BLANK]
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23

24 ⁵⁹ [ECF No. 148-1, Ex. J, Bauman Deposition at 148:1–150:3; ECF No. 142–2, Ex. R, *State v.*
25 *Semper*, Case No. 18F15424, Vol. I at ACLU 000252–254 145:22–147:19].

26 ⁶⁰ [ECF No. 145-1, Ex. Q, LVMPD 30(b)(6) (Reyes) Deposition at 146:10–148:23]

27 ⁶¹ [*Id.* at 170:13–23]

28 ⁶² *Compare* [ECF No. 136, Ex. 27, United Problem Abatement Concept Presentation, at LVMPD
000241–242] with [Ex. 27 at LVMPD 000240].

CONCLUSION

Plaintiffs do not oppose the dismissal of Defendant David Jeong but request that the Court deny all other aspects of the LVMPD Defendants' Motion for Summary Judgment based upon the facts and law cited herein.

DATED this 22nd day of April, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Response to LVMPD Defendants' 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 April 22, 2024. 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/ Christopher Peterson
An employee of ACLU of Nevada

INDEX OF EXHIBITS

Exhibit No.	Description
1	<i>State v. Semper</i> , Case No. 18F15424, Transcript, Vol. III
2	LVMPD's Supplemental Answers to Plaintiffs' Third Set of Interrogatories
3	Defendant LVMPD Responses to Plaintiffs' First Set of Requests for Admissions (Dated Sept. 27, 2023)
4	State and Local Task Force Agreement Between the Drug Enforcement Administration Los Angeles Field Division and LVMPD Program – Funded State and Local Task Force Agreement (Dated Oct. 1, 2017)
5	Defendant LVMPD Responses to Plaintiffs' First Set of Requests for Admissions (Dated Dec. 18, 2023)
6	Federal Bureau of Investigation Cost Reimbursement Agreement (Dated Aug. 27, 2018)
7	Gang Liaison Officer Training Lesson Plan (revised 2.19.21)
8	Report of Dr. Ana Muniz
9	<i>Police: 9 local gang members arrested during party bust at Rio Hotel & Casino</i> , Kelsey Thomas
10	<i>Nine identified after gang party arrests at Rio Las Vegas hotel-casino</i> , Katherine Jarvis
11	<i>Las Vegas Metro Police Busts Rio Casino Hotel 'Gang Party'</i> , Philip Conneller
12	<i>Attorney General Ford's Office Secures \$1.2 Million for Gang Suppression in Clark County</i> , Nevada Attorney General's Office (Dated March 20, 2019)
13	" <i>QuickFacts Clark County, Nevada; United States</i> ," United States Census Bureau