

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOHN VENSEL,

Plaintiff,

v.

BRENT STROMAN, MANUEL
CHAVEZ, ABELINO "ABEL"
REYNA and JOHN DOE

Defendants.

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CIVIL ACTION NO. 1:15-CV-1045

**PLAINTIFF'S ORIGINAL COMPLAINT
AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff John Vensel (hereinafter "Plaintiff"), files this his Original Complaint and in support respectfully shows the Court as follows:

I. INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 arising from the unlawful arrests that occurred in Waco, Texas on May 17, 2015. The mass arrests were unprecedented in both their scope and the complete absence of individual, particularized facts to establish probable cause. Plaintiff is seeking damages against Defendants Police Chief Brent Stroman, Waco Police Department (hereinafter "WPD") officer Manuel Chavez, and Abelino "Abel" Reyna, in their individual capacities, for committing acts under color of law, which deprived Plaintiff, as well as many other persons, of rights secured under the Constitution and Laws of the United States.

Plaintiff also seeks damages against an unnamed Texas Department of Public Safety employee for similar violations.

II. PARTIES

2. Plaintiff John Vensel ("Vensel" or "Plaintiff") is a resident of Collin County, Texas.

3. Chief Brent Stroman ("the Chief" or "Stroman"), is the Chief of Police of the Waco Police Department and is sued in his individual capacity. He acted under the color of law of the statutes, ordinances, regulations, policies, customs, and usages of the State of Texas. Defendant Stroman may be served with process at his place of business in the Waco Police Department, 3115 Pine Avenue, Waco, Texas, 76708.

4. Det. Manuel Chavez ("Chavez"), is a police officer employed by the Waco Police Department. Chavez is sued in his individual capacity. He acted under the color of law of the statutes, ordinances, regulations, policies, customs, and usages of the State of Texas and/or the City of Waco, Texas. Defendant may be served with process at the Waco Police Department, located at 3115 Pine Avenue, Waco, Texas, 76708.

5. Abelino "Abel" Reyna ("Reyna"), is the elected District Attorney of McLennan County, Texas and is sued in his individual capacity. He acted under the color of law of the statutes, ordinances, regulations, policies, customs, and usages of the State of Texas. Defendant Reyna may be served with process at 219 N. 6th Street, Waco, Texas 76701.

6. John Doe is an employee of the Texas Department of Public Safety ("DPS") that as of this date is unnamed.

II. JURISDICTION

7. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this lawsuit pursuant to 28 U.S.C § 1331, as this lawsuit arises under the Constitution, laws, or treaties of the United States.

III. VENUE

8. Venue is proper in this Court under 28 U.S.C. § 1391(b), as this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

IV. FACTUAL BACKGROUND

OVERVIEW

9. On May 17, 2015, hundreds of motorcycle enthusiasts from across the state gathered in Waco, Texas for a scheduled Texas Confederation of Clubs & Independents (“COC”) meeting. As with any COC meeting, bikers expected to hear from speakers on topics ranging from state legislative updates to national motorcycle safety initiatives. The Waco COC meeting was also expected to be as much a social gathering as it was informative.

10. Tragically, violence erupted and nine lives were lost, with others sustaining non-fatal injuries. Because law enforcement had become aware of friction between some members of the Bandidos Motorcycle Club (“Bandidos”) and some members of the Cossacks Motorcycle Club (“Cossacks”), undercover and uniformed officers were located around the perimeters of the Twin Peaks restaurant where the COC meeting was occurring. These law enforcement officers were armed with assault rifles and responded to the violence with deadly force.

11. It is undisputed that members of law enforcement fired upon individuals at the gathering, although it is yet unknown the extent of the injuries caused by law enforcement. Regardless of the manner or cause of the deaths, the loss of life that occurred that day is, without question, tragic. Unfortunately, the actions of law enforcement, including members of the McLennan County District Attorney's Office, compounded the tragedy by causing the wrongful arrest and incarceration of countless innocent individuals.

12. Despite a total lack of particularized evidence relating to specific individuals, Defendants Stroman, Chavez, and Reyna determined that individuals would be arrested and charged with Engaging in Organized Criminal Activity based entirely on their presence at Twin Peaks, the motorcycle club that Defendants presumed an individual was associated with, and/or the clothing they were wearing at the time of the incident. Rather than investigating the incident and relying on actual facts to establish probable cause, Defendants theorized that a conspiracy of epic proportion between dozens of people had taken place, and willfully ignored the total absence of facts to support their "theory."

SPECIFIC FACTUAL ALLEGATIONS

13. The COC is a non-profit organization of motorcyclists with a mission to lobby for motorcyclist rights and safety legislation in the State of Texas.

14. COC meetings are not held in any one specific city and are open to all motorcyclists.

15. The May 17, 2015 COC meeting in Waco had been scheduled several weeks in advance, and was posted publicly on the COC website prior to the date of the event. Bikers from numerous motorcycle clubs from all over the state were expected to attend.

16. Numerous motorcycle clubs were represented at the May 17 COC gathering. No law of the State of Texas or the United States prohibits an individual's right to associate with a motorcycle club. In fact, an individual's right to associate is guaranteed by the First Amendment to the United States Constitution.

17. Prior to the May COC meeting, tension existed between certain members of the Bandidos Motorcycle Club and certain members of the Cossacks Motorcycle Club. This tension was known to law enforcement and as a result, law enforcement had officers present for the purpose of security and to monitor the gathering.

THE INCIDENT

18. At approximately noon on May 17, 2015, an altercation occurred between several individuals. Within moments, the situation escalated and shots were fired. At its conclusion, nine individuals were killed and at least twenty were injured. To date, the extent to which the fatalities and injuries were caused by gunfire from law enforcement officers is unknown.

19. As the gunfire erupted, video evidence conclusively proves that the vast majority of the individuals present at the location did not participate in any violent activity, but instead ran away from the gunfire or ducked for cover.

20. Once the shooting ceased, law enforcement officers immediately took

control of the premises. The individuals present were compliant and did not resist commands of law enforcement.

INVESTIGATION

21. Defendant Chavez is a detective in the Special Crimes Unit of the WPD. On May 17, 2015, he was the on-call investigator and as a result, was called to the scene as the lead investigator of the Twin Peaks incident.

22. Defendant Reyna, the elected McLennan County District Attorney, and First Assistant District Attorney Michael Jarrett were on scene after the incident investigating the shooting, along with law enforcement officials from numerous local agencies.

23. After several hours, all individuals in attendance at the COC meeting were transported to the Waco Convention Center for interviews. For the remainder of the day, WPD detectives, Texas Rangers, and DPS special agents conducted interviews of those in attendance.

24. Initially Defendant Chavez advised detectives and investigators to Mirandize each individual prior to questioning. However, at approximately 7:30 p.m. Defendant Chavez reversed course and instructed detectives and investigators to stop reading the *Miranda*¹ warnings, as the bikers were not under arrest.

25. Throughout the interviews, a common theme became evident - the detained individuals were merely present for a meeting, to visit with friends, eat food, and enjoy socializing with other motorcycle enthusiasts. During the interviews, it was

¹ *Miranda v. Arizona*, 384 U.S. 436, 478-79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

learned that most were nowhere near the shooting; many had just arrived at the restaurant; and none were aware of a prearranged plan of violence. It was also learned that the vast majority of the individuals immediately took cover at the outset of the gunfire, and did not in any way participate in or encourage the violence.

26. Investigators were providing the information learned during interviews directly to Defendant Stroman, Defendant Reyna, and unknown DPS official(s).

27. Documents related to this incident clearly establish that a very specific plan for the release of most individuals was in the works just prior to the decision to arrest everyone and charge each person with the first degree felony of Engaging in Organized Criminal Activity with the Intent to Commit or Conspire to Commit Murder, Capital Murder, or Aggravated Assault.

DEFENDANTS' DECISION TO ARREST

28. Defendant Chavez ordered all of the investigators to stop their interviews at approximately 8:30 p.m. because Defendant Reyna had called a meeting. From approximately 9:00 p.m. to 10:30 p.m., Defendants Stroman, Chavez, Reyna, and others met regarding the incident. Soon thereafter, investigators were informed that Defendants had decided to arrest all motorcyclists that met certain criteria, and to charge each with the offense of Engaging in Organized Criminal Activity.

29. Defendant Stroman and/or Reyna provided an arrest criteria list for all detectives to follow in compiling the list of individuals to be arrested. Documents related to the mass arrests prove that Defendants made the determination to arrest based on motorcycle club association and/or clothing, patches, key chains, etc. that

Defendants arbitrarily decided reflected “support” for either the Bandidos or the Cossacks.

30. Defendant Stroman has publicly acknowledged his responsibility in the decision to arrest the 177, including Plaintiff. Documents related to the incident clearly establish Defendant Reyna’s responsibility for the ill fated decision as well.

31. Despite possessing video from numerous angles showing the complete lack of involvement of most of those arrested and hours and hours of interviews with the arrested individuals in which no evidence of a conspiracy was uncovered to support their “theory” of pre-planned violence, Defendants willfully, intentionally, and recklessly charged 177 individuals with the identical first degree felony of Engaging in Organized Criminal Activity with the Intent to Commit or Conspire to Commit Murder, Capital Murder, or Aggravated Assault.

THE AFFIDAVIT TO OBTAIN AN ARREST WARRANT

32. On May 18, 2015, the day following the incident at Twin Peaks, Defendants caused a general warrant, as that term has been defined by the United States Supreme Court, to be used for the purpose of obtaining arrest warrants for each of the 177 individuals, including Plaintiff.

33. Despite the United States Constitution requiring a *particularized* showing of facts against an individual before a warrant can issue, an identical fill-in-the-name affidavit (hereinafter “affidavit” or “probable cause affidavit,” attached hereto as Exhibit 1) was used as the basis for establishing probable cause for each of the arrested individuals.

34. It is indisputable that the affidavit in question **does not set forth particularized facts against Plaintiff** that would in any way establish probable cause.

35. Defendant Chavez has acknowledged that he read the template affidavit and inserted names of individuals based on a list he was provided.

36. Defendant Chavez did not question the template affidavit or the basis of the criminal charge despite the fact that he had already begun the process of overseeing arrangements to release all of the detainees.

37. Defendant Chavez swore to 177 template affidavits *en masse* – that is, he swore under oath that the stack before him was true and correct – and is the sole affiant for all affidavits. Chavez swore under oath he had personal knowledge of the information contained therein, even though he did not. Having read the affidavit, Defendant Chavez knew he did not have personal knowledge as to the particular facts of any one person, including Plaintiff. Chavez knew that the affidavit was open-ended, false, and misleading in a material manner, yet he presented it to Magistrate Peterson for the purpose of obtaining arrest warrants, including Plaintiff's.

38. The template affidavit, sworn to by Defendant Chavez, is wholly lacking in probable cause, and instead is filled with conclusory, inaccurate statements and/or background facts.

39. The affidavit falsely states that Plaintiff is “a member of a criminal street gang.” That statement is categorically *false*. It is an indisputable fact that Defendants did not possess any reliable particularized information to indicate that Plaintiff himself was a member of a criminal street gang on or before the date such fact was sworn to by

Defendant Chavez. Plaintiff was not, and never has been, a member of a criminal street gang.

40. In the aftermath of the incident at Twin Peaks, Defendants apparently concluded that the Bill of Rights to the U.S. Constitution ceased to apply, and could be ignored given what they perceived as an immediate need to announce the re-establishment of law and order in their town.

41. Compounding Defendants' gross violations of civil rights, an identical one million dollar (\$1,000,000.00) bail was set for each of the 177 detained individuals, including Plaintiff, despite the Eighth Amendment to the U. S. Constitution's clear mandate that "excessive bail shall not be required, nor excessive fines imposed..." As a result of all of the above, Plaintiff was wrongfully incarcerated for 30 days following his arrest.

MISSTATEMENTS AND EXAGGERATIONS TO THE MEDIA

42. Within hours of the Twin Peaks incident, information was provided to the media that was inaccurate, exaggerated, and highly misleading. Defendant Stroman allowed WPD representatives to set forth a narrative that was inaccurate in many respects. The "shootout between outlaw motorcycle gangs" theme that continues to be trumpeted is patently false. Perpetuating the narrative has caused irreparable harm to the reputations of the many individuals, including Plaintiff, who had nothing to do with the fatalities and injuries.

43. WPD's intent to create a false picture of the event is most evident in the manner that guns and knives were displayed to the media following the incident. The

majority of the knives confiscated would not be considered illegal under § 46.02 of the Texas Penal Code, and were voluntarily relinquished upon requests from law enforcement soon after the shootings. Notwithstanding an individual's right to carry a legal knife, the knives were displayed to the media with blades extended in an effort to appear as menacing as possible.

44. A similar storyline emerged regarding the number of guns seized after the incident, which was grossly overstated in initial reports. Police representatives failed to mention that many were found following the incident, stored safely on motorcycles or in other vehicles.

45. Perhaps the most misleading characterization of the events was made days after the incident by Defendant Reyna when he implied that those arrested were guilty because "if they're victims, then they shouldn't have *any* problem coming to law enforcement and cooperating... and, at least in the first round of interviews, we ain't getting that." This is blatantly false. A review of investigators' records documenting the interviews that were conducted with the detained bikers clearly establishes that the vast majority, including Plaintiff, were completely cooperative during interviews, and voluntarily submitted to questioning and requests for forensics from law enforcement. Defendant Reyna knew of these facts at the time he made the above described public statement.

46. Since the outset, law enforcement's narrative of the event as told to the public bears little resemblance to the actual facts.

THE INDICTMENT

47. On November 10, 2015, despite only convening for the first time earlier in the day to hear facts related to the Twin Peaks incident, a McLennan County Grand Jury indicted Plaintiff along with 105 other individuals for the exact same crime of Engaging in Organized Criminal Activity with the Intent to Commit or Conspire to Commit Murder, Capital Murder, or Aggravated Assault. The indictment, like the probable cause affidavit, is identical for every single individual. To date, there has been no attempt to state with any particularity the facts on which the first degree felony against Plaintiff is based. From a fill-in-the-name template probable cause affidavit, to a fill-in-the-name template Indictment, violations of Plaintiff's constitutional rights continue.

V. FACTS PERTAINING TO PLAINTIFF

48. John Phillip Vensel is a resident of Collin County, Texas. Plaintiff has been married to his wife for over thirty (30) years, has five (5) children, and two (2) grandchildren.

49. Plaintiff is a motorcycle enthusiast and is a member of the Vaqueros Motorcycle Club of Dallas County.

50. Mr. Vensel rode to the Twin Peaks in Waco with some of his fellow members for the purpose of attending the COC meeting and to socialize. Soon after arriving, Plaintiff heard gun shots and immediately took cover.

51. Plaintiff was engaged in **completely lawful conduct** at all times relevant to the Twin Peaks incident.

52. Plaintiff's membership in a motorcycle club was lawful and did not violate any laws of Texas or the United States.

53. Plaintiff's attendance at the COC meeting on May 17, 2015, was lawful and did not violate any laws of Texas or the United States.

54. All clothing worn by Plaintiff on May 17, 2015, including jackets, vests, t-shirts, and patches, was completely lawful and did not violate any laws of Texas or the United States.

55. All stickers on Plaintiff's motorcycle were completely lawful and did not violate any laws of Texas or the United States.

56. Plaintiff did not shoot, strike, or threaten any person on May 17, 2015.

57. Plaintiff did not encourage anyone to shoot, strike, or threaten any person on May 17, 2015.

58. Plaintiff's actions upon hearing gun shots were consistent with what 99% of the population would do – he immediately took cover to avoid being struck.

59. In summary, Plaintiff had absolutely nothing to do with the tragic deaths and injuries that occurred on May 17, 2015, at Twin Peaks.

60. The entire basis of Defendants' belief that probable cause existed to arrest and charge Plaintiff comes down to his presence at the Twin Peaks restaurant on May 17, 2015, his lawful affiliation with a motorcycle club, and the clothing that he was wearing.

61. The probable cause affidavit signed by Manuel Chavez on May 18, 2015 **fails to identify even one single fact specific to Plaintiff to support probable cause for**

his arrest and incarceration.

62. Plaintiff's cell phone has been examined by law enforcement and contains no evidence of any illegal plan or desire to engage in illegal conduct before, during, or after May 17, 2015.

63. Despite the lack of any indicia to establish probable cause, Plaintiff was arrested for Engaging in Organized Criminal Activity and his bond was initially set at one million dollars (\$1,000,000). Plaintiff spent 30 days in jail. He was able to post bail after his bond was lowered.

V. CAUSES OF ACTION

**42 U.S.C. § 1983 – 4th Amendment Violation
pursuant to *Malley v. Briggs***

64. Paragraphs 1-63 are incorporated herein by reference.

65. Plaintiff had a clearly established Constitutional right to be free from unlawful arrest. As a direct result of Defendants' conduct, Plaintiff was falsely arrested and charged with Engaging in Organized Criminal Activity, despite the absence of probable cause to establish that he had committed a crime. Defendants' conduct, as described above, deprived Plaintiff of his right to be secure in his person against unreasonable seizure, in violation of the Fourth Amendment of the Constitution of the United States and 42 U.S.C. § 1983.

66. The Fourth Amendment of the U.S. Constitution states,

“[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, **and no warrants shall issue, but upon probable cause**, supported by oath or affirmation, and **particularly describing** the place to be searched, and the persons or things to be seized.” (*Emphasis added.*)

As the Supreme Court of the United States has plainly stated, “[w]here the standard is probable cause, a... seizure of a person must be supported by probable cause particularized with respect to that person.” *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).²

67. Plaintiff pleads that Defendants Stroman and Reyna knowingly and intentionally, or with reckless disregard for the truth, caused a facially deficient, fill-in-the-name template affidavit, completely lacking in particularized facts against Plaintiff to be presented to the Magistrate Judge for the purpose of obtaining an arrest warrant.

68. Further, Defendant Chavez is liable to Plaintiff because he knowingly and intentionally, or with reckless disregard for the truth, presented a facially deficient, fill-in-the-name template affidavit, completely lacking in particularized facts against Plaintiff to be presented to the Magistrate Judge for the purpose of obtaining an arrest warrant. A police officer is not entitled to qualified immunity when he submits a warrant application that is so lacking in indicia of probable cause as to render official belief in its existence unreasonable. *Malley v. Briggs*, 475 U. S. 335, 345, 106 S. Ct. 1092, 1098, 89 L.Ed.2d 271 (1986).

69. Because the template affidavit regarding Plaintiff lacks assertions of fact that, even if true, would establish probable cause, Defendants have each, individually

² See also *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (“...the belief of guilt must be particularized with respect to the person to be searched or seized.”); *Trapper v. North Carolina*, 451 U.S. 997, 1000 (1981); *Michigan v. Summers*, 452 U.S. 692, 695, n. 4 (1981); *U.S. v. Hearn*, 563 F.3d 95, 103 (5th Cir. 2009) (quoting *Ybarra*, 444 U.S. at 91); *U.S. v. Zavala*, 541 F.3d 562, 575 (5th Cir. 2008); *Williams v. Kaufman Co.*, 352 F.3d 994, 1003 (5th Cir. 2003) (quoting *Ybarra*, 444 U.S. at 91); *Merchant v. Bauer*, 677 F.3d 656, 666 (4th Cir. 2012) (“The Supreme Court has emphasized that ‘[w]here the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person.’”); *Hawkins v. Mitchell, et al*, 983, 994 (7th Cir. 2014); *U.S. v. Ojeda-Ramos*, 455 F.3d 1178, 1181 (10th Cir. 2006) (quoting *Ybarra*, 444 U.S. at 91); *U.S. v. Guzman*, SA-13-CR-89-DAE (W.D. Tex. 2013); *Dinler v. City of New York*, 2012 WL 4513352 *6 (S.D.N.Y. 2012) (“The Fourth Amendment does not recognize guilty by association.”).

and as a group, violated Plaintiff's Fourth Amendment rights.

70. "The Fourth Amendment directs that 'no Warrants shall issue, but upon probable cause... and particularly describing the place to be searched, and the persons or things to be seized.' Thus, 'open-ended' or 'general' warrants are constitutionally prohibited." *Ybarra v. Illinois*, 444 U.S. 85, 92 n. 4 (1979). It was well settled law in this country prior to May 17, 2015 that use of a general warrant application was prohibited. Defendants' actions effectively constitute the use of a general warrant prohibited by the Constitution and decades of United States Supreme Court case law.

71. As set forth in *Malley v. Briggs*, and its progeny, the Plaintiff's Fourth Amendment rights were violated when a probable cause affidavit was presented for the purpose of obtaining an arrest warrant that was so lacking in indicia of probable cause as to render official belief in existence of probable cause "unreasonable."

72. The affidavit, attached as Exhibit 1 to this Complaint, is incorporated herein by reference. The plain language of the affidavit indicates that it does not contain a single particularized assertion of fact against Plaintiff that would establish a reasonable belief that Plaintiff has committed a criminal offense.

73. As a direct result of Defendants' conduct and actions, Plaintiff was deprived of his constitutional rights all to his damage.

**42 U.S.C. § 1983 - 4th Amendment Violation
pursuant to *Franks v. Delaware***

74. Paragraphs 1-73 are incorporated herein by reference.

75. In the alternative, Plaintiff pleads civil liability against Defendants based on a "Franks" violation. See *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d

667 (1978). *See also Hale v. Fish*, 899 F.2d 390, 400 n.3 (5th Cir. 1990). Defendants Stroman and Reyna knowingly and intentionally, or with reckless disregard for the truth, caused an affidavit against Plaintiff to be presented to the Magistrate Judge that each knew to be materially false and misleading. Further, Defendant Chavez is liable to Plaintiff because he knowingly and intentionally, or with reckless disregard for the truth, swore to a probable cause affidavit against Plaintiff that he knew to be materially false and misleading, and presented it to the Magistrate Judge.

76. Defendant Chavez swore under oath that he had personal knowledge of the information set forth in the probable cause affidavit. He did not.

77. The affidavit falsely states that Plaintiff is “a member of a criminal street gang.” That statement is categorically *false*. It is an indisputable fact that Defendants did not possess any reliable particularized information to indicate that Plaintiff himself was a member of a criminal street gang on or before the date such fact was sworn to by Defendant Chavez. Plaintiff was not, and never has been, a member of a criminal street gang.

78. Further, the probable cause affidavit states, “[a]fter the altercation, the subject was apprehended at the scene, while wearing common identifying distinctive signs or symbols **or** had an identifiable leadership or continuously **or regularly associate in the commission of criminal activities.**” These statements are false and misleading and were known to be false and misleading by Defendant Chavez at the time he swore to such.

79. Information omitted from the affidavit by Defendant Chavez would have negated probable cause. Despite a duty to include information that weighs against probable cause, Defendant Chavez knowingly and intentionally, or with reckless disregard for the truth, failed to reference the complete lack of any particularized evidence connecting Plaintiff to the deaths or injuries that occurred at Twin Peaks.

80. As a direct result of Defendants' conduct and actions, Plaintiff was wrongfully arrested even though probable cause did not exist.

42 U.S.C. § 1983 - 14th Amendment Violation

81. Paragraphs 1-80 are incorporated herein by reference.

82. If it is determined that a Fourth Amendment violation is not sustainable, Plaintiff alternatively asserts a violation of his Due Process rights under the Fourteenth Amendment to be free from unlawful arrest as a result of false and misleading statements that were knowingly, or with reckless disregard included in the probable cause affidavit. The Due Process Clause of the Fourteenth Amendment was intended to prevent government from abusing its power, or employing it as an instrument of oppression.

83. Specifically, Plaintiff has rights guaranteed by the Fourteenth Amendment not to have law enforcement deliberately fabricate evidence, including the insertion of facts in affidavits and arrest documents that Defendants know to be false.

84. Here, Defendants knew there was no basis for the claim that Plaintiff was a member of a criminal street gang who committed or conspired to commit murder, capital murder, or aggravated assault. By inserting such claims in the probable cause

affidavit and other official documents related to Plaintiff's arrest, Defendants violated Plaintiff's Fourteenth Amendment rights. This is conduct sufficient to shock the conscience for substantive due process purposes.

42 U.S.C. § 1983 - Conspiracy

85. Paragraphs 1-84 are incorporated herein by reference.

86. In the hours and days immediately following the incident, Defendants Stroman, Chavez, Reyna, and Doe entered into a conspiracy to deprive Plaintiff of his right to be free from unlawful seizure and incarceration in violation of his Fourth Amendment rights. Defendants acted in concert either to orchestrate or to carry out the illegal seizure and cause the illegal arrest and incarceration described in this Complaint when they knew there was no probable cause to arrest him or to charge him with the offense of Engaging in Organized Criminal Activity. Defendants are liable to Plaintiff for their violations of the Fourth Amendment under 42 U.S.C. § 1983.

87. As described above, Defendants Stroman, Chavez, Reyna, and Doe caused a warrant to be issued against Plaintiff based on a false or deficient probable cause affidavit that Defendants knew to be false or deficient.

88. The conspiracy involved state action, as Defendants Stroman, Chavez, Reyna, and Doe acted under color of the statutes, customs, ordinances, and usage of the State of Texas.

89. As a direct result of Defendants' illegal conduct, Plaintiff was deprived of his constitutional rights, all to his damage.

Defendant Reyna is not entitled to immunity.

90. Defendant Reyna investigated the scene within hours of the incident, took photographs of the scene, reviewed information as it became known, and in all respects inserted himself in the role of an investigator/detective. Defendant Reyna was not acting as an advocate in assisting with the mere preparation of the affidavit for an arrest warrant, but rather involved himself in the investigative phase of the case **prior to a determination of probable cause**, and thus, is not entitled to absolute immunity. Legal advice by Reyna to police and other law enforcement officials was provided **during the investigative phase**. Defendant Reyna involved himself in the decision to arrest when he called the meeting described above and changed the course of earlier decisions to release most of those detained, including Plaintiff. In fact, it was Chief Stroman and Reyna who ultimately decided to charge each individual who met certain established criteria related to club affiliation and/or clothing, patches, bumper stickers, etc. that in their minds suggested “support” for either the Bandidos or the Cossacks.

VI. DAMAGES

91. As a direct and proximate result of the acts and omissions outlined above, Plaintiff has been severely damaged. Each Defendant, acting individually, or in concert with the other Defendants, has caused Plaintiff to suffer the damages described below.

92. Plaintiff seeks compensatory damages in an amount deemed sufficient by the trier of fact to compensate him for his damages, which includes past and future mental anguish, past and future pain and suffering, past and future damage to his reputation, and past and future lost wages and lost earning capacity.

93. Plaintiff also seeks damages as a result of Defendants' actions and conduct that have impinged on rights guaranteed by the First Amendment, such as Plaintiff's right to free speech, and to association. Conditions placed on Plaintiff's bond have deprived Plaintiff of rights guaranteed by the Constitution. It was entirely foreseeable to Defendants that falsely arresting and charging Plaintiff with a criminal offense for which probable cause was lacking would lead to these constitutional deprivations and damages.

94. Plaintiff also seeks damages for the costs he incurred in having to post bail and defend against the false criminal charges filed against him. Those costs include the money he paid for legal representation.

95. Plaintiff also seeks exemplary damages against each Defendant.

96. Plaintiff has retained the services of the undersigned counsel, and claims entitlement to an award of reasonable and necessary attorney's fees under 42 U.S.C. § 1983 and 1988.

VII. JURY DEMAND

97. Plaintiff respectfully requests a trial by jury.

PRAYER FOR RELIEF

For these reasons, Plaintiff seeks a judgment against Defendants for:

- a. compensatory and actual damages in an amount deemed sufficient by the trier of fact;
- b. exemplary damages;
- c. attorney's fees pursuant to 42 U.S.C. §§ 1983 and 1988;

- d. costs of court; and
- e. interest allowed by law for prejudgment or post-judgment interest.

Respectfully submitted,

By: /s/ Don Tittle

Don Tittle

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