

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

ALEJANDRO MARTINEZ,

Plaintiff,

V.

CITY OF ROSENBERG, TEXAS; *et al.*,

Defendants.

) (Civil Action No.: 4:21-cv-432

) (Jury Trial)

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PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES Plaintiff Alejandro Martinez amending his complaint as a matter of course and complaining of the CITY OF ROSENBERG, TEXAS; OFFICER R. CANTU, *Individually*; OFFICER R. DON DIEGO, *Individually*; OFFICER JOSH MANRIQUEZ, *Individually*; OFFICER JEREMY REID, *Individually*; OFFICER SHELBY MACHA, *Individually*; OFFICER RAMON GALLEGOS, *Individually*; and OFFICER EARNEST TORRES, *Individually*; and will show the Court the following:

NUTSHELL

1. Alejandro Martinez was falsely arrested by the defendant Officers and injured by excessive force in the process.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's federal claims, under 28 U.S.C. § 1331, 42 U.S.C. §§ 1983 and 1988, and supplemental jurisdiction, under 28 U.S.C. § 1367(a), to hear Plaintiff's state law claims, if any. Venue is proper in this Court, under 28 U.S.C. § 1391(b) because the incident at issue took place in Fort Bend County, Texas within the United States

Southern District of Texas, Houston Division.

PARTIES

3. Plaintiff ALEJANDRO MARTINEZ is a resident of Fort Bend County, Texas.
4. Defendant CITY OF ROSENBERG, TEXAS (“the City”) is a municipality organized under the laws of the State of Texas which, as a home-rule municipality and through the City’s Charter, has created a police department, the Rosenberg Police Department (“RPD”), through which the City is responsible for the implementation of RPD policies, procedures, practices and customs, as well as the acts and omissions of its police officers, including all of the above and below named police officers. The City can be served with process by serving the City Secretary or Mayor at 2110 4th Street, Rosenberg, TX 77471
5. Defendant OFFICER R. CANTU is sued in his individual capacity and can be served with process at 2120 4th Street, Rosenberg, Texas 77471.
6. Defendant OFFICER R. DONDieGO is sued in his individual capacity and can be served with process at 2120 4th Street, Rosenberg, Texas 77471.
7. Defendant OFFICER JOSH MANRIQUEZ is sued in his individual capacity and can be served with process at 2120 4th Street, Rosenberg, Texas 77471.
8. Defendant OFFICER JEREMY REID is sued in his individual capacity and can be served with process at 2120 4th Street, Rosenberg, Texas 77471.
9. Defendant OFFICER SHELBY MACHA is sued in his individual capacity and can be served with process at 2120 4th Street, Rosenberg, Texas 77471.
10. Defendant OFFICER RAMON GALLEGOS is sued in his individual capacity and can be served with process at 2120 4th Street, Rosenberg, Texas 77471.
11. Defendant OFFICER EARNEST TORRES is sued in his individual capacity and

can be served with process at 2120 4th Street, Rosenberg, Texas 77471.

12. Defendant OFFICER SHELBY MACHA is sued in his individual capacity and can be served with process at 2120 4th Street, Rosenberg, Texas 77471.

ADDITIONAL FACTS

13. February 6, 2019 Alejandro Martinez, an elderly disabled man, was walking along a street in Rosenberg, Texas. Alejandro Martinez was committing no crimes.

14. Rosenberg police officers R. CANTU, R. DONDieGO, JOSH MANRIQUEZ, JEREMY REID, SHELBY MACHA, RAMON GALLEGOS, and EARNEST TORRES detained Alejandro Martinez without his consent for several minutes when he was committing no crime. All the officers could see and hear what was going on with the other officers yet they failed to intervene. Mr. Martinez is severely physically disabled and this was known and obvious to all the officers.

15. Eventually and without valid reason one or more of the officers used force to take Alejandro to the ground and proceeded to manhandle him. At the time Alejandro was not resisting or committing a crime. One or more of the officers arrested Alejandro for resisting arrest when he had not resisted arrest. All of the other officers witnessed the false arrest and use of excessive force but failed to intervene. Alejandro experienced pain, abrasions, and bruising due the unjustified use of force against him.

16. The charges against Alejandro were dismissed without any, fine, jail time, or other obligation required by Alejandro Martinez.

17. On the afternoon of February 6, 2019, Alejandro was out for a walk in his neighborhood. Parrott Avenue and 5th Street form a T-intersection in that part of the neighborhood, and he crossed the street from his right-hand corner of the intersection to his left-

hand side of 5th, walking toward his house. Neither of these streets has a sidewalk on either side of the street. As he was walking, he carried a noticeable limp, and had an obvious deformity in his left arm because he does not have a humerus and has sustained several injuries as a result of numerous encounters with Rosenberg police.

18. At that time, Officer Cantu turned onto Parrott Avenue, and saw Alejandro cross to the left side of 5th Street and continue walking toward his home. Other than Cantu's police cruiser, there were no other moving vehicles traveling on relevant portions of either street. After Alejandro had crossed and continued on, Cantu turned onto 5th Street, initiated a traffic stop of Alejandro, and exited his vehicle. The encounter described herein is captured in part on Cantu's dashboard camera video, attached as **Exhibit 1**.¹

19. The Texas Traffic Code § 552.006 (b)(1) states that “[i]f a sidewalk is not provided, a pedestrian walking along and on a highway shall if possible walk on the left side of the roadway.”

20. Although Alejandro was not violating this statute—and had legally crossed the street to stay in compliance with this statute—Cantu stopped him for “walking on the wrong side of the street.” Alejandro was understandably incredulous, and correctly informed Cantu of what he already knew: that Alejandro was doing nothing wrong. Cantu was also aware of Alejandro's long history with the Rosenberg police, including his injuries. Despite all of that knowledge and despite that he could have easily approached Alejandro to “just . . . talk to [him],” Cantu insisted that Alejandro come to him. Alejandro correctly stated that he had done nothing wrong, and kept slowly moving down the street, toward his home, while continuing to verbally engage with Cantu.

21. After a verbal exchange with Alejandro, Cantu quickly approached Alejandro, grabbed him, and then almost immediately effected an arrest by tackling Alejandro onto the

¹ The video is contained on a flash drive submitted to the Clerk.

ground, and wrestling Alejandro's arms behind his back through the intense pain and screaming that Alejandro was experiencing. Alejandro informed Cantu that he was hurting and reinjuring his already injured and deformed arm, and that it was causing him intense pain, but Cantu proceeded with the arrest.

22. As Cantu was trying to force Alejandro's arms into an extremely painful position that was causing Alejandro to writhe in pain, Officer Dondiego arrived, immediately exited his vehicle, and manhandled Alejandro into the extremely difficult and painful position necessary for Cantu to handcuff him—all for “walking on the wrong side of the street.” Officer Gallegos arrived and approached Alejandro, Cantu, and Dondiego as the arrest was affected, although he remained just off-camera. In quick succession, the other Defendants arrived (Torres, Manriquez, Macha, Gallegos, and Reid), and Officer Torres kicked Alejandro's back while he was handcuffed on the ground. All of the present officers were aware of Alejandro's history with the department, his injuries at their hands, and the pain he was experiencing at the time. They were also aware that he was arrested on the correct side of the street for walking on the “wrong” side of the street, and thus that there was no probable cause or any legal reason for his arrest. All Defendants participated directly in the arrest, detention, and subsequent search of Alejandro at the scene. Several of the officers searched his pockets and bagged his belongings, while others held him in place, and then put him into the patrol vehicle.

23. Due to his injuries and extreme pain, Alejandro was transported to the hospital by Cantu, who was accompanied by Dondiego. While at the scene loading him into the car, while leading him about, and while handling him in the hospital during the examination, both Cantu and Dondiego consistently used more force than was necessary to handle him, and targeted the areas that they knew would be painful to him due to injuries that he informed them of, chiefly his left

arm and left hip. This treatment caused him further pain and injuries, and he consistently screamed in pain in response to such handling, but both officers continued to handle him in that manner anyway.

VIOLATION OF THE 4TH AND 14TH FOURTEENTH AMENDMENTS

24. Plaintiff incorporates all preceding paragraphs as if set fully set forth herein.

25. The Fourth Amendments guarantees everyone the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” *U.S. Const. amend. IV*. The 14th Amendment allows for due process of law. Such violations are actionable pursuant to 42 U.S.C. Section 1983 and 1988.

26. The force used by the individually named defendants, was in great excess to the need to use such force and constituted an Unreasonable Seizure of Plaintiff and violated his due process rights under the 14th and 4th Amendments. The defendants unlawfully forced Alejandro to the ground injuring him in violation of the 4th and 14th Amendments. The defendants injured Mr. Martinez causing injuries. Additionally, the defendant officers detained Alejandro without reasonable suspicion and arrested him without probable cause. They then maliciously prosecuted him until his case was dismissed.

27. All of the individual officers directly participated in unlawful detention and search, because they all knew that he was being arrested and detained for a crime that they knew he did not commit. Defendants Cantu, Dondiego, and Torres directly handled Alejandro and used excessive force upon him throughout his arrest and detention.

28. The City of Rosenberg, Texas has a custom, policy, practice, and procedure of using excessive force on individuals and not disciplining or training officers adequately and is therefore liable under 42 U.S.C. Section 1983 and 1988. There is a pattern and practice of excessive force

and condoning excessive force. This pattern and practice was ratified by the City of Rosenberg, Texas when the department determined that the officers' actions were consistent with department policy.

29. This pattern, practice, and custom was known to the City of Rosenberg police department and among most or all of its officers with respect to Alejandro specifically, because they had dealt with Alejandro many times prior to this arrest, and had injured him in the past pursuant to this pattern, practice, and custom.

LIABILITY FOR FAILURE TO INTERVENE

30. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

31. A law enforcement officer “who is present at the scene and does not take reasonable measures to protect a suspect from another officer’s use of excessive force may be liable under section 1983.” *Hale v. Townley*, 45 F.3d 914, 919 (5th Cir. 1995). Although *Hale* most often applies in the context of excessive force claims, this Court recognized that other constitutional violations also may support a theory of bystander liability. *Whitley v. Hanna*, 726 F.3d 631, 646 n. 11 (5th Cir. 2013)(citing *Richie v. Wharton County Sheriff’s Dep’t Star Team*, No. 12–20014, 2013 WL 616962, at *2 (5th Cir. Feb. 19, 2013)(per curiam) (unpublished)(noting that plaintiff failed to allege facts suggesting that officers “were liable under a theory of bystander liability for failing to prevent ... other member[s] from committing constitutional violations”). Further, the Second Circuit has stated that “law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.” *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir.1994). See also, *Byrd v. Brishke*, 466 F.2d 6, 11 (7th Cir. 1972)(“we believe it is clear that one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who

summarily punish a third person in his presence or otherwise within his knowledge.”). Thus, the Defendant officers may be liable under § 1983 under a theory of bystander liability when the officer “(1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act.” *Whitley*, 726 F.3d at 646.

32. Officers Dondiego, Cantu, and Torres may be liable as bystanders to each others’ use of force both at the scene and at the hospital, and Officer Gallegos may be liable as a bystander to Cantu, Dondiego, and Torres’s excessive force used at the end of the arrest. Moreover, all officers present may be liable as bystanders to all the other officers’ participation in a false arrest and search. Any officer that may not be liable directly for the false arrest and search was a bystander to the officers that did directly participate the arrest and search.

MENTAL ANGUISH

33. Plaintiff incorporates all preceding paragraphs as if set fully set forth herein.

34. Alejandro Martinez suffered at least anxiety, fear, anger and depression because of the acts of the individually named defendants and the City of Rosenberg and, therefore, seeks damages for mental anguish past and future as well as the pain and suffering, past and future, and other damages set forth above.

PUNITIVE DAMAGES

35. Plaintiff incorporates all preceding paragraphs as if set fully herein.

36. The individually named defendants actions and inactions cause them to be liable for punitive damages as they were consciously indifferent to the plaintiff’s constitutional rights and they did the acts knowingly, such acts being extreme and outrageous and shocking to the conscience.

ATTORNEYS’ FEES

37. Plaintiff is entitled to recover attorneys' fees and costs to enforce his Constitutional rights and under 42 U.S.C. Sections 1983 and 1988.

JURY TRIAL

38. Plaintiff requests a trial by jury on all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

- A. Enter judgment for the plaintiff and against the individual defendants and the City of Rosenberg, Texas holding them jointly and severally liable;
- B. Find that Plaintiff is the prevailing party in this case and award attorneys' fees and costs, pursuant to federal law, as noted against all defendants;
- C. Award damages to Plaintiff for the violations of his Constitutional rights;
- D. Award Pre- and post-judgement interest;
- E. Award Punitive damages against each and every individually named defendant, and
- F. Grant such other and further relief as appears reasonable and just, to which plaintiff shows himself entitled.

Respectfully Submitted,

/s/ Randall L. Kallinen

Randall L. Kallinen

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on this October 12, 2021 a true and correct copy of the foregoing pleading was delivered in accordance with the Federal Rules of Civil Procedure to all ECF notice attorneys of record.

/s/ Randall L. Kallinen
Randall L. Kallinen