

3. Venue is proper in this Court under 28 U.S.C. §1391(b) because all incidents, events, and occurrences giving rise to this action occurred in the Northern District of Illinois. Moreover, all of the parties reside in this Judicial District.

PARTIES

4. At the time of his death, HECTOR HERNANDEZ was a 21-year-old Hispanic-American man and father to Hector Hernandez-Davila Jr. and Hailey Hernandez-Davila. At all times relevant hereto, HECTOR HERNANDEZ was a citizen of the United States and a resident of the City of Chicago, Cook County, Illinois.

5. Plaintiff ESPERANZA DAVILA is the independent administrator of the estate of decedent HECTOR HERNANDEZ and brings this action on behalf of decedent and her minor children, surviving heirs, and next of kin, Hector Hernandez-Davila Jr. and Hailey Hernandez-Davila. At the time of Decedent's death, Plaintiff was HECTOR HERNANDEZ's girlfriend and was pregnant with HECTOR HERNANDEZ's youngest child, Hailey Hernandez-Davila.

6. That at all relevant times hereto, Plaintiff Esperanza Davila and the only surviving heirs and next of kin of decedent, HECTOR HERNANDEZ, Hector Hernandez-Davila Jr. and Hailey Hernandez-Davila, have resided in the City of Chicago, County of Cook, State of Illinois.

7. That at all relevant times hereto, Hector Hernandez-Davila Jr. and Hailey Hernandez-Davila have not yet reached the age of majority.

8. At all relevant times hereto, Defendant Officers KELLY and CORRAL were acting under color of state law and within the scope of their employment with Defendant CITY of CHICAGO as sworn Chicago police officers.

9. Defendant CITY OF CHICAGO is a municipal corporation, duly incorporated under the laws of the State of Illinois, and was at all relevant times, the employer and principal of Defendant OFFICERS.

FACTUAL ALLEGATIONS

A. The Incident.

10. On April 7, 2014, decedent HECTOR HERNANDEZ was at the private residence of his girlfriend and mother of his two surviving children, Plaintiff, Esperanza Davila, at 2558 W. 50th Street, Chicago, Cook County, Illinois.

11. At this time HECTOR HERNANDEZ was visiting his son in order to spend time with him and take him to Chuck E. Cheese, a family restaurant and entertainment center in the neighborhood.

12. At about this time, decedent HECTOR HERNANDEZ was involved in a non-violent verbal argument with Plaintiff, ESPERANZA DAVILA.

13. As a result, Defendant OFFICERS arrived shortly thereafter at the private residence.

14. At this time, Defendant OFFICERS entered inside of the residence with their weapons drawn.

15. Defendant OFFICERS proceeded to surround and corner HECTOR HERNANDEZ in the kitchen area of the home while continuing to direct their weapons in HECTOR HERNANDEZ' direction and threatening to shoot him, despite non-life threatening Tasers being drawn by fellow officers and on-scene.

16. At this time, HECTOR HERNANDEZ's members of the family of Esperanza Davila were in the side bedroom, near the kitchen.

17. At no time, did HECTOR HERNANDEZ physically or verbally threaten Defendant OFFICERS physical safety or any other occupant in the home.

18. At no time, did HECTOR HERNANDEZ cause Defendant OFFICER KELLY to be in fear for his life or the life of others.

19. At no time, did HECTOR HERNANDEZ cause Defendant OFFICER KELLY to be placed in fear of great bodily harm to himself or others.

20. At no time, did HECTOR HERNANDEZ cause Defendant OFFICER CORRAL to be in fear for their life or the life of others.

21. At no time, did HECTOR HERNANDEZ cause Defendant OFFICER CORRAL to be placed in fear of great bodily harm to himself or others.

22. At all relevant time hereto, other Chicago Police Officers were present on the scene that had Tasers available, accessible, and directed at HECTOR HERNANDEZ while he was cornered in the kitchen area.

23. At no time during this encounter did Defendant OFFICER KELLY or CORRAL attempt to deescalate the encounter. Instead, without provocation and while HECTOR HERNANDEZ posed no threat of harm to the officers or any other occupant of the home, Defendant OFFICERS KELLY and CORRAL proceeded to violently and intentionally discharge every bullet in their service weapons into HECTOR HERNANDEZ.

24. Upon information and belief eight of the thirteen rounds fired were into the back and/or buttocks of HECTOR HERNANDEZ.

25. At all times relevant hereto, Defendant OFFICERS KELLY and CORRAL were aware that non-lethal force, such as Tasers, were present and available on scene, yet unnecessarily shot and killed HECTOR HERNANDEZ.

B. Defendant Officer Kelly's History of Police Misconduct prior to April 7, 2014.

26. That on and prior to April 7, 2014, and at all relevant times herein, Patrick Kelly (hereinafter "KELLY"), was employed by Defendant, CITY OF CHICAGO, as a police

officer with the Chicago Police Department.

27. Prior to and at the time of the fatal shooting of HECTOR HERNANDEZ, the Defendant CITY OF CHICAGO was aware that Defendant OFFICER KELLY had an extensive history of violent and disturbing behavior against civilians within the City of Chicago, both on and off-duty.

28. Prior to and at the time of the fatal shooting of HECTOR HERNANDEZ, the Defendant CITY OF CHICAGO was aware that Defendant OFFICER KELLY, had been arrested by the Chicago Police Department for assault and/or battery on at least two occasions.

29. Upon information and belief, prior to and at the time of the fatal shooting of HECTOR HERNADNEZ, the Defendant CITY OF CHICAGO was aware that Defendant OFFICER KELLY had been found unfit for duty.

30. Prior to and at the time of the fatal shooting of HECTOR HERNANDEZ, the Defendant CITY OF CHICAGO was aware that Defendant OFFICER KELLY, had an unreasonably long list of serious complaint registers (hereinafter referred to as "CR") filed against him alleging misconduct.

- a. On January 2, 2005, CR # 302879 was filed against KELLY for excessive force and/or other misconduct regarding his arrest of a civilian on January 2, 2005
- b. On June 20, 2005, CR # 306380 was filed against KELLY for neglect of duty, unbecoming conduct and/or other misconduct regarding a civilian on June 19, 2005
- c. On July 22, 2005, CR # 307352 was filed against KELLY for false arrest and/or other misconduct regarding an arrest of a citizen on July 22, 2005.
- d. On August 22, 2005, CR # 307921 filed against KELLY for illegal arrest and/or other misconduct regarding a civilian on August 4, 2005.

- e. On September 19, 2005, CR # 308519 was filed against KELLY for a domestic altercation and/or other misconduct while off duty on September 19, 2005.
- f. On April 21, 2006, CR # 312461 was filed against KELLY for excessive force and/or other misconduct regarding his arrest of a civilian on April 20, 2006.
- g. On May 13, 2006, CR # 312940 was filed against KELLY for misconduct regarding an incident with a civilian on May 13, 2006.
- h. On June 12, 2006, CR # 313525 was filed against KELLY for excessive force and/or other misconduct on June 12, 2006 where he broke the nose of his live-in girlfriend's brother by throwing a television remote at his head.
- i. On October 8, 2006, CR # 1000316 was filed against KELLY for intimidation and/or other police misconduct regarding his arrest of a citizen on October 8, 2006.
- j. On October 17, 2006, CR # 1000794 was filed against KELLY for excessive force and/or other misconduct while issuing a citation to a civilian on October 17, 2006.
- k. On December 5, 2006, CR # 1001795 was filed against KELLY for police misconduct on or about December 5, 2006.
- l. On July 30, 2007, CR # 1008002 was filed against KELLY for excessive force and/or other misconduct regarding his arrest of a civilian on July 28, 2007.
- m. On August 22, 2007, CR # 1008618 was filed against KELLY for excessive force and/or other misconduct regarding his search of a civilian on August 19, 2007.
- n. On or about May 18, 2008, CR#1016647 was filed against KELLY for police misconduct on or about May 18, 2008.
- o. On June 29, 2008, CR # 1017140 was filed against KELLY for excessive force and/or other misconduct regarding an alleged illegal arrest of a civilian on June 3, 2008.
- p. On or about September 23, 2008, CR#s 1020246 and 1020249 were filed against KELLY for police misconduct on or about September 23, 2008.
- q. On November 17, 2008, CR # 1020013 was filed against KELLY for false arrest and/or other police misconduct regarding his arrest of a citizen on September 5, 2007.

- r. On December 30, 2008, CR # 1022769 was filed against KELLY for excessive force and/or other misconduct regarding his interaction and arrest of a civilian on December 30, 2008.
- s. On August 1, 2009, CR # 1028782 was filed against KELLY for excessive force, derogatory racial slurs to a civilian, and other misconduct regarding an incident with a civilian on July 27, 2009.
- t. On January 12, 2010, CR# 1033096 was filed against KELLY for official misconduct, intoxication off-duty, failure to secure his weapon, and assault to a superior officer on January 12, 2010. This CR also included allegations that KELLY shot Michael LaPorta, a civilian, and provided false statements to police officers and detectives regarding the incident.
- u. On August 4, 2013, CR#1063990 was filed against KELLY for excessive force and false arrest for tasing a pregnant woman numerous times without justification, causing a miscarriage.

31. At present, Kelly has had at least 27 CRs registered against him since he became an officer in 2004. At least 21 of those CRs were registered prior to the shooting of HECTOR HERNANDEZ. At least 10 of those CRs prior to the shooting of HECTOR HERNANDEZ were registered with allegations of violent behavior.

32. The CRs registered against Kelly were investigated by various entities under the control of the City of Chicago: Office of Professional Standards (“OPS”), IPRA, the Bureau of Internal Affairs (“BIA”), and/or IAD.

33. Upon information and belief, Defendant Kelly has also had numerous IPRA investigations into the discharge of his taser and pepper spray in the line of duty, as well as SPAR (“summary punishment action request”) investigations.

34. Upon information and belief, SPAR files can include offenses such as failure to appear at court, committing traffic transgressions while driving a police vehicle, as well as discharging tasers and pepper spray.

35. To date Defendant Kelly, an officer with the Chicago Police Department, has had at least 27 IPRA/OPS investigations and numerous other investigations into his behavior and

conduct by BIA and/or IAD.

36. Prior to and at the time of the fatal shooting of HECTOR HERNANDEZ, the Defendant CITY OF CHICAGO was aware that Officer KELLY had been named as a Defendant in numerous federal and state court civil rights cases that alleged that KELLY committed excessive force, false arrest or other police misconduct against the plaintiff:

- a. *LaPorta v. City of Chicago, et al.*, 14 CV 9665
- b. *Martinez, et al. v. City of Chicago, et al.*, 09 CV 5938
- c. *Jesus Rios, et al. v. City of Chicago, et al.*, 08 CV 4272
- d. *Anthony Wilson v. Officer Kelly, et al.*, 08 CV 4103
- e. *Renteria v. City of Chicago, et al.*, 04 CV 2347
- f. *Turner v. City of Chicago, et al.*, 15 CV 006741

37. Prior to and at the time of the fatal shooting of HECTOR HERNANDEZ, despite the Defendant CITY OF CHICAGO having clear and obvious knowledge of the dangerous and violent propensities of Defendant Officer KELLY, the CITY OF CHICAGO continued to retain KELLY as a Chicago Police Officer, allow him to possess deadly weapons, dispatch him onto the streets of Chicago to interact with civilians under the color of law as a Chicago police officer.

38. Prior to and at the time of the fatal shooting of HECTOR HERNANDEZ, Defendant CITY OF CHICAGO instilled in Defendant Officer KELLY a mindset of impunity that was emboldened through the Code of Silence and after repeated failures to maintain an adequate Early Warning System, investigate and discipline Defendant Officer KELLY during his time at the Chicago Police Department.

1. Defendant Officer Kelly should have been separated from the Chicago Police Department before April 7, 2014.

39. Prior to April 7, 2014, Defendant Officer Kelly demonstrated a pattern of both on and off duty behavioral violence that repeatedly went uninvestigated and unpunished by the City of Chicago.

40. Prior to April 7, 2014, if and when Defendant Officer Kelly was investigated and/or punished, the investigations would inexplicably be resolved and the discipline inexplicably reduced in his favor.

41. That said pattern of behavioral violence included a 2005 complaint (CR #308519).

- a. CR #308519 was filed against Defendant Officer Kelly for a domestic altercation and/or other misconduct while off-duty.
- b. CR #308519 resulted in an OPS-led administrative investigation into Defendant Officer Kelly's conduct that was eventually sustained and found credible by Investigator Bowens.
- c. Despite that said complaint was sustained, OPS Chief Administrator Tisa Morris, upon information and belief, did not take action to discipline Defendant Kelly.
- d. Defendant Officer Kelly's Commander at the time, Eugene Roy, deferred to Tisa Morris' experience in making her baseless override, did not pursue any further investigation, and recommended no discipline, behavioral monitoring and/or alcohol or anger management counseling, or discipline of any kind.
- e. Title 18, United States Code, Section 922(g)(9) (the Lautenberg Amendment) prohibits any individuals, including on-duty police officers, convicted of misdemeanor or felony crimes of domestic violence from possessing a firearm.
- f. Pursuant to Chicago Police Department policies and procedures, if an officer is convicted of a misdemeanor domestic battery and/or can no longer lawfully carry a weapon, it should trigger separation proceedings.
- g. If an officer is investigated and found to have committed an offense, such as

domestic violence, which precludes him from possessing a weapon, the Chicago Police Department *must* discharge that officer.

- h. Further, had the CPD disciplined or arrested or convicted Defendant Officer Kelly for domestic battery and/or separated him from the Chicago Police Department prior to April 7, 2014, Defendant Officer Kelly would no longer have been a police officer in the field, would not have had access to a firearm, and the shooting of Hector Hernandez could have been prevented.
- i. Despite the allegations and the findings of the investigators, no warrant was ever issued for Kelly's arrest for the September 19, 2005 incident.
- j. Defendant Officer Kelly maintained his job as a Chicago police officer after this incident.

42. That said pattern of behavioral violence also included a 2006 complaint (CR #313525).

- a. CR #313525 was filed against Defendant Officer Kelly for excessive force and/or misconduct, and despite physical evidence to the contrary the case was determined "unfounded".
- b. Upon information and belief, similar to CR #308519, this complaint and any criminal investigation arising therefrom, would have been deemed a domestic violence altercation.
- c. Further, had the CPD disciplined or arrested Defendant Officer Kelly for domestic battery and/or separated him from the Chicago Police Department prior to April 7, 2014, Defendant Officer Kelly would no longer have been a police officer in the field, would not have had access to a firearm, and the shooting of Hector Hernandez could have been prevented.

- d. Defendant Officer Kelly maintained his job as a Chicago police officer after this incident.

43. That said pattern of behavioral violence also included a 2007 complaint (CR #1008002) filed by Jesus Rios against Defendant Officer Kelly. The related civil lawsuit filed against the City of Chicago and Defendant Patrick Kelly by Jesus Rios alleged that Defendant Kelly stopped and searched him without justification, struck him repeatedly, pointed a gun at his head, handcuffed him too tightly to inflict pain, and kicked him while he was handcuffed. Mr. Rios went on to allege that Defendant Kelly falsely charged him with battery to a police officer, resisting arrest and drinking on the public way. Defendant Officer Kelly maintained his job as a Chicago police officer after this incident.

44. That said pattern of behavioral violence also included a 2010 complaint (CR #1033096) filed by members of the LaPorta family, as well as a lieutenant of the Chicago Police Department, that Kelly had engaged in official misconduct, including intoxication off-duty, failure to secure his weapon, and assault to a superior officer on January 12, 2010. This CR also included allegations that KELLY shot Michael LaPorta, a civilian, and provided false statements to police officers and detectives regarding the incident.

- a. CR #1033096 was filed against Defendant Officer Kelly and five of the seven allegations were sustained; including: Intoxication while on or off-duty; Inattention to duty; Engaging in any unjustified verbal or physical altercation with any person, while on or off-duty; Insubordination or disrespect toward a supervisory member while on or off-duty; Engaging in any unjustified verbal or physical altercation with any person, while on or off-duty; and Any conduct which impedes the Department's efforts to achieve its policy or goals or brings discredit on the Department.

- b. CR #1033096 was filed against Defendant Officer Kelly and two of the allegations were not sustained, including: Lying during the course of an official investigation; and Shooting Michael LaPorta in the head.
- c. Defendant Officer Kelly's initial suspension from Maria Olvera, was, again, inexplicably reduced to just a 60-day suspension by the IPRA Chief Administrator, Ilana Rosenzweig.
- d. Defendant Officer Kelly maintained his job as a Chicago police officer after this incident.

45. That said pattern of behavioral violence also included a 2013 complaint (CR #1063990) filed by Elaina Turner and her fiancé, Ulysses Green, that Defendant Officer Kelly tased her in the stomach first and then also in the arm without justification while she was six weeks pregnant.

- a. CR #1063990 was filed against Defendant Officer Kelly for excessive force and/or other misconduct. Records show IPRA did not pursue an investigation into the case for nearly two years, did not take Officer Kelly's statement until 2016, and subsequently exonerated him of all allegations of misconduct.
- b. Ulysses Green and Elaina Turner were both acquitted of the criminal charges, including an allegation of aggravated assault to a police officer by Green and resisting arrest by Turner, filed against them.
- c. Elaina Turner miscarried several days after she was tased by Defendant Officer Kelly.
- d. Defendant Officer Kelly maintained his job as a Chicago police officer after this incident.

46. The only allegations ever administratively sustained against Defendant Officer Kelly involved his assault against a fellow police officer.

47. No allegation ever filed by or on behalf of a citizen has ever been administratively sustained against Defendant Officer Kelly.

48. These failures to investigate, discipline, and ultimately terminate Defendant Officer Kelly caused Defendant Officer Kelly to act with impunity and to feel and act as though his acts of misconduct would go unpunished and uninvestigated.

2.The City of Chicago’s history of covering up and condoning police misconduct to protect and shield its dangerous officers.

a. The Code of Silence and Failures to Investigate and Discipline

49. The Chicago City Council has long been aware of the regulatory, supervisory and disciplinary failures plaguing the Chicago Police Department.

50. In the early 2000s, Alderman William M. Beavers, in his capacity as Chairman of the Committee on Police and Fire of the Chicago City Council, notified all members of the Chicago City Council by means of an official resolution that there existed within the CPD “an environment where police officers who do not carry out their responsibilities in a professional manner have ample reason to believe they will not be held accountable even in instances of egregious misconduct.”

51. At an October 2007 meeting of the Council’s Committee on the Budget and Government Operations, a Council member remarked of the OPS that “there is no follow-up [of citizen complaints], and I think we have to move beyond the code of silence and the protection of the police officers and command staff at any cost.”

52. In 2007, off-duty Chicago police officer Anthony Abbate ruthlessly beat a bartender, a Ms. Obrycka at her place of employment. Following the incident, officers conspired to keep Abbate’s name from the police documents and reports and attempted to intimidate the

victim from pursuing her claims. The incident was caught on video tape, the case proceeded to trial, and the jury found against the City of Chicago.

53. Following the Obrycka incident in 2007, the City Council replaced OPS with IPRA, primarily in response to concerns and complaints about how allegations of police misconduct were being investigated.

54. However, IPRA used the OPS manual as its own operational manual, retained the vast majority of its staff from OPS, and, for all intents and purposes, was a continuation of the failed OPS system that had been in place.

55. This was due in large part to the collective bargaining agreements entered into by the Fraternal Order of Police and the City of Chicago pre and post-IPRA. These agreements entered into every five years (2002-2007, 2007-2012, 2012-2017) contained *identical* provisions, preserving and protecting police power in disciplinary investigations: a Bill of Rights affording an accused officer the right to the full name of the complainant and the right to examine allegations before taking a stance regarding the charges; restrictions on the investigation of anonymous complaints; an inability to compel an officer to give a statement within 24 hours of a shooting; and limitations on the use of previous unsustained complaints against the officer in subsequent disciplinary actions.

56. Upon information and belief, the City of Chicago bargained away protections of citizens' constitutional rights in exchange for lower salary demands from the Fraternal Order of Police in negotiation of said bargaining agreements.

57. These provisions remained in place despite a study known to the Council demonstrating that from 2001-2006, the years leading up to the transition from OPS to IPRA, only 0.2% of complaints against the police were meaningfully sustained (resulting in a suspension of a week or more), with 662 officers having 11 or more complaints against

them. The same study indicated that a brutality complaint was 94% less likely to be sustained in Chicago than in the rest of the nation.

58. Further, between 2004 and 2011, there were 968 complaints against Chicago police officers for domestic battery. Only 3 percent of total complaints filed (33 officers) resulted in termination or resignation from the Chicago Police Department.

59. Chicago Mayor Rahm Emanuel delivered a speech to the City Council in which he admitted that a code of silence exists and has existed within the Chicago Police Department, stating: “This problem is sometimes referred to as the Thin Blue Line. Other times it is referred to as the code of silence. It is the tendency to ignore, deny or in some cases cover-up the bad actions of a colleague or colleagues. ...Permitting and protecting even the smallest acts of abuse by a tiny fraction of our officers leads to a culture where extreme acts of abuse are more likely. . . .”

60. The Mayor also admitted that “[s]upervision and leadership in the police department and the oversight agencies that were in place failed,” and that “Our city has been down this road before.” Mayor Emanuel also stated that he intended to create a task force to examine these failures within IPRA that would reach back to at least 2007.

61. In April 2016, the Mayor’s “Police Accountability Task Force” supported the Mayor’s statements that a code of silence or blue shield exists within the Chicago Police Department. (Police Accountability Task Force, at 69-70.)

62. Specifically, the Mayor’s Task Force concluded, among other things:

The police cannot be held accountable for misconduct that is hidden. Yet there are many ways in which the current system serves to make it more difficult to identify potential misconduct. For years, people have talked about a “blue code of silence,” an unwritten rule that says that a police officer will not report on another police officer’s misdeeds.

In December 2015, Mayor Emanuel was asked if there is a “code of

silence” that exists among Chicago police officers. “The short answer is yes,” he said. Referring to the shooting death of Laquan McDonald, Mayor Emanuel conceded that “this isn’t the first shooting where maybe there hasn’t been honest reporting by officers who were there.” As he then explained in a December 9, 2015 speech to the City Council:

This problem is sometimes referred to as the Thin Blue Line. Other times it is referred to as the code of silence. It is the tendency to ignore, deny or in some cases cover-up the bad actions of a colleague or colleagues. . . . We cannot ask citizens in crime-ravaged neighborhoods to break the code of silence if we continue to allow a code of silence to exist within our own police department.

Current and former CPD officials have also increasingly acknowledged a “code of silence.” Former Superintendent Richard Brzeczek (1980-83) has said that a code of silence “has always existed in the police department.” Eugene Williams, the current Chief of the Bureau of Support Services, and former Chief of the Bureau of Patrol, stated that:

[S]ix months of academy training cannot stand up to a career of “on the streets influence” by veteran officers who are all too anxious to show the rookies how things are really done on the streets. The way it is done on the streets is to protect and cover for your partner at all cost, even at the expense of sacrificing every ounce of one’s integrity. This culture has been all too evident when we investigate thousands of allegations where the partner of the accused never sees, or hear[s] of any inappropriate conduct although they work in very close proximity of each other during their entire tour of duty. Yet, within this culture it is considered righteous to cut corners and embellish on the facts in a case report or arrest report to win a case in court.

The code of silence is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City. These impediments to identifying potential misconduct must be eliminated if CPD and the City are to end this persistent challenge.

(Police Accountability Task Force, at 69-70.)

63. The Chicago Police Department has a policy, pattern and practice of refusing to investigate citizen complaints filed against officers if the citizen does not file an affidavit.

64. The effect of such a policy is that a full 45 percent of CRs registered against officers are never investigated.

65. Those officers with the highest numbers of CRs registered against them also had the highest rate of CR non-investigation for lack of an affidavit.

66. The Chicago Police Department has a history of failing to sustain CRs filed against officers- even officers with more than 5 CRs filed against them, like Defendant Officer Kelly.

67. Additionally, the *Police Accountability Task Force Report 2016* identified that the Chicago Police Department has “no dedicated system [that] exists to identify and address patterns or practices...” and “[s]ince its inception, IPRA has had the power to examine patterns of complaints when investigating misconduct, but has not exercised it.”

68. The Department of Justice (DOJ) made the following findings in its 2017 Report investigating the Chicago Police Department:

- a. From 2011-2016 fewer than 2% of the 30,000 complaints of police misconduct were sustained, resulting in no discipline in 98% of the complaints.
- b. The City does not investigate the majority of cases it is required by law to investigate.
- c. Civilians, officer witnesses, and accused officers are frequently not interviewed during an investigation.
- d. The questioning of officers is often cursory and aimed at eliciting favorable statements justifying the officer’s actions rather than seeking truth.
- e. Investigative fact-finding into police misconduct and attempts to hold officers accountable are also frustrated by police officers’ code of silence.

- f. The City, police officers, and leadership within the CPD and its police officer union acknowledge that a code of silence among Chicago police officers exists, extending to lying and affirmative efforts to conceal evidence.
- g. In the rare instance when complaints of misconduct are sustained, discipline is haphazard and unpredictable, and is meted out in a way that does little to deter misconduct.
- h. Officers are often disciplined for conduct far less serious than the conduct that prompted the investigation and even when a complaint is sustained, there is no discipline.
- i. Complaints that are investigated reveal consistent patterns of egregious investigative deficiencies that impede the search for the truth.
- j. Despite having the option to override a “No Affidavit” finding in an administrative investigation, the override provision was used only 17 times from 2011-2016.
- k. Superficial investigation documentation and investigative bias exists in favor of officers.
- l. Investigations into Rule 14, the CPD rule forbidding officers from lying during the course of an investigation, are not encouraged and had previously been prohibited unless given approval from the IPRA Chief Administrator.

69. The City of Chicago’s investigative agencies and the Chicago Police Department can investigate allegations of misconduct without an affidavit under Illinois state law and the provisions of the Collective Bargaining Agreement.

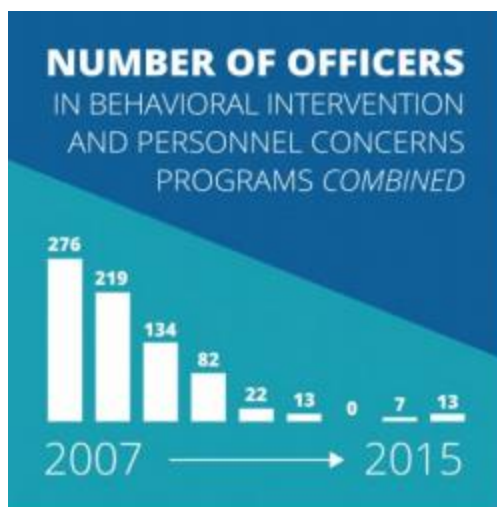
b. The Failure to Maintain an Adequate Early Warning System

70. The City of Chicago has no system in place that functions as an early warning system to find, rehabilitate, discipline, or terminate officers with histories of misconduct.

71. The City of Chicago's Behavioral Intervention System (BIS) and Personnel Concerns Program (PC) are non-disciplinary in nature and exist in name only.

72. The BIS and PC systems are flawed in that reforms over the years have been allowed to "wither on the vine" and have been met with virulent opposition from the Fraternal Order of Police.

73. The effects of this opposition and concessions by the Chicago Police Department can be seen in the rapid decline of the number of officers enrolled in its BIS and PC programs from 2007 until prior to this shooting.



74. The DOJ found in its 2017 Report that, "The lack of a functioning early intervention system, coupled with inadequate supervision, has placed officers and members of the public at risk."

75. The DOJ also found that the, "CPD does not adequately and accurately identify officers who are in need of corrective action; and second, CPD does not consistently or sufficiently address officer behavior even where CPD identifies negative patterns."

76. As a result of these failures, “CPD officers are able to engage in problematic behaviors with impunity, which can—and do—escalate into serious misconduct.”

77. In October 2017, in *LaPorta v. City of Chicago*, a jury in the Northern District of Illinois found that the City of Chicago maintained a widespread practice and/or custom of failing to discipline officers and for failing to maintain an adequate early warning system.

3. CPD Covering Up Defendant Officer Kelly and Other Officer’s Involvement and Police Misconduct in the Present Incident.

78. This “Code or Silence” and/or “Blue Shield,” wherein the City of Chicago covered up and condoned police misconduct to shield its officers- including dangerous officers that pose a threat to the public, such as Defendant Officer Kelly- allowed these officers to act with impunity and feel as though their acts of misconduct would go uninvestigated, deficiently investigated, and/or undisciplined.

79. The City of Chicago participated in this Code of Silence when it failed to hold Defendant Officer Kelly accountable for the shooting of Hector Hernandez.

80. The City of Chicago participated in this Code of Silence when they attempted to hide or cover-up Defendant Officer Kelly’s role in the shooting of Hector Hernandez.

81. The City of Chicago participated in this Code of Silence when it consistently failed to train or retrain its high-complaint officers to prevent continued Department violations, constitutional violations, and/or harm to the public.

82. The City of Chicago participated in this Code of Silence when they failed to investigate at least seven of the 27 CRs filed against Defendant Officer Kelly, due to the policy of refusing to investigate CRs unaccompanied by complainant affidavit, despite the existing exception to the affidavit requirement contained within the Collective Bargaining Agreements.

83. The City of Chicago participated in this Code of Silence when they disciplined

Defendant Officer in only one instance of misconduct and inexplicably decreased or eliminated discipline in cases where greater discipline was recommended.

84. The City of Chicago participated in this Code of Silence when they failed to take any action in response to a demonstrated pattern of violent and abusive behavior by Defendant Officer Kelly, enabling him to hide for years behind the Blue Shield.

85. The effect of such policy is that officers, including but not limited to Defendant Officer Kelly, feel they can act with impunity and without fear of reprimand.

86. On March 10, 2014, in *Kalven v. City of Chicago*, the Illinois Appellate Court held that documents bearing on allegations of police misconduct are public information that can be requested through the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1 *et seq.* (West 2010). 2014 IL App (1st) 121846, at ¶ 13.

87. In *Kalven*, the plaintiff, submitted FOIA requests to the Chicago Police Department seeking lists of Chicago police officers who amassed the most misconduct complaints (referred to as Repeater Lists or RLs) and (2) Complaint Registers, or Chicago Police Department’s records of investigations into complaints made by citizens against Chicago police officers, related to the Chicago Police Department’s completed investigations into allegations of police misconduct against five officers. *Id.* at ¶ 2.

88. Until the decision in *Kalven*, these lists were protected from public disclosure under court order. *Id.*

89. As of July 11, 2014, the decision in *Kalven* has allowed the public to review for the first time the quality (or lack thereof) of internal Chicago police investigations into their own officers’ alleged misconduct (both on- and off-duty) and to identify groups of officers with patterns of complaints.

90. Despite the *Kalven* decision, Defendant CITY OF CHICAGO has taken numerous affirmative acts to delay Plaintiff's complaint at law, his claims, or prevent Plaintiff from discovering all potential claims.

91. In particular, Defendant CITY OF CHICAGO has made numerous efforts to conceal, suppress, and/or stall the discovery that Defendant Officer Kelly was involved in the shooting death of Hector Hernandez.

92. After Defendant Officer Kelly fatally shot and killed Hector Hernandez while on-duty a LOG number 1068458 and U-file number 14-011 was created by IPRA and an investigation was initiated regarding this officer involved shooting.

93. Plaintiff Esperanza Davila sought legal representation within the two-year statute of limitation and attorneys did submit a FOIA request on her behalf. However, when the FOIA response was received, the names of all involved officers were replaced with pseudonyms such as "Officer A" and "Officer B". Defendant Officer Kelly's name was not contained within the FOIA response, depriving Plaintiff of the knowledge of the identity of the offending officer and the viability of a *Monell* claim against the City of Chicago.

94. On June 11, 2015, the Circuit Court of Cook County in *People v. Ulysses Green and Elaina Turner*, Case Nos. 13-1-220227 and 13-1-220426, ordered the City of Chicago to produce all complaint files, CR Files, internal files, from the Chicago Police Department or other internal Chicago Police Department investigative agencies regarding investigations of Defendant Officer Kelly to Plaintiff's counsel in the connected civil case.

95. On June 29, 2015, IPRA, through its private counsel, purported to produce the entire CR-file and investigative file of Defendant Officer Kelly in compliance of the Court's order. The IPRA investigative file relating to the LOG number 1068458 was not produced

or identified in this production, despite IPRA having finalized the investigation in February 2015.

96. On July 2, 2015, a hearing was held before Circuit Court Judge Clarence Burch on a Rule to Show Cause and Sanctions Motion in *People v. Ulysses Green and Elaina Turner*, Case Nos. 13-1-220227 and 13-1-220426, during which time the counsel for IPRA stated to the Court that IPRA had complied with the Court Order and produced all files relating to Defendant Officer Kelly investigations.

97. No documentation of any investigation into the shooting of Hector Hernandez was included, despite the Judge's June 11, 2015 order.

98. On June 3, 2016, under a new policy, IPRA uploaded thousands of investigative documents and videos to the internet however, the reports regarding the subject Hernandez shooting were not disclosed.

99. Prior to June 23, 2016, in the civil matter of *Turner v. City of Chicago, et al*, 15 CV 006741, despite numerous production requests and interrogatories regarding the complete all CRs and the complete investigative file regarding Defendant Officer Kelly, the investigative documents regarding the fatal shooting of Hector Hernandez were not included.

100. On June 23, 2016, during a deposition taken in *Turner v. City of Chicago, et al*, 15 CV 006741, in the Northern District of Illinois, Defendant Officer Kelly offered sworn testimony that he was involved in the shooting of Hector Hernandez.

101. On October 27, 2016, Judge Cox of the Northern District of Illinois entered a report and recommendation for sanctions in *Turner v. City of Chicago, et al*, 15 CV 006741 against the City of Chicago for failing to disclose the involvement of Defendant Officer Kelly in the shooting of Hector Hernandez.

102. On December 7, 2016, Judge Coleman of the Northern District of Illinois accepted the report and recommendation for sanctions in *Turner v. City of Chicago, et al*, 15 CV 006741 against the City of Chicago for failing to disclose the involvement of Defendant Officer Kelly in the shooting of Hector Hernandez.

103. Only upon review of this significant additional information after June 23, 2016, did Plaintiff learn that Defendant CITY OF CHICAGO could be held liable for the shooting of Hector Hernandez under several additional theories of liability.

104. Prior to the June 23, 2016 deposition of Defendant Officer Kelly, Plaintiff did not know his injuries were caused by Defendant City of Chicago's *de facto* policies, practices, and customs.

105. Up until, June 23, 2016, Plaintiff had no way of knowing that Defendant Officer Kelly was involved in the shooting of decedent, Hector Hernandez.

106. This newly released information, along with subsequent media investigations and reports, has recently revealed to Plaintiff that the death of Hector Hernandez were caused by the CITY OF CHICAGO's widespread *de facto* policies, practices, or custom of maintaining a Code of Silence, failing to investigate, failing to discipline, failing to maintain an adequate Early Warning System, or otherwise hold accountable its police officers, whether on or off duty.

107. These collective policies, practices, and customs engendered the firm understanding among Chicago Police Officers, including Defendant Officer Kelly, that CPD police officers are above the law and can act with impunity without the fear of consequences. In that vein, Defendant CITY OF CHICAGO's persistent and widespread *de facto* policies practices and customs were the moving force behind Defendant Officer Kelly's conduct.

108. Moreover, this recently released information, when taken in context with Defendant CITY OF CHICAGO's extensive efforts to not release the name of officers involved in the shooting of Hector Hernandez as well as the City's actions to conceal, suppress, stall or hamper its and/or IPRA's investigation into Defendant Officer Kelly's misconduct, has revealed to Plaintiff several other theories of liability, namely, Plaintiff's §1983 *Monell* claim.

109. Whether by stalling internal investigations, declining or rejecting FOIA requests, or discovery violations, Defendant CITY OF CHICAGO has taken numerous affirmative acts calculated to hide Defendant Officer Kelly's involvement in the shooting of Hector Hernandez to prevent Plaintiff from discovering claims.

110. Accordingly, Plaintiff pleads that, pursuant to the common law discovery rule, because Plaintiff did not know of his injuries and their cause until the June 23, 2016 discovery deposition of Defendant Officer Kelly in the *Turner v. City of Chicago* case, Defendant CITY OF CHICAGO must be equitably estopped from raising the statute of limitations or statute of repose as an affirmative defense to Plaintiff's personal injury tort claims. In this case, the statute of limitations on Plaintiff's 1983 *Monell* claim began to accrue on June 23, 2016 or thereafter, when Plaintiff discovered his injuries and their cause.

111. Defendant CITY OF CHICAGO has had and presently has an incentive to shield, misrepresent, cover-up and hide the true nature and scope of Defendant Officer Kelly and other Chicago police officers' conduct, and what Defendant CITY OF CHICAGO knew or should have known about Defendant Officer Kelly's history of misconduct, to avoid federal oversight and intervention, public scrutiny, and the time and expense of litigation.

112. Plaintiff will be prejudiced by the misrepresentations and/or concealment committed by Defendant CITY OF CHICAGO, if the Statute of Limitations and/or Statute of Repose are invoked to bar their newly added claims.

113. Accordingly, Plaintiff pleads that Defendant CITY OF CHICAGO be equitably estopped from raising the statute of limitations or statute of repose as an affirmative defense. Further, the tolling of the statute of limitations and statute of repose has been delayed based on the doctrine of equitable tolling, the continuing violation doctrine, and the fraudulent concealment statute (735 ILCS 5/13-215).

COUNT I - Willful and Wanton Conduct - Wrongful Death
Against Defendant City of Chicago

114. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

115. Plaintiff as Administrator of the Estate of HECTOR HERNANDEZ, deceased, brings this cause of action pursuant to the provisions of 740 ILCS 180/1, *et seq.*, commonly known as the Illinois Wrongful Death Act.

116. At all relevant times, Defendant CITY OF CHICAGO owed decedent HECTOR HERNANDEZ a duty to refrain from wanton and willful acts and omissions, which could cause him harm.

117. That at all times relevant herein, there existed a duty on the part of Defendant, CITY OF CHICAGO, to refrain from retaining officers who posed a risk of harm to the public, including Hector Hernandez.

118. Prior to the shooting of HECTOR HERNANDEZ on April 7, 2014, Defendant Officer Kelly had at least 20 CRs filed against him for excessive force, neglect of duty, unbecoming conduct, illegal arrest, domestic altercation, and/or other misconduct while off-duty and on-duty serving as a Chicago police officer.

119. On and prior to April 7, 2014, upon information and belief, Defendant CITY OF CHICAGO, knew or should have known KELLY was unfit to be a police officer and unfit to carry a firearm.

120. On April 7, 2014, Defendant CITY OF CHICAGO breached its duty to decedent HECTOR HERNANDEZ by acting willfully and wantonly in continuing to retain KELLY as a Chicago Police Officer, allowing him to possess deadly weapons, and dispatching him onto the streets of Chicago to interact with civilians under the color of law as a Chicago police officer all while knowing KELLY had a violent and dangerous propensity to commit harm, use excessive force, and use deadly force against civilians, like HECTOR HERNANDEZ.

121. At the time and place alleged, Defendant CITY OF CHICAGO, by and through the acts and/or omissions of its agents, employees, and officers, breached its duty to HECTOR HERNANDEZ by acting in an intentional manner, willful and wanton manner, and/or with utter indifference and conscious disregard for HECTOR HERNANDEZ's health and safety in one or more of the following respect:

- a. Shot HECTOR HERNANDEZ;
- b. Shot HECTOR HERNANDEZ without lawful justification;
- c. Discharged a weapon in such a manner as to shoot HECTOR HERNANDEZ;
- d. Discharged a weapon in such a manner as to shoot HECTOR HERNANDEZ without justification;
- e. Discharged a weapon in such a manner as to shoot HECTOR HERNANDEZ in an excessive and unreasonable way;

- f. Used excessive and inappropriate deadly force on HECTOR HERNANDEZ;
- g. Failed to exercise the proper level of force that was warranted under the circumstances;
- h. Used excessive and inappropriate deadly force without justification;
- i. Used excessive and inappropriate deadly force without lawful justification;
- j. Failed to use, or allow to be used, less dangerous means of restraint on HECTOR HERNANDEZ before using and discharging their firearms, as HECTOR HERNANDEZ was not engaged in conduct that would justify such force;
- k. Failed to warn HECTOR HERNANDEZ of the impending use of force;
- l. Failed to investigate, discipline, reprimand, or terminate its officers for misconduct, including Defendant Officer Kelly;
- m. Failed to implement and adhere to a use of force continuum consistent with that used by law enforcement agencies in Illinois;
- n. Failed to properly instruct, train and implement a sufficient use of force policy or continuum, consistent with that used by law enforcement agencies in Illinois;
- o. Failed to discipline its officers for using excessive or unnecessary deadly force against civilians of Chicago, which caused Officer KELLY and CORRAL to use deadly force against HECTOR HERNANDEZ;
- p. Retained Officer KELLY as a Chicago Police Officer despite knowledge that KELLY exhibited unstable, violent, and dangerous propensities to others while on and off duty;

- q. Authorized and armed Officer KELLY with a service weapon on April 7, 2014, while knowing of his violent propensities to use his service weapons unlawfully and unnecessarily on civilians while on or off duty;
- r. Failed to terminate and/or separate Defendant Officer Kelly from the Chicago Police Department;
- s. Failed to sustain findings made by IPRA investigators into a domestic violence CR against Defendant Kelly;
- t. Failed to arrest Defendant Officer Kelly for domestic violence after a CR was filed against him;
- u. Failed to properly investigate numerous other CRs filed against Defendant Officer Kelly;
- v. Failed to properly investigate criminal charges against Defendant Officer Kelly;
- w. Failed to maintain and/or utilize a valid early warning system which would have identified Patrick Kelly as an officer with repeated offenses and complaints alleged against him, enabled proper discipline, re-training, supervising or other intervention into his behavior, and therefore prevented the shooting from occurring, even though Defendant CITY OF CHICAGO knew or should have known that its system did not work and/or was not proper, and knowing that the failure of such would cause and could cause injury to an individual such as Hector Hernandez;
- x. Was otherwise willful and wanton and/or negligent.

122. As a direct and proximate result of the willful and wanton acts and/or omissions, the decedent, HECTOR HERNANDEZ died on April 7, 2014.

123. Decedent HECTOR HERNANDEZ, is survived by his minor children and heirs, Hector Hernandez-Davila, Jr. and Hailey Hernandez-Davila.

124. By reason of the death of HECTOR HERNANDEZ, decedent's heirs have suffered pecuniary damages, including the loss of support, comfort, love, affection, protection and society of decedent.

WHEREFORE, ESPERANZA DAVILLA, as Administrator of the Estate of HECTOR HERNANDEZ, Deceased, respectfully requests that this Court enter judgment against Defendant CITY OF CHICAGO, awarding compensatory damages in an amount in excess of fifty thousand dollars (\$50,000.00), and any further relief this Court deems just.

COUNT II – Willful and Wanton Conduct – Wrongful Death
Against Defendant Officers Kelly and Corral

125. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

126. Plaintiff as Administrator of the Estate of HECTOR HERNANDEZ, deceased, brings this cause of action pursuant to the provisions of 740 ILCS 180/1, *et seq.*, commonly known as the Illinois Wrongful Death Act.

127. At all relevant times, Defendant Officer KELLY and CORRAL owed decedent HECTOR HERNANDEZ a duty to refrain from wanton and willful acts and omissions, which could cause him harm.

128. At the time and place alleged, Defendant Officer KELLY and CORRAL, by and through their acts and/or omissions and as agents, employees, and Chicago police officers of the CITY OF CHICAGO, breached their duty to HECTOR HERNANDEZ by acting in an intentional manner, willful and wanton manner, and/or with utter indifference and conscious disregard for HECTOR HERNANDEZ's health and safety in one or more of the following respect:

- a. Shot HECTOR HERNANDEZ;

- b. Shot HECTOR HERNANDEZ without lawful justification;
- c. Discharged a weapon in such a manner as to shoot HECTOR HERNANDEZ;
- d. Discharged a weapon in such a manner as to shoot HECTOR HERNANDEZ without justification;
- e. Discharged a weapon in such a manner as to shoot HECTOR HERNANDEZ in an excessive and unreasonable way;
- f. Used excessive and inappropriate deadly force on HECTOR HERNANDEZ;
- g. Failed to exercise the proper level of force that was warranted under the circumstances;
- h. Used excessive and inappropriate deadly force without justification;
- i. Used excessive and inappropriate deadly force without lawful justification;
- j. Failed to use, or allow to be used, less dangerous means of restraint on HECTOR HERNANDEZ before using and discharging their firearms, as HECTOR HERNANDEZ was not engaged in conduct that would justify such deadly force;
- k. Failed to warn HECTOR HERNANDEZ of the impending use of force;
- l. Failed to implement and adhere to a use of force continuum consistent with that used by law enforcement agencies in Illinois;
- m. Made false and misleading statements in relation to their actions of shooting HECTOR HERNANDEZ on April 7, 2014 to cover up their unnecessary use of force;
- n. Was otherwise willful and wanton and/or negligent.

129. As a direct and proximate result of the willful and wanton acts and/or omissions, the decedent, HECTOR HERNANDEZ died on April 7, 2014.

130. Decedent HECTOR HERNANDEZ, is survived by his minor children and heirs, Hector Hernandez-Davila, Jr. and Hailey Hernandez-Davila.

131. By reason of the death of HECTOR HERNANDEZ, decedent's heirs have suffered pecuniary damages, including the loss of support, comfort, love, affection, protection and society of decedent.

WHEREFORE, ESPERANZA DAVILA, as Administrator of the Estate of HECTOR HERNANDEZ, Deceased, respectfully requests that this Court enter judgment against Defendant Officer KELLY and CORRAL, awarding compensatory damages in an amount in excess of fifty thousand dollars (\$50,000.00), and any further relief this Court deems just.

COUNT III – VIOLATION OF 42 USC §1983
(Monell Claim – Policy, Practice and/or Custom)
Maintaining a Code of Silence and/or Blue Shield
Against Defendant City of Chicago

132. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

133. At all relevant times, HECTOR HERNANDEZ had a constitutional right to be free from excessive force under the Fourth Amendment to the United States Constitution, incorporated to apply to the states through the Fourteenth Amendment to the United States Constitution.

134. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated on April 7, 2014 when he was shot thirteen times, eight of which were in his back.

135. HECTOR HERNANDEZ's constitutional right to be free from excessive

force was violated by Defendant Officer Kelly and Corral, who were Chicago police officers acting under color of state law.

136. The actions of Defendant, CITY OF CHICAGO, and Defendant Officer Kelly were done pursuant to *de facto* policies, practices and/or customs of the CITY OF CHICAGO that are so pervasive that they carry the force of law.

137. The CITY of CHICAGO has a *de facto* policy, practice and/or custom of maintaining a Code of Silence.

138. The Code of Silence is an implicit understanding between and among members of the CPD resulting in a refusal or failure to report instances of misconduct of which they are aware, including the use of unlawful force, despite their obligation to do so as sworn peace officers. This includes police officers who remain silent or give false or misleading information during official investigations into allegations of a fellow officer related to misconduct that occurred on duty or off duty in order to protect themselves or their fellow officers from discipline, criminal prosecution or civil liability.

139. This *de facto* policy, practice, and/or custom involves concealing and/or suppressing officer misconduct (both on duty and off-duty misconduct), including the use of unlawful force. The concealment and suppression of the existence of misconduct includes, but is not limited to: failure to sufficiently investigate allegations of misconduct; failure to accept complaints from citizens against police officers; the failure to investigate criminal conduct where off or on duty officers are involved; the disparate treatment of an officer who is the subject of an investigation and a non-officer suspect; failure to promptly record witness statements or preserve evidence; failure to promptly interview the suspected officer; failure to properly and sufficiently discipline an officer, even where the complaint is sustained; fabrication of exculpatory evidence or destruction of evidence; and failure to

initiate prompt disciplinary procedures related to the alleged misconduct, even when the allegation of misconduct has obvious merit.

140. This *de facto* policy, practice and/or custom also includes defective and biased procedures for investigating complaints, including excessive force and domestic violence complaints, against on and off-duty officers. This “double standard” regarding allegations of misconduct against officers includes, but is not limited to: all of the above acts and/or omissions listed in the paragraph above; limiting charges against off-duty officers to misdemeanors (or taking measures to have the charges dismissed), regardless of the severity or outrageousness of the alleged misconduct; and suppressing felony review of charges against off-duty officers, regardless of the severity or outrageousness of the alleged misconduct.

141. This *de facto* policy, practice and/or custom also includes failing to maintain accurate and complete records of complaints and investigations of misconduct.

142. This *de facto* policy, practice and/or custom also includes failing to turn over and disclose complete records of complaints and investigations of misconduct.

143. The City of Chicago acted in a manner consistent with a *de facto* policy, practice and/or custom of a “code of silence” and “blue shield” with regards to Defendant Officer Kelly when it chose not to pursue further investigation into allegations of domestic violence in 2005 and 2006, the allegations of excessive force made by Jesus Rios, the absence of any criminal prosecution of Defendant Officer Kelly for the shooting of Michael LaPorta, or the 2013 tazing of a pregnant woman for no reason.

144. Further, the City of Chicago acted in a manner consistent with a *de facto* policy, practice and/or custom of a “code of silence” and “blue shield” when it engaged in conduct such as, but not limited to, the following:

- a. The City of Chicago, IPRA and its supervisors failed to conduct proper administrative investigations into the complaints against department member (CRs) filed against Patrick Kelly before the shooting of Hector Hernandez.
- b. The City of Chicago, IPRA and its supervisors failed to lawfully and/or properly adjudicate the administrative investigations into the complaints against department member (CRs) filed against Patrick Kelly before the shooting of Hector Hernandez.
- c. The City of Chicago failed to properly discipline and/or discipline Patrick Kelly prior to April 7, 2014.
- d. In CR #308519, findings were not sustained findings despite overwhelming evidence.
- e. The City of Chicago failed to separate Defendant Officer Kelly from the CPD for his violent/forceful history predating April 7, 2014.
- f. The City of Chicago failed to disclose on its own initiative and without court intervention new CRs, SPAR and other IPRA log and U# shooting investigation files which were never disclosed, including the shooting of Hector Hernandez.
- g. The City of Chicago wrongfully and inexplicably allowed Defendant Officer Kelly's gun to be returned to him in 2013 pending the *LaPorta* civil case and without judicial order.
- h. The City of Chicago allowed Defendant Officer Kelly to return to work as a sworn Chicago police officer despite the fact that doctors

for Michael LaPorta indicated to CPD investigators that the bullet wound was not self-inflicted.

145. The above described *de facto* policies, practices and/or customs of the CITY OF CHICAGO in maintaining a Code of Silence proximately resulted in the culture and endemic attitude among members of the CPD, including Defendant Officer Kelly, that they may engage in misconduct against citizens of Chicago with impunity, and without fear of official consequence; they consider themselves “above the law.”

146. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, has been maintained and/or implemented with utter indifference by Defendant CITY of CHICAGO and has or have encouraged and/or motivated Defendant Officer Kelly to commit the aforesaid wrongful acts against Hector Hernandez, and therefore were the direct and proximate cause of the injuries sustained by him.

147. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, were the moving force behind Kelly’s conduct, depriving Hector Hernandez of his Fourth Amendment right to be free from excessive force.

148. The above acts and/or omissions of the CITY of CHICAGO violated the rights of Hector Hernandez under the Fourth and Fourteenth Amendments to the United States Constitution.

149. As a direct and proximate result of The above acts and/or omissions of the CITY of CHICAGO, the decedent, HECTOR HERNANDEZ died on April 7, 2014.

WHEREFORE, ESPERANZA DAVILA, as Administrator of the Estate of HECTOR HERNANDEZ, Deceased, prays for judgment against Defendant, CITY OF CHICAGO, awarding compensatory damages in an amount in excess of seventy-five

thousand dollars (\$75,000), attorney's fees, costs, plus interest, and any further relief this Court deems appropriate and just.

COUNT IV – VIOLATION OF 42 USC §1983
(Monell Claim – Policy, Practice and/or Custom)
Failing to Maintain a Proper Early Warning System
Against Defendant City of Chicago

150. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

151. At all relevant times, HECTOR HERNANDEZ had a constitutional right to be free from excessive force under the Fourth Amendment to the United States Constitution, incorporated to apply to the states through the Fourteenth Amendment to the United States Constitution.

152. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated on April 7, 2014 when he was shot thirteen times, eight of which were in his back.

153. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated by Defendant Officer Kelly and Corral, who were Chicago police officers acting under color of state law.

154. The actions of Defendant, CITY OF CHICAGO, and Defendant Officer Kelly were done pursuant to one or more of the following *de facto* policies, practices and/or customs of the CITY OF CHICAGO that are so pervasive that they carry the force of law.

155. The City of Chicago has failed to maintain a proper or valid early warning system to detect and intervene with corrective measures officers with multiple CRs and/or who exhibit patterns of potentially adverse performance, attitude and behavior.

156. Defendant, CITY OF CHICAGO, failed to maintain and/or utilize a valid early warning system which would have identified Defendant Officer Kelly as an officer with

repeated offenses alleged against him and led to the proper discipline, re-training, supervising or other intervention into his behavior, therefore preventing the subject shooting from occurring, even though Defendant CITY OF CHICAGO knew or should have known that its system did not work and/or was not proper and that the failure of such would cause and could cause injury to an individual such as Hector Hernandez.

157. Defendant, CITY OF CHICAGO, failed to identify the small fraction of officers with the highest numbers of CRs registered against them, despite knowing that such identification and proper retraining or discipline could prevent them from committing further acts that would cause and could cause injury to an individual such as Hector Hernandez.

158. Defendant, CITY OF CHICAGO, failed to identify the small fraction of officers with the highest number of CRs, despite knowing that such failure could cause those officers to feel they could act with impunity and without fear of retribution.

159. Defendant, CITY OF CHICAGO, failed to identify and/or failed to act on the fact that that Defendant Officer Kelly was in the top fraction of officers with the highest number of CRs, despite knowing that such identification and proper retraining or discipline could prevent them from committing further acts that would cause and could cause injury to an individual such as Hector Hernandez.

160. Defendant, CITY OF CHICAGO, failed to identify and/or failed to act on the fact that that Defendant Officer Kelly was in the top fraction of officers with the highest number of CRs, despite knowing that such failure could cause him to feel he could act with impunity and without fear of retribution.

161. Defendant, CITY OF CHICAGO, maintained and affirmed agreements with the Chicago Police Department which limited OPS's and IPRA's ability to utilize past

complaints in its investigations, hampering their ability to identify patterns in officer misconduct, despite knowing that such failure could prevent officers from committing further acts which would cause injury to individuals such as Hector Hernandez.

162. Individually and collectively, the above described *de facto* policies, practices and/or customs of the CITY OF CHICAGO proximately resulted in the culture and endemic attitude among members of the CPD, including Defendant Officer Kelly, that they may engage in misconduct against citizens of Chicago with impunity, and without fear of official consequence; they consider themselves “above the law.”

163. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, individually and collectively, have been maintained and/or implemented with utter indifference by Defendant CITY of CHICAGO and has or have encouraged and/or motivated Defendant KELLY to commit the aforesaid wrongful acts against the Hector Hernandez, and therefore were the direct and proximate cause of the injuries sustained by Hector Hernandez.

164. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, were the moving force behind Kelly’s conduct, depriving Hector Hernandez of his Fourth Amendment right to be free from excessive force.

165. The above acts and/or omissions of the CITY of CHICAGO violated Hector Hernandez’s rights under the Fourth and Fourteenth Amendments to the United States Constitution.

166. As a direct and proximate result of the above acts and/or omissions of the CITY of CHICAGO, the decedent, HECTOR HERNANDEZ died on April 7, 2014.

WHEREFORE, ESPERANZA DAVILA, as Administrator of the Estate of HECTOR HERNANDEZ, Deceased, prays for judgment against Defendant, CITY OF

CHICAGO, awarding compensatory damages in an amount in excess of seventy-five thousand dollars (\$75,000), attorney's fees, costs, plus interest, and any further relief this Court deems appropriate and just.

COUNT V – VIOLATION OF 42 USC §1983
(Monell Claim – Policy, Practice and/or Custom)
Failing to Investigate Officer Misconduct
Against Defendant City of Chicago

167. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

168. At all relevant times, HECTOR HERNANDEZ had a constitutional right to be free from excessive force under the Fourth Amendment to the United States Constitution, incorporated to apply to the states through the Fourteenth Amendment to the United States Constitution.

169. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated on April 7, 2014 when he was shot thirteen times, eight of which were in his back.

170. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated by Defendant Officer Kelly and Corral, who were Chicago police officers acting under color of state law.

171. The actions of Defendant, CITY OF CHICAGO, and Defendant Officer Kelly were done pursuant to one or more of the following *de facto* policies, practices and/or customs of the CITY OF CHICAGO that are so pervasive that they carry the force of law.

172. The City of Chicago, including but not limited to CPD, OPS, IAD and/or IPRA, has a policy, pattern and practice of failing to investigate complaints filed against officers registered by citizens if the citizen complainant does not file an affidavit, despite there being exceptions to the proceeding with an investigation without an affidavit.

173. As a result, approximately 45 percent of CRs registered against officers are never investigated.

174. Officers with the highest number of CRs also had the highest rate of CRs filed unaccompanied by an affidavit. As a result, high-CR officers go disproportionately uninvestigated for allegations of misconduct.

175. Of the 27 CRs filed against Defendant Officer Kelly, upon information and belief, numerous CRs were not properly investigated due to the affidavit policy.

176. By maintaining the policy of failing to investigate CRs that are not accompanied by an affidavit and without invoking any of the exceptions, the City of Chicago is concealing officer misconduct and ensuring the officers against whom CRs are registered will not face investigation or discipline, causing officers to feel they can act with impunity.

177. The City of Chicago failed to investigate and concealed Defendant Officer Kelly's misconduct during the 2005 domestic violence investigation when a sustained finding was overridden without any explanation.

178. The City of Chicago failed to investigate and concealed Defendant Officer Kelly's misconduct during a 2006 domestic violence incident.

179. The City of Chicago failed to investigate and concealed Defendant Officer Kelly's misconduct during the 2010 investigation of the shooting of Michael LaPorta by the following means: failing to conduct a thorough, meaningful investigation into the shooting of Michael LaPorta, including failing to investigate or process physical evidence; failing to properly question witnesses; failing from the very outset to treat the incident as a potential homicide; failing to take action or hold accountable officers who were with Defendant Officer Kelly on the night of the shooting of Michael LaPorta, who also gave identical answers in their IPRA statements, were represented by the same attorney, and knowingly

lied to investigators; and by inexplicably closing the investigation after LaPorta's doctors told them that the wound could not have been self-inflicted.

180. The City of Chicago failed to investigate and concealed Defendant Officer Kelly's misconduct during the 2013 investigation into the tazing of Elaina Turner by failing to take Officer Kelly's statement for nearly two years.

181. In the instant matter, the City of Chicago, concealed officer misconduct through their withholding of information regarding Defendant Officer Kelly's involvement in the shooting of Hector Hernandez.

182. The aforementioned *de facto* practices, policies, and customs of Defendant, individually and collectively, have been maintained and/or implemented with utter indifference by Defendant, and have encouraged and/or motivated Defendant Officer Kelly to commit the aforesaid wrongful act against Hector Hernandez, and therefore acted as the direct and proximate causes of the injuries sustained by and the death of Hector Hernandez.

183. Individually and collectively, the above described *de facto* policies, practices and/or customs of the CITY OF CHICAGO proximately result in the culture and endemic attitude among members of the CPD, including Defendant Officer Kelly, that they may engage in misconduct against citizens of Chicago with impunity, and without fear of official consequence; they consider themselves "above the law."

184. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, individually and collectively, have been maintained and/or implemented with utter indifference by Defendant CITY of CHICAGO and has or have encouraged and/or motivated Defendant Officer Kelly to commit the aforesaid wrongful acts against Hector Hernandez, and therefore were the direct and proximate cause of the injuries sustained by Hector Hernandez.

185. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, were the moving force behind Kelly's conduct, depriving Hector Hernandez of his Fourth Amendment right to be free from excessive force.

186. The above acts and/or omissions of the CITY of CHICAGO violated the Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

187. As a direct and proximate result of the above acts and/or omissions of the CITY of CHICAGO, the decedent, HECTOR HERNANDEZ died on April 7, 2014.

WHEREFORE, ESPERANZA DAVILA, as Administrator of the Estate of HECTOR HERNANDEZ, Deceased, prays for judgment against Defendant, CITY OF CHICAGO, awarding compensatory damages in an amount in excess of seventy-five thousand dollars (\$75,000), attorney's fees, costs, plus interest, and any further relief this Court deems appropriate and just.

COUNT VI – VIOLATION OF 42 USC §1983
(*Monell* Claim – Policy, Practice and/or Custom)
Failing to Discipline Officer Misconduct
Against Defendant City of Chicago

188. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

189. At all relevant times, HECTOR HERNANDEZ had a constitutional right to be free from excessive force under the Fourth Amendment to the United States Constitution, incorporated to apply to the states through the Fourteenth Amendment to the United States Constitution.

190. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated on April 7, 2014 when he was shot thirteen times, eight of which were in his back.

191. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated by Defendant Officer Kelly and Corral, who were Chicago police officers acting under color of state law.

192. The actions of Defendant, CITY OF CHICAGO, and Defendant Officer Kelly were done pursuant to one or more of the following *de facto* policies, practices and/or customs of the CITY OF CHICAGO that are so pervasive that they carry the force of law.

193. The City of Chicago has a *de facto* policy of failure to discipline officers under investigation for misconduct, even where the allegations against them have merit.

194. In the instant case, the City of Chicago knew or should have known it was actively concealing officer misconduct in 2005 when a sustained finding of Defendant Kelly's involvement in a domestic violence act was overridden.

195. This sustained override was a conscious act, without basis, which effectively concealed Patrick Kelly's known domestic violence offense and allowed him to continue serving on the police force without reprimand or fear of retribution or discipline.

196. The City of Chicago knew or should have known it was actively concealing officer misconduct when it failed to discipline or arrest, or even issue a warrant for, Defendant Officer Kelly for the domestic violence incident in 2005.

197. The City of Chicago knew or should have known it was actively concealing officer misconduct when it failed to discipline, terminate, or pursue a battery charge against Defendant Officer Kelly in 2006.

198. The City of Chicago knew or should have known it was actively concealing when it failed to discipline or terminate Defendant Officer Kelly after the 2007 incident where he beat Jesus Rios, drove his head into the ground, and put a gun to the side of his head.

199. The City of Chicago knew or should have known it was actively concealing when it failed to discipline or terminate Defendant Officer Kelly after the 2010 incident for shooting Michael LaPorta in the head.

200. The City of Chicago knew or should have known it was actively concealing when it failed to discipline or terminate Defendant Officer Kelly after the 2013 when Defendant Officer Kelly tased a pregnant woman and caused a miscarriage.

201. The only allegations ever administratively sustained resulting in any discipline against Defendant Officer Kelly involved his assault against a fellow police officer.

202. The discipline for that allegation was inexplicably reduced to 60 days.

203. No allegation ever filed by or on behalf of a citizen has ever been administratively sustained against Defendant Officer Kelly.

204. Further, the City of Chicago has a *de facto* policy of failure to punish, suspend, re-train, terminate, or otherwise discipline officers with high numbers of CRs, resulting in disproportionately infrequent and light discipline against offending officers.

205. The aforementioned *de facto* practices, policies, and customs of Defendant, individually and collectively, have been maintained and/or implemented with utter indifference by Defendant, and have encouraged and/or motivated Defendant Officer Kelly to commit the aforesaid wrongful act against Hector Hernandez, and therefore acted as the direct and proximate causes to the injuries sustained by Hector Hernandez.

206. Individually and collectively, the above described *de facto* policies, practices and/or customs of the CITY OF CHICAGO proximately result in the culture and endemic attitude among members of the CPD, including Defendant Officer Kelly, that they may engage in misconduct against citizens of Chicago with impunity, and without fear of official consequence; they consider themselves “above the law.”

207. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, individually and collectively, have been maintained and/or implemented with utter indifference by Defendant CITY of CHICAGO and has or have encouraged and/or motivated Defendant Officer Kelly to commit the aforesaid wrongful acts against the Hector Hernandez, and therefore were the direct and proximate cause of the injuries sustained by Hector Hernandez.

208. The aforementioned *de facto* policies, practices and/or customs of the CITY OF CHICAGO, were the moving force behind Kelly's conduct, depriving Hector Hernandez of his Fourth Amendment right to be free from excessive force.

209. The above acts and/or omissions of the CITY of CHICAGO violated Hector Hernandez's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

210. As a direct and proximate result of the above acts and/or omissions of the CITY of CHICAGO, the decedent, HECTOR HERNANDEZ died on April 7, 2014.

WHEREFORE, ESPERANZA DAVILA, as Administrator of the Estate of HECTOR HERNANDEZ, Deceased, prays for judgment against Defendant, CITY OF CHICAGO, awarding compensatory damages in an amount in excess of seventy-five thousand dollars (\$75,000), attorney's fees, costs, plus interest, and any further relief this Court deems appropriate and just.

COUNT VII – VIOLATION OF 42 USC §1983

Ratification

Against Defendant City of Chicago

211. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

212. At all relevant times, HECTOR HERNANDEZ had a constitutional right to

be free from excessive force under the Fourth Amendment to the United States Constitution, incorporated to apply to the states through the Fourteenth Amendment to the United States Constitution.

213. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated on April 7, 2014 when he was shot thirteen times, eight of which were in his back.

214. HECTOR HERNANDEZ's constitutional right to be free from excessive force was violated by Defendant Officer Kelly and Corral, who were Chicago police officers acting under color of state law.

215. Upon information and belief, a final policy maker, such as the Chicago City Council, Chicago Police Superintendent McCarthy and/or Chicago Mayor Rahm Emmanuel, acting under color of law, who had final policymaking authority and disciplinary authority concerning the acts of Defendant KELLY, ratified Defendant KELLY's acts preceding the HECTOR HERNANDEZ incident and the bases of them.

216. Upon information and belief, a final policy maker, such as the Chicago City Council, Chicago Police Superintendent McCarthy, and/or Chicago Mayor Rahm Emmanuel, acting under color of law, who had final policymaking authority and disciplinary authority concerning the acts of Defendant KELLY, ratified Defendant KELLY's acts in the HECTOR HERNANDEZ incident itself and the bases of them.

217. Upon information and belief, the final policymaker knew of and specifically approved of Defendant KELLY's acts preceding the HECTOR HERNANDEZ incident, which permitted Defendant KELLY to remain in his post until the HECTOR HERNANDEZ incident described above.

218. Upon information and belief, a final policy maker has determined that the

acts of Defendant KELLY were “within policy,” which permitted Defendant KELLY to remain in his post until the HECTOR HERNANDEZ incident described above.

219. As a direct and proximate result of the above acts and/or omissions of the CITY of CHICAGO, the decedent, HECTOR HERNANDEZ died on April 7, 2014.

WHEREFORE, ESPERANZA DAVILA, as Administrator of the Estate of HECTOR HERNANDEZ, Deceased, prays for judgment against Defendant, CITY OF CHICAGO, awarding compensatory damages in an amount in excess of seventy-five thousand dollars (\$75,000), attorney’s fees, costs, plus interest, and any further relief this Court deems appropriate and just.

Respectfully Submitted,

ESPERANZA DAVILA
Plaintiff,

By: /s/Jeffrey B. Granich
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