# SUPPLEMENTAL MATERIALS

## Part III - Examples of How to Integrate DEI into the Core Law Curriculum by Subject Matter

# Chapter 9 - Civil Procedure DEI Course Planning Template

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF ALABAMA**
**SELMA DIVISION**

| | | |
|---|---|---|
| **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,** | ) | |
| **Plaintiff,** | ) | **CASE NO. 1:13-cv-0476-CB-M** |
| **v.** | ) | |
| | ) | **COMPLAINT** |
| **CATASTROPHE MANAGEMENT SOLLUTIONS** | ) | **JURY DEMAND** |
| **Defendant.** | ) | |

## NATURE OF THE ACTION

This is an action brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq*. ("Title VII"), and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race (black) and to provide appropriate relief to Chastity C. Jones who was adversely affected by the unlawful practices.

Specifically, Plaintiff U.S. Equal Employment Opportunity Commission alleges that Defendant Catastrophe Management Solutions ("Catastrophe") maintained a racially discriminatory policy of prohibiting employees from wearing dreadlocks and enforced the policy against Chastity C. Jones by withdrawing an offer of employment when she refused to comply with the policy.

## JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3)

of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful herein were committed within the jurisdiction of the United States District Court for the Southern District of Alabama, Selma Division.

## PARTIES

3. Plaintiff, U.S. Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3)of Title VII, 42 U.S.C. § 2000e-5 (f), (1) and (3).

4. At all relevant times, Defendant Catastrophe has continuously been doing business in the State of Alabama, in the City of Mobile and at all relevant times had at least fifteen (15) employees.

5. At all relevant times, Defendant Employer has continuously been and employer engaged in an industry affecting commerce within the meaning of 701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e-(b), (g) and (h).

## STATEMENT OF CLAIMS

6. More than 30 days prior to the institution of this lawsuit, Chastity C. Jones filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant Catastrophe. All conditions precedent to the filing of this lawsuit have been fulfilled.

7. Since on or about May 2010, Defendant Catastrophe has engaged in unlawful employment practices at its Mobile, Alabama location in violation of 42 U.S.C. § 2000e-2(a)(1)

and 42 U.S.C. § 2000e-2(m) by implementing a policy that prohibited employees from wearing dreadlocks and enforcing that policy against Chastity C. Jones.

8. Defendant's policy states as follows:

> "All personnel are expected to be dressed and groomed in a manner that projects a professional and businesslike image while adhering to company and industry standards and/or guidelines…hairstyle should reflect a business/professional image. No excessive hairstyles or unusual colors are acceptable…"

9. Defendant interpreted its policy to prohibit dreadlocks.

10. Defendant conditioned the employment of Chastity C. Jones on her cutting off her dreadlocks, and then withdrew the offer of employment when she declined.

11. Defendant's application of its policy to prohibit dreadlocks constitutes an employment practice that discriminates on the basis of race, black.

12. The effect of the practices complained of above has been to deprive Chastity C. Jones of equal employment opportunities and to otherwise adversely affect her status as an employee because of her race (black).

13. The unlawful employment practices complained of above were intentional.

14. The unlawful employment practices complained of above were done with malice or reckless indifference to the federally protected rights of Chastity C. Jones.

## PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Catastrophe Management Solutions, its owners, officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates against blacks, by subjecting them to disparate terms and conditions of employment.

B. Order Defendant Catastrophe Management Solutions to institute and carry out policies, practices, and programs which provide equal employment opportunities for all employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Chastity C. Jones, by providing appropriate back pay with pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement and/or front pay.

D. Order Defendant Catastrophe Management Solutions to pay Chastity C. Jones, punitive damages for its malicious and reckless conduct in an amount to be determined at trial.

E. Grant such further relief as the Court deems necessary and proper in the public interest.

F. Award the Commission its costs in this action.

**JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its complaint.

RESPECTFULLY SUBMITTED,

P. DAVID LOPEZ
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

C. EMANUEL SMITH
Regional Attorney
Mississippi Bar # 7473

JULIE BEAN
Supervisory Trial Attorney
D.C. Bar # 433292

Equal Employment Opportunity Commission
Birmingham District Office
Ridge Park Place, Suite 2000
1130 22nd Street South
Birmingham, AL 35205
(205) 212-2045

# Chapter 10 – Criminal Law DEI Course Planning Template

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

# GRAND JURY FELONY INDICTMENT

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: JARROD PETER AGEN

**DOB**: 11/17/1977
**SEX/RACE**: M/W

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 01/1/2015-01/1/2018

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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## INDICTMENT

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** PERJURY DURING AN INVESTIGATIVE SUBPOENA EXAMINATION

Did knowingly and willfully make a false statement or statements under oath during investigative subpoena interview testimony conducted on February 11, 2017, by a Special Assistant Attorney General pursuant to MCL 767A in the matter of the Flint Water Crisis; contrary to MCL 767A.9. [767A.9]

**FELONY:** 15 years

**I hereby certify that the foregoing indictment is a TRUE BILL.**

Grand Juror

DATE: 1/8/21

SG Flint/Indictment (Agen)

ORIGINAL

**STATE OF MICHIGAN**
**7th JUDICIAL CIRCUIT**

**GRAND JURY FELONY INDICTMENT**

**CASE NO:**
**20-113791-PZ**

**The People of the State of Michigan**

vs

**DEF: GERALD AMBROSE**

**DOB: 02/22/1944**
**SEX/RACE: M/W**

**Offense Information**
**Police Agency / Report No.**

**Date of Offense 10/1/2013-03/20/2014**

**Place of Offense Flint, MI**

**Complaining Witness**
GRAND JURY

## GRAND JURY INDICTMENT

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above named defendant:

**COUNT1:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during his tenure as the appointed Finance Director by allowing the City of Flint to incur debt in violation of the Home Rule City Act; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

DATE: 3/16/20

**I hereby certify that the foregoing indictment is a TRUE BILL.**

Grand Juror

ORIGINAL

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY FELONY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: GERALD AMBROSE

**DOB**: 02/22/1944
**SEX/RACE**: M/W

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 01/01/2013-4/30/2015

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during his tenure as the state-appointed Emergency Manager from January 2015 to April 2015 by rejecting opportunities to switch the City of Flint's drinking water source back to Detroit Water and Sewerage Department, when he had knowledge of ongoing quality issues and health risks associated with Flint's drinking water as well as local opposition to continued use of the Flint River; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

**COUNT 2:** MISCONDUCT IN OFFICE



ORIGINAL

Did commit misconduct in office, an indictable offense at common law, during his tenure as the state-appointed Emergency Manager by directing a private consulting company hired by the City of Flint in early 2015 to address water quality and safety concerns to not evaluate or consider switching back to DWSD supplied water when he had knowledge of ongoing quality issues and health risks associated with Flint's drinking water as well as local opposition to continued use of the Flint River; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

**COUNT 3**: MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during his tenure as the state-appointed Emergency Manager by, immediately prior to his resignation as Emergency Manager in April 2015, when he had knowledge of continuing quality issues and health risks associated with Flint's drinking water as well as local opposition to continued use of the Flint River, committing the City of Flint to a $7 million emergency loan to address its ongoing deficit that impeded Flint's ability to switchback to Detroit Water and Sewerage Department for its drinking water source; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

**I hereby certify that the foregoing indictment is a TRUE BILL.**

Grand Juror

DATE: 9/1/20

SG Flint/Indictment (Ambrose)

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY FELONY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: RICHARD LOUIS BAIRD

**DOB**: 8/24/1956
**SEX/RACE**: M/W

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 12/1/2015-01/1/2019

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** PERJURY DURING AN INVESTIGATIVE SUBPOENA EXAMINATION

Did knowingly and willfully make a false statement or statements under oath during investigative subpoena interview testimony conducted on March 1, 2017, by a Special Assistant Attorney General pursuant to MCL 767A in the matter of the Flint Water Crisis; contrary to MCL 767A.9. [767A.9]

**FELONY:** 15 years

**COUNT 2**: MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during his tenure as a public officer and appointed member of the Executive Office of Governor



ORIGINAL

Snyder, by improperly using state personnel and resources; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

**COUNT 3**: OBSTRUCTION OF JUSTICE

Did commit obstruction of justice, an indictable offense at common law, during his tenure as a public officer and appointed member of the Executive Office of Governor Snyder by attempting to influence and/or interfere with ongoing legal proceedings arising from the Flint Water Crisis; contrary to MCL 750.505C. [750.505C]

**FELONY:** 5 years and/or $10,000.00

**COUNT 4:** EXTORTION

Did knowingly and willfully communicate a threat to cause harm to the reputation and/or employment of a leader of the state-appointed Flint Area Community Health and Environmental Partnership ("FACHEP") with the intent to coerce him to act against his will during FACHEP's investigation into the source of the Legionnaires' Disease outbreak in Genesee County, Michigan; contrary to MCL 750.213 [750.213]

**FELONY:** 20 years and/or $10,000.00

**I hereby certify that the foregoing indictment is a TRUE BILL.**

Grand Juror

DATE: 1/8/21

SG Flint/Indictment (Baird)

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: HOWARD CROFT

**DOB**: 06/24/1965
**SEX/RACE**: M/B

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 10/01/2013-10/01/2015

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** WILLFUL NEGLECT OF DUTY

Did willfully neglect to communicate information, and/or risks of health effects, associated with the Flint Water Supply System, thereby failing to ensure the safety and quality of the Flint Water Supply System for its residents in violation of his duties as the Emergency Manager appointed Director of Department of Public Works for the City of Flint; contrary to MCL 750.478. [750.478]

**MISDEMEANOR:** Not more than 1 year and/or fine of not more than $1,000.00

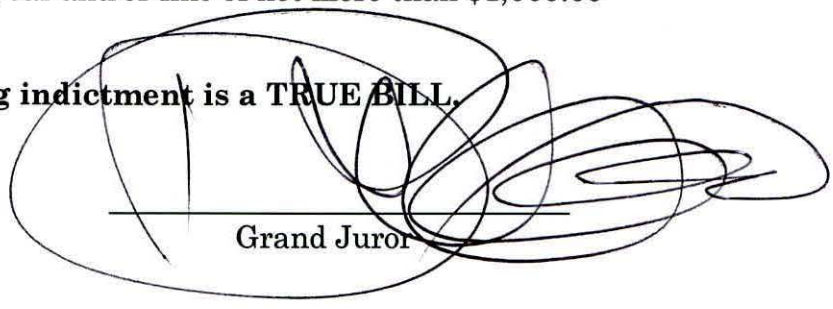
**COUNT 2:** WILLFUL NEGLECT OF DUTY

Did willfully neglect to pursue, and/or communicate, corrosion concerns in the Flint Water Supply System, thereby failing to ensure the safety and quality of the Flint Water Supply System for its residents in violation of his duties as the Emergency

Manager appointed Director of Department of Public Works for the City of Flint; contrary to MCL 750.478. [750.478]

**MISDEMEANOR:** Not more than 1 year and/or fine of not more than $1,000.00

**I hereby certify that the foregoing indictment is a TRUE BILL.**



Grand Juror

DATE: 1/8/21

SG Flint/Indictment(Croft)

| STATE OF MICHIGAN<br>7th JUDICIAL CIRCUIT | GRAND JURY FELONY INDICTMENT | CASE NO:<br>20-113791-PZ |
|---|---|---|

**The People of the State of Michigan**

vs

**DEF: DARNELL EARLEY**

**DOB: 11/01/1951**
**SEX/RACE: M/B**

**Offense Information**
**Police Agency / Report No.**

**Date of Offense 10/1/2013-03/20/2014**

**Place of Offense Flint, MI**

**Complaining Witness**
GRAND JURY

## GRAND JURY INDICTMENT

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above named defendant:

**COUNT1:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during his tenure as state-appointed Emergency Manager by allowing the City of Flint to incur debt in violation of the Home Rule City Act; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

DATE: 3/16/20

**I hereby certify that the foregoing indictment is a TRUE BILL.**

Grand Juror

ORIGINAL

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY FELONY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: DARNELL EARLEY

**DOB**: 11/01/1951
**SEX/RACE**: M/B

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 10/01/2013-01/20/2015

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during his tenure as state-appointed Emergency Manager by disseminating misleading information on or about January 2, 2015, about the City of Flint's drinking water, while refusing to switch Flint's drinking water source back to the Detroit Water and Sewerage Department, when he had knowledge of ongoing quality issues and health risks associated with Flint's drinking water; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

**COUNT 2:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during his tenure as state-appointed Emergency Manager by disseminating misleading information on or about January 9, 2015, about the City of Flint's drinking water, while refusing to switch Flint's drinking water source back to the Detroit Water and Sewerage Department, when he had knowledge of ongoing quality issues and health risks associated with Flint's drinking water; contrary to MCL 750.505C. [750.505-C]

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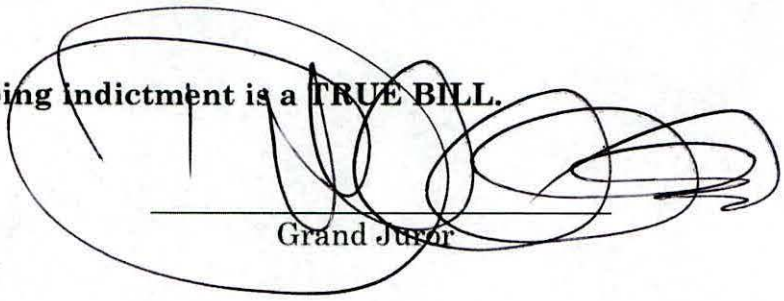
**FELONY:** 5 years and/or $10,000.00

**I hereby certify that the foregoing indictment is a TRUE BILL.**



Grand Juror

DATE: 9/1/20

SG Flint/Indictment (Earley)

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY FELONY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: NICOLAS LYON

**DOB**: 11/23/1968
**SEX/RACE**: M/W

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 01/28/2015-01/13/2016

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** INVOLUNTARY MANSLAUGHTER

Did cause the death of John Snyder on June 30, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 2:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Debra Kidd on August 2, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the



ORIGINAL

citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 3:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Brian McHugh on July 5, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 4:** INVOLUNTARY MANSLAUGHTER

Did cause the death of DuWayne Nelson on August 7, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 5:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Nelda Hunt on July 22, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 6:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Peter Derscha on August 17, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 7:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Thomas Mulcahy on August 22, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of

that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 8:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Arthur Percy on August 31, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 9:** INVOLUNTARY MANSLAUGHTER

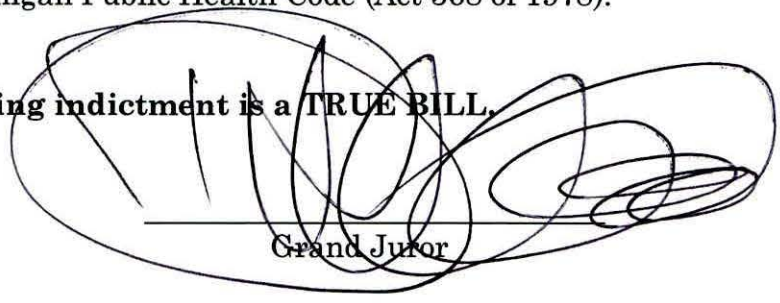
Did cause the death of Patricia Schaffer on July 23, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 10:** WILLFUL NEGLECT OF DUTY

As Director of the Michigan Department of Health and Human Services, a public officer, did willfully neglect his mandatory legal duty to protect the health of citizens of Michigan under the Michigan Public Health Code (Act 368 of 1978).

**I hereby certify that the foregoing indictment is a TRUE BILL.**



Grand Juror

DATE: 1/8/21

SG Flint/Indictment (Lyon) 12.29.20

ORIGINAL

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY FELONY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: NANCY PEELER

**DOB**: 07/21/1962
**SEX/RACE**: F/W

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 7/23/2015-10/02/2015

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during her tenure as Manager of the Early Childhood Health Section at the Michigan Department of Health and Human Services on July 28, 2015, by concealing the results of an epidemiological analysis concerning elevated blood lead levels of children in the City of Flint; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

**COUNT 2:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, during her tenure as Manager of the Early Childhood Health Section at the Michigan Department of Health and Human Services on September 23, 2015, by

misrepresenting information concerning elevated blood lead levels of children in the City of Flint; contrary to MCL 750.505C. [750.505-C]

**FELONY:** 5 years and/or $10,000.00

**COUNT 3**: WILLFUL NEGLECT OF DUTY

Did commit willful neglect of duty during her tenure as Manager of the Early Childhood Health Section at the Michigan Department of Health and Human Services between July and September 2015 by failing to act upon indications of elevated blood lead levels of children in the City of Flint; contrary to MCL 750.478. [750.478]

**MISDEMEANOR:** 1 year and/or $1,000.00

**I hereby certify that the foregoing indictment is a TRUE BILL.**

Grand Juror

DATE: 11/24/20

SG Flint/Indictment(Peeler)

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: RICHARD DALE SNYDER

**DOB**: 8/19/1958
**SEX/RACE**: M/W

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 04/25/2014-12/31/2018

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

---

**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** WILLFUL NEGLECT OF DUTY

As Governor of the State of Michigan, a public officer, did willfully neglect his mandatory legal duty under Article V, section 8 and 10, of the Michigan Constitution, by failing to inquire into the performance, condition and administration of the public offices and officers that he appointed and was required to supervise; contrary to MCL 750.478.

**MISDEMEANOR:** 1 year and/or $1,000.00

**COUNT 2:** WILLFUL NEGLECT OF DUTY

As Governor of the State of Michigan, a public officer, did willfully neglect his mandatory legal duty to protect citizens of this state against disaster and/or emergency under Public Act 390 of 1976 (Emergency Management Act) by failing to declare a state of emergency and/or disaster when the Governor had notice of a threat of a disaster and/or emergency in the City of Flint; contrary to MCL 750.478.

**MISDEMEANOR:** 1 year and/or $1,000.00

**I hereby certify that the foregoing indictment is a TRUE BILL.**

Grand Juror

DATE: 1/8/21

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

**GRAND JURY FELONY INDICTMENT**

PEOPLE OF THE STATE OF MICHIGAN,

v

**DEF**: EDEN WELLS

**DOB**: 01/10/1963
**SEX/RACE**: F/W

CONFIDENTIAL/Non-Public
File No. 2020-113791-PZ

**Offense Information**
Police Agency/Report No.

**Date of Offense**: 01/01/2015-03/03/2017

**Place of Offense**: Flint, MI

**Complaining Witness**:
GRAND JURY

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**INDICTMENT**

THE GRAND JURY OF THE COUNTY OF GENESEE PRESENTS THAT:

On or about the above date in County of GENESEE, State of MICHIGAN, the above-named defendant:

**COUNT 1:** INVOLUNTARY MANSLAUGHTER

Did cause the death of John Snyder on June 30, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 2:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Debra Kidd on August 2, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the



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citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 3:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Brian McHugh on July 5, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 4:** INVOLUNTARY MANSLAUGHTER

Did cause the death of DuWayne Nelson on August 7, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 5:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Nelda Hunt on July 22, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 6:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Peter Derscha on August 17, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 7:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Thomas Mulcahy on August 22, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of

that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 8:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Arthur Percy on August 31, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 9:** INVOLUNTARY MANSLAUGHTER

Did cause the death of Patricia Schaffer on July 23, 2015 by the grossly negligent failure to perform the following legal duty, to-wit: failing to protect the health of the citizens of Michigan and/or by the grossly negligent performance of that duty in accordance with the public health code; contrary to MCL 750.321. [750.321]

**FELONY:** 15 years and/or $7,500.00

**COUNT 10:** MISCONDUCT IN OFFICE

Did commit misconduct in office, an indictable offense at common law, as the Chief Medical Officer of the State of Michigan, by preventing and/or attempting to prevent the distribution of public health information about Legionnaires Disease in Genesee County to impacted communities and individuals; contrary to MCL 750.505C. [750.505C]

**FELONY**: 5 years and/or $10,000.00

**COUNT 11:** MISCONDUCT IN OFFICE

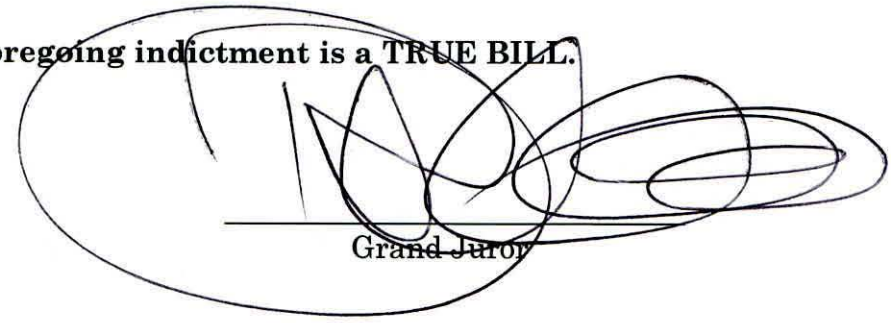
Did commit misconduct in office, an indictable offense at common law, as the Chief Medical Officer of the State of Michigan, by preventing and/or attempting to prevent state-appointed public health professionals from sharing information with the public and other public health officials about the Legionnaires' Disease outbreak in Genesee County; contrary to MCL 750.505C. [750.505C]

**FELONY**: 5 years and/or $10,000.00

**COUNT 12:** WILLFUL NEGLECT OF DUTY

As Chief Medical Officer of the State of Michigan, a public officer, did willfully neglect her mandatory legal duty to protect the health of the citizens of Michigan under the Michigan Public Health Code (Act 368 of 1978).

**I hereby certify that the foregoing indictment is a TRUE BILL.**



Grand Juror

DATE: 1/8/21

SG Flint/Indictment(Wells) 12.29.20

# Chapter 13 – Legal Analysis & Writing DEI Course Planning Template

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

December 28, 2001

**MEMORANDUM FOR WILLIAM J. HAYNES, II**
**GENERAL COUNSEL, DEPARTMENT OF DEFENSE**

**FROM:** Patrick F. Philbin
Deputy Assistant Attorney General

John C. Yoo
Deputy Assistant Attorney General

**RE:** *Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba*

This memorandum addresses the question whether a federal district court would properly have jurisdiction to entertain a petition for a writ of habeas corpus filed on behalf of an alien detained at the U.S. naval base at Guantanamo Bay, Cuba ("GBC"). This question has arisen because of proposals to detain al Qaeda and Taliban members at GBC pending possible trial by military commission. If a federal district court were to take jurisdiction over a habeas petition, it could review the constitutionality of the detention and the use of a military commission, the application of certain treaty provisions, and perhaps even the legal status of al Qaeda and Taliban members.

We conclude that the great weight of legal authority indicates that a federal district court could not properly exercise habeas jurisdiction over an alien detained at GBC. Nonetheless, we cannot say with absolute certainty that any such petition would be dismissed for lack of jurisdiction. A detainee could make a non-frivolous argument that jurisdiction does exist over aliens detained at GBC, and we have found no decisions that clearly foreclose the existence of habeas jurisdiction there. On the other hand, it does not appear that any federal court has allowed a habeas petition to proceed from GBC, either. While we believe that the correct answer is that federal courts lack jurisdiction over habeas petitions filed by alien detainees held outside the sovereign territory of the United States, there remains some litigation risk that a district court might reach the opposite result.

## I.

The basis for denying jurisdiction to entertain a habeas petition filed by an alien held at GBC rests on *Johnson v. Eisentrager*, 339 U.S. 763 (1950). In that case, the Supreme Court held that federal courts did not have authority to entertain an application for habeas relief filed by an enemy alien who had been seized and held at all relevant times outside the territory of the United

States. *See id.* at 768-78. *Eisentrager* involved several German soldiers who had continued to aid the Japanese in China after Germany had surrendered in April 1945. They were seized, tried by military commission in Nanking, China and subsequently imprisoned in Germany. From there, they filed an application for habeas corpus in the District Court for the District of Columbia, naming as respondents the Secretary of Defense, Secretary of the Army, and the Joint Chiefs of Staff. *Id.* at 766-67. The Court concluded that the federal courts were without power to grant habeas relief because the plaintiffs were beyond the territorial sovereignty of the United States and outside the territorial jurisdiction of any U.S. court. As the Court explained:

> We have pointed out that the privilege of litigation has been extended to aliens, whether friendly or enemy, only because permitting their presence in the country implied protection. No such basis can be invoked here, for these prisoners at no relevant time were within any territory over which the United States is sovereign, and the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the United States.

*Id.* at 777-78.[1]

The Court seemed to acknowledge tacitly that the habeas application could fall within the literal terms of the federal statute defining the power of federal courts to grant habeas corpus relief. Then, as now, the statute did not expressly restrict the jurisdiction of courts to issue the writ solely to situations where a prisoner was held within the territorial jurisdiction of the court. Instead, the statute states simply that courts may grant the writ "within their respective jurisdictions." *See* 28 U.S.C. § 2241 (1994) ("Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions."). It has been held sufficient for jurisdiction to grant the writ if a person with authority over the custody of the prisoner is within the jurisdiction of the court.[2] The Supreme Court assumed that, "while [the] prisoners are in immediate physical custody of an officer or officers not parties to the proceeding, respondents named in the petition have lawful authority to effect their release." 339 U.S. at 766-67. The Court, however, reasoned that the answer to the court's power did not lie in the statute. Rather, it explained that, for the question before it, "answers stem directly from fundamentals," and that they "cannot be found by casual

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[1] *See also Johnson v. Eisentrager*, 339 U.S. 763, 768 (1950) ("We are cited to no instance where a court, in this or any other country where the writ is known, has issued it on behalf of an alien enemy who, at no relevant time and in no stage of his captivity, has been within its territorial jurisdiction.").

[2] *See* Wright, Miller & Cooper, *Federal Practice & Procedure: Jurisdiction 2d* § 4268.1 (1988 & Supp. 2001). Courts have held that *U.S. citizens* held abroad, and therefore outside the territorial jurisdiction of any federal district court, are nevertheless entitled to seek habeas relief. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495, 498 (1973) ("[N]othing more [is required] than that the court issuing the writ have jurisdiction over the custodian. . . . Where *American citizens* confined overseas (and thus outside the territory of any district court) have sought relief in habeas corpus, we have held, if only implicitly, that the petitioners' absence from the district does not present a jurisdictional obstacle to the consideration of the claim.") (emphasis added); *Kinnell v. Warner*, 356 F. Supp. 779, 780-81 (D. Haw. 1973) ("Petitioner, a member of the United States Navy, is now on the South China Seas aboard the aircraft carrier U.S.S. Enterprise . . . [but his] physical absence from the territorial jurisdiction of this district court does not per se bar this court's jurisdiction over his [habeas] petition."). As this memorandum explains, however, under *Eisentrager* different rules apply to enemy aliens held outside the United States.

reference to statutes or cases." 339 U.S. at 768. In analyzing those "fundamentals," the Court concluded that an alien held outside the United States cannot seek the writ of habeas corpus.

The analysis from *Eisentrager* should apply to bar any habeas application filed by an alien held at GBC. In the critical passage that most nearly summarizes the Court's holding, the *Eisentrager* Court based its conclusion on the fact that the prisoners were seized, tried, and held in territory that was outside the sovereignty of the United States and outside the territorial jurisdiction of any court of the United States. We do not believe that the Court intended to establish a two-part test, distinguishing between "sovereign" territory and territorial "jurisdiction." Instead, we believe that the Court used the latter term interchangeably with the former to explain *why* an alien has no right to a writ of habeas corpus when held outside the sovereign territory of the United States. The same reasoning applies to GBC because it is outside the sovereign territory of the United States.

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The United States holds GBC under a lease agreement with Cuba entered into in 1903. *See* Agreement Between the United States of America and the Republic of Cuba for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations, Feb. 16-23, 1903, U.S.-Cuba, T.S. No. 418, 6 Bevans 1113 ("Lease Agreement").[3] That agreement expressly provides that "the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the" lands and waters subject to the lease. *Id.* art. III. Although the agreement goes on to state that the United States "shall exercise complete jurisdiction and control over and within" the leased areas, it specifically reserves sovereignty to Cuba. *Id.*

The terms of the Lease Agreement are thus definitive on the question of sovereignty and should not be subject to question in the courts. The Supreme Court has acknowledged that "the determination of sovereignty over an area is for the legislative and executive departments" – that is, it is not a question on which the courts should second-guess the political branches. *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 380 (1948). Indeed, in *Vermilya-Brown* all nine members of the Supreme Court observed that the United States has no sovereignty over GBC. The issue in *Vermilya-Brown Co. v. Connell*, was whether the Fair Labor Standards Act ("FLSA") applied to a United States military base in Bermuda. Five members held that the FLSA applied to "foreign territory under lease for bases," *id.* at 390, while the four dissenters concluded that the FLSA applied only in "any Territory or possession of the United States," *id.* (Jackson, J., dissenting). All nine believed, however, that neither Bermuda nor GBC was subject to the sovereignty of the United States.

At the time when *Vermilya-Brown* was decided, the United States was operating military bases in Bermuda pursuant to a 99-year leasehold. That lease ended in September 1, 1995, when both bases were closed and the land returned to the Government of Bermuda. *See id.* at 378; *see also* www.virtualsources.com/Countries/Europe%20Countries/Bermuda.htm. Based on the

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[3] Further conditions were imposed in a subsequent agreement, among them a promise from the United States not to permit any commercial enterprise to operate on the base. *See* Lease of Certain Areas for Naval Coaling Stations, July 2, 1903, U.S.-Cuba, T.S. No. 426, 6 Bevans 1120. The Lease Agreement does not state a term for the lease, and it was continued by a subsequent agreement stating that it would continue "[u]ntil the two contracting parties agree to the modification or abrogation of the stipulations." Treaty between the United States and Cuba defining their relations, May 29, 1934, U.S.-Cuba, art. III, 48 Stat. 1682, 1683.

terms of that leasehold, the majority noted the State Department's position that "[t]he arrangements under which the [United States'] leased bases [of Bermuda] were acquired from Great Britain did not and were not intended to transfer sovereignty over the leased areas from Great Britain to the United States." 335 U.S. at 380. Accordingly, those five justices concluded "that the leased area is under the sovereignty of Great Britain and that it is not territory of the United States in a political sense, that is, a part of its national domain." *Id.* at 380-81. Moreover, the majority specifically stated that the United States also has "a lease from the Republic of Cuba of an area at Guantanamo Bay for a coaling or naval station," and that "[t]he United States was granted by the Cuban lease substantially the same rights as it has in the Bermuda lease." *Id.* at 383 & n.5 (quoting 1903 US-Cuba agreement).

Similarly, the dissent contended that "Bermuda and like bases are not . . . our possessions." *Id.* at 392 (Jackson, J., dissenting). "Guantanamo Naval Base, . . . a leased base in Cuba . . . has been ruled by the Attorney General not to be a possession; it has not been listed by the State Department as among our 'non-self-governing territories,' and the Administrator of the very Act before us has not listed it among our possessions." *Id.* at 405 (Jackson, J., dissenting) (footnotes omitted). The disagreement in the case was not whether the United States exercised sovereignty over GBC -- all agreed that the United States did not -- but rather whether the FLSA applies extraterritorially to include U.S. military bases such as those in Bermuda and GBC. The *Eisentrager* analysis turns, of course, on whether the United States exercises sovereignty over a particular territory.

The *Vermilya-Brown* decision does not stand alone in concluding that the United States does not exercise sovereignty over GBC. More recently, in 1995, the Eleventh Circuit similarly relied on the terms of the Lease Agreement to conclude that GBC is not within the sovereign territory of the United States. See *Cuban American Bar Ass'n, Inc. v. Christopher*, 43 F.3d 1412, 1425 (11th Cir. 1995) ("The district court here erred in concluding that Guantanamo Bay was a 'United States territory.' We disagree that 'control and jurisdiction' is equivalent to sovereignty.") (citations omitted); *id.* (rejecting "the argument that our leased military bases abroad which continue under the sovereignty of foreign nations, hostile or friendly, are 'functional[ly] equivalent' to being land borders or ports of entry of the United States or otherwise within the United States") (alteration in original). And the District of Connecticut has likewise held that "sovereignty over the Guantanamo Bay does not rest with the United States." *Bird v. United States*, 923 F. Supp. 338, 343 (D. Conn. 1996). *See also id.* ("Because the 1903 Lease of Lands Agreement clearly establishes Cuba as the *de jure* sovereign over Guantanamo Bay, this Court need not speculate whether the United States is the *de facto* sovereign over the area.").

The position of GBC stands in sharp contrast to the status of the Philippine Islands in cases arising out of World War II. General Yamashita was tried in the Philippines by a U.S. military commission from October to December of 1945, and the Supreme Court chose to exercise habeas jurisdiction in reviewing the commission's decision. *See Application of Yamashita*, 327 U.S. 1, 5 (1946). At that time, however, the Philippine Islands was an insular possession of the United States, and not a mere U.S. leasehold interest. See *Eisentrager*, 339 U.S. at 780 ("By reason of our sovereignty at that time over these insular possessions, Yamashita stood much as did Quirin before American courts. Yamashita's offenses were committed on our

territory, he was tried within the jurisdiction of our insular courts and thus was imprisoned within territory of the United States."). The United States exercised sovereignty over the Philippines until July 4, 1946, *see generally* 48 U.S.C. ch. 5 (1994), at which time the Philippines became an independent sovereign. The United States retained a military base there – and it was that condition which the *Vermilya-Brown* Court compared to Bermuda and GBC. *See Vermilya-Brown*, 335 U.S. at 384 & n.7. The Court's treatment of the Philippines after July 4, 1946, thus affirms our conclusion that the United States interest in GBC today is markedly different, for *Eisentrager* purposes, than that in the Philippines prior to July 4, 1946.

GBC is also outside the "territorial jurisdiction of any court of the United States." *Eisentrager*, 339 U.S. 778. The territory of every federal district court is defined by statute. *See* 28 U.S.C. §§ 81-131 (1994); 48 U.S.C. §§ 1424, 1424b, 1821-1826 (1994). GBC is not included within the territory defined for any district. In contrast, other island bases that are considered territories or possessions of the United States are expressly defined within the jurisdiction of specific district courts, even if they are retained largely for military use. *See, e.g.*, 28 U.S.C. § 91 (defining the District of Hawaii to include "the Midway Islands, Wake Island, Johnston Island, . . . Kingman Reef," and other islands).[4]

Finally, the executive branch has repeatedly taken the position under various statutes that GBC is neither part of the United States nor a possession or territory of the United States. For example, this Office has opined that GBC is not part of the "United States" for purposes of the Immigration and Naturalization Act. *See* Memorandum for the Associate Attorney General, from Larry L. Simms, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Status of Guantanamo Bay* (Oct. 27, 1981). Similarly, in 1929, the Attorney General opined that GBC was not a "possession" of the United States within the meaning of certain tariff acts. *See Customs Duties – Goods Brought into United States Naval Station at Guantanamo Bay, Cuba*, 35 Op. Att'y Gen. 536 (1929). GBC was "a mere governmental outpost beyond our borders" and "a place subject to the use, occupation and control of the United States," without being part of sovereign territory. *Id.* at 541, 540. Although neither of these opinions is directly on point here, because each addresses the status of GBC under a particular statutory definition, they demonstrate that the United States has consistently taken the position that GBC remains foreign territory, not subject to U.S. sovereignty.[5]

II.

[4] For your further information, we have attached a memorandum prepared by this office based on earlier research concerning potential habeas jurisdiction for detainees held at Midway, Wake and Tinian, which have also been considered as possible detention sites.

[5] We note that in one statute, Congress has expressly included GBC within a reference to U.S. territories or possessions. In extending the provisions of the Longshore and Harbor Workers' Compensation Act to military bases, section 1651(a) of title 42, United States Code, provides that the terms of that Act shall apply "upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone)." *See also* 42 U.S.C. § 1701(b)(1) (similar provision). By specifically including GBC within the term "Territory or possession" for purposes of extending a particular statutory scheme to military bases Congress in no way undermined the general proposition that GBC is not part of the sovereign territory of the United States. Part of the purpose of the provision was to extend the protection of the Longshore and Harbor Workers' Compensation Act even to bases in foreign nations, and the specific inclusion of GBC in one subsection of the provision cannot be understood as a general statement of the status of the base as a U.S. "possession."

For the reasons outlined above, we believe that the rationale for holding that there is no jurisdiction to entertain a habeas petition from an alien held at GBC is very strong and is the correct result under *Eisentrager*. Nevertheless, we caution that there is a potential ground for uncertainty arising from an arguable imprecision in the Supreme Court's language in *Eisentrager*. As noted above, in a critical passage the Court stated that habeas jurisdiction was not available because the aliens were not within "territory over which the United States is sovereign." 339 U.S. at 778. In the very same sentence, however, the Court also stated that habeas jurisdiction did not exist because the events and detention occurred outside "the territorial jurisdiction" of any federal court. *Id.* If an alien detainee is both outside the United States' sovereign territory and outside the territorial jurisdiction of a federal court, then it is clear that no habeas jurisdiction exists. We have explained above that we believe GBC meets those conditions. A non-frivolous argument might be constructed, however, that GBC, while not part of sovereign territory of the United States, *is* within the territorial jurisdiction of a federal court. In that scenario, the application of *Eisentrager* might not be as clear. This is because "sovereignty" over territory and "jurisdiction" over territory could mean different things. A nation, for example, can retain its sovereignty over its territory, yet at the same time allow another nation to exercise limited jurisdiction within it.

It might be argued that the difference in language in *Eisentrager* must be given meaning, which can only be done if there is a difference between "sovereignty" and "jurisdiction." A court could find that the U.S.-Cuba lease agreement lends itself rather well to this distinction, since it makes clear that the United States exercises "complete jurisdiction and control" over GBC, even though Cuba retains "sovereignty." Lease Agreement, 6 Bevans 1114. Although *Eisentrager* seems to permit aliens to bring habeas petitions only in areas within the sovereign control of the United States, which by the 1903 agreement does not extend to GBC, a court could find that *Eisentrager*'s mention of territorial jurisdiction does not preclude habeas jurisdiction at GBC.

A district court also might find support in some cases, although (as explained below) we believe that these precedents are not good law. In *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326 (2nd Cir. 1992), the Second Circuit stated that "Guantanamo Bay is a military installation that is subject to the *exclusive* control and jurisdiction of the United States." *Id.* at 1342. As a result of the United States' exclusive control, the court concluded that some constitutional rights applied to Haitian refugees held at GBC and that an interest group could file for a preliminary injunction in federal court in New York to vindicate those rights. The court also relied in part on the fact that certain U.S. criminal laws apparently applied to GBC under the definition of the United States' "special maritime and territorial jurisdiction" in section 7 of title 18, United States Code. *See id.* at 1342. That placed GBC, at least in some sense, under U.S. "jurisdiction." Similarly, in *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028 (E.D.N.Y. 1993), the district court relied on *McNary* to hold that, because "Guantanamo Bay Naval Base . . . is under the complete control and jurisdiction of the United States government," aliens held there must be granted some constitutional protections. *Id.* at 1040.

For a number of reasons, however, we believe that a federal district court would not accept these arguments. First, the best reading of *Eisentrager* indicates that the Court was only

permitting habeas jurisdiction within the sovereign territory of the United States, which does not include GBC. Second, no federal statutes include GBC within the territorial jurisdiction of any federal district court. The fact that the United States can exercise some "jurisdiction" and "control" over the base is not the relevant factor for purposes of the analysis in *Eisentrager*. Presumably the United States similarly exercised considerable "jurisdiction" and "control" over the Landsberg Prison, which was under the command of an American Army general at the time, where the applicants in *Eisentrager* were held. That, however, was not deemed relevant to the Court's analysis.

Third, the *McNary* and *Sale* cases cited above are not persuasive authority for extending habeas jurisdiction to GBC. To begin with, the cases did not address habeas jurisdiction at all and thus never squarely confronted the analysis in *Eisentrager*. Instead, *McNary*, for example, addressed whether the United States, in interdicting Haitian refugees and detaining them at GBC, had violated international treaties and agreements, statutes, and executive orders. In fact, we have not found any case directly addressing habeas jurisdiction over an alien held at GBC. In addition, both *McNary* and *Sale* have been vacated. *McNary* was vacated as moot by the Supreme Court, *see* 509 U.S. 918 (1993), and *Sale* was subsequently vacated by Stipulated Order, *see Cuban American Bar Ass'n*, 43 F.3d at 1424. More importantly, the analysis in *Sale* has also been expressly rejected by the Eleventh Circuit. *See id.* at 1425 ("The district court here erred in [relying on *Sale* and] concluding that Guantanamo Bay was a 'United States territory.' We disagree that 'control and jurisdiction' is equivalent to 'sovereignty.'") (citation omitted). Finally, to the extent the Second Circuit in *McNary* relied on the theory that GBC was within the "special maritime and territorial jurisdiction" of the United States under 18 U.S.C. § 7, it is particularly weak authority for habeas jurisdiction here. Section 7 of title 18 defines places or circumstances where certain criminal laws of the United States shall apply to proscribe conduct. 18 U.S.C. § 7 (1994). The mere fact that U.S. criminal law applies, however, does not bring a place within the territorial jurisdiction of a federal district court. As the Supreme Court explained in *Vermilya-Brown*, a nation may extend its statutes to regulate conduct "on areas under the control, though not within the territorial jurisdiction or sovereignty, of the nation enacting the legislation." 335 U.S. at 381. Laws are frequently applied extraterritorially to conduct occurring *outside* a nation's territorial jurisdiction, but the mere application of law in such a case does not alter the territorial jurisdiction of the courts or their power to grant the writ of habeas corpus. Indeed, the venue provision for cases arising under the special maritime and territorial jurisdiction of the United States expressly acknowledges this distinction. It sets out the venue for crimes that occur "out of the jurisdiction of any particular State or district." 18 U.S.C. § 3238 (1994).

In addition, the Second Circuit has subsequently repudiated the cursory analysis in *McNary*, which essentially assumed that 18 U.S.C. § 7 applied to GBC. Instead, the Second Circuit has held that the statute has no extraterritorial application. *See United States v. Gatlin*, 216 F.3d 207, 214 (2nd Cir. 2000). After holding that § 7 had no territorial application for the case before it, the *Gatlin* Court noted that "the United States base at Guantanamo Bay is technically outside the territorial boundaries of the United States" and declined to express a view on "whether our *dictum* in *McNary* was correct." *Id.* at 214 n.8.[6] *McNary*'s reliance on 18

[6] Although the Second Circuit has held that 18 U.S.C. § 7 does not apply extraterritorially, we caution against relying too heavily on that rationale. This office has opined that GBC is within the special maritime and territorial

U.S.C. § 7 to demonstrate a form of jurisdiction over GBC is thus particularly unreliable authority here.

Fourth, and perhaps most importantly, a federal district court ought to be reluctant to extend habeas jurisdiction to GBC, when not clearly called for by statute, if doing so would interfere with matters solely within the discretion of the political branches of government. Detention and trial of al Qaeda and Taliban members is undertaken pursuant to the President's Commander in Chief and foreign affairs powers. Without a clear statement from Congress extending jurisdiction to GBC, a court should defer to the executive branch's activities and decisions prosecuting the war in Afghanistan.[7]

III.

You have also asked us about the potential legal exposure if a detainee successfully convinces a federal district court to exercise habeas jurisdiction. There is little doubt that such a result could interfere with the operation of the system that has been developed to address the detainment and trial of enemy aliens. First, a habeas petition would allow a detainee to challenge the legality of his status and treatment under international treaties, such as the Geneva Conventions and the International Covenant on Civil and Political Rights. *See* 28 U.S.C. § 2241(c)(4). Thus, a court could review, in part, the question whether and what international law norms may or may not apply to the conduct of the war in Afghanistan, both by the United States and its enemies. Second, a detainee could challenge the use of military commissions and the validity of any charges brought as violation of the laws of war under both international and domestic law. *See* 28 U.S.C. § 2241(c)(3). Third, although the Supreme Court in *Ex parte Quirin*, 317 U.S. 1 (1942) foreclosed habeas review of the procedures used by military commissions, a petitioner could argue that subsequent developments in the law of habeas corpus require the federal courts to review the constitutionality of military commission procedures today. Fourth, a petitioner might even be able to question the constitutional authority of the President to use force in Afghanistan and the legality of Congress's statutory authorization in place of a declaration of war.

Finally, you have asked about the rights that an enemy alien habeas petitioner would enjoy as a litigant in federal court, assuming that the court has found jurisdiction to exist. We are aware of no basis on which a federal court would grant different litigant rights to a habeas petitioner simply because he is an enemy alien, other than to deny him habeas jurisdiction in the first place.

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jurisdiction of the United States under that provision. *See Installation of Slot Machines on U.S. Naval Base, Guantanamo Bay*, 6 Op. O.L.C. 236 (1982). We do not believe it is necessary to revisit that opinion here because, as outlined in text, whether or not GBC comes within 18 U.S.C. § 7 is irrelevant for the question of habeas jurisdiction. In addition, we note that criminal prosecutions have been brought on the assumption that 18 U.S.C. § 7 applies to GBC, although the issue does not appear to have been litigated. *See, e.g., United States v. Lee*, 906 F.2d 117, 117 & n.1 (1990).

[7] This point draws further support from the fact that, where Congress has intended to include GBC in any provisions extending the reach of U.S. law, it has done so expressly. *See, e.g.*, 42 U.S.C. § 1651(a)(2). Congress has shown that it will be express about extending U.S. law to GBC when it intends that result. Particularly where a judicial construction extending jurisdiction or the substantive reach of U.S. law would potentially interfere with the President's foreign affairs and commander-in-chief powers, such a clear statement should be required.

## CONCLUSION

For the foregoing reasons, we conclude that a district court cannot properly entertain an application for a writ of habeas corpus by an enemy alien detained at Guantanamo Bay Naval Base, Cuba. Because the issue has not yet been definitively resolved by the courts, however, we caution that there is some possibility that a district court would entertain such an application.

Please let us know if we can be of any further assistance.

# Chapter 14 – Tort Law DEI Course Planning Template

NO.
SEPTEMBER 2020 GRAND JURY

JEFFERSON CIRCUIT COURT
DIVISION TWO

GRAND JUROR — PLAINTIFF

v.

**NOTICE – MOTION – ORDER**

COMMONWEALTH OF KENTUCKY — DEFENDANT

******

**NOTICE**

TO: Hon. Daniel Cameron, Attorney General
Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601

Please take notice that the following motion will be made on Monday, October 5th, 2020 at 9:00 a.m. or in such time as the above Court may so docket.

**MOTION FOR RELEASE OF GRAND JURY TRANSCRIPTS/RECORDINGS/REPORTS AND FOR DECLARATION OF RIGHTS PURSUANT TO KRS 418.040**

Comes the Plaintiff, Grand Juror, by counsel, and moves this Honorable Court to release any and all recordings of the grand jury pertaining to what is commonly known as the Breonna Taylor case that resulted in Indictment No. 20CR1473 styled Commonwealth vs. Brett Hankison, pursuant to RCr 5.24. Grand Juror further petitions this Court for declaration of rights pursuant to KRS 418.040. Specifically, Grand Juror seeks for the Court to make a binding declaration that Grand Juror, and any additional members of this grand jury, has the right to disclose information and details about the process of the grand jury proceedings held in Jefferson County, Kentucky regarding the above case known as the Breonna Taylor case and any potential charges

presented or not related to the events surrounding that matter. In support of his motion, Grand Juror states the following:

1. Grand Juror was a member of the grand jury for the month of September 2020 in Jefferson County, Kentucky. Supporting documents attached.

2. Beginning on or about September 21 and until September 23, 2020, Grand Juror and the other grand jurors were tasked with being the grand jury for the presentation by the Office of the Attorney General in purportedly all matters related to the death of Ms. Breonna Taylor after a Louisville Metro Police Department raid of her apartment.

3. Subsequent to the above referenced Indictment, Attorney General Daniel Cameron held a press conference to publicly announce the charges against Mr. Hankison and to further announce that there would be no charges against Sergeant Jon Mattingly and Detective Myles Cosgrove.

4. Attorney General Cameron made many definitive remarks during his press conference. Among them, he stated that his office's investigation found "...and the grand jury agreed that Mattingly and Cosgrove were justified in the return of deadly fire after having been fired upon by Kenneth Walker."

5. When questioned about whether he made a recommendation to the grand jury, Attorney General Cameron stated that "[g]rand jury proceedings are secret. And so I'm not going to get in to the specifics of details about that proceeding. What I will say is that we presented all of the information and they ultimately made a determination about whether to charge. In this instance, they decided to indict Detective Hankison."

6. Upon inquiry regarding approximately a dozen witnesses stating they did not hear the police knock and announce and the Attorney General relying on one witness to the contrary,

Attorney General Cameron stated in part that he thought the "...more pertinent question is what was the evidence provided to the grand jury? What was sufficient for their purposes? They got to hear and listened to all the testimony and made the determination that Detective Hankison was the one that needed to be indicted knowing all of the relative points that you made."

7. When asked if the grand jury considered manslaughter, reckless homicide or those kinds of charges, Attorney General Cameron stated the following:

> I won't get into the specifics again of the proceedings themselves are secret. But what I will say is that our team walked them through every homicide offense, and also presented all of the information that was available to the grand jury. And then the grand jury was ultimately the one that made the decision about indicting Detective Hankison for wanton endangerment.

8. The secrecy of grand jury proceedings and their potential disclosure are controlled by RCr 5.24(1) which states as follows:

> Subject to the right of a person indicted to procure a transcript or recording as provided by Rule 5.16(3), and subject to the authority of the court at any time to direct otherwise, all persons present during any part of the proceedings of a grand jury shall keep its proceedings and the testimony given before it secret, except that counsel may divulge such information as may be necessary in preparing the case for trial or other disposition.

9. The Court of Appeals of Kentucky stated plainly and clearly that only the court itself may order the release of grand jury proceedings to which the Office of the Attorney General found and actually agreed in Opinion of the Attorney General 95-17 issued on May 10, 1995. "A grand jury is a part of the court and under judicial control, so there can be no doubt

that a session of the grand jury is 'proceeding in a circuit court.'" *Greenwell v. Commonwealth*, Ky., 317 S.W.2d 859,861 (1958). The Opinion of the Attorney General further pointed to *Ex Parte Farley* Ky., 570 S.W.2d 617 (1978) and *York v. Commonweatlh,* Ky.App., 815 S.W.2d 415 (1991) in further agreeing that the judiciary has exclusive custody and control of grand jury testimony and proceedings as a court record.

10. There can similarly be no doubt that this Court had and has the exclusive custody and control of the grand jury proceedings in question as the grand jury reported to this Court for the month of September, 2020 and reported the very proceedings in question, at least in part, to this Court.

11. The Attorney General publicly made many statements that referenced what the grand jury heard and decisions that were made based on what certain witnesses said. He further laid those decisions at the feet of the grand jury while failing to answer specific questions regarding the charges presented. Attorney General Cameron attempted to make it very clear that the grand jury alone made the decision on who and what to charge based solely on the evidence presented to them. The only exception to the responsibility he foisted upon the grand jurors was in his statement that they "agreed" with his team's investigation that Mattingly and Cosgrove were justified in their actions.

12. There is a compelling public interest for these proceedings to be released of a magnitude the city and Commonwealth have never seen before that could not be confined, weaving its way across the country. The citizens of this Commonwealth have demonstrated their lack of faith in the process and proceedings in this matter and the justice system itself. Using the grand jurors as a shield to deflect accountability and responsibility for these decisions only sows

more seeds of doubt in the process while leaving a cold chill down the spines of future grand jurors.

13. The public interest spreads across the entire Commonwealth when the highest law enforcement official fails to answer questions and instead refers to the grand jury making the decisions. The interest of the individual grand jurors is parallel to the public but also manifests as fears of persecution, condemnation, retribution, and torment. Unfortunately, they do not get to hide behind any entity, person, or office.

14. The handbook that grand jurors are given in Jefferson County, Kentucky at the beginning of their service encourages them "...to share, without divulging the content of any Grand Jury hearings, your experiences in the criminal justice system with your family, friends and neighbors." See attached. It would seem from that statement that at least the Jefferson County Office of the Commonwealth's Attorney intends for their experience to be one that should be used to promote the education and future participation of the public. It certainly seems to suggest that grand jurors are free to discuss their participation in the grand jury process even if they are to keep secret the content of the hearings. This highly likely includes informing their family, friends, neighbors, and employers of their participation as grand jurors. The level of attention this matter has received across the country creates an inability to calculate how far these seemingly innocuous disclosures of their participation have reached. It is precisely for these reasons that Grand Juror wishes to remain anonymous while feeling compelled to act in a manner that promotes transparency, truth, and justice without further sacrificing anyone's right to feel comfortable in their own mind and body for their compulsory grand jury participation and the decisions that were alleged to be exclusively theirs by Attorney General Daniel Cameron.

15. It is patently unjust for the jurors to be subjected to the level of accountability the Attorney General campaigned for simply because they received a summons to serve their community at a time that adherence to the summons forced them to be involved in a matter that has caused such a palpable divide between sides.

16. Truth being of paramount importance to all affected parties and the community as a whole, justice demands a full public release of the grand jury proceedings. Not only are the grand jury proceedings the sole province of the Court but there is "an inherent power and the inescapable duty of the trial court to lift the lid of secrecy on the grand jury proceedings in aid of the search for truth." *Dennis v. United States*, 384 U.S. 855, 868 (1966).

17. For the reasons stated above and in the interest of justice being applied equally and appropriately to all interested parties regardless of their race, position, or association, Grand Juror respectfully asks that this Court exercise its power pursuant to RCr 5.24(1) and Order the release of all recordings, transcripts and reports of the grand jury related to this matter to the public.

**DECLARATION OF RIGHTS PURSUANT TO KRS 418.040**

18. Grand Juror further seeks for the Court to make a binding declaration that Grand Juror has the right to disclose information and details about the process and details of the grand jury proceedings held in Jefferson County, Kentucky regarding the Breonna Taylor case and any potential charges and defendants presented or not presented related to the events surrounding that matter. Grand Juror asserts that the RCr 5.24(1) only governs what was recorded during the proceedings held by the grand jury and, therefore, any details surrounding the actions outside of those recorded proceedings and anything that did NOT happen in the grand jury proceedings are

permitted to be disclosed. The penalty of contempt as detailed in RCr 5.24(3) shall not apply to any such disclosures nor should any other civil or criminal penalty.

19. A petition for declaratory judgment pursuant to KRS 418.040 provides for the venue and cause of action, providing as follows:

> In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

In order to state a claim under KRS 418.040, a Petitioner must show "that an actual controversy exists." *Foley v. Commonwealth,* 306 S.W.3d 28, 31 (Ky.2010). "An actual controversy for purposes of the declaratory judgment statute requires a controversy over present rights, duties, and liabilities; it does not involve a question which is merely hypothetical or an answer which is no more than an advisory opinion." *Barnett v. Reynolds,* 817 S.W.2d 439 441 (Ky.1991) (citing *Dravo v. Liberty Nat'l Bank & Trust Co.,* 267 S.W.2d 95 (Ky.1954)).

20. Grand Juror states that there is an actual controversy over their own rights, duties and liabilities as a grand juror and a citizen of both the Commonwealth of Kentucky and the United States of America. Grand Juror states that RCr 5.24(1) does not apply to anything that WAS NOT recorded as a part of the grand jury proceedings and that they are well within the bounds of permissible disclosures to the public when those disclosures pertain to details and information tangent to, but not part of, the recorded grand jury proceedings. Similarly, the rule does not prohibit disclosing things that DID NOT happen during the proceedings. Specifically, the rules does not restrict discussion of charges that were NOT presented to the grand jury, explanations of the law that were NOT provided to the grand jury, defenses or justifications that were NOT detailed during the proceedings, witnesses that did NOT testify, potential defendants

that were NOT presented, and/or individuals or officials who were NOT present for the proceedings.

21. This request is for declaratory relief from a fear of prosecution for disclosing information that was not a part of the grand jury proceedings and for a finding that it is permissible by law and not subject to civil or criminal liability to so disclose.

22. As stated above, the Breonna Taylor case is a matter of great public interest that has been subject to much national scrutiny. Attorney General Cameron stated publicly in his press conference that no details would be discussed regarding the proceedings because they are secret. He then, however, disclosed information and acknowledged publicly other information that was a part of at least the investigation. The multiple mentions of the proceedings being secret and Attorney General Cameron's efforts and desires for it to remain so create the controversy addressed in this action. It is the fear of the Petitioner that, Attorney General Cameron would attempt to utilize the court's contempt powers under RCr 5.24(3) if there was a public disclosure that contradicted certain things that he stated happened during the proceedings, characterized the singularity of the decision in a different light, or raised doubts about charges that were presented during the proceedings.

23. The same concerns argued above in favor of releasing the grand jury proceedings to the public are incorporated herein and further asserted that the need for a declaration of rights is to quell the fears of persecution, condemnation, retribution, and torment along with the fear of prosecution that apply not only to Grand Juror but quite possibly to the other grand jurors in this matter.

24. The full story and absolute truth of how this matter was handled from beginning to end is now an issue of great public interest and has become a large part of the discussion of

public trust throughout the country. The legal system has placed the grand jurors in this matter on an island where they are left to wonder if anyone who finds them will treat them well or hold the pain and anger of the lingering questions against them. Their choices are to remain there hoping they are never found or attempt to find a way to a safer position. That position is the ability to disclose everything the law provides to the public so that the truth may prevail. It should be noted that, as mentioned in the motion to disclose the recordings, this action is filed anonymously not only for protection but also because there is no desire for notoriety or acclaim, only truth. This action does not seek any monetary damages and there are no other actions pending that seek them either. Only the truth, the whole truth, and nothing but the truth.

25. Attorney General Cameron further stated in a press release in response to a news conference held by the legal team for Ms. Breonna Taylor's family, "...everyone is entitled to their opinion, but prosecutors and Grand Jury members are bound by the facts and by the law." This illustrates his position in the conflict raised in this action. The Attorney General has stated in an official press release his anticipation of grand jury members desires to talk about what did NOT happen during the proceedings by mentioning them when there was no need to do so in his response. Attorney General Cameron's last remarks in his press conference following the indictment were as follows:

> And I will fight for those across our state who feel like their voice isn't heard, who feel marginalized, judged, and powerless to bring about change. In a world that is forcing many of us to pick a side, I choose the side of justice. I choose the side of truth. I choose a path that moves the Commonwealth forward and toward healing. You have that choice as well. Let's make it together.

Public speakers like to end on a powerful note and the Attorney General did exactly that. He chose wisely in his speech, now he has another choice in his response. Choose truth. Choose justice. Together Kentucky.

WHEREFORE, Grand Juror respectfully requests that this Court releases the grand jury proceedings to the public and grants declaratory relief that properly limits the scope of RCr 5.24(1) to only prohibit disclosures of things that actually occurred during the proceedings of the grand jury and testimony thus freeing the grand jurors to publicly discuss their experiences.

## CERTIFICATE

This is to certify that a copy of the foregoing motion was sent to the Honorable Daniel Cameron, Attorney General, or his agent, on this the 28th day of September 2020.

This further certifies that a courtesy copy was sent to all parties that would be potentially affected by this pleading to include the following:

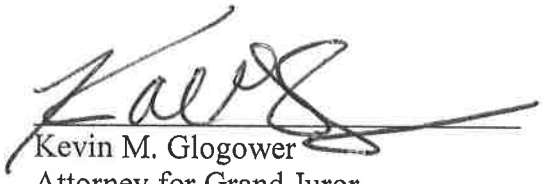
Hon. Stewart Matthews
817 Main Street, Suite 500
Cincinnati, Ohio 45202
Fax (513) 621-5646
Counsel for Mr. Hankison

Hon. Kent Wicker
DBL Law
321 W. Main Street, #2100
Louisville, Kentucky 40202
kwicker@dbllaw.com
Counsel for Sergeant Mattingly

Hon. Bill Brammell
DBL Law
321 W. Main Street #2100
Louisville, Kentucky 40202
bbrammell@dbllaw.com
Counsel for Detective Cosgrove

Hon. Lonita Baker
1201 Story Avenue
Louisville, Kentucky 40206
lonita@kylawoffice.com
Counsel for the family of Breonna Taylor

Hon. Frederick W. Moore
2000 Warrington Way, Suite 170
Louisville, Kentucky 40222
fmoore@grossmangreen.com
Counsel for Kenneth Walker



Kevin M. Glogower
Attorney for Grand Juror
214 S. 8th Street, Suite 201
Louisville, KY 40202
(502) 384-5656

AOC-005
Rev. 10-17
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Commonwealth of Kentucky
Court of Justice *www.courts.ky.gov*
KRS Chapter 29A; AP Part II

# JUROR SUMMONS

Juror ID: [redacted]
JEFFERSON_SEPT GJ GROUP[redacted]
[redacted]

**DEAR PROSPECTIVE JUROR:** You have been selected to serve as a **JUROR** in the JEFFERSON County Courts. You are summoned to appear at the following place, date, and time. **Failure to appear may result in a fine or jail time.** Even if you believe you are disqualified from serving, are asking to be excused from jury service, or are asking that your service be postponed, **YOU MUST COMPLETE, SIGN, AND RETURN THE ENCLOSED JUROR QUALIFICATION FORM WITHIN FIVE (5) DAYS AFTER RECEIVING THIS SUMMONS.**

***KEEP THIS PAGE*** *and bring it with you when you report for jury service.*

[redacted]
LOUISVILLE, KY [redacted]

**Barcode ID:** [redacted]
**Juror ID:** [redacted]
**Group ID:** [redacted]

**Date:** Tuesday, September 1, 2020
**Time:** 08:30 AM
**Place:** 700 West Jefferson Street
Room 244
Louisville, KY 40202
(502) 595-3460

**Jefferson County Jury Administrator**
Name/Title

## GENERAL INFORMATION ABOUT JURY SERVICE

earn more about jury service at the Kentucky Court of Justice website at ***http://www.courts.ky.gov***

**EPORT ON THE DATE and AT THE TIME INSTRUCTED ABOVE:** This is the only notice you will receive. **Failure to comply** /ith this Summons is punishable as **CONTEMPT OF COURT**. KRS 29A.150.

**URY TERM and HOURS:** Jury service begins on the date shown on this Summons. Jury service may be served on consecutive ays or over a period of several months as determined by the Chief Circuit Judge or designee, and can last up to thirty (30) court ays. If selected to serve on a trial, plan to spend a full day in Court for the length of the trial.

**RESS:** Jurors are officers of the Court as much as Judges and other court personnel. You are expected to dress accordingly while erforming this serious and solemn duty.

**UROR PAY:** You will receive, as set by state law, **$12.50 for each day of jury service** ($5.00 of this amount is considered actual ay and $7.50 is reimbursement for expenses). Check with your employer for personnel policies regarding jury service.

**IOTE TO EMPLOYERS and EMPLOYEES:** The law says an employer shall not deprive an employee of employment, threaten, or oerce an employee regarding jury service. KRS 29A.160(1). An employer who violates this law is guilty of a misdemeanor. KRS 9A.990(1). The Court will provide a Certificate of Jury Service (AOC-015) to a juror or employer requesting verification of a juror's ervice.

**OSTPONEMENT OF SERVICE:** If you need to postpone or be excused from jury service, you must demonstrate **undue ardship, extreme inconvenience,** or **public necessity.** KRS 29A.100(1). You may be excused from service entirely, or have our number of days of service reduced, or have your service postponed temporarily for a period of time not to exceed twenty-four 24) months. KRS 29A.100(3). Be sure to explain your request on the enclosed Juror Qualification Form (AOC-005-A) and indicate n alternative time within the next twelve (12) months when you will be available to serve. You will be notified by mail, or phone, or mail if you are disqualified, excused, or your service is postponed. Otherwise, you will need to report for jury service on the date hown on this Summons, at which time you may discuss any situations that you think might prevent you from being able to serve.

**CCOMMODATIONS:** If you are **physically disabled** and require an accommodation to serve, **OR** if you are **deaf or ard-of-hearing** and an interpreter is needed, indicate the disability and needed service(s) in the space provided on the Juror Qualification Form.

**UROR QUALIFICATION FORM: COMPLETE, SIGN,** and **RETURN** the enclosed Juror Qualification Form **within five (5) days** to ne return address listed on the form.

OFFICE OF
THOMAS B. WINE
COMMONWEALTH'S ATTORNEY
514 W. Liberty Street
Louisville, Kentucky 40202-2887
www.louisvilleprosecutor.com

Erwin Roberts
First Assistant

(502) 595-2300
Fax (502) 595-3214

# JEFFERSON COUNTY GRAND JURY SEPTEMBER 2020

## GRAND JURORS

You have been ordered by the Jefferson Circuit Court to serve as a **GRAND JUROR** for the month of **September, 2020**. As a Grand Juror, you are required to be in attendance when the Jefferson County Grand Jury is in session. At least twelve Grand Jurors must be present in order to do business. The first twelve jurors selected as "the Grand Jury" will be expected to be in attendance unless a request is made for an alternate. Alternates, unless you have committed to a day or days of service before you leave the jury pool room, you will be serving as a Grand Juror this month on an "on-call" basis. When one of the twelve members of "the Grand Jury" can't be in attendance, you will be called to fill in for that juror.

## GRAND JURY MEETING LOCATION AND DAYS OF SERVICE:

You must report each morning that the Grand Jury is scheduled to be in session to the **10th floor Appellate Courtroom**, located on the 10th floor of the Judicial Center, 700 West Jefferson Street. **Report at 8:00 a.m.** The Jefferson County Grand Jury is generally is in session from 8:00 a.m. to approximately 4:00 p.m., Mondays, Tuesdays, Wednesdays, and Thursdays.

## CONTACT NUMBER: [redacted]

If an issue arises about serving on the Grand Jury outside of the time the Grand Jury is in session, please call or text [redacted] (This is the cell phone of the Assistant Commonwealth Attorney [redacted]) [redacted] will return your call or text. If you are requesting to be excused for a day that you are scheduled to be at Grand Jury duty, **you must hear back from the Grand Jury attorney before you are excused.** Any requests to be excused from your Grand Jury service for the remainder of the month must be made to the Grand Jury Judge. [redacted] can assist you in speaking to the Judge.

**GRAND JURY PERSONNEL:**
**Attorney:** [redacted]
**Grand Jury Staff:** [redacted] and [redacted]

# COMMONWEALTH
# OF
# KENTUCKY
# GRAND JURY
# HANDBOOK


**JEFFERSON COUNTY**

**OFFICE OF THE COMMONWEALTH'S ATTORNEY**

## AFTER THE GRAND JURY

After you have finished your term of jury duty, we hope you will consider it as a service to the community and yourself. Hopefully, it will increase your awareness and interest in government and civic affairs. You should have a greater understanding of the nature of crimes and the possible ramifications of the commission of those crimes. Also, you may be able to understand why the maximum penalties are not levied in each and every case and why it is necessary for the prosecution and the Court to use discretion in arriving at the proper outcome in each case. Your tenure as a Grand Juror should impress upon you the obligations each individual has to contribute to fair and impartial law enforcement in your community. If you and other Grand Jurors have done your job well, both our community and government will be improved.

We again urge you to share, without divulging the content of any Grand Jury hearings, your experiences in the criminal justice system with your family, friends and neighbors. Only by educating the entire community about the problems which confront the enforcement of our laws will we be able to best serve each and every individual in the community. You, as a knowledgeable representative, can be of great service in sharing such information.

# JEFFERSON COUNTY JUDICIAL CENTER

# 10TH FLOOR COURTROOM

# 700 WEST JEFFERSON STREET

# LOUISVILLE, KENTUCKY 40202

**Grand Jury Office #**
**502-595-2384**
**Grand Jury Emergency #**
502-649-8784

NO._____

JEFFERSON CIRCUIT COURT
DIVISION_____
JUDGE_____

***ELECTRONICALLY FILED***

TAMIKA PALMER,
as Administratrix of the ESTATE OF
BREONNA TAYLOR

PLAINTIFF

v.

**COMPLAINT**

BRETT HANKISON
2203 Wendell Ave.
Louisville, KY 40205

-and-

MYLES COSGROVE
2844 Brookdale Avenue
Louisville, KY 40220

-and-

JONATHAN MATTINGLY
8913 Meadow Street Way
Louisville, KY 40228

DEFENDANTS

*** *** *** *** ***

## I. PRELIMINARY STATEMENT

1. At 12:30 am on March 13, 2020 both Breonna Taylor and Kenneth Walker were asleep in their bedroom. Breonna was scheduled to work later in the day. Breonna was a licensed EMT and worked for two local hospitals. Kenneth, her boyfriend, was set to begin his new position with the postal service. Neither of the two had any criminal history for drugs or violence. Neighbors described Breonna and Kenneth as quiet and peaceful. Friends and family describe the two as loving and caring. While Breonna and Kenneth were sleeping peacefully, the three Defendants arrived in their neighborhood in plain clothes in unmarked vehicles. These Defendants

were working within the criminal interdiction unit of the Louisville Metro Police Department. The Defendants had a knock and announce search warrant for Breonna's apartment, where the officers were searching for an individual who lived in a different part of Louisville. The Defendant officers had an ambulance staged around the corner from Breonna's residence, yet did not defer to the LMPD SWAT unit for execution of the warrant. Furthermore, the individual that the officers were seeking had already been apprehended by LMPD earlier that morning at his own home. As the Defendant officers approached Breonna's home, they did so in a manner which kept them from being detected by neighbors. The officers then entered Breonna's home without knocking and without announcing themselves as police officers. The Defendants then proceeded to spray gunfire into the residence with a total disregard for the value of human life. Shots were blindly fired by the officers all throughout Breonna's home and also into the adjacent home, where a five-year-old child and a pregnant mother had been sleeping. Breonna Taylor was shot at least eight times by the officers' gunfire and died as a result. Breonna had posed no threat to the officers and did nothing to deserve to die at their hands. The Plaintiff brings this personal injury and wrongful death action in order to obtain damages resultant from the Defendants' unlawful conduct, which directly and proximately caused the death a young, beautiful human being who was also an essential front-line medical professional in this community.

## II. JURISDICTION AND VENUE

2. Jurisdiction and venue are proper due to the location of the incident, the claimed damages and the matters in controversy.

## III. THE PARTIES

3. Plaintiff is the mother of the deceased, Breonna Taylor, and is the duly appointed

administratrix of Breonna's estate.[1]

4. Defendants Brett Hankison, Myles Cosgrove, and Jonathan Mattingly were, at all times relevant to this action, employees of Louisville Metro Government who worked as police officers in the Louisville Metro Police Department. They are each sued in their individual capacities.

## IV. FACTS

5. Breonna Taylor was 26 years old on March 13, 2020.

6. She was a critical, front-line employee during the beginning phases of the coronavirus pandemic, working for both Jewish and Norton hospitals.

7. Breonna was also a certified EMT.

8. Breonna lived at 3003 Springfield Drive with her younger sister and Kenneth, each of whom are African American.

9. Other than a couple of speeding tickets, Breonna had no criminal history. She was not violent and posed no threat to the community.

10. Breonna had no drugs in her home.

11. Kenneth, who had a license to carry, kept firearms in the home for protection.

12. Kenneth also had no history of violence and no history of drug offenses.

13. At 12:30 am on March 13, 2020 both Breonna and Kenneth were asleep in their bedroom.

14. Breonna's sister was out of town.

15. The Defendants were each working at the time.

16. Defendant Mattingly was an LMPD sergeant at the time Breonna was shot.

[1] *Exhibit A*: Jefferson District Court Order.

17. Defendant Cosgrove was an LMPD officer at the time Breonna was shot.

18. Cosgrove has a prior history of shooting a Louisville resident seven times.

19. Defendant Hankison was an LMPD officer at the time Breonna was shot.

20. Defendant Hankison has a prior history of unnecessary force and corruption within his employment.

21. Hankison's documented use of force history within LMPD is pages long, documenting dozens of situations where he has sent citizens to the hospital for injuries from being tased, pepper sprayed and struck repeatedly in the nose and eyes. Hankison has taken out his anger both while on the job and during his off-duty security detail at bars on Shelbyville Road. He has a history of fighting with citizens, breaking out car windshields with flashlights, and punching citizens with such force that Hankison himself has needed stitches in his hand.

22. The Defendant officers, on the early morning of March 13, 2020 had a warrant that they were going to execute at Breonna's home.

23. Also that morning, colleagues of the Defendants were executing one or more warrants at one or more additional Louisville locations in an effort to locate Jamarcus Glover.

24. LMPD requires that a Risk Assessment Matrix (LMPD #05-0016) be completed prior to the service of all search warrants.[2]

25. This is a ministerial duty of all LMPD officers.

26. There is a ministerial duty imposed upon LMPD commanding officers to complete an Arrest/Search Warrant Information Sheet (LMPD #05-0023) and notify the Special Weapons and Tactics (SWAT) Team Commander to coordinate a response if:

a. The Risk Assessment Matrix score necessitates the use of the SWAT unit; or

[2] Louisville Metro Police Department Standard Operating Procedures (SOP) 8.1.13.

b. The situation requires a mandatory SWAT unit call-out, as listed on the Risk Assessment Matrix, regardless of the score. [3]

27. The Defendants, none of whom were assigned to the SWAT unit at the time of the subject incident, each had a ministerial duty to refrain from executing the warrant on Breonna's home if either of the factors in paragraphs 26(a) or 26(b) above were present.

28. The Defendants did not adhere to this duty.

29. Defendant Mattingly, as the commanding officer in charge of executing the warrant on Breonna's home, had a ministerial duty to complete a Search Warrant Operations Plan form (LMPD #05-0025).[4]

30. Prior to warrant service, Defendant Mattingly, as the acting Incident Commander (IC) for service of the search warrant, was required to implement and follow the Incident Command System (ICS). Mattingly was required to conduct a briefing with all search team personnel that included:

a. A review of operations and procedures that the search personnel will follow.

b. An analysis of conditions at the premises utilizing maps, charts, and diagrams, when appropriate.

c. Tactics and equipment that are to be used in the event of forced entry.

d. A pre-planned hospital route.

31. The Defendants did not adhere to this duty, as evidenced by the fact that a hospital route had to be planned after the Defendants fired more than 20 shots into Breonna's home.

32. The Defendants were required, prior to executing the warrant, to notify Metrosafe

[3] *Id.*
[4] SOP 8.1.17

that the search warrant was being executed.[5]

33. The Defendants were required to wear body armor as part of the entry procedures into Breonna's home.[6]

34. Before entry to Breonna's home was made by the Defendants, the Defendant officers each had a ministerial duty to identify themselves as law enforcement officers and state their intent to execute a search.[7]

35. The Defendants did not adhere to this duty.

36. The Defendants each had a ministerial duty to comply with the terms of the warrant which, upon information and belief, included knocking and announcing themselves prior to entering Breonna's home and confirming prior to execution that probable cause still existed for the warrant's execution.

37. The Defendants did not adhere to this duty.

38. The Defendants, even with a valid search warrant, had a ministerial duty to call off the warrant's execution if the probable cause listed on the affidavit no longer existed.[8]

39. The Defendants did not adhere to this duty.

40. If the matrix identifies that the warrant's execution is high risk, then the SWAT unit is required to execute the warrant.

41. SWAT did not execute the warrant at Breonna Taylor's home.

42. SWAT did not execute the warrant at Jamarcus Glover's home.

43. LMPD was successful in locating Jamarcus Glover at his home, detaining him, executing a search, identifying drugs and firearms, and arresting Glover.

[5] Id.
[6] SOP 8.1.18
[7] SOP 8.1.19
[8] SOP 8.1.17

44. Glover was located and identified by LMPD prior to the warrant being executed at Breonna's home.

45. Despite this, the Defendants elected to proceed with executing the warrant at Breonna's home.

46. There were no drugs in Breonna's home.

47. The Defendant officers, despite determining that the warrant was of a low risk nature (and thus one which SWAT did not need to execute), had an ambulance staged around the corner from Breonna's home.

48. As confirmed by multiple neighbors, the Defendant officers did not knock or identify themselves prior to entering Breonna's home.

49. Knocking and announcing is critical for a warrant of this nature to be executed safely. Reasons include but are not limited to the following:

a. The officers were in plain clothes;

b. It was 12:40 in the morning;

c. The home was part of a large unit of connected homes containing children;

d. There was nothing to indicate that Breonna Taylor and Kenneth would flee or pose an unreasonable danger if the officers knocked and identified themselves as police; and

e. Individuals, under several circumstances, have a lawful right to use deadly force in order to defend against those who enter their home.

50. The Defendant officers breached the front door and entered the home without knocking and without announcing themselves.

51. Breonna and Kenneth were awakened by the Defendants' unannounced entry into

their home.

52. They believed that their home had been broken into by criminals and that they were in significant, imminent danger.

53. Kenneth proceeded to call 911.

54. The Defendant officers fired their weapons into Breonna's home repeatedly.

55. The Defendants fired several shots into the home from outside on the patio.

56. The living room was obscured by curtains; the officers could not see anything inside the home (past the curtains) within their line of fire when shooting into the home through the glass.

57. The Defendants fired several shots into the home from outside of the second bedroom window.

58. The second bedroom window was obscured by a screen and blinds; there was no way that the officers could have had a reasonable line of sight when firing into the home from outside this window.

59. The Defendants did not have discretion to shoot blindly into Breonna's home in this manner.

60. The Defendants' gunshots struck objects in the home's living room, dining room, kitchen, bathroom, hallway and both bedrooms.

61. Several of the Defendants' gunshots traveled into the adjacent home, where a five-year-old child and pregnant mother were located.

62. Breonna was shot several times by the Defendants.

63. Breonna was unarmed when she was shot repeatedly.

64. Breonna posed no threat to the officers when she was shot repeatedly.

65. The Defendant officers acted intentionally, knowingly, unreasonably, maliciously,

negligently, recklessly, and in bad faith with deliberate indifference to the safety and rights of Breonna Taylor when they attempted to execute a warrant without the SWAT unit, proceeded with executing the warrant without probable cause, entered the home unannounced, entered the home without permission, entered the home without complying with the terms of the warrant, engaged in erratic gunfire and fired at Breonna, who was unarmed and posed no threat, in an intentional, erratic and deadly manner. These actions were objectively unreasonable.

66. The officers failed to use any sound reasonable judgment whatsoever when firing more than 25 blind shots into multiple homes and causing the wrongful death of Breonna.

67. The Defendants had absolute, certain and imperative duties to knock, announce their presence, give Breonna and Kenneth notice that they were peace officers there to serve a warrant, offer to show Breonna and Kenneth the warrant and afford the opportunity to be let into the home.

68. Breonna had committed no crime, posed no immediate threat to the safety of the Defendants, and did not actively resist or attempt to evade arrest prior to being repeatedly shot and killed by the Defendants.

69. The actions of the Defendant officers were made in bad faith, were performed with a corrupt motive, were outside the scope of the Defendants' authority, were executed willfully and with the intent to harm, and were in violation of Breonna's constitutional and statutory rights.

70. The Defendants knew or reasonably should have known that the actions taken would violate Breonna's rights.

71. The Defendants' actions were made with the malicious intention to cause a deprivation of Breonna's constitutional rights.

72. The Defendants unlawfully and forcibly entered Breonna's home, causing Breonna

and Kenneth to have a reasonable fear of imminent peril of death or great bodily harm.

73. Any defensive force used against the Defendants was due to their forcible and unlawful entry into Breonna's home.

74. Breonna and Kenneth knew, or had reason to believe, that an unlawful and forcible entry was occurring or had occurred at the time of any defensive force. The Defendants, under the facts which were present at the time of their entry into Breonna's home, had no lawful right to be in the home.

75. The Defendants did not identify themselves prior to or upon entry into the home, and neither Breonna nor Kenneth knew or reasonably should have known, prior to any use of defensive force, that the individuals in their home were peace officers.

76. The use of force on Breonna Taylor by the Defendants was unreasonable, excessive, and in violation of clearly established law prohibiting assault, battery, gross negligence.

77. As a direct and proximate result of the conduct of Defendants, Breonna Taylor suffered physical injury and emotional trauma when she was shot multiple times and then left to die.

78. As a further direct and proximate result of Breonna's wrongful death, her survivors, next of kin, and/or heirs have suffered permanent damages, including, but not limited to, Breonna's destruction of power to labor and earn income, funeral and burial costs, and other expenses, and will incur additional expenses in the future.

79. The Defendants' conduct was grossly negligent, reckless, malicious, willful, wanton, and conducted with a flagrant indifference for the value of human life with a subjective awareness that those within the residence would be seriously injured or killed. As such, punitive damages are necessary against the officers.

**COUNT I**

***Battery***

80. Plaintiff incorporates the preceding paragraphs by reference.

81. On March 13, 2006 the Defendants, in intentionally shooting Breonna repeatedly without the privilege or authority to do so, committed battery upon her several times.

82. As a result of this conduct, Breonna Taylor suffered harm.

83. Plaintiff's damages secondary to the Defendants' conduct include Breonna's physical and emotional pain and suffering, destruction of power to labor and earn income, funeral and burial costs, as well any other damages secondary to the actions of the Defendants.

84. The Plaintiff is entitled to punitive damages due to the Defendants' conduct.

**COUNT II**

***Wrongful Death***

85. Plaintiff incorporates the preceding paragraphs by reference.

86. The Defendants' actions caused the wrongful death of Breonna Taylor, resulting in damages recoverable under K.R.S. § 411.130 and K.R.S. § 411.133.

87. Plaintiff's damages secondary to the Defendants' conduct include Breonna's physical and emotional pain and suffering, destruction of power to labor and earn income, funeral and burial costs, as well any other damages secondary to the actions of the Defendants.

88. The Plaintiff is entitled to punitive damages due to the Defendants' conduct.

**COUNT III**

***Excessive Force in Violation of KRS 431.025***

89. Plaintiff incorporates the preceding paragraphs by reference.

90. The Defendants each had a statutory duty, pursuant to KRS 431.025(3), to refrain

from using unnecessary force upon Breonna.

91. The Defendants used unnecessary force and violence upon Breonna Taylor in violation of KRS 431.025.

92. This statute was enacted to prevent the type of conduct associated with the Defendants.

93. The Defendants were negligent per se.

94. The Defendants' violations of this statute were direct and proximate causes of Breonna Taylor's death and the claimed damages herein.

95. Plaintiff's damages secondary to the Defendants' conduct include Breonna's physical and emotional pain and suffering, destruction of power to labor and earn income, funeral and burial costs, as well any other damages secondary to the actions of the Defendants.

96. The Plaintiff is entitled to punitive damages due to the Defendants' conduct.

**COUNT IV**

***Negligence and Gross Negligence***

97. Plaintiff incorporates the preceding paragraphs by reference.

98. Each of the Defendants breached their respective ministerial duties of reasonable care owed to Breonna Taylor, with said breaches serving as direct and proximate causes of her injuries and damages.

99. These ministerial duties included, but were not limited to:

a. Mandatory activation of the SWAT team for the planning and execution of the search warrant.

b. Calling off the warrant once the primary target was apprehended elsewhere.

c. Calling off the warrant once probable cause no longer existed.

d. Knocking and announcing prior to making entry into Breonna's home.

e. Accurately, completely, and specifically completing the affidavit in support of the search warrant so that an informed decision could be made as to the probable cause for the warrant and its terms of execution.

f. Refraining from blind gunfire into a home which the Defendants knew or should have known was occupied by an unarmed 26-year-old female.

100. The Defendants' failures to adhere to their ministerial duties owed to Breonna Taylor were a substantial factor in her death and the claimed damages herein.

101. Plaintiff's damages secondary to the Defendants' conduct include Breonna's physical and emotional pain and suffering, destruction of power to labor and earn income, funeral and burial costs, as well any other damages secondary to the actions of the Defendants.

102. The Plaintiff is entitled to punitive damages due to the Defendants' conduct.

## VII. JURY DEMAND

103. Plaintiff hereby demands a trial by jury of all issues so triable.

## VIII. PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff demands that this Court award the following:

a. Compensatory damages in an amount to be shown at trial.

b. Punitive damages in an amount to be shown at trial;

c. Costs incurred in this action and reasonable attorney fees;

d. Prejudgment and post-judgment interest; and

e. Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

**SAM AGUIAR INJURY LAWYERS, PLLC**

*/s/ Sam Aguiar*

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