

**UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF NEW HAMPSHIRE**

**NEIL PINEDA-LANDAVERDE**

**Plaintiff,**

**v.**

**CITY OF MANCHESTER, MATTHEW  
BARTER, JAMES PITTMAN, and  
CONNOR MEFFORD**

**Defendants.**

**Case No.:** \_\_\_\_\_

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Pursuant to 42 U.S.C. § 1983, Plaintiff Neil Pineda-Landaverde (“Mr. Pineda-Landaverde”) sues the City of Manchester and three of its police officers—Sergeant Matthew Barter, Officer James Pittman, and Officer Connor Mefford—for, on October 17, 2019, forcibly seizing Mr. Pineda-Landaverde and his iPhone SE smartphone without a warrant after he was peacefully recording the Department’s officers engaging multiple individuals during a fight at the 7-Eleven convenience store at 85 South Main Street in Manchester. This warrantless seizure violated Mr. Pineda-Landaverde’s clearly established Fourth and First Amendment rights. The City, Sergeant Barter, and Officer Mefford also failed to timely secure a search warrant until November 1, 2019—15 days after the warrantless seizure. This search warrant was only sought and secured when Mr. Pineda-Landaverde’s counsel demanded the phone’s return on October 29, 2019. This unreasonable delay constituted a violation of Mr. Pineda-Landaverde’s clearly established Fourth Amendment rights. Finally, the City of Manchester sought and secured an overbroad warrant that exceeded the recording in question in violation of the Fourth Amendment.

Mr. Pineda-Landaverde seeks damages arising out of these serious constitutional violations.

### **JURISDICTION AND VENUE**

1. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Mr. Pineda-Landaverde's federal causes of action arising under 42 U.S.C. § 1983 *et seq.*

2. This Court may exercise personal jurisdiction over all Defendants because they reside or do business within the District of New Hampshire.

3. Proper venue lies in the District of New Hampshire because a substantial part of the events giving rise to Mr. Pineda-Landaverde's claims occurred in Manchester, New Hampshire. 28 U.S.C. § 1391(b)(2).

### **PARTIES**

4. Neil Pineda-Landaverde is a 31-year-old resident of Manchester, New Hampshire.

5. Matthew Barter is a police officer employed by Manchester's Police Department. Sergeant Barter is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by Manchester's Police Department. Defendant Barter is being sued in his individual capacity. At all times relevant to this lawsuit, Defendant Barter was and is a "person" as that term is used by 42 U.S.C. § 1983.

6. James Pittman is a police officer employed by Manchester's Police Department. Officer Pittman is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by Manchester's Police Department. Defendant Pittman is being sued in his individual capacity. At all times relevant to this lawsuit, Defendant Pittman was and is a "person" as that term is used by 42 U.S.C. § 1983.

7. Connor Mefford is a police officer employed by Manchester's Police Department. Officer Mefford is, or was at all times relevant to this lawsuit, acting under color of state law as a

police officer employed by Manchester's Police Department. Defendant Mefford is being sued in his individual capacity. At all times relevant to this lawsuit, Defendant Mefford was and is a "person" as that term is used by 42 U.S.C. § 1983.

8. Barter, Pittman, and Mefford together are referred to as the "Police Officer Defendants."

9. Defendant City of Manchester is a municipal entity created under the laws of the State of New Hampshire. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. At all times relevant to this lawsuit, Defendant City of Manchester was and is a "person" as that term is used by 42 U.S.C. § 1983. Defendant City of Manchester is the public employer of the Police Officer Defendants.

### **THE FACTS**

10. In the late afternoon of October 17, 2019, Plaintiff Neil Pineda-Landaverde and his mother—Lillian Pineda-Landaverde ("Lillian")—were driving to Lillian's home after she had a medical appointment. Mr. Pineda-Landaverde was the passenger, and Lillian was the driver.

11. As they turned onto Clinton Street in Manchester, they saw two Manchester Police Department cruisers and a large crowd at the nearby 7-Eleven convenience store at 85 South Main Street.

12. Mr. Pineda-Landaverde's wife—Jennily Paris ("Ms. Paris")—was working at the 7-Eleven that afternoon. Mr. Pineda-Landaverde exited the car and approached the store to make sure that his wife was safe. Meanwhile, Lillian parked the car.

13. When Mr. Pineda-Landaverde arrived, he found his wife. She was upset.

14. After Mr. Pineda-Landaverde spoke to his wife for a few seconds to confirm that

she was safe, he heard one of the officers yelling and telling people to stand back.

15. As the officer was yelling, Mr. Pineda-Landaverde turned towards the officer and saw a crowd of people. Police officers were trying to get the crowd under control. There were multiple altercations going on at once, with people pushing and getting arrested.

16. Mr. Pineda-Landaverde then, consistent with his clearly established First Amendment rights, tried to record the officers while they were performing their duties in the 7-Eleven parking lot—a place that is open to the public. He made sure to not interfere with the officers and to comply with all instructions from the police to stand back.

17. Mr. Pineda-Landaverde attempted to record the police officers because he wanted to document their actions to ensure that they could be held accountable if they acted inappropriately.

18. There were other bystanders watching the officers as well, approximately 20 to 30 people. Of this group of bystanders, Mr. Pineda-Landaverde saw many people recording the incident along with him.

19. While he was holding his phone, Mr. Pineda-Landaverde's wife pointed out that he was not actually recording. Instead, he had only taken a picture.

20. Mr. Pineda-Landaverde then began actually recording what was transpiring. He believes that he recorded the incident for approximately 8 minutes.

21. Lillian stood next to Mr. Pineda-Landaverde while he recorded the incident. By that time, Lillian had parked the car and come to the store parking lot.

22. After the officers quelled the fight and arrested multiple individuals<sup>1</sup>, an officer

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<sup>1</sup> See Manchester Police Department Press Release, "5 Arrested After Melee With Police at 7-Eleven," *Manchesterinklink.com* (Oct. 18, 2019), <https://manchesterinklink.com/5-arrested-after-melee-with-police-at-7-eleven/>.

approached Ms. Paris and questioned her about the incident, as she was on duty at the 7-Eleven while the incident unfolded. This officer likely was Defendant Officer Connor Mefford.

23. As Officer Mefford questioned Ms. Paris, Defendant Officer James Pittman spoke to Mr. Pineda-Landaverde. Officer Pittman asked Mr. Pineda-Landaverde whether he had video from the interaction and, if so, how much he was able to record.

24. Mr. Pineda Landaverde responded that he got to the scene after it all started, so he did not have a complete recording.

25. Mr. Pineda Landaverde also explained that he did not want to give his phone to the police. He said that many other bystanders had recorded the incident.

26. Officer Pitman, who had previously interacted with Mr. Pineda-Landaverde, said that he knows that Mr. Pineda-Landaverde will not cooperate. Officer Pittman addressed the other officers and said something to the effect of “this is Neil Pineda-Landaverde. He won’t cooperate with us.” Officer Pitman then turned to Neil and said “Neil, all you had to do was say no.”

27. Mr. Pineda-Landaverde then verbally indicated his agreement that he was not going to voluntarily give up his phone to the officers.

28. Officer Pittman then responded sarcastically: “We know, Neil. You know your rights!”

29. Mr. Pineda-Landaverde then turned his attention to his wife. He said to her in sum and substance: “Why answer his questions and help them when they never come here to help you when you call?” He was referring to times when 7-Eleven employees like his wife had called the police for help and they had not shown up.

30. Defendant Sergeant Matthew Barter, who was standing nearby and listening to the conversation, did not like Mr. Pineda-Landaverde’s comment. As a result, Sergeant Barter

abruptly approached Mr. Pineda-Landaverde and said, “Do you have a question for my Detective?” In essence, Sergeant Barter was basically saying in an intimidating fashion “do you have something to say?”

31. Mr. Pineda-Landaverde said “no.”

32. Sergeant Barter then demanded that Mr. Pineda-Landaverde turn over his phone. Sergeant Barter said that Mr. Pineda-Landaverde did not have an option but to give up his phone because the phone had evidence on it.

33. Sergeant Barter also told Mr. Pineda-Landaverde that, if he did not give up his phone, he would be arrested.

34. Given this demand, the Police Officer Defendants had effectively seized Mr. Pineda-Landaverde, as he was not free to leave with his phone. The Police Officer Defendants did not have reasonable suspicion or probable cause to believe that Mr. Pineda-Landaverde had engaged in criminal activity.

35. Appropriately invoking his rights, Mr. Pineda-Landaverde declined Sergeant Barter’s demand to hand over his phone, thereby asserting his right to not have his property seized without a warrant.

36. Sergeant Barter insisted that he had every right to take the phone. He continued to demand the phone.

37. Mr. Pineda-Landaverde reiterated that he was not the only one recording the incident, and that many other bystanders had similar recordings. In sum and substance, he asked “why do you need mine?”

38. After Sergeant Barter made clear that he was going to seize the phone (or arrest Mr. Pineda-Landaverde if he did not agree), Mr. Pineda-Landaverde offered to delete the video

recording. Mr. Pineda-Landaverde hoped that the Department would agree to this deletion so that he could end this interaction with police and keep his phone, as no one would now have the recording.

39. Mr. Pineda-Landaverde's offer did not placate Sergeant Barter.

40. Sergeant Barter then forcibly grabbed Mr. Pineda-Landaverde's right wrist in an effort to get at his phone.

41. Officer Mefford also forcibly grabbed Mr. Pineda-Landaverde's other wrist in an effort to forcefully confiscate the phone.

42. During this interaction, Officer Pittman also twisted Mr. Pineda-Landaverde's arm.

43. Mr. Pineda-Landaverde had not moved his hands before this contact; his hands were in his pants pockets not touching his phone. His phone was in his front sweatshirt pocket.

44. Mr. Pineda-Landaverde then was immediately surrounded by over a dozen officers.

45. During this assault by the Police Officer Defendants where they physically contacted Mr. Pineda-Landaverde without his consent, the phone was knocked out of Mr. Pineda-Landaverde's front sweatshirt pocket. It landed on the ground. The Defendants then took the phone.

46. The Police Officer Defendants stated in their police reports that they engaged in this assault because Mr. Pineda-Landaverde reached into the front pocket of his sweatshirt, thereby causing them to believe that he was attempting to grab his phone to delete the evidence.

47. As confirmed by video, these statements in the police reports are false. Mr. Pineda-Landaverde did not reach for his phone, nor was there any reason to believe that he was going to imminently delete the video. The Police Officer Defendants alleged this in their police reports as a ruse designed to manufacture an exigency that they could then use to seize Mr. Pineda-

Landaverde's phone without a warrant.

48. The Police Officer Defendants then let go of Mr. Pineda-Landaverde.

49. One of the officers told Mr. Pineda-Landaverde to leave or the Department would arrest him for disorderly conduct.

50. As Mr. Pineda-Landaverde was walking away, he was upset and told the officers that he did not want them to take his phone because it was his only means of communication. He pleaded to have his phone back because he needed it.

51. Lillian also said that the officers had no right to demand that her son leave a public area.

52. Sergeant Barter said that they were going to keep the phone because it contained evidence.

53. A minute or two later, Mr. Pineda-Landaverde walked back and asked Sergeant Barter whether he could have his phone back if he could send the video recording in an email. Sergeant Barter agreed.

54. Officer Mefford held the phone to ensure that nothing would be deleted as Mr. Pineda-Landaverde entered his passcode to unlock it.

55. During this interaction, Officer Mefford held the phone, and Mr. Pineda-Landaverde directed to Officer Mefford to the video's location.

56. Officer Mefford saw that the video existed.

57. Controlling Mr. Pineda-Landaverde's phone, Officer Mefford emailed the video to Officer Mefford's email address from Mr. Pineda-Landaverde's email account.

58. To Mr. Pineda-Landaverde, it looked like the video had been successfully emailed.

59. However, Officer Mefford told him that the email with the video did not go through



and that the cell phone battery died during the attempt.

60. Mr. Pineda-Landaverde told Officer Mefford that he did what he said he would do as part of their agreement, and that he wanted his phone back.

61. Sergeant Barter and Officer Mefford said that they would take the phone.

62. Sergeant Barter and Officer Mefford then took the phone without a warrant.

63. Lillian asked Sergeant Barter in sum and substance: “how long are you going to keep the phone?”

64. Sergeant Barter responded that the phone could be returned in two to three hours.

65. Lillian asked under what circumstances the Department is allowed to take her son’s phone.

66. Sergeant Barter said that the phone contained evidence of a crime and that Mr. Pineda-Landaverde was “hindering a criminal investigation.”

67. Lillian stated that other people were filming the incident and that the 7-Eleven store also had surveillance footage.

68. Lillian stated in sum and substance: “How was he hindering? He was not involved. He had nothing to do with the incident. Why wasn’t the Department going after others who recorded the incident?”

69. Indeed, the Police Officer Defendants targeted Mr. Pineda-Landaverde for confiscation of his phone, even though many other bystanders were recording the incident. The Police Officer Defendants do not appear to have asked most, if any, of those bystanders for their recordings.

70. At some point around this time, Lillian attempted to call the Manchester Police Department “officer in charge” to make a complaint about how the officers at the scene were

confiscating her son's phone.

71. Sergeant Barter saw Lillian on her phone and asked her who she was speaking to.

72. Lillian said that it was not his business.

73. Sergeant Barter then yelled at her: "Hang up that god-damned phone now."

74. About an hour later, Mr. Pineda-Landaverde and Ms. Paris went to the Manchester Police Department's headquarters to get the phone back.

75. Ms. Paris delivered to the Department a DVD of what she believed was the fight captured from the 7-Eleven's surveillance camera, which was given to her by her boss. (She found out later that the transfer of the video to the DVD did not work and that the DVD was blank.)

76. Once again, Mr. Pineda-Landaverde asked for his phone back while he was at the Department's headquarters.

77. Sergeant Barter was there and said that Mr. Pineda-Landaverde could not have his phone back until the Department was done with it. He said that the officers were responding to a shooting so they would not be getting the phone back to Mr. Pineda-Landaverde soon.

78. Mr. Pineda-Landaverde called the Department the next day using Lillian's phone, and almost daily thereafter, in an effort to obtain his phone. He repeatedly stressed that his phone was his only means of communication.

79. The Department's officers declined to return the phone and said that they would be applying for a search warrant.

80. Lillian also called the Department almost daily to ask for the return of her son's phone. She left numerous messages and voicemails for Sergeant Barter asking for the phone back.

81. Sergeant Barter did not return her calls.

82. On October 29, 2019, Mr. Pineda-Landaverde's undersigned counsel wrote a letter

to the City of Manchester demanding the return of the phone. See Exhibit A, WARRANT at 014-15.

83. On October 30, 2019, Mr. Pineda-Landaverde's counsel followed up with another email to the City, stating the following in part:

We continue to believe that the phone should be returned immediately. We believe that it is now too late to obtain a warrant, as it has taken the Department nearly two weeks to seek a warrant. There could be a reasonable inference made that this warrant is being sought only after our client pressed to have his phone back through yesterday's letter. We have not received an explanation as to why the Department has not sought a warrant after nearly two weeks ....

That said, our client is willing to, with our assistance, voluntarily provide the video/pictures of the incident if they exist, thereby (i) obviating the need for a warrant application, (ii) reducing the intrusion on his privacy that would be caused by the Department's search of his phone, and (iii) allowing the phone to be immediately returned. This should eliminate any concern that potential evidence, if it exists, will be deleted. Let me know if the Department is amenable to this, as my client is being significantly inconvenienced by the loss of his phone, which has been magnified by the Department's delay in filing a search warrant application.

See Exhibit B, Oct. 30, 2019 Email.

84. On the morning of October 31, 2019, Mr. Pineda-Landaverde's counsel reached an agreement with Manchester Detective David Whelen. Under this agreement, the Department would release the phone to Mr. Pineda-Landaverde the next day, Mr. Pineda-Landaverde would immediately transport the phone to his counsel's Concord office, Mr. Pineda-Landaverde and his counsel would review the phone for the video, and then his counsel would send the video to the Department. As this agreement made clear, there was no exigency or imminent prospect of the video being deleted.

85. In an email sent on 12:13 p.m. on October 31, 2019, Manchester Detective Kenneth Loui wrote an email to Mr. Pineda-Landaverde's counsel revoking the agreement based on his erroneous assumption that Mr. Pineda-Landaverde may have deleted the video and that the video

was therefore inaccessible (however, as explained above, Officer Mefford saw that the video existed when an attempt was made to email the video, and therefore the video would have been readily retrievable). Detective Loui wrote: “Our concern is that you make a good faith effort to find the video, fail to do so, and simply tell us the video is not there, while it could still be there and fully recoverable by a trained, cell phone forensic examiner.” See Exhibit A, WARRANT at 09-10.

86. Detective Loui then requested that Mr. Pineda-Landaverde “come to the Manchester Police Headquarters at his earliest convenience, meet with a detective, sign a consent to search his cell phone, assist in locating the evidence in question (in the presence of the detective), and then email or otherwise provide the evidence in question.” Detective Loui added that, if there was no agreement, they would complete the search warrant process. *Id.*

87. At 1:56 p.m., Mr. Pineda-Landaverde’s counsel responded, stating that the video had not been deleted (which, again, the Department knew because Officer Mefford saw the video on October 17, 2019 and attempted to email it). Thus, there was no exigency for the Department to retain the phone. As Mr. Pineda-Landaverde’s counsel explained: “[I]f the video/pictures exist, they will be easily accessible on the phone and we can send them to you per the arrangement I discussed with Detective Whelan this morning.” Mr. Pineda-Landaverde’s counsel stated that the Department’s new proposal was unsatisfactory, as “[m]y client will not consent to any search by the Department.” See Exhibit A, WARRANT at 11.

88. Mr. Pineda-Landaverde’s counsel added that the Department should state in any warrant application “the 2-week delay in securing the warrant” and provide an “explanation for the delay.” *Id.*

89. Mr. Pineda-Landaverde’s counsel also demanded that any warrant be “tailored to

only images/video of the incident.” *Id.*

90. However, the next day on November 1, 2019, the Department filed and secured an overbroad search warrant, requesting access to more than just the images and video of the incident. The warrant includes a search of “ownership information – including the phone number associated with the phone, billing address, and subscriber information – any and all photographs or video associated with the incident, and any and all social media accounts or applications, any and all text, SMS messages, or social media messages available on the phone relating to the incident, the locations it had been on or about 10/17/2019, and any and all incoming and outgoing call logs and voice messages, photographs or video, any location data – GPS, tower site, or otherwise – and any other digital information related to its location.” See Exhibit A, WARRANT at 02, 04, 07 ¶¶ 18.

91. This warrant was secured *ex parte*, without Mr. Pineda-Landaverde’s counsel having any opportunity to respond or contest it.

92. On November 1, 2019, the Department commenced its search of the phone and located and extracted a video of the incident as well as several photos.

93. On November 2, 2019, Mr. Pineda-Landaverde’s counsel wrote another email to the Department objecting to the warrant application, including to its scope. Exhibit C, Nov. 2, 2019 Email.

94. The Department continued to hold the phone and not return it to Mr. Pineda-Landaverde. On November 14, 2019, the State of New Hampshire—through Attorney Gregory T. Muller of the Manchester’s Solicitor’s Office—filed a Motion to Return Property Pursuant to RSA 595-A:6 with the 9<sup>th</sup> Circuit-District Division in Manchester. Exhibit D, State’s Nov. 14, 2019 Motion to Return Property. The Manchester Circuit Court scheduled a hearing for December 11, 2019. Exhibit E, Nov. 21, 2019 Court Order.

95. On December 11, 2019, the parties in the respective criminal cases reached agreement concerning the return of Mr. Pineda-Landaverde's phone, and the Circuit Court approved of the agreement. *See Exhibit F*, Dec. 11, 2019 Agreement.

96. On December 13, 2019, the phone was released by the Manchester Police Department to Mr. Pineda-Landaverde.

97. As explained below, the actions of the Department's officers in this case constituted an outrageous violation of Mr. Pineda-Landaverde's constitutional rights. They assaulted and seized one of their citizens, and deprived him of his property without a warrant.

98. As a direct a proximate cause of the Defendants' unlawful conduct, Mr. Pineda-Landaverde has suffered damages, including the loss of use of his phone. Like most people, Mr. Pineda-Landaverde uses his phone for everything, including taking pictures of special occasions and communicating with his family (including his disabled mother, Lillian, who needs to be in contact with her son if there is an emergency).<sup>2</sup> The Department's confiscation hindered this usage and disrupted Mr. Pineda-Landaverde's life.

99. Plaintiff is also entitled to punitive damages, as the actions of Defendants Barter, Pittman, and Mefford were motivated by evil motive or intent and/or involved reckless or callous indifference to the federally-protected rights of Plaintiff.

### **COUNT I**

#### **42 U.S.C. § 1983 – FOURTH AMENDMENT; UNREASONABLE SEIZURE OF PHONE (AGAINST CITY OF MANCHESTER -- UNCONSTITUTIONAL POLICY and FAILURE TO TRAIN) (AGSINST MATTHEW BARTER, JAMES PITTMAN, and CONNOR MEFFORD)**

100. All prior paragraphs are incorporated.

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<sup>2</sup> As the United States Supreme Court has explained, "cell phones and the services they provide are 'such a pervasive and insistent part of daily life' that carrying one is indispensable to participation in modern society." *Carpenter v. United States*, 138 S. Ct. 2206, 2220 (2018) (quoting *Riley v. United States*, 573 U.S. 373, 385 (2014)).

101. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.

102. The Fourth Amendment is applied to the states through the Fourteenth Amendment.

103. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional policies, and failure to train their law enforcement officers.

104. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

105. The right to be free from warrantless seizures of personal property, absent an applicable exception, is clearly established. *See United States v. Place*, 462 U.S. 696, 701 (1983) (“In the ordinary case, the Court has viewed a seizure of personal property as per se unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized.”).

106. The limited scope of the exigent circumstances exception was similarly clearly established as of October 17, 2019. *See United States v. Wilson*, 36 F.3d 205, 209 (1st Cir. 1994) (holding that the exigency exception requires “such a compelling necessity for immediate action as will not brook the delay of obtaining a warrant”) (quoting *United States v. Adams*, 621 F.2d 41, 44 (1st Cir. 1980)); *Bilida v. McCleod*, 211 F.3d 166, 171 (1st Cir. 2000) (exigent circumstances are typically exemplified by “hot pursuit of a felon, imminent destruction or removal of evidence, the threatened escape by a suspect, or imminent threat to the life or safety of the public [or] police officers”) (emphasis added); *see also Hegarty v. Somerset County*, 53 F.3d 1367, 1374 (1st Cir. 1995); *Kentucky v. King*, 563 U.S. 452, 460 (2011) (“One well-recognized exception [to the warrant requirement] applies when the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth

Amendment.” (internal quotation marks omitted)).

107. The exigent circumstance likely argued by the Defendants in this case concerns the “imminent destruction of evidence.”

108. The Police Officer Defendants violated Mr. Pined-Landaverde’s clearly established rights under the Fourth Amendment when they seized and retained, without a warrant or consent, Mr. Pineda-Landaverde’s iPhone SE smartphone after he recorded the Department’s officers engaging multiple individuals during a fight at the 7-Eleven at 85 South Main Street in Manchester on October 17, 2019.

109. The Police Officer Defendants’ seizure of Mr. Pineda-Landaverde’s phone clearly is not justified by the exigency exception to the warrant requirement, including the exigency of evidence being imminently destroyed. The Police Officer Defendants could not have reasonably believed that the recording would be imminently destroyed sufficient to justify the exigency exception to warrant requirement.

110. As the Eleventh Circuit Court of Appeals held in a nearly identical case denying qualified immunity:

Exigent circumstances sufficient to seize evidence may be found when the evidence is in the possession of a person it could implicate in a crime or someone close to them. But finding that exigent circumstances exist in order to seize property from a bystander is a different thing entirely. For obvious reasons, evidence is more likely to be destroyed when it is in the possession of a person who may be convicted by it. [The plaintiff], however, had no involvement with the car accident that he had photographed. He was merely a curious passerby.

*See Crocker v. Beatty*, 886 F.3d 1132, 1136 (11th Cir. 2018).

111. The Eleventh Circuit Court of Appeals further rejected the notion that the “nature of cell phones” leads “to easily-destroyed evidence that disappears quickly,” thus creating exigent circumstances. *Id.* at 1137. The Court explained:



Taken to its logical conclusion, [the officer's] interpretation would permit police officers to seize now-ubiquitous cell phones from any person, in any place, at any time, so long as the phone contains photographs or videos that could serve as evidence of a crime—simply because the “nature” of the device used to capture that evidence might result in it being lost. Not so. The Fourth Amendment draws a line well short of this awesome breadth of government power that no court, to our knowledge, has come close to recognizing. The Constitution requires [the officer's] argument to fail.

*Id.*

112. Defendant City of Manchester also has intentionally developed and implemented an unconstitutional policy whereby its officers are permitted to seize, without a warrant or consent, cellular phones and video cameras where the recording contains evidence of a crime based on an erroneous interpretation of the exigent circumstance exception to a warrant requirement.

113. The Police Officer Defendants' confiscation of Mr. Pineda-Landaverde was pursuant to a Department policy stating the following: “If [a] recording [of officers using a cellular phone or video camera] is being done during the commission of a crime and you believe that crime was recorded on the cellular phone/video camera, you are permitted to seize the cell phone/video camera as evidence to that crime. The justification for seizing these items exists under the exigent circumstance exception to a warrant; evidence is in imminent danger of destruction. Once seized, a search warrant, or voluntary consent, will be required to retrieve the recording. However, if we have our own recording of the incident, such as a video and audio recording of an activist demonstration where a crime is committed, there may be no need to seize any outside camera.” See Exhibit G, Apr. 5, 2012 MPD Email (April 2012 MPD Training Memo, with section “Seizing Phones/Cameras” at page 4, attached to this email) (emphasis added); see also Exhibit H, Aug. 28, 2012 MPD Email (July 2011 MPD Training Bulleting attached to this email; stating that if the department has its own video and audio recording where a crime is committed, “using this exception to a warrant would be unjustifiable unless you can articulate your seizure of such de-”

(the text cuts off)).

114. As in *Crocker*, the Manchester Police Department's policy violates the Fourth Amendment on its face because it adopts an overbroad *per se* rule of exigency that (i) assumes that all video or photographs in a cell phone or video camera containing evidence of a crime are subject to deletion (unless officers can obtain the video/photographs elsewhere), (ii) allows for the warrantless seizure of bystander video, and (iii) applies to recordings of any potential offense, no matter how minor.

115. Manchester city officials have known or should have known about the existence of this policy.

116. The Police Officer Defendants, acting under color of state law and pursuant to this unlawful policy, violated Mr. Pineda-Landaverde's clearly established Fourth Amendment right to be free from unreasonable seizures when they seized and retained, without a warrant or consent, Mr. Pineda-Landaverde's iPhone SE smartphone.

117. This unlawful policy caused the violation of Mr. Pineda-Landaverde's Fourth Amendment rights.

118. The City of Manchester acted with deliberate indifference and/or willful blindness to the strong likelihood that unconstitutional conduct will result from the implementation of this policy.

119. Separately, and as an independent basis of liability, the City of Manchester failed to train its police officers that, in the context of recordings made on cellular phones or video cameras, the "imminent destruction of evidence" exigency exception to the Fourth Amendment's warrant requirement cannot be applied on a *per se* basis that (i) assumes that all video or photographs in a cell phone or video camera containing evidence of a crime are subject to deletion,

(ii) allows for the warrantless seizure of bystander video, and (iii) applies to recordings of any potential offense, no matter how minor. This failure to train caused Barter, Pittman, and Mefford to be in a position to violate Mr. Pineda-Landaverde's Fourth Amendment right to be free from unreasonable seizures when they seized and retained Mr. Pineda-Landaverde's phone without a warrant or consent, and without any reasonable belief that the recording would be imminently destroyed.

120. The City of Manchester knew or should have known that such training was inadequate and would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies.

121. The City of Manchester's failure to train its officers directly resulted in the violation of Mr. Pineda-Landaverde's Fourth Amendment rights by Barter, Pittman, and Mefford when they seized and retained Mr. Pineda-Landaverde's phone without a warrant or consent, and without any reasonable belief that the recording would be imminently destroyed.

122. Accordingly, the Defendants City of Manchester, Barter, Pittman, and Mefford violated Mr. Pineda-Landaverde's clearly established rights under the Fourth Amendment of the United States Constitution to be free from unreasonable seizures.

123. Plaintiff is entitled to punitive damages, as the actions of Defendants Barter, Pittman, and Mefford were motivated by evil motive or intent and/or involved reckless or callous indifference to the Fourth Amendment rights of the Plaintiff.

## **COUNT II**

### **42 U.S.C. § 1983 – FIRST AMENDMENT RIGHT TO RECORD VIOLATION (AGAINST CITY OF MANCHESTER -- UNCONSTITUTIONAL POLICY and FAILURE TO TRAIN) (AGSINST MATTHEW BARTER, JAMES PITTMAN, and CONNOR MEFFORD)**

124. All prior paragraphs are incorporated.

125. The First Amendment to the United States Constitution prohibits abridgment of freedom of speech.

126. The First Amendment is applied to the states through the Fourteenth Amendment.

127. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is liable at law and in equity.

128. Under the First Amendment, there is a clearly established right by a member of the public to video and/or audio record law enforcement officers in a public place when the officers are acting in the course of their official duties, provided that the recording does not interfere with the officer's performance of those duties. *See Glik v. Cunniffe*, 655 F.3d 78, 83 (1st Cir. 2011) (“Our recognition that the First Amendment protects the filming of government officials in public spaces accords with the decisions of numerous circuit and district courts.”); *Gericke v. Begin*, 753 F.3d 1, 7, 8 (1st Cir. 2014) (“Recognizing that it is firmly established that the First Amendment protects a range of conduct surrounding the gathering and dissemination of information, we held that the Constitution protects the right of individuals to videotape police officers performing their duties in public . . . . However, a police order that is specifically directed at the First Amendment right to film police performing their duties in public may be constitutionally imposed only if the officer can reasonably conclude that the filming itself is interfering, or is about to interfere, with his duties.”) (internal quotations omitted).

129. This right to record includes not just the ability to record, but also the ability to retain and use the recording owned and created by the recorder. Indeed, gathering and retaining information about government officials in a form that can be readily disseminated “serves a cardinal First Amendment interest in protecting and promoting ‘the free discussion of governmental affairs.’” *Glik*, 655 F.3d at 82 (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

Protecting the right of information gathering “not only aids in the uncovering of abuses, but also may have a salutary effect on the functioning of government more generally.” *Id.* at 82-83 (citations omitted). To allow automatic warrantless seizures of bystanders’ cell phones containing recordings of police interactions without any evidence of exigency would deeply chill the First Amendment right to record, as the public simply would not exercise this constitutional right out of fear that doing so would authorize law enforcement to seize one’s phone and hold it indefinitely.

130. The Manchester Police Department has notified its officers—including the Police Officer Defendants—of the *Glik* decision. See Exhibit I, MPD Aug. 31, 2011 MPD Email.

131. Following up on the *Glik* decision, on March 22, 2012, the New Hampshire Attorney General distributed a memorandum (“AG Memorandum”) titled “Audio Recording Law Enforcement Officers” to all law enforcement agencies in New Hampshire, including the Manchester Police Department.

132. The AG Memorandum stated that *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011) held that “members of the public have a right, under the first amendment to the federal constitution, to video and audio record law enforcement officers in a public place when the officers are acting in the course of their official duties, provided that the recording is done peacefully and does not interfere with the officers’ performance of their duties.” *Id.*

133. The AG Memorandum repeated the part of the *Glik* opinion stating the following: “[A] citizen’s right to film government officials, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.” *Id.*

134. The AG Memorandum stated that the *Glik* opinion “makes clear that a person has a First amendment right to both video and audio record police officers engaged in official duties in public places such as . . . on a public street or sidewalk, provided it does not interfere with the

officer's performance of those duties." *Id.*

135. The Department has made its officers—including Police Officer Defendants Barter, Pittman, and Mefford—aware of the AG Memorandum. See Exhibit G, Apr. 5, 2012 MPD Email (Mar. 22, 2012 A.G. Memo. attached to this email).

136. Police Officer Defendants Barter, Pittman, and Mefford knew or should have known about the AG Memorandum and the *Glik/Gericke* decisions.

137. The Police Officer Defendants violated Mr. Pineda-Landaverde's clearly established rights under the First Amendment when they, on October 17, 2019, confiscated Mr. Pineda-Landaverde's phone for recording the Department's officers and seized Mr. Pineda-Landaverde until he relinquished his phone.

138. Defendant City of Manchester also has intentionally developed and implemented an unconstitutional policy whereby its officers are permitted to seize, without a warrant or consent, cellular phones and video cameras where the recording contains evidence of a crime based on the exigent circumstance exception to a warrant requirement, even where the recording was of police officers performing their duties in a public place without interference.

139. The Police Officer Defendants' confiscation of Mr. Pineda-Landaverde was pursuant to a Department policy stating the following: "If [a] recording [of officers using a cellular phone or video camera] is being done during the commission of a crime and you believe that crime was recorded on the cellular phone/video camera, you are permitted to seize the cell phone/video camera as evidence to that crime. The justification for seizing these items exists under the exigent circumstance exception to a warrant; evidence is in imminent danger of destruction. Once seized, a search warrant, or voluntary consent, will be required to retrieve the recording. However, if we have our own recording of the incident, such as a video and audio recording of an activist

demonstration where a crime is committed, there may be no need to seize any outside camera.” See *Exhibit G*, Apr. 5, 2012 MPD Email (April 2012 MPD Training Memo, with section “Seizing Phones/Cameras” at page 4, attached to this email) (emphasis added); see also *Exhibit H*, Aug. 28, 2012 MPD Email (July 2011 MPD Training Bulleting attached to this email; stating that if the department has its own video and audio recording where a crime is committed, “using this exception to a warrant would be unjustifiable unless you can articulate your seizure of such de-” (the text cuts off)).

140. Manchester city officials have known or should have known about the existence of this policy. This is not the first time Manchester police officers have been sued for violating the right to record the police. See *Valentin v. City of Manchester*, No. 1:15-cv-00235-PB (D.N.H. filed June 19, 2015; settled for \$275,000). Nor is this the first time Manchester police officers have confiscated, without a warrant, the phones of individuals recording the police. See *Exhibit I*, MPD Aug. 31, 2011 MPD Email (stating that the Department seized “video cameras for evidentiary value during the recent chalking protest at HQ”); Garret Ean, “Mass Arrests and Camera Seizures at Manchester PD Demonstration,” June 4, 2011 (noting that police began confiscating cameras), available at <https://freeconcord.wordpress.com/2011/06/05/mass-arrests-at-manchester-pd-demonstration/>.

141. The Police Officer Defendants, acting under color of state law and pursuant to this unlawful policy, violated Mr. Pineda-Landaverde’s clearly established First Amendment right when they, on October 17, 2019, confiscated Mr. Pineda-Landaverde’s phone for recording the Department’s officers and seized Mr. Pineda-Landaverde until he relinquished his phone.

142. This unlawful policy caused the violation of Mr. Pineda-Landaverde’s First Amendment rights.

143. The City of Manchester acted with deliberate indifference and/or willful blindness to the strong likelihood that unconstitutional conduct will result from the implementation of this policy.

144. Separately, and as an independent basis of liability, the City of Manchester failed to train its police officers that recordings of police officers performing their duties in a public place should not be seized without a warrant or consent.

145. The City of Manchester knew or should have known that such training was inadequate and would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies.

146. The City of Manchester's failure to train its officers directly resulted in the violation of Mr. Pineda-Landaverde's First Amendment rights by Barter, Pittman, and Mefford when they seized and retained Mr. Pineda-Landaverde's phone and its recording without a warrant or consent.

147. Accordingly, the Defendants City of Manchester, Barter, Pittman, and Mefford violated Mr. Pineda-Landaverde's clearly established rights under the First Amendment of the United States Constitution.

148. Plaintiff is entitled to punitive damages, as the actions of Defendants Barter, Pittman, and Mefford were motivated by evil motive or intent and/or involved reckless or callous indifference to the First Amendment rights of the Plaintiff.

### **COUNT III**

#### **42 U.S.C. § 1983 – FOURTH AMENDMENT UNREASONABLE SEIZURE OF PERSON (AGAINST MATTHEW BARTER, JAMES PITTMAN, and CONNOR MEFFORD)**

149. All prior paragraphs are incorporated.

150. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.



151. The Fourth Amendment is applied to the states through the Fourteenth Amendment.

152. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is liable at law and in equity.

153. It is clearly established under *Terry v. Ohio*, 392 U.S. 1 (1968), that a seizure violates the Fourth Amendment where there is no “reasonable and articulable suspicion” that the person has or is engaging in criminal activity.

154. Here, Mr. Pineda-Landaverde was seized, as he was not free to leave with his phone. This seizure is especially obvious given (i) Sergeant Barter’s statement that he would arrest Mr. Pineda-Landaverde if he did not relinquish his phone, (ii) the Police Officers Defendants’ ultimate confiscation of the phone, and (iii) and the Defendants’ actions in surrounding and assaulting Mr. Pineda-Landaverde. A reasonable person would not have believed that they were free to leave in such circumstances. Indeed, the Defendants put Mr. Pineda-Landaverde in a position where he was forced to choose between his rights. Here, he could retain possession of his property or he could remain free from arrest, but he could not do both.

155. Police Officer Defendants Barter, Pittman, and Mefford unlawfully seized Mr. Pineda-Landaverde without any probable cause or reasonable suspicion to believe that he had engaged in criminal activity.

156. Accordingly, the Police Officer Defendants Barter, Pittman, and Mefford violated Mr. Pineda-Landaverde’s rights under the Fourth Amendment of the United States Constitution to be free from unreasonable seizures.

157. Plaintiff is entitled to punitive damages, as the actions of Defendants Barter, Pittman, and Mefford were motivated by evil motive or intent and/or involved reckless or callous indifference to the Fourth Amendment rights of the Plaintiff.

**COUNT IV**

**42 U.S.C. § 1983 – FOURTH AMENDMENT FAILURE TO TIMELY SECURE A  
WARRANT  
(AGAINST CITY OF MANCHESTER -- UNCONSTITUTIONAL PRACTICE and  
FAILURE TO TRAIN)  
(AGAINST MATTHEW BARTER and CONNOR MEFFORD)**

158. All prior paragraphs are incorporated.

159. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.

160. The Fourth Amendment is applied to the states through the Fourteenth Amendment.

161. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional practices, and failure to train their law enforcement officers.

162. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

163. The Fourth Amendment clearly requires that any delay between the seizure of a device without a warrant and the filing of a search warrant application be reasonable. *See Commonwealth v. White*, 59 N.E.3d 369, 378-80 (Mass. 2016). Once a warrantless seizure has been executed, the police “must make it a priority to secure a search warrant that complies with the Fourth Amendment. This will entail diligent work to present a warrant application to the judicial officer at the earliest reasonable time.” *See United States v. Burgard*, 675 F.3d 1029, 1035 (7th Cir.), *cert. denied*, 133 S. Ct. 183 (2012). If the police fail to do so, the seizure, even if “reasonable at its inception because based upon probable cause,” “may become unreasonable as a result of its duration.” *Segura v. United States*, 468 U.S. 796, 812 (1984).

164. Police Officer Defendants Barter and Mefford violated Mr. Pineda-Landaverde’s clearly established rights under the Fourth Amendment when they unreasonably delayed seeking a warrant to search the phone until November 1, 2019—15 days after the warrantless seizure on

October 17, 2019.

165. The Department only secured a search warrant on November 1, 2019 because, three days earlier on October 29, 2019, Mr. Pineda-Landaverde's counsel wrote to the Department demanding the immediate return of the phone.

166. This 15-day delay was especially unreasonable given Mr. Pineda-Landaverde's repeated demands for his phone and the apparent fact that the Department only attempted to secure a warrant after the Department was contacted by Mr. Pined-Landaverde's counsel.

167. Neither the Department nor its officers have given a reasonable explanation for this delay. *See United States v. Mitchell*, 565 F.3d 1347, 1350 (11th Cir. 2009) (21-day delay unreasonable, in part, because the Department "didn't see any urgency" and made no efforts to secure a warrant during the delay); *United States v. Dass*, 849 F.2d 414, 414-15 (9th Cir. 1988) (7 to 23-day delay violated Fourth Amendment); *United States v. Pratt*, 915 F.3d 266, 272 (4th Cir. 2019) ("the government has no persuasive justification for the delay in obtaining a search warrant for Pratt's phone"; one month delay unconstitutional).

168. Defendant City of Manchester also has intentionally developed and implemented a practice and custom of, after seizing a cellular phone or video camera without a warrant, unreasonably delaying the securing of a search warrant.

169. Manchester city officials have known or should have known about the existence of this practice. Indeed, this is not the first time the Department has confiscated a phone and unconstitutionally delayed seeking a warrant. *See Valentin v. City of Manchester*, No. 1:15-cv-00235-PB (D.N.H. Mar. 8, 2017 filing, Docket No. 66-1, at pp. 24-26) (128-day delay in obtaining a warrant for a confiscated phone; case settled for \$275,000).

170. Defendant Manchester police officers Barter and Mefford, acting under color of

state law and pursuant to this unlawful practice, violated Mr. Pineda-Landaverde's clearly established Fourth Amendment right to be free from unreasonable seizures when they unreasonably delayed securing a warrant to search the phone until November 1, 2019.

171. This unlawful practice caused the violation of Mr. Pineda-Landaverde's Fourth Amendment rights.

172. The City of Manchester acted with deliberate indifference and/or willful blindness to the strong likelihood that unconstitutional conduct will result from the implementation of this practice.

173. Separately, and as an independent basis of liability, the City of Manchester has failed to train its police officers about the Fourth Amendment requirement to not unreasonably delay the securing of a search warrant, especially when a cellular phone or video camera is seized without a warrant. This failure to train caused Barter and Mefford to be in a position to violate Mr. Pineda-Landaverde's Fourth Amendment rights when they unreasonably delayed securing a warrant to search the phone until November 1, 2019.

174. The City of Manchester knew or should have known that such training was inadequate and would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies.

175. The City of Manchester's failure to train its officers directly resulted in the violation of Mr. Pineda-Landaverde's Fourth Amendment rights by Barter and Mefford when they unreasonably delayed securing a warrant to search the phone until November 1, 2019.

176. Accordingly, the Defendants City of Manchester, Barter, and Mefford violated Mr. Pineda-Landaverde's clearly established rights under the Fourth Amendment of the United States Constitution to be free from unreasonable searches and seizures.

177. Plaintiff is entitled to punitive damages, as the actions of Defendants Barter and Mefford were motivated by evil motive or intent and/or involved reckless or callous indifference to the Fourth Amendment rights of the Plaintiff.

**COUNT V**  
**42 U.S.C. § 1983 – FOURTH AMENDMENT – SEEKING AND SECURING AN  
OVERBROAD SEARCH WARRANT  
(AGAINST CITY OF MANCHESTER -- UNCONSTITUTIONAL PRACTICE and  
FAILURE TO TRAIN)**

178. All prior paragraphs are incorporated.

179. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.

180. The Fourth Amendment is applied to the states through the Fourteenth Amendment.

181. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional customs, practices, and policies, and failure to train their law enforcement officers.

182. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

183. Under the Fourth Amendment, the description of the things to be searched in a search warrant should be limited to the scope of the probable cause established in the warrant. *See In re Grand Jury Investigation Concerning Solid State Devices, Inc.*, 130 F.3d 853, 856-57 (9th Cir. 1997). “Probable cause exists when, given all the circumstances set forth in the affidavit[,] . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *United States v. Crespo-Rios*, 645 F.3d 37, 42 (1st Cir. 2011) (alteration in original) (internal quotation marks omitted).

184. On November 1, 2019, Manchester Detective Justin Mangum violated Mr. Pined-

Landaverde’s rights under the Fourth Amendment when he sought and obtained a search warrant that was not limited to the scope of the probable cause established in the warrant.

185. On the face of the warrant, the search should have been limited to video taken of the incident taken by Mr. Pineda-Landaverde. *See Exhibit A*, WARRANT at 06, ¶¶ 9-10. Indeed, on October 31, 2019, Mr. Pineda-Landaverde’s counsel told the Department that any warrant must be “tailored to only images/video of the incident.” *See id.* at 11.

186. However, the warrant goes far beyond the video, and instead authorizes a search of other areas of the phone. Using all-inclusive language, it authorizes the broad search of “ownership information – including the phone number associated with the phone, billing address, and subscriber information – any and all photographs or video associated with the incident, and any and all social media accounts or applications, any and all text, SMS messages, or social media messages available on the phone relating to the incident, the locations it had been on or about 10/17/2019, and any and all incoming and outgoing call logs and voice messages, photographs or videos, any location data – GPS, tower site, or otherwise – and any other digital information related to its location.” *See id.* at 04, 07, ¶¶ 18.

187. There was no basis to believe that there was a “fair probability that contraband or evidence of a crime” would be found in these other items or locations beyond the video.

188. Defendant City of Manchester has intentionally developed and implemented a practice of seeking and obtaining overbroad warrants to search phones and computers that are not limited to the scope of the probable cause established in the warrant. This all-inclusive language is boilerplate and regularly used by the Department as part of an unconstitutional practice of seeking overbroad warrants. *See Valentin v. City of Manchester*, No. 1:15-cv-00235-PB (D.N.H. Mar. 8, 2017 filing, Docket No. 66-1, at pp. 7-8, ¶ 17) (where citizen recorded a police officer

encounter, Department's warrant exceeded the recording and included, for example, "passwords," any "[o]ther electronically stored records," and "[s]tored images relating to any SIM cards"; case settled for \$275,000); Det. Scott Ardita August 24, 2017 Search Warrant of Cell Phone of alleged witness tampering victim (Manchester police department warrant seeking "evidence of the crime of Witness Tampering," including "all text, SMS, or social media messages, GPS locations during the day of the assault, incoming and outgoing call logs and voice messages, photographs or videos, and any other digital information related to Witness Tampering"; narrowed by Superior Court to only include specific communications with specific parties, as well as photographs and videos on a specific date).

189. Manchester city officials have known or should have known about the existence of this custom, practice, and/or policy.

190. Detective Mangum, acting under color of state law and pursuant to this unlawful practice, violated Mr. Pineda-Landaverde's Fourth Amendment right to be free from unreasonable seizures when he, on November 1, 2019, sought and obtained a search warrant that was not limited to the scope of the probable cause established in the warrant.

191. This unlawful practice caused the violation of Mr. Pineda-Landaverde's Fourth Amendment rights.

192. The City of Manchester acted with deliberate indifference and/or willful blindness to the strong likelihood that unconstitutional conduct will result from the implementation of this practice.

193. Separately, and as an independent basis of liability, the City of Manchester failed to train its police officers on how the description of the things to be searched in a search warrant should be limited to the scope of the probable cause established in the warrant, especially in the

context of cellular phones and computers. For example, search warrants should be limited to the specific files or images in which there is probable cause to believe that evidence of a crime exists. This failure to train caused Detective Mangum to be in a position to violate Mr. Pineda-Landaverde's Fourth Amendment right to be free from unreasonable seizures when he sought and obtained a search warrant that was not limited to the scope of the probable cause established in the warrant.

194. The City of Manchester knew or should have known that such training was inadequate and would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies.

195. The City of Manchester's failure to train its officers directly resulted in the violation of Mr. Pineda-Landaverde's Fourth Amendment rights by Detective Mangum when he sought and obtained a search warrant that was not limited to the scope of the probable cause established in the warrant.

196. Accordingly, the Defendant City of Manchester violated Mr. Pineda-Landaverde's rights under the Fourth Amendment of the United States Constitution to be free from unreasonable seizures.

### **DEMAND FOR JURY TRIAL**

Plaintiff Neil Pineda-Landaverde requests a trial by jury on all issues triable by jury.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff Neil Pineda-Landaverde respectfully requests this Court grant the following relief:

A. As to Counts I, II, III, IV, and V, declare that the actions taken by Defendants in (i) seizing, without a warrant, Mr. Pineda-Landaverde and his iPhone SE smartphone, (ii) delaying any effort to seek a warrant to search the phone until November 1, 2019 (15 days after the warrantless seizure on October 17, 2019), and (iii) seeking and obtaining a search warrant on



November 1, 2019 that was not limited to the scope of the probable cause established in the warrant each violated Plaintiff's rights under the Fourth and First Amendments;

- B. Monetary damages in an amount to be determined at trial;
- C. Punitive damages as to Counts I, II, III, and IV against Police Officer Defendants Barter, Pittman, and Mefford;
- D. Costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b);  
and
- E. Any other relief that is just or equitable.

Respectfully submitted,

NEIL PINEDA-LANDAVERDE,

By and through his attorneys affiliated with the  
American Civil Liberties Union of New Hampshire  
Foundation,

*/s/ Gilles R. Bissonnette* \_\_\_\_\_

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