

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

VIRGILIO AGUILAR MENDEZ,
individually,

Plaintiff,

vs.

ST. JOHNS COUNTY, a political
subdivision of the State of Florida;

ROBERT A. HARDWICK, in his
official capacity as Sheriff of St. Johns
County and his individual capacity as a
St. Johns County police officer;

MICHAEL KUNOVICH, through his
personal representative of his estate, in
his official capacity as a St. Johns
County police officer and his individual
capacity as a St. Johns County police
officer;

GAVIN HIGGINS, in his individual
capacity as a St. Johns County police
officer;

GEORGE MONTGOMERY, in his
individual capacity as a St. Johns
County police officer,

Defendants.

Case No.: 3:24-cv-00195-HLA-PDB

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, VIRGILIO AGUILAR MENDEZ, individually, sues Defendants, ST. JOHNS COUNTY, a political subdivision of the State of Florida; ROBERT A. HARDWICK, in his official capacity as the Sheriff of St. Johns County and his individual capacity as a St. Johns County police officer; MICHAEL KUNOVICH, through his personal representative of his estate, in his official capacity as a St. Johns

County police officer and his individual capacity as a St. Johns County police officer; GAVIN HIGGINS, in his individual capacity as a St. Johns County police officer; and, GEORGE MONTGOMERY, in his individual capacity as a St. Johns County police officer; alleges as follows:

PRELIMINARY STATEMENT

1. The Magna Carta was issued in June 1215 and was the first document to put into writing the principle that the Government was not above the law. The writers of the Bill of Rights and state constitutions were inspired by concepts born in the Magna Carta: that a Government should be constitutional, that the law of the land should apply to everyone—even to a sitting County Sheriff—and that certain rights and liberties were so fundamental that their violation was an abuse of Governmental authority.

2. People with limited English proficiency or have a speech barrier are often victims of police brutality, bias, or civil rights violations, like here.

3. This case stems from the events of May 19, 2023, where Sergeant Michael Kunovich, a St. Johns County police officer, illegally searched, seized, tased, and beat Virgilio Aguilar Mendez without any reasonable suspicion of any crime, without probable cause, without a contemporaneous execution of a valid search or an arrest warrant, and without exigent circumstances.

4. After the arrest, Sgt. Kunovich had a sudden heart attack at the scene and died from natural causes, not related from Aguilar Mendez. No matter, the St.

Johns County Sheriff's Office charged Aguilar Mendez with felony murder, a charge with a possible life sentence in a Florida prison.

5. Sheriff Robert Hardwick made several public statements about Aguilar Mendez, all in an effort to cover up and blatantly deceive the public on the lack of Sgt. Kunovich's reasonable suspicion by alleging that Aguilar Mendez committed a crime: trespassing. But in reality, there was never a trespass, nor a charge of trespassing by the St. Johns County Sheriff's Office nor the State Attorney. The St. Johns County Sheriff's Office had no legal basis to detain Aguilar Mendez.

6. The events led to Aguilar Mendez's unconstitutional detention at the Volusia County Jail for **288 days** without bond.

7. Ultimately, on March 1, 2024, the State Attorney's Office was forced to dismiss all charges because, among other things, the entire proceeding was in clear violation of the Fourth Amendment, and there was no evidence for any crime underpinning the so-called reasonable suspicion.

NATURE OF THE ACTION

8. This is a federal civil rights action for damages, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, enforced through the Civil Rights Act, 42 U.S.C. §§ 1983, 1988, to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

9. This is also a state law action for battery, defamation, abuse of process, and intentional infliction of emotional distress.

PARTIES

10. Plaintiff, VIRGILIO AGUILAR MENDEZ (“Aguilar Mendez”), is *sui juris* and is an adult person living in the State of Florida. Aguilar Mendez is Guatemalan with indigenous ancestry of Mayan descent.

11. Defendant, ST. JOHNS COUNTY, is a political subdivision of the State of Florida. The St. Johns Sheriff’s Office (“SJCSO”) is and was at all times material hereto a county agency, providing the vehicle through which the County fulfills its policing functions. The SJCSO is not a legal entity, therefore, claims against the SJCSO are against St. Johns County.

12. Defendant, ROBERT A. HARDWICK, is the sitting Sheriff for St. Johns County and is legally responsible for the over operations of the SJCSO, including but not limited to each officer under his jurisdiction. Sheriff Hardwick is sued in both his official capacity and his individual capacity.

13. Defendant, the PERSONAL REPRESENTATIVE of the ESTATE OF MICHAEL KUNOVICH, is *sui juris*. Upon information and belief, Sergeant Michael Kunovich was employed by the SJCSO from 1997 until May 19, 2023, when he died from natural causes. Before his death, Sgt. Kunovich was *sui juris* and was an adult citizen of the State of Florida. Sgt. Kunovich is sued in both his official capacity and his individual capacity.

14. Defendant, GAVIN HIGGINS, is *sui juris* and is an adult citizen of the State of Florida. Upon information and belief, Dep. Higgins has been employed by

the SJCSO since January 2022, until present. Dep. Higgins is sued in his individual capacity.

15. Defendant, GEORGE MONTGOMERY, is *sui juris* and is an adult citizen of the State of Florida. Upon information and belief, Dep. Montgomery has been employed by the SJCSO since May 2021, until present. Dep. Montgomery is sued in his individual capacity.

SUBJECT MATTER JURISDICTION

16. This Court has jurisdiction over the subject matter in this action, pursuant to 28 U.S.C. §§ 1331, 1343, because this action involves federal questions raised by the Civil Rights Act, 42 U.S.C. §§ 1983, 1988, *et seq.*

17. Aside from the federal claims alleged herein, this Court has supplemental jurisdiction over the state law claims in this action, pursuant to 28 U.S.C. § 1367, because the Court has original jurisdiction of the federal question claims, and the state law claims are so related to the federal question claims that they form part of the same controversy under Article III of the United States Constitution.

PERSONAL JURISDICTION

18. This Court has general *in personam* jurisdiction over Defendants because they are found in the State of Florida.

VENUE

19. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b)(1), because Defendants reside in the same state: Florida.

20. As an independent and alternative basis, venue is also proper in this Court, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims accrued in St. Johns County, FL; more specifically, the claims accrued around 2550 State Road 16, St. Augustine, FL 32092.

21. The Jacksonville Division of this Court is proper, pursuant to Local Rule 1.04, because the claims accrued in St. John's County, FL.

GENERAL ALLEGATIONS

Language Barriers

22. Aguilar Mendez was raised in a small rural village, Colotenango, in the mountains of Guatemala.

23. His native language is Mam, not Spanish or English.

24. Mam is an ancient Mayan language spoken by the Mam people, who are indigenous to the highlands of western Guatemala and eastern Chiapas, Mexico. Mam is one of several Mayan languages spoken in Guatemala, along with K'iche', Kaqchikel, Q'anjob'al, and Tz'utujil, among others. The Mam language is spoken by around 500,000 people in Guatemala and Mexico, and it is an important part of the cultural identity of the indigenous people. Mam is used in a variety of settings, including at home, in the community, and in religious ceremonies.

25. While a sentence might be phrased in a specific manner in Mam, its translation into other languages, such as Spanish or English, can take on a different structure, maintaining the essence but adapting to the linguistic norms of the target language.

26. Aguilar Mendez entered the United States with hopes to work and send money home to his mother and father, for money to buy corn for his younger brothers and sisters to eat.

27. He moved to Florida in or about September 2022, specifically moving to St. Augustine in or about May 13, 2023, and then resided at a Super 8 Motel.

28. In St. Augustine, Aguilar Mendez gained employment in the farms, harvesting watermelons and peppers.

The Incident

29. After completing his workday on May 19, 2023, Aguilar Mendez arrived back at the Super 8 Motel.

30. Around 8:00 PM on the same date, Aguilar Mendez walked to a Chinese restaurant in the vicinity to buy his dinner.

31. Back at the Super 8 Motel, he decided to eat his dinner outside, close to the pool area.

32. While eating, he saw an SJCSO officer driving by, which was later determined to be Sgt. Kunovich.

33. Aguilar Mendez then got up to buy a soda at the gas station convenient store, which is minutes from the Super 8 Motel.

34. At approximately 9:00 PM on May 19, 2023, Sgt. Kunovich self-initiated a call for service to the vicinity to the Super 8 Motel located at 2550 State Road 16, St. Augustine, FL 32092, in regard to a “suspicious person,” who was a “Hispanic male” (Aguilar Mendez).

35. Sgt. Kunovich unconstitutionally profiled Aguilar Mendez.

36. Sgt. Kunovich's self-initiated call did not identify any possible crimes that he witnessed.

37. Sgt. Kunovich exited his patrol vehicle at 9:04:56 PM.

38. The incident was videotaped by Sgt. Kunovich's bodycam.

39. The SJCSO refused to produce the bodycam footage until they were forced to do so through legal process.

40. Sgt. Kunovich was alone; he did not have another officer with him.

41. Sgt. Kunovich approached Aguilar Mendez while he was walking between the Super 8 Motel and the gas station convenient store.

42. The area was well lit.

43. Sgt. Kunovich did not witness any crimes in that area between the Super 8 Motel and the gas station convenient store.

44. Aguilar Mendez was on the phone speaking with his mother when Sgt. Kunovich stopped him and immediately seized him on the north side of State Road 16.

45. On the call with his mother, Aguilar Mendez (in Mam) stated that he did not understand why Sgt. Kunovich was approaching him.

46. Aguilar Mendez was walking on a public sidewalk and speaking with his mother, which is not a crime.

47. When Sgt. Kunovich seized Aguilar Mendez, he stopped and did not try to flee.

48. Aguilar Mendez was confused as to why Sgt. Kunovich stopped him.

49. Unlike hundreds of other cases, where the police officer gets out of the patrol vehicle and begins to question the suspect in a courteous and calm manner, Sgt. Kunovich can be heard on his bodycam immediately yelling at Aguilar Mendez in a very aggressive manner.

50. Sgt. Kunovich unnecessarily elevated the situation by saying “when you saw me, you got up and walked away. Why? WHY!”

51. Aguilar Mendez gestured “eating,” “tienda” (store), and “drink” in the direction to the gas station convenient store in response to Sgt. Kunovich’s commands and stated, “I’m sorry no speak no speak English (sic).”

52. Sgt. Kunovich did not speak Mam (nor Spanish).

53. It was clear to Sgt. Kunovich that Aguilar Mendez had Limited English Proficiency, and Sgt. Kunovich made no attempts, under SJCSO Policy 81.13 (Communication with Deaf, Hearing Impaired, and Limited English Proficiency), signed by Sheriff Hardwick himself, to communicate with Aguilar Mendez in another language.

54. A true and correct copy of SJCSO Policy 81.13 (Communication with Deaf, Hearing Impaired, and Limited English Proficiency) is attached hereto as **Exhibit “A.”**

55. Without provocation or justification, Sgt. Kunovich then physically seized Aguilar Mendez without any reasonable suspicion of any crime, misdemeanor or felony, and illegally searched Aguilar Mendez’s person.

56. Aguilar Mendez did not consent to Sgt. Kunovich's search and seizure.

57. In the bodycam video, Sgt. Kunovich grabs Aguilar Mendez's arm and says, "don't walk away from me!" even though Aguilar Mendez never tried to pull away from Sgt. Kunovich at that moment and before.

58. Aguilar Mendez is repeatedly heard on the video saying in broken English, "I'm sorry, I'm sorry."

59. Aguilar Mendez was afraid of Sgt. Kunovich. For the Hispanic community there is a predisposition to be afraid of the police.

60. Sgt. Kunovich then threw Aguilar Mendez to the ground, violently.

61. Sgt. Kunovich then tased Aguilar Mendez several times.

62. Aguilar Mendez did not understand why Sgt. Kunovich was trying to restrain him.

63. When attacked by Sgt. Kunovich, Aguilar Mendez began to resist arrest in a mild and non-violent manner out of fear.

64. Dep. Higgins was the first deputy to arrive at the scene, after Sgt. Kunovich.

65. Dep. Montgomery was the second deputy to arrive at the scene.

66. Dep. Higgins put Aguilar Mendez in a chokehold.

67. According to SJCSO Policy 1.8 (Response to Resistance), signed by Sheriff Hardwick himself, "chokeholds are prohibited unless lethal force is justified." (emphasis added).

68. A true and correct copy of SJCSO Policy 1.8 (Response to Resistance) is attached hereto as **Exhibit “B.”**

69. There was no justified lethal force by Dep. Higgins at the scene.

70. Dep. Montgomery pulled Aguilar Mendez from his throat and body slammed Aguilar Mendez. Dep. Montgomery then repeatedly hit Aguilar Mendez’s left arm and left shoulder. In addition, he delivered multiple knees strikes to Aguilar Mendez.

71. Unable to understand the brutality of the officers, Aguilar Mendez began to cry out for his family. In the video, he says several times “familia” (family) and, in response to commands, says that he does not understand or speak English.

72. In the video, Aguilar Mendez can be heard screaming in pain when he is tased **six times** by Sgt. Kunovich over two minutes.

73. Without question, Aguilar Mendez did not understand the purpose or reason for the officers to pile on him, to physically strike him multiple times, and the repeated use of a taser by Sgt. Kunovich.

74. Aguilar Mendez is around 5 feet and weighs approximately 115 pounds and was beaten by Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery.

75. The encounter was with excessive force.

76. Dep. Higgins and Dep. Montgomery placed handcuffs on Aguilar Mendez, on his back.

77. Aguilar Mendez remained calm and complied with each of the officers' commands as directed, without incident, and did not at any point physically or verbally threaten the officers.

78. At the time of arrest, the SJCSO did not give Aguilar Mendez his *Miranda* rights, nor did the SJCSO attempt to obtain an interpreter for Aguilar Mendez, pursuant to SJCSO Policy 81.13, so he could appropriately understand the rights that he was waiving by giving his answers. *See Ex. A.*

79. After the arrest was complete, Dep. Brian Armenta and Dep. Matheus Alves responded to the incident.

80. Dep. Armenta searched Aguilar Mendez's person and discovered a small pocketknife in Aguilar Mendez's shorts pocket, which was never used or exposed during the incident.

81. Aguilar Mendez had the pocketknife because he uses the knife for his work as a harvester. He can be heard in the video stating that he had the knife "para sandía" (for watermelon).

82. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery did not know about the small pocketknife until after the arrest was done and Aguilar Mendez was in handcuffs.

83. The SJCSO did not find any illicit substances on Aguilar Mendez's person, nor were there any illegal items in his room at the Super 8 Motel.

84. Aguilar Mendez has no prior criminal convictions and no prior arrests.

The Investigation of Sgt. Kunovich's Death, Aftermath, and Nolle Prosequi

85. About 10 minutes after the arrest was complete and Aguilar Mendez was in the car patrol, Sgt. Kunovich, who was 52 years old, had a sudden heart attack at the scene and was pronounced dead.

86. On the scene, the SJCSO charged Aguilar Mendez with Murder of a Police Officer during the Commission of a Felony, pursuant to Florida Statute § 782.04 and Resisting a Police Officer through the "Use of Violence," pursuant to Florida Statute § 843.01.

87. Between late May 2023 until mid-July, the State of Florida investigated the events of May 19, 2023, and the death of Sgt. Kunovich.

88. On June 2, 2023, the State Attorney's Office sent several cases to the St. Johns County Medical Examiner, Dr. Wendolyn Sneed, to review and rely on her opinion as to Sgt. Kunovich's cause of death.

89. Five days later, on June 7, 2023, Dr. Sneed sent her written autopsy report to the SJCSO. Dr. Sneed's report opines that Sgt. Kunovich's death was "natural," caused by an irregular heartbeat, due to atherosclerosis (hardening of the arteries) and hypertensive cardiovascular disease.

90. Dr. Sneed also cited "possible emotional stress" as a contributing cause as a result of her review of the cases that the State Attorney's Office sent to her on June 2, 2023.

91. However, there is no objective standard on “possible emotional stress” on a deceased person. That statement is subjective, at best, to build a story that Aguilar Mendez caused Sgt. Kunovich’s death.

92. Sgt. Kunovich’s irregular heartbeat was an unknown condition that was not foreseeable to anyone, including the SJCSO.

93. On July 23, 2023, the State Attorney’s Office dropped the Murder charge and then charged Aguilar Mendez with Aggravated Homicide by Culpable Negligence, pursuant to Florida Statute § 943.10(14), and Resisting a Police Officer through the “Use of Violence,” pursuant to Florida Statute § 843.01.

94. As expected, after Sgt. Kunovich’s death, Sheriff Hardwick tried to spin the story in the SJCSO’s favor with several inaccurate facts, including stating that Aguilar Mendez was trespassing at “a permanently closed business.” Sheriff Hardwick continued by stating that Sgt. Kunovich said, “Hey, why are you on this property trespassing?” in response to Aguilar Mendez. *See JAXSHERIFF, Violence Against Police Press Conference*, https://www.youtube.com/watch?v=VPH_m-aykWk, at 14:53 to 15:50 (last visited February 9, 2024).

95. Sgt. Kunovich’s own bodycam itself clearly negates these facts.

96. The statement of “trespassing” was nothing more than an unconstitutional pre-textual stop with racial bias, as there is no evidence that Aguilar Mendez ever entered the abandoned building between the Super 8 Motel and the gas station convenient store, nor was there any evidence that there were any posted signs regarding trespassing by the owner of the abandoned building.

97. Additionally, the bodycam from Sgt. Kunovich himself never states trespassing as the basis of reasonable suspicion.

98. To this day, the SJCSO has never charged Aguilar Mendez with trespassing.

99. The SJCSO also produced a 44-page incident report that, likewise, does not allege “trespassing” as the basis of Sgt. Kunovich’s so-called reasonable suspicion.

100. The SJCSO never had reasonable suspicion to stop and seize Aguilar Mendez when Sgt. Kunovich approached Aguilar Mendez.

101. In the May 25, 2023, press conference, Sheriff Hardwick stated that all that Aguilar Mendez “needed to do was to comply” and that “the body camera footage will come out and show you, it was by the book, textbook, legal aspect doing his [Sgt. Kunovich’s] job to the best of his abilities and duties.” *See* JAXSHERIFF, *Violence Against Police Press Conference*, https://www.youtube.com/watch?v=VPH_m-aykWk, at 14:53 to 15:50 (last visited February 9, 2024).

102. Obviously, that statement is divorced from the fact that the SJCSO never gave Aguilar Mendez any assistance on the language barrier between Sgt. Kunovich, including the SJCSO’s own policies on dealing with Limited English Proficiency:

The agency makes **reasonable accommodations** for persons with Limited English Proficiency by using a designated interpreter service via telephone.

Ex. A. at 3 (emphasis added).

Deputies must consider an individual's mental, physical, or other incapacities. Deputies must, when feasible, consider whether a person's failure to comply with a deputy's command is due to a medical condition, mental impairment, physical limitation, developmental disability, **language barrier**, drug interaction, behavioral crisis, or other factors beyond the individual's control. In these situations, **deputies should consider whether specific techniques or resources would help resolve the situation without force.**

Ex. B. at 5 (emphasis added).

103. On November 21, 2023, Aguilar Mendez filed a motion to set bond.

104. On December 29, 2023, the state court entered an Order finding Aguilar Mendez incompetent, based on his language barrier. Aguilar Mendez does not have any mental illness, nor an intellectual disability. However, the state court ordered that:

[The] Volusia County Branch Jail or medical designee shall administer physician **prescribed psychiatric medications** and the Defendant shall take them as prescribed.

105. A true and correct copy of the Order is attached hereto as **Exhibit "C."**

106. The Order is based on Aguilar Mendez's Limited English Proficiency.

See id.

107. On March 1, 2024, the State Attorney's Office dismissed all charges against Aguilar Mendez by Nolle Prosequi. In the filing, the State Attorney gratuitously stated, "Arrest Sufficient." That filing does not negate the fact that the St. Johns County Sheriff's Office and the State Attorney never had credible evidence to unconstitutionally detain Aguilar Mendez for 288 days in the Volusia Jail.

108. A true and correct copy of the Nolle Prosequi is attached hereto as **Exhibit “D.”**

109. All general and statutory conditions precedent to this action have either occurred or have been waived by operation of law.

110. Aguilar Mendez properly exhausted his current federal administrative remedies prior to filing this action. In addition, Aguilar Mendez will bring additional state claims against St. Johns County as well, pursuant to Fla. Stat. § 768.28(6), if the Florida Department of Financial Services denies his state claims against St. Johns County and Sheriff Hardwick in his official capacity.

111. The Prison Litigation Reform Act (the “PLRA”) does not apply, as Aguilar Mendez is not a “prisoner” within the meaning of the PLRA, as to March 1, 2024.

112. The undersigned counsels are entitled to recover reasonable fees in this action, pursuant to the Civil Rights Act, 42 U.S.C. § 1988.

COUNT I

**Violation of the Fourth Amendment – Unconstitutional Search and Seizure
Civil Rights Act, 42 U.S.C. § 1983, *et seq.***

Sgt. Micheal Kunovich, *in his Official and Individual Capacity*

113. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112, above, as though fully alleged herein.

114. At all material times, Sgt. Kunovich acted as a sergeant and directly participated in violating Aguilar Mendez’s Fourth Amendment rights.

115. Sgt. Kunovich was a “person” within the meaning of the Civil Rights Act.

116. At all material times, he acted under color of state law, as an agent of St. Johns County, and within the scope of his employment and authority as a duly certified law enforcement officer of the SJCSO.

117. Sgt. Kunovich acted pursuant to the SJCSO’s “Bias Policing Policy,” which allowed Sgt. Kunovich to stop Aguilar Mendez without reasonable suspicion, as that Policy only protects citizens, not non-citizens, like Aguilar Mendez:

It is the policy of the St. Johns County Sheriff’s Office to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws. It is also the policy that **citizens** will only be stopped or detained when there exists **reasonable suspicion** to believe they have committed, are committing, or are about to commit an infraction of the law. It is this proactive enforcement that keeps our **citizens**, our streets, and our highways safer. It also enables us in detecting and apprehending criminals. All laws shall be enforced equally, regardless of race, color, ethnicity, sex, physical handicap, or religion, and biased policing shall not be tolerated in enforcement efforts. This standard is established in accordance with Florida State Statute 30.15. SJSO policies prohibit biased policing, and members are responsible for ensuring that all **citizens** of the community are treated with dignity and respect.

See St. Johns County Sheriff’s Office, *Bias Policing Policy*,

<https://www.sjsso.org/about-sjsso/biased-based-policing-policy/> (last visited

February 9, 2024) (emphasis added).

118. Sgt. Kunovich did not have reasonable suspicion to search Aguilar Mendez’s person.

119. Sgt. Kunovich did not have reasonable suspicion to seize Aguilar Mendez.

120. Sgt. Kunovich did not have probable cause to search Aguilar Mendez's person.

121. Sgt. Kunovich did not have probable cause to seize Aguilar Mendez.

122. Sgt. Kunovich did not have an arrest warrant for Aguilar Mendez.

123. Sgt. Kunovich did not have a search warrant for Aguilar Mendez.

124. On May 19, 2023, after Aguilar Mendez's arrest, Deputy John Newman filed and certified an arrest report for the SJCSO stating that "[b]ased on body worn camera footage, deputies' statements, and defendant's post-*Miranda* statements, probable cause has been established to arrest" Aguilar Mendez for the charges.

125. However, Dep. Newman intentionally misled the sitting judge by only giving him with the sworn complaint and ignored the "body worn camera footage" that Dep. Newman mentions in his report. The body worn camera footage evidences that there was no probable cause to arrest Aguilar Mendez, making the arrest unlawful.

126. A reasonable officer would have known that searching or seizing a person without reasonable suspicion or probable cause constitutes a violation of the Fourth Amendment.

127. This search and seizure of an innocent person—without probable cause, without a contemporaneous execution of a valid search or an arrest warrant, and

without exigent circumstances—is a clear Fourth Amendment violation far outside any narrow exception permitted by any Supreme Court precedent.

128. Aguilar Mendez had both a subjective and objective expectation of privacy. He exhibited a subjective expectation of privacy by not consenting to Sgt. Kunovich's search and seizure. As to the objective expectation of privacy, society is prepared to recognize reasonable suspicion or probable cause, but society will not tolerate a pre-textual basis on race, color, national origin, or alienage only, like here.

129. Qualified immunity is unavailable to Sgt. Kunovich because he conducted an unreasonable search and seizure in violation of Aguilar Mendez's Fourth Amendment rights that were clearly established at the time of the challenged action, bound by the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court.

130. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and general damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendant, the PERSONAL REPRESENTATIVE of the ESTATE OF MICHAEL KUNOVICH, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, and special damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment

interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT II

**Violation of the Fourth Amendment – False Arrest or Imprisonment
Civil Rights Act, 42 U.S.C. § 1983, *et seq.*
Sgt. Micheal Kunovich, *in his Individual Capacity*
Dep. Gavin Higgins, *in his Individual Capacity*
Dep. George Montgomery, *in his Individual Capacity***

131. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112 and paragraphs 117 through 128, above, as though fully alleged herein.

132. At all material times, Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery directly participated in violating Aguilar Mendez’s Fourth Amendment rights.

133. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery are “persons” within the meaning of the Civil Rights Act.

134. At all material times, they acted under color of state law, as an agent of St. Johns County, and within the scope of their employment and authority as a duly certified law enforcement officer of the SJCSO.

135. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery seized Aguilar Mendez within the meaning of the Fourth Amendment when he terminated Aguilar Mendez’s freedom of movement through means intentionally applied, making a false arrest or false imprisonment due to the lack of probable cause.

136. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery made an unlawful detention and deprivation of liberty against Aguilar Mendez’s will.

137. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery made an unreasonable detention which is not warranted by the circumstances.

138. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery made an intentional detention.

139. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery all were part of the arresting chain of command authorizing Aguilar Mendez's arrest.

140. Qualified immunity is unavailable to Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery because they conducted an unlawful arrest in violation of Aguilar Mendez's Fourth Amendment rights that were clearly established at the time of the challenged action, bound by the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court.

141. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and general damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

142. Punitive damages are available against Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery and are hereby claimed because they were reckless or had callous indifference to the federally protected rights of Aguilar Mendez.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendants, the PERSONAL REPRESENTATIVE of the ESTATE OF MICHAEL KUNOVICH, GAVIN HIGGINS, and GEORGE MONTGOMERY, and respectfully requests the entry of an Order awarding Aguilar

Mendez with (i) nominal, compensatory, special, and punitive damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT III

Violation of the Fourth Amendment – Excessive Force

Civil Rights Act, 42 U.S.C. § 1983, *et seq.*

Sgt. Michael Kunovich, *in his Individual Capacity*

Dep. Gavin Higgins, *in his Individual Capacity*

Dep. George Montgomery, *in his Individual Capacity*

143. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112, paragraphs 117 through 128, and paragraphs 132 through 139, above, as though fully alleged herein.

144. Sgt. Kunovich conducted an unreasonable seizure, taking into account all relevant circumstances, that amounted to unconstitutionally excessive force against Aguilar Mendez by using a taser gun six times.

145. Dep. Higgins and Dep. Montgomery conducted an unreasonable seizure, taking into account all relevant circumstances, that amounted to unconstitutionally excessive force against Aguilar Mendez by using a chokehold, pulling him from his throat, body slamming him, repeatedly hitting his left arm and left shoulder, and striking his knees multiple times.

146. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery did not have a reasonable fear of imminent bodily harm when he tackled Aguilar Mendez to the ground, nor did they have a reasonable belief that any other person was in danger of imminent bodily danger from Aguilar Mendez.

147. The bodycam evidence reveals that Aguilar Mendez only resisted when Sgt. Kunovich conducted the unconstitutional search and seizure on Aguilar Mendez's person.

148. This does not qualify as active resistance, and the State Attorney's Office dismissed the charge of Resisting a Police Officer through the "Use of Violence," pursuant to Florida Statute § 843.01.

149. The amount of force exerted by Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery was unproportional to the force needed to subdue Aguilar Mendez.

150. Aguilar Mendez did not attempt to hit any SJCSO officers. At best, he tried to cover the area on his own body where Sgt. Kunovich repeatedly shocked him six times with a taser gun.

151. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery made no efforts to temper or to limit the amount of force, including no attempts to bridge the language gap for Aguilar Mendez, pursuant to SJCSO Policy 81.13 (Communication with Deaf, Hearing Impaired, and Limited English Proficiency) and SJCSO Policy 1.8 (Response to Resistance).

152. Aguilar Mendez did not pose a serious security problem, as he was not using any weapons against Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery.

153. A reasonable officer would have known that tasing a person six times without reasonable suspicion or probable cause constitutes a violation of the Fourth Amendment. In addition, a reasonable officer would have known that using a

chokehold and beating a person without reasonable suspicion or probable cause constitutes a violation of the Fourth Amendment.

154. Qualified immunity is unavailable to Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery because they used unconstitutionally excessive force in violation of Aguilar Mendez's Fourth Amendment rights that were clearly established at the time of the challenged action, bound by the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court.

155. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and general damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

156. Punitive damages are available against Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery and are hereby claimed because they were reckless or had callous indifference to the federally protected rights of Aguilar Mendez.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendants, the PERSONAL REPRESENTATIVE of the ESTATE OF MICHAEL KUNOVICH, GAVIN HIGGINS, and GEORGE MONTGOMERY, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, special, and punitive damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT IV

Battery

Sgt. Micheal Kunovich, *in his Individual Capacity*
Dep. Gavin Higgins, *in his Individual Capacity*
Dep. George Montgomery, *in his Individual Capacity*

157. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112, above, as though fully alleged herein.

158. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery committed acts intending to cause harmful or offensive contact with Aguilar Mendez or causing Aguilar Mendez to be in imminent apprehension of such contact.

159. Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery made offensive contact with Aguilar Mendez.

160. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and general damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

161. Punitive damages are available against Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery and are hereby claimed because they were reckless or had callous indifference to the federally protected rights of Aguilar Mendez.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendants, the PERSONAL REPRESENTATIVE of the ESTATE OF MICHAEL KUNOVICH, GAVIN HIGGINS, and GEORGE MONTGOMERY, and respectfully requests the entry of an Order awarding Aguilar

Mendez with (i) nominal, compensatory, special, and punitive damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT V

**Violation of the Fourteenth Amendment – Equal Protection
Civil Rights Act, 42 U.S.C. § 1983, *et seq.***

St. Johns County

**Sheriff Robert Hardwick, *in his Official Capacity*
Sgt. Micheal Kunovich, *in his Individual Capacity***

162. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112, above, as though fully alleged herein.

163. Sheriff Hardwick is the final policymaker for the SJCSO with regard to establishing policies, customs, and training programs governing the conduct of SJCSO officers performing policing functions on behalf of the County.

164. St. Johns County, Sheriff Hardwick and Sgt. Kunovich are “persons” within the meaning of the Civil Rights Act.

165. At all material times, Sheriff Hardwick and Sgt. Kunovich acted under color of state law, as an agent of St. Johns County, and within the scope of his employment and authority as a duly certified law enforcement officer of the SJCSO.

166. At all material times, Sgt. Kunovich acted as a sergeant and directly participated in violating Aguilar Mendez’s Fourth and Fourteenth Amendment rights.

167. He violated Aguilar Mendez’s Fourth Amendment rights by conducting an illegal search and seizure of Aguilar Mendez’s person due to the lack of reasonable suspicion or probable cause for any crime.

168. He violated Aguilar Mendez’s Fourteenth Amendment rights by illegally discriminating between non-citizens and citizens in regard with reasonable suspicion.

169. Aguilar Mendez is not a citizen.

170. According to SJCSO’s express “Bias Policing Policy:”

It is the policy of the St. Johns County Sheriff’s Office to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws. It is also the policy that **citizens** will only be stopped or detained when there exists **reasonable suspicion** to believe they have committed, are committing, or are about to commit an infraction of the law. It is this proactive enforcement that keeps our **citizens**, our streets, and our highways safer. It also enables us in detecting and apprehending criminals. **All laws shall be enforced equally, regardless of race, color, ethnicity, sex, physical handicap, or religion, and biased policing shall not be tolerated in enforcement efforts.** This standard is established in accordance with Florida State Statute 30.15. SJCSO policies prohibit biased policing, and members are responsible for ensuring that all **citizens** of the community are treated with dignity and respect.

See St. Johns County Sheriff’s Office, *Bias Policing Policy*,

<https://www.sjso.org/about-sjso/biased-based-policing-policy/> (last visited

February 9, 2024) (emphasis added).

171. St. Johns County’s Bias Policing Policy differs from other Florida Counties, for example, Orange County:

Biased-Based Profiling – the decision by a deputy to stop, detain, interdict, or search **an individual** based on the race, color, ethnicity, background, gender, national origin, sexual orientation, gender identity/expression, economic status, age, culture, physical handicap, immigration status, housing status, occupation, language fluency, religion or other belief system, or any physical or personal characteristic.

172. SJCSO’s express Bias Policing Policy is facially unconstitutional because it is an official action that explicitly draws suspect classifications, so strict scrutiny applies.

173. Aguilar Mendez is a member of a suspect class: alienage and national origin.

174. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution commands that St. Johns County, Sheriff Hardwick, and Sgt. Kunovich may not deny to “any person” within its jurisdiction the equal protection of the laws.

175. SJCSO’s express Bias Policing Policy only protects citizens, which is unconstitutional.

176. Sgt. Kunovich stopped, searched, and seized Aguilar Mendez in light of the Bias Policing Policy, and the Policy was the moving force of Aguilar Mendez injury.

177. Sgt. Kunovich ignored the Fourth Amendment and did not attempt to find reasonable suspicion because St. Johns County has already endorsed that the Bias Policing Policy only protects “citizens,” not persons.

178. Under the Equal Protection Clause, Sgt. Kunovich should had treated Aguilar Mendez no different than any person because he is similarly situated, given that the Fourth Amendment applies to “persons,” not “citizens.”

179. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and general damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendants, ST. JOHNS COUNTY, a political subdivision of the State of Florida, ROBERT A. HARDWICK, and the PERSONAL REPRESENTATIVE of the ESTATE OF MICHAEL KUNOVICH, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, and special damages; (ii) reasonable attorneys’ fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT VI
Violation of the Fourteenth Amendment – *Monell* Liability
Civil Rights Act, 42 U.S.C. § 1983, *et seq.*
St. Johns County
Sheriff Robert Hardwick, *in his Official Capacity*

180. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112 and paragraphs 166 to 173, above, as though fully alleged herein.

181. Sheriff Hardwick, while acting in his official capacity and under color of state law, caused Aguilar Mendez's Fourteenth Amendment rights to be violated by establishing several policies or customs.

182. Sheriff Hardwick is the final policymaker for the SJCSO with regard to establishing policies, customs, and training programs governing the conduct of SJCSO officers performing policing functions on behalf of the County.

183. St. Johns County and Sheriff Hardwick are "persons" within the meaning of the Civil Rights Act.

184. The SJCSO receives federal financial assistance through St. Johns County and is bound to Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act.

185. Sheriff Hardwick enacted Policy 81.13 regarding Limited English Proficiency.

186. Aguilar Mendez has Limited English Proficiency.

187. He is qualified to participate in or receive the benefit of some of SJCSO's services, programs, or activities, pursuant to SJCSO Policy 81.13 and other SJCSO policies.

188. Aguilar Mendez was excluded or denied the benefits of the SJCSO's services, programs, or activities, or was otherwise discriminated against by the SJCSO.

189. The SJCSO's decision to exclude, deny, or discriminate was because of Aguilar Mendez's disability: Limited English Proficiency coupled with his national origin.

190. According to SJCSO Policy 81.13, the Office makes reasonable accommodations for Limited English Proficient persons by using "Language Line" Services, which is a service available any time of the year with interpreters and translators.

191. However, Sheriff Hardwick also has a custom of not following Policy 81.13, thus, not requiring SJCSO officers to use Policy 81.13.

192. The Language Line is an American company who provides on-demand and onsite language interpretation and document translation services worldwide for law enforcement, healthcare organizations, courts, schools, and businesses in over 240 languages. The Language Line is the largest interpretation services provider in the world. It has more than 28,000 clients, including the SJCSO.

193. Aguilar Mendez repeatedly told Sgt. Kunovich that he did not understand English.

194. After the arrest, the SJCSO also failed to give Aguilar Mendez a Mam interpreter at the station to allow him to understand his *Miranda* rights.

195. This action departs from federal law, including guidance from the U.S. Department of Justice regarding Limited English Proficiency persons:

Through the Civil Rights Division's longstanding work enforcing Title VI and the Safe Streets Act, we have seen what can happen when language barriers prevent accurate communication between law

enforcement and the communities they serve. We have seen that a failure to provide such meaningful access can chill reporting of crimes, leave victims and witnesses with limited English proficiency vulnerable to flawed investigations and even wrongful arrest, and threaten the safety of officers and the general public alike. Without sufficient plans, procedures, and trainings in place to respond to the needs of community members with limited English proficiency, law enforcement agencies struggle with a range of issues, including:

- identifying whether a person is limited English proficient;
- proceeding in English during interactions with individuals who have limited English proficiency;
- improperly crediting English-speaking witness accounts over those of individuals with limited English proficiency;
- relying on unqualified staff, bystanders, family members, or automated/electronic applications for language assistance; and/or
- providing important documents such as citations only in English.

196. A true and correct copy of the guidance from the U.S. Department of Justice is attached hereto as **Exhibit “E.”**

197. Sgt. Kunovich knew there was a substantial likelihood that Aguilar Mendez would be unable to communicate effectively, absent any interpretive aid for Mam, and ignored Aguilar Mendez’s statutory rights and SJCSO’s policies regarding Limited English Proficiency.

198. In addition, the SJCSO denied Aguilar Mendez with an interpreter for medical assistance regarding the injuries by Sgt. Kunovich, Dep. Higgins, and Dep. Montgomery from the incident on May 19, 2023.

199. Sgt. Kunovich did not use the Language Line even when there were no exigent circumstances before he illegally searched and seized Aguilar Mendez.

200. In addition to Policy 81.13, Aguilar Mendez was injured through Sheriff Hardwick's Bias Policing Policy, which is unconstitutional on its face.

201. Sheriff Hardwick also has a custom that allows SJCSO officers to use an alleged crime area to serve as the sole basis of reasonable suspicion, which was what happened with Aguilar Mendez.

202. According to Sheriff Hardwick, Sgt. Kunovich's stop was justified because:

“[w]e continue to have a high crime area of 16 and 95 where prostitution people that are committing other crimes that are coming off interstate 95, and other illegal drug activity in the area. It's a high crime area of where we have a lot of deputy sheriffs that are responding to calls for service.”

See First Coast News, St. Johns County Sheriff says deputy who died during fight with a suspect lawfully questioned him,

[https://www.firstcoastnews.com/article/news/crime/st-johns-county-sheriff-says-
sgt-died-during-fight-suspect-lawfully-detained-michael-kunovich-robert-
hardwick/77-2484e3d6-02a6-482e-aca4-3a1df204e298](https://www.firstcoastnews.com/article/news/crime/st-johns-county-sheriff-says-sgt-died-during-fight-suspect-lawfully-detained-michael-kunovich-robert-hardwick/77-2484e3d6-02a6-482e-aca4-3a1df204e298) (last visited February 9, 2024).

203. Federal and state courts—nationwide—have repeatedly held that a high crime area, standing alone, is insufficient for reasonable suspicion. Thus, Sheriff Hardwick's policies are ripe with bias.

204. Sheriff Hardwick's policies, customs, and training constitute the official policy of St. Johns County with regards to policing functions and were the moving force behind and caused by Aguilar Mendez's injuries.

205. On or prior to May 19, 2023, the SJCSO, with deliberate indifference to the rights of arrestees, detainees, and the like, tolerated, permitted, failed to correct, promoted, fostered or ratified a number of customs, patterns, or practices that condoned and required officers to treat non-citizens differently than citizens.

206. Sheriff Hardwick's policies, customs, and training are unconstitutional and establishes that the Sheriff did serious harm to Aguilar Mendez.

207. Sheriff Hardwick's customs or practice of deliberate indifference were so widespread that the Sheriff had both actual and constructive knowledge of them but did nothing to end them.

208. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and general damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendants, ST. JOHNS COUNTY, a political subdivision of the State of Florida and ROBERT HARDWICK, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, and special damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment

interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT VII
Violation of the Fourteenth Amendment – *Canton* Liability
Civil Rights Act, 42 U.S.C. § 1983, *et seq.*
St. Johns County
Sheriff Robert Hardwick, *in his Official Capacity*

209. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112 and paragraphs 181 through 183, above, as though fully alleged herein.

210. The SJCSO failed to properly train or modify its training to Sgt. Kunovich and other SJCSO officers, including but not limited to, matters related to bias policing, the reasonable and appropriate use of force during arrests, intervention in the excessive use of force by fellow officers, and the need to train officers on language gaps.

211. Effectuating an arrest, using force to effectuate an arrest, and intervening in the use of force is a usual and recurring situation with which SJCSO officers and other agents encounter on a regular basis.

212. As such, the SJCSO was aware of the need for more and different training.

213. With deliberate indifference, the SJCSO failed to provide adequate training to its officers on excessive force, the need to train officers on language gaps, and the need to train officers on bias policing.

214. The SJCSO was aware that the deprivation of the constitutional rights of persons was likely to result from its lack of training.

215. As such, the SJCSO was deliberately indifferent and exhibited reckless disregard with respect to the potential violation of constitutional rights. The failure to train or to appropriately modify training constituted official SJCSO policies, practices, or customs.

216. The SJCSO's failure to train or to modify training was the moving force behind and caused by Aguilar Mendez's injuries.

217. Sheriff Hardwick's customs or practice of deliberate indifference were so widespread that the Sheriff had both actual and constructive knowledge of them but did nothing to end them.

218. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and general damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendants, ST. JOHNS COUNTY, a political subdivision of the State of Florida and ROBERT HARDWICK, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, and special damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT VIII

**Violation of the Fourteenth Amendment – Stigma Plus
Civil Rights Act, 42 U.S.C. § 1983, *et seq.* and *Paul v. Davis*
Sheriff Hardwick, *in his Individual Capacity***

219. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112 and paragraphs 114 through 128, above, as though fully alleged herein.

220. Sheriff Hardwick made public statements concerning Aguilar Mendez in press releases and a press conference.

221. In addition, Sheriff Hardwick gratuitously made numerous false and otherwise defamatory statements about Aguilar Mendez without any valid law enforcement purpose.

222. The public reasonably understood that each of those statements were about Aguilar Mendez.

223. Each statement was false and defamatory, including but not limited to:

- “Last Friday night Sergeant deputy Michael Kunovich was legally out with a person [Aguilar Mendez] that was at a permanently closed business in the area of 16 and 95. He checked out with him simply to say, ‘hey why are you on this property trespassing?’ That was a simple thing, simple task.” (May 25, 2023, Press Conference).
- “As the body camera footage will come out and show you it was by the book, textbook legal aspect doing his job to the best of his abilities and duties and all the suspect [Aguilar Mendez] had to do was comply instead the suspect chose to try to remove a knife from its left hand pocket of his pants and a struggle was on with Sgt. Michael Kunovich until the next deputy showed up 37 seconds later.” (May 25, 2023, Press Conference).
- “Sgt. Kunovich succumbed to some medical issues that were actually induced by the struggle with our subject [Aguilar Mendez].” (May 25, 2023, Press Conference).

224. Sheriff Hardwick knew or should have known that the statements, which were defamatory as to Aguilar Mendez, were false.

225. Each of these statements were reasonably understood to mean that Aguilar Mendez had committed a crime, even though Sheriff Hardwick possessed no evidence that Aguilar Mendez committed the crime of trespassing.

226. Sheriff Hardwick's statements garnered national media attention all stemming from the so-called trespass at the abandoned building between the Super 8 Motel and the gas station convenient store, which were repeatedly reposted on a variety television networks and social media. Because of Sheriff Hardwick's false accusations, Aguilar Mendez has been villainized by the public and media, destroying his reputation and labeled as a "murderer."

227. Sheriff Hardwick's statements were a substantial factor in causing Aguilar Mendez personal and professional harm, associated deprivations of his constitutional and statutory rights.

228. On January 5, 2024, Aguilar Mendez made a written demand to Sheriff Hardwick, via his government email address, to retract his defamatory statements regarding Aguilar Mendez.

229. A true and correct copy of demand to retract is attached hereto as **Exhibit "F."**

230. Sheriff Hardwick ignored the retraction demand.

231. On January 5, 2024, Aguilar Mendez also made a written demand to the St. Johns County, Board of County Commissioners to:

Commissioner Christian Whitehurst,

Commissioner Sarah S. Arnold,

Commissioner Roy Alaimo,

Commissioner Krista Joseph, and

Commissioner Henry Dean

via their government email addresses, to retract Sheriff Hardwick's defamatory statements regarding Aguilar Mendez. *See* Ex. F.

232. St. Johns County, Board of County Commissioners ignored the retraction demand.

233. Sheriff Hardwick acted with malice, oppression, and fraud. Among other things, Sheriff Hardwick knew or should have known that the statements about Aguilar Mendez were false and made them anyway in complete indifference to Aguilar Mendez's rights and at a time when Aguilar Mendez was most vulnerable.

234. Aguilar Mendez has a liberty interest secured by the United States and Florida Constitutions to his good name and reputations, which was taken from him without due process of law and in conjunction with other violations and deprivations of Aguilar Mendez's constitutional rights.

235. Aguilar Mendez's injury to his reputation caused the denial of a federal protected right or was inflicted in connection with the deprivation of a federal protected right.

236. Qualified immunity is unavailable to Sheriff Hardwick because he defamed Aguilar Mendez with malice in violation of Aguilar Mendez's Fourth and Fourteenth Amendment rights that were clearly established at the time of the challenged action, bound by the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court.

237. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and actual damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

238. Punitive damages are available against Sheriff Hardwick and are hereby claimed because they were reckless or had callous indifference to the rights of Aguilar Mendez.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendant, ROBERT HARDWICK, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, special, and punitive damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT IX
Defamation

Sheriff Hardwick, in his Individual Capacity

239. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112 and paragraphs 220 through 234, above, as though fully alleged herein.

240. Sheriff Hardwick is an employee of St. Johns County.

241. St. Johns County is vicariously liable for the conduct of its employees.

242. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and actual damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

243. Punitive damages are available against Sheriff Hardwick and are hereby claimed because they were reckless or had callous indifference to the rights of Aguilar Mendez.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendant, ROBERT A. HARDWICK, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, special, and punitive damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT X
Abuse of Process
Sheriff Hardwick, in his Individual Capacity

244. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112 and paragraphs 220 through 227, above, as though fully alleged herein.

245. Sheriff Hardwick misused the legal machinery of Florida for an illegal, improper, or perverted use of process.

246. Sheriff Hardwick had an ulterior motive or purpose in exercising the illegal, improper or perverted process.

247. In so doing, Sheriff Hardwick acted with malice and oppression against Aguilar Mendez.

248. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, emotional distress, physical harm, loss of earnings, and actual damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

249. Punitive damages are available against Sheriff Hardwick and are hereby claimed because they were reckless or had callous indifference to the federally protected rights of Aguilar Mendez.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendant, ROBERT A. HARDWICK, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, special, and punitive damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

COUNT XI

**Intentional Infliction of Emotional Distress
Sheriff Hardwick, *in his Individual Capacity*
Sgt. Micheal Kunovich, *in his Individual Capacity***

250. Aguilar Mendez re-alleges the allegations set forth in paragraphs 8 through 112, above, as though fully alleged herein.

251. Sheriff Hardwick and Sgt. Kunovich are/were employees of St. Johns County.

252. St. Johns County is vicariously liable for the conduct of its employees.

253. Sheriff Hardwick and Sgt. Kunovich's conduct was extreme, outrageous, and despicable.

254. Sheriff Hardwick and Sgt. Kunovich's conduct was outrageous.

255. In so doing, Sheriff Hardwick and Sgt. Kunovich abused their positions of authority as members of a public law enforcement agency, which provided them with real power to affect Aguilar Mendez's interests.

256. Sgt. Kunovich knew that he had zero reasonable suspicion to stop, seize, tase, beat, and effect an arrest against Aguilar Mendez.

257. Sheriff Hardwick viewed the bodycam footage before May 24, 2023, which plainly reveals that Sgt. Kunovich knew that he had zero reasonable suspicion to stop Aguilar Mendez, yet on May 25, 2023, Sheriff Hardwick proceeded to blatantly deceive the public in a press conference on the so-called reasonable suspicion with false assertions about "trespassing," all in an effort to cover up the unconstitutional search and seizure by Sgt. Kunovich.

258. Sheriff Hardwick knew that his conduct would likely result in Aguilar Mendez's mental and emotional distress based on false assertions and never charged Aguilar Mendez with trespassing, nor any other crime to stop Aguilar Mendez.

259. Sheriff Hardwick and Sgt. Kunovich acted with the intent to cause Aguilar Mendez emotional distress, or acted with reckless disregard of the

probability that Aguilar Mendez would suffer emotional distress, knowing that their conduct was directed at and would be received by Aguilar Mendez.

260. Sheriff Hardwick and Sgt. Kunovich's conduct was a substantial factor in causing Aguilar Mendez severe emotional distress for 288 days by unconstitutional confinement.

261. In so doing, Sheriff Hardwick and Sgt. Kunovich acted with malice and oppression against Aguilar Mendez.

262. As a direct and proximate result of the acts and omissions described herein, Aguilar Mendez suffered humiliation, severe emotional distress, physical harm, loss of earnings, and actual damages that resulted from being illegally stopped, searched, seized, and detained without justification, in an amount to be determined by the jury.

263. Punitive damages are available against Sheriff Hardwick and Sgt. Kunovich and are hereby claimed because they were reckless or had callous indifference to the federally protected rights of Aguilar Mendez.

WHEREFORE, Plaintiff, VIRGILIO AGUILAR MENDEZ, demands judgment against Defendants, ROBERT A. HARDWICK and the PERSONAL REPRESENTATIVE of the ESTATE OF MICHAEL KUNOVICH, and respectfully requests the entry of an Order awarding Aguilar Mendez with (i) nominal, compensatory, special, and punitive damages; (ii) reasonable attorneys' fees; (iii) costs of the action; (iv) prejudgment interest; and (v) any such other, further, and different relief as the Court deems appropriate.

DATED: March 12, 2024

Respectfully submitted,

Coleman Watson

Coleman W. Watson, Esq.
Florida Bar No. 0087288
California Bar No. 266015
Georgia Bar No. 317133
New York Bar No. 4850004
Email: coleman@alexanderhero.com

ALEXANDER HERO
P.O. Box 3586
Orlando, FL 32802
Tel: (917) 796-6055

-and-

Phillip Arroyo, Esq.
Florida Bar No. 1022409
Email: phillip@chillcallphil.com
Josephine B. Arroyo, Esq.
Florida Bar No. 93714
Email: josephine@chillcallphil.com

THE ARROYO LAW FIRM
390 N. Orange Ave., Ste 2185
Orlando, FL 32801
Tel: (407) 770-9000

Attorneys for Plaintiffs