IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DWAYNE FURLOW et al.,

Plaintiffs,

v.

JON BELMAR et al.,

Defendants.

Case No.: 4:16-cv-00254-JAR
Oral Argument Requested

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

This case is about the "Wanteds" that St. Louis County Police Department ("SLCPD") officers issue so that suspects will be arrested for questioning, without a judicial determination of probable cause. St. Louis County and its surrounding municipalities appear to be the only jurisdictions that have a policy of issuing Wanteds. As the United States Department of Justice's Ferguson Report found, Wanteds are rife with the potential for abuse. As Plaintiffs show below, Wanteds are unconstitutional.

Drawing every inference in their favor, this is how the Defendants say the Wanted system works: Where a police officer has probable cause to believe a crime has been committed and a specific person has committed it, the officer will attempt to question the suspect. If the officer cannot contact the suspect face-to-face, or if the suspect indicates over the telephone that he does not want to meet or speak with the officer, the officer will enter a "Wanted" into the regional or state-wide law-enforcement database. When any other officer encounters that suspect, for any reason, and learns from one of these databases that there is a Wanted out for the suspect, the officer will take the suspect into custody and will contact the original, Wanted-issuing officer. That officer is supposed to then come interrogate the suspect in custody, and is given 24 hours to do so. During this time, sometimes the suspect exonerates himself and is released. Sometimes the suspect refuses to answer questions. Sometimes, but—all agree—not remotely close to always, the Wanted-entering officer contacts the St. Louis County Prosecuting Attorney's Office ("PAO") to request that they seek a formal arrest warrant and begin the prosecutorial process. And sometimes, but not always, the PAO applies for a warrant.

Other governments—federal, state, and local—arrest people without using Wanteds, relying instead on the system of judge-approved arrest warrants that the

Framers of the Constitution enshrined in the Bill of Rights. One might wonder, then, where the Wanted system came from. The answer is a PAO policy that an officer must attempt to obtain an in-person statement from a suspect before the PAO will even consider seeking a warrant. To comply with this PAO policy, the SLCPD has instituted its own policy, under which an SLCPD officer must either (i) locate and question the suspect in person, or (ii) issue a Wanted, authorizing any other officer to arrest the suspect, so that the Wanted-issuing officer can question the suspect in custody.

Plaintiffs Ralph Torres, Dwayne Furlow, and Howard Liner (the "Named Plaintiffs"), exemplify the problems with this system. Each was arrested on a Wanted. For each arrest, no judicial officer assessed that evidence to determine whether there was probable cause. In each, there was no exigency to justify taking them into custody prior to seeking a warrant. Each Plaintiff was taken into custody by an officer who had no personal knowledge of the facts on which any probable cause determination had been made; the arresting officers simply executed some other officer's Wanted. Each Plaintiff was released after spending the night in jail; Mr Liner was released after 30 hours in custody, and Mr. Torres and Mr. Furlow were released after just over 24 hours. None was charged with the crime for which he was arrested.[1]

With Phase I discovery into the Wanted system now complete, it is clear that the parties dispute many factual and legal issues, and that those disputes could be resolved only at a trial. These include whether Wanteds are often issued without probable cause; the Plaintiffs' own stories confirm that probable cause is often lacking, but the Defendants insist it is always required. These include whether SLCPD officers are

[1] Plaintiffs are moving simultaneously to certify a class of other, similarly-situated people arrested on Wanteds. The legal issue presented in this motion is common to the class.

adequately trained about Wanteds; there is no class or book or pamphlet or lecture about Wanteds, yet Defendants insist the training is adequate. And these include the liability of the individual officer Defendants who issued the Wanteds against the Named Plaintiffs and the amount of damages that the Plaintiffs suffered.

This motion does not concern any of those disputed facts, however. Instead, this motion concerns the constitutionality of (i) the arrests and detentions of the three Plaintiffs pursuant to Wanteds, even assuming the existence of probable cause, and (ii) the SLCPD Wanted policy itself, and rests on only the facts as the Defendants themselves have explained them, drawing every inference in their favor. Defendants freely admit that Mr. Torres, Mr. Furlow, and Mr. Liner were arrested pursuant to Wanteds issued by St. Louis County police officers. They freely admit that the purpose of a Wanted is to take someone into custody to interrogate them, rather than to seek formal charges against them. And they freely admit that SLCPD officers use Wanteds to continue their investigations by questioning suspects in custody, because otherwise the PAO will not seek a warrant. This practice, we will show in this motion, on its own and as applied to the three Named Plaintiffs, violates the Fourth Amendment.

Plaintiffs move for partial summary judgment on Count I of the First Amended Class Action Complaint. The Court should declare the St. Louis County Wanted system, and the arrests of Mr. Torres, Mr. Furlow, and Mr. Liner made pursuant to that system, to be in violation of Fourth and Fourteenth Amendments and enter summary judgment in the Plaintiffs' favor on this issue. Because these arrests were made pursuant to an undisputed, official SLCPD policy, the Court should find St. Louis County and Chief Belmar, in his official capacity, are liable for causing these arrests to take place.

STATEMENT OF FACTS

Plaintiffs draw these facts from (i) the declaration of Eric Alan Stone, to which Plaintiffs have attached exhibits, and (ii) the accompanying Statement of Uncontroverted Material Facts. The facts are undisputed except where noted.

The Parties

Plaintiffs Ralph Torres, Dwayne Furlow, and Howard Liner are all residents of St. Louis County, and each was the target of a Wanted, denied procedural remedies to quash the Wanted, and subjected to arrest and extended detention on a Wanted. Defendant Laura Clements is an SLCPD detective who caused the arrest of Mr. Torres. Defendant Kevin Walsh is an SLCPD detective who caused the arrest of Mr. Furlow. Defendant Christopher Partin is an SLCPD officer who issued a separate Wanted against Mr. Furlow. Officer Ed Schlueter is an SLCPD officer who caused the arrest of Mr. Liner and who is named in the Amended Complaint as John Doe. *See* Ex. 6, 12:5-14:2 (Schlueter). Defendant Jon Belmar has been the Chief of Police of St. Louis County since 2014. Defendant St. Louis County operates a police department that is the primary law enforcement agency serving St. Louis County.

Plaintiff Ralph Torres's Arrest Pursuant to a Wanted

Mr. Torres's arrest stems from allegations made by his ex-wife during a December 16, 2014 phone call with Detective Clements, and a November 26, 2014 forensic interview of his daughter, conducted by the Missouri Department of Social Services ("MDSS") at the Child Center in Wentzville, Missouri. Ex. 31, at 3 (Torres SLCPD IR, 2-15).

Two months after those allegations were first made, on January 27, 2015, Defendant Clements contacted Mr. Torres by phone, reaching his voicemail. *Id.*

Mr. Torres returned her call, stated that he "referred any matters pertaining to his ex-wife to his attorney," and provided Defendant Clements his attorney's contact information. *Id.* Defendant Clements was unable to reach the attorney, so on February 23, 2015, she issued a Wanted for Mr. Torres's arrest. *Id.*

On March 30, 2015, the MDSS closed its case against Mr. Torres for lack of evidence, noting inconsistencies in the accusations, and noting that Mr. Torres's daughter, during the interview, "admitted that her mom told her what to say." Ex. 36, at 1 (MDSS Letter). Defendant Clements did not learn of this until she prepared for her deposition in this case. Ex. 3, 174:22-25 (Clements). Mr. Torres's ex-wife later admitted she made these allegations up. Ex. 8, 44:14-45:1 (Torres).

Two days after the MDSS investigation against him was closed, at approximately 11 a.m. on April 1, 2015, Mr. Torres was in his garage with his eight-year-old son, fixing a bicycle, when he was approached by SLCPD Officer Scott Leible. Ex. 31, at 6-7 (Torres SLCPD IR, 2-15). Officer Leible had, by coincidence, been in the neighborhood, and, from his car, conducted a computer search for outstanding warrants and Wanteds nearby. *Id.* Seeing Detective Clements's outstanding Wanted for the nearby (but otherwise unknown to him) Mr. Torres, Officer Leible went to Mr. Torres's house, informed him of the Wanted, and arrested him pursuant to that Wanted. Mr. Torres did not struggle or resist. *Id.* At approximately 11:30 a.m., Officer Leible told Detective Clements that he had arrested Mr. Torres. Ex. 28, at 3 (Just. Ctr., Torres, 4-1-15). Mr. Torres was eventually booked and processed at the St. Louis County Justice Center at about 5 p.m. *Id.*

Defendant Clements was not on duty at the time. Ex. 3, 235:1-8 (Clements). According to her testimony and to Justice Center records, Clements arrived at the Justice Center at 8:45 p.m. that evening to interview Mr. Torres. Ex. 28, at 4 (Just. Ctr., Torres, 4-1-15); Ex. 3, 215:11-18 (Clements). All agree that Mr. Torres told Defendant Clements that he did not wish to speak with her, and that he invoked his right to an attorney. Ex. 3, 216:14-18 (Clements); Ex. 8, 99:8-11 (Torres).

Defendant Clements then instructed the Justice Center to continue holding Mr. Torres for a full 24 hours. Ex. 8, 102:1-8 (Torres); *see also* Ex. 3, 229:24-230:12 (Clements). She explained that her investigation was "complete" at that point, but that holding suspects for a full 24 hours is "just an option we have," and she chose to "utilize it." Ex. 3, 233:2-7. The Justice Center records say "H24 for Clements"—*i.e.*, hold for 24 hours, for Detective Clements. Ex. 28, at 4 (Just. Ctr., Torres, 4-1-15).

The next day, Defendant Clements asked the PAO to apply for a warrant for Mr. Torres. They refused, which Detective Clements believes they did for lack of evidence. Ex. 3, 233:10-17 (Clements); Ex. 28, at 10 (Torres SLCPD IR, 2-15). Mr. Torres was released after nearly 25 hours in police custody, according to Defendants' own records. Ex. 28, at 1-2 (Just. Ctr., Torres, 4-1-15). Mr. Torres's mugshot, which was taken in conjunction with these accusations, remains publicly accessible online. Ex. 57 (Liner Mugshot).

Defendant Clements testified to a pattern and practice consistent with these events: she issues Wanteds to "investigate allegations" and to "either interview [a suspect] or have them invoke and not make a statement" so that she can present a complete investigation to the PAO. Ex. 3, 28:8-25 (Clements).

Plaintiff Dwayne Furlow's Two Wanteds and His Arrest

1. On the morning of November 11, 2015, Mr. Furlow was taking his daughter to preschool when his son called to tell him that their neighbor, Janet Virgin, had been hitting him in the face, and that there was a police officer on the scene. Ex. 7, 150:24-151:10; 152:2-5 (Furlow). The driver of the taxi the son usually takes to school observed the incident. Ex. 4, 212:13-25 (Partin); Ex. 7, 151:6-152:1 (Furlow). Defendant Partin was the officer on the scene. Ex. 4, 125:7-16 (Partin). Mr. Furlow's son handed Officer Partin his cell phone so he could speak with Mr. Furlow. *Id.* at 125:18-21. Defendant Partin did not take a statement from the taxi driver. *Id.* at 212:13-25.

Over the phone, Mr. Furlow informed Defendant Partin that Ms. Virgin had assaulted his children. *Id.* at 125:22-126:4. Defendant Partin informed Mr. Furlow that Ms. Virgin had accused Mr. Furlow of stealing her phone, and asked Mr. Furlow to return home to be questioned. *Id.* at 186:9-20; Ex. 7, 152:15-21 (Furlow); Ex. 32, at 3-4 (Furlow SLCPD IR, 11-15). Mr. Furlow declined to return to his home to be questioned by Defendant Partin, at which time Defendant Partin said he would enter a Wanted into the system for Mr. Furlow if he didn't return; Officer Partin entered a Wanted against Mr. Furlow. Ex. 32, at 4 (Furlow SLCPD IR, 11-15); Ex. 7, 152:22-153:23 (Furlow); Ex: 4, 134:24-135:1 (Partin).

That same day, Mr. Furlow's attorney, Blake Strode, made several attempts to contact Defendant Partin and others at the SLCPD to explain that Mr. Furlow was invoking his Fifth Amendment right to remain silent. Ex. 4, 141:4-17, 142:13-15, 144:20-24 (Partin); Ex. 7, 195:24-198:10 (Furlow); Ex. 61 (Means Letter).

Despite these diligent efforts, the Wanted remained active for more than a month. Ex. 4, 144:25-145:10 (Partin). Ultimately, Mr. Strode arranged for Mr. Furlow to go to the police station on December 12, 2015 in order to invoke his right to remain silent in person, which he did, so that the Wanted would be canceled and Mr. Furlow would be free of the risk of sudden arrest. *Id.* at 154:20-22. The PAO dropped the charges against Mr. Furlow, noting that this was a "neighbor dispute and the neighbor is not mentally well." Ex. 35 (Furlow Prosecutor's Note).

2. A little over a month later, on January 25, 2016, Mr. Furlow spoke over the telephone to a different police officer, Defendant Walsh, about unrelated allegations. Ex. 5, 121:14-122:4 (Walsh). Defendant Walsh asked Mr. Furlow to return to his home to be questioned, and Mr. Furlow said he did not want to speak to Defendant Walsh. *Id.* at 122:1-21. Defendant Walsh told Mr. Furlow that if he did not return home and speak with him in person, Defendant Walsh would issue a Wanted. *Id.* at 122:9-15. When Mr. Furlow did not return, Defendant Walsh issued a Wanted against him. *Id.* at 122:22-25. On January 28, 2016, Mr. Furlow was stopped for an unrelated traffic violation, and arrested on Defendant Walsh's Wanted. Ex. 7, 260:19-262:15 (Furlow); Ex. 33, at 5-6 (Furlow SLCPD IR, 1-16). At the time Defendant Walsh was informed that Mr. Furlow was in custody on his Wanted, Mr. Furlow had already invoked his right to remain silent, so Defendant Walsh did not attempt to interrogate Mr. Furlow. Ex. 33, at 6 (Furlow SLCPD IR, 1-16); Ex. 5, 136:5-24 (Walsh). Mr. Furlow was held for just over 24 hours and released. Ex. 27, at 1-2 (Just. Ctr., Furlow, 1-29-16). No charges were brought against Mr. Furlow.

Plaintiff Howard Liner's Two Wanteds and His Arrest

1. An SLCPD officer issued a Wanted against Mr. Liner on March 23, 2015 after his girlfriend reported that he had stolen her car. Ex. 29, at 3 (Liner, SLCPD IR, 3-15). After the Wanted was live in the computer system, the officer determined that the vehicle had actually been repossessed by Mr. Liner's girlfriend's loan company, and that the accusation against Mr. Liner was baseless; at this point, the Wanted was cancelled. *Id.* From the time the Wanted was issued until it was cancelled, Mr. Liner was subject to arrest at any moment.

2. The second Wanted against Mr. Liner arose out of an incident in the summer of 2015 in which Mr. Liner was accused by his acquaintance Jaylen Davis and Mr. Davis's mother of stealing car tires and rims from their front lawn. Ex. 30, at 5 (Liner, SLCPD IR, 8-15); Ex. 6, 104:9-106:11 (Schlueter). Neither Mr. Davis nor his mother said they had seen Mr. Liner take these items. Ex. 30, at 5 (Liner, SLCPD IR, 8-15). Nevertheless, on these statements alone, Officer Ed Schlueter issued a Wanted against Mr. Liner on August 25, 2015. He then made no further attempts to investigate these allegations. Ex. 6, 122:1-4 (Schlueter).

On October 5, 2015, officers from the St. Louis Metropolitan Police Department ("SLMPD") happened upon Mr. Liner in an argument outside of a restaurant. Ex. 38 (SLMPD Liner). From their computer, they learned about Defendant Schlueter's outstanding Wanted, and arrested Mr. Liner. *Id.* Because he was arrested by a separate law enforcement agency than the one that issued the Wanted, Mr. Liner was booked, processed and held by the SLMPD, and then conveyed to SLCPD, where he was again booked, processed, and held, all as a result of Defendant Schlueter's Wanted. *Id.*; Ex. 62 (Liner Fugitive Notification); Ex. 26 (Just. Ctr., Liner, 10-5-15). Defendant Schlueter did

not even question Mr. Liner until he had been in custody for some 29 hours. In that interrogation, Defendant Schlueter quickly determined that the stolen tires and rims could not possibly have fit in the trunk of Mr. Liner's car, given its make and model. Defendant Schlueter was quite clear that Mr. Liner's vehicle negated probable cause: "I asked about the type of vehicle he was driving, and pretty quickly I determined that I don't have probable cause and he should be released." Ex. 6, 143:6-9 (Schlueter). "[S]o I told them, I've got nothing, you know, let him go. . ." *Id.* at 144:24-145:1. Defendant Schlueter was also quite clear that prior to that point, he had not tried to determine what kind of car Mr. Liner drove. *Id.* at 116:1-117:1.

Mr. Liner was held for approximately 30 hours and was never charged with a crime. Ex. 26 (Just Ctr., Liner, 10-5-15); Ex. 38 (SLMPD Liner). His mugshot, which was taken in conjunction with these accusations, remains publicly accessible online. Ex. 56 (Liner Mugshot).

The St. Louis County Prosecuting Attorney's Office's Requirement

The record evidence is undisputed that SLCPD officers and detectives issue Wanteds because the PAO will not even consider applying for a warrant without an in-person interrogation of the suspect,. *See, e.g.*, Ex. 13, 36:10-22 (Morrow); Ex. 4, 45:3-13 (Partin); Ex. 5, 52:6-12, 53:22-54:2 (Walsh). To be clear, this is not contained in any written policy document. But there is no dispute that SLCPD personnel issue Wanteds to comply with this requirement.

Both Rule 30(b)(6) witnesses for the police department testified to this. *First*, Lt. Gomez testified that "usually a warrant won't be issued unless we've given the suspect every opportunity to make a statement." Ex. 2, 128:3-128:11 (Gomez). *Second*, Lt. Morrow, asked why an officer would issue a Wanted instead of seeking a warrant,

replied, "Our Prosecuting Attorney's Office requires an attempt at an interview with your suspect before they will entertain a warrant application. . . I'll make attempts [to] find you and if I can't, then I'll [be] putting out [a] Wanted." Ex. 13, 36:10-22 (Morrow). Detective Clements explained it bluntly: "Our prosecuting attorney's office doesn't issue at large warrants," defining an at large warrant as "[a] warrant for somebody that's not in custody or hasn't been spoken with." Ex. 3, 40:4-11 (Clements). Detective Clements went on to explain that if she went "to the prosecuting attorney and tried to get a warrant [without having first made contact], they would say that the investigation is not complete and to come back after you've made contact with that person." *Id.* at 40:12-21.

Plaintiffs also deposed a 30(b)(6) witness from the PAO itself, seeking confirmation of this policy. The witness testified that, typically, the PAO will not consider seeking a warrant unless there has been a "complete investigation," which—he explained—requires either an in-person interview or an in-person refusal to answer questions. *See* Ex. 14, 64:15-24, 40:4-10 (Monahan). The PAO witness explained that when evaluating an officer's request for a warrant, the attorney wants to analyze the "most complete facts" in order to determine whether they have a "reasonable chance of winning" before applying for the warrant. *Id.* at 36:1-37:7.

The Wanteds Policy in St. Louis County

For decades, it has been SLCPD policy to issue Wanteds in order to satisfy the PAO's requirement of an in-person interview. *See* Ex. 13, 77:5-16 (Morrow). Wanteds serve no other purpose, all SLCPD officer and policy witnesses testified, than to permit questioning of a suspect in custody so that a warrant may be sought.

Lt. Gomez, as one of the County's Rule 30(b)(6) witness, agreed with the statement that a "significant purpose of the wanted process" is "to bring people into

custody so that they can be questioned or at least given the opportunity to be questioned prior" to an officer seeking a warrant. Ex. 2, 135:10-15 (Gomez). Lt. Gomez could not think of any other reason to use a Wanted. *Id.* at 23:5-25. In fact, he confirmed, an officer may use a Wanted for the sole purpose of questioning a suspect, rather than to seek a warrant to prosecute them. *Id.* at 258:21-259:5. Similarly, the County's other 30(b)(6) witness, Lt. Morrow, testified that you can issue a wanted for the purpose of having an individual detained for questioning. Ex. 13, 41:2-5 (Morrow). Lt. Burk, who was involved in discussions about whether to change SLCPD policies regarding Wanteds (Ex. 15, 41:7-12 (Burk)), and Detective Walsh both explained that the purpose of the Wanted is to gather additional evidence by interviewing a suspect. *Id.* at 35:6-9; Ex. 5, 55:25-56:6 (Walsh). Officer Schlueter elaborated that the purpose of a Wanted is "to speak to a subject . . . you believe has committed a crime and you need to reach out to them and you're not able to get ahold of them . . . kind of a last resort to . . . getting in touch with the subject." Ex. 6, 32:18-25 (Schlueter). Detective Clements testified that the purpose of a Wanted is to contact and interview a suspect. Ex. 3, 29:22-30:20 (Clements). And Officer Partin testified that "The purpose of entering a wanted is to be able to speak with the person that was involved in the case to see—to give them their opportunity to say what happened." Ex. 4, 42:2-5 (Partin).

To issue a Wanted, an SLCPD officer calls a computer clerk (known as a "CARE operator") to enter the Wanted into REJIS or MULES, the two electronic databases used by SLCPD officers to issue, view, and store Wanteds and other information pertinent to

their law enforcement duties.[2] The CARE operator inputs the information from the officer, including identifying information and the crime for which that person is Wanted, without any independent assessment of whether or not there is probable cause to sustain the Wanted.

Once a Wanted has been entered into REJIS or MULES, it can be seen by any officer in any police department that has access to the database. Wanteds can remain active for up to three years, or even indefinitely, depending on the alleged crime. *See* Ex. 44, at 54 (Wanted Entry Guide 1-2017). If, during that time, an officer runs a person's name through that database—or, for that matter, simply searches for outstanding Wanteds and warrants near his own location, as Officer Leible did when he ended up arresting Mr. Torres, *accord, e.g.,* Ex. 3, 208:17-209:2 (Clements)—he will see the Wanted entry. This can happen even during a routine traffic stop, in the same way that an officer would run a person's name to determine whether that person has an outstanding warrant. Ex. 15, 28:15-25 (Burk). All of the officers were clear that probable cause is not required to run a name check. *See, e.g.,* Ex. 2, 62:5-12 (Gomez); Ex. 15, 29:10-13 (Burk).

Where the querying officer sees that there is a Wanted for a specific person, he will see only the name of the subject, the name of the officer who issued the Wanted, and the crime for which the person is wanted for questioning, but not any part of the evidentiary basis for the probable cause determination. *See* Ex. 15, 31:20-33:9 (Burk); Ex. 2, 257:20-24 (Gomez). An officer is then obligated to detain the subject of the

[2] REJIS stands for Regional Justice Information Service. Ex.1, 22:4-5 (Meschke). It is a government agency (*id.* at 22:5-6) that operates in much of Missouri and in parts of Illinois. Ex. 12, 23:23-24:7 (Jennings). MULES stands for Missouri Uniform Law Enforcement System. Ex. 11, 34:21-22 (Woods); *see also* Ex. 13, 39:5-17 (Morrow) (explaining that MULES is state-wide and REJIS is local).

Wanted. As the SLCPD's Rule 30(b)(6) witness testified, that is "the purpose of a wanted," to ensure the person is arrested:

> Q: And that is, in fact, the purpose of a wanted? It's a way to ensure that if the subject of the wanted is encountered by a law enforcement officer, for whatever reason, and their background is checked and the wanted is found, that person is taken into custody, correct?
>
> A: Correct.

Ex. 2, 64:13-19 (Gomez).

Subjects of Wanteds often do not know that a Wanted has been issued for them until they are arrested. *See* Ex. 3, 53:8-11 (Clements). In many cases, an individual may suspect that a Wanted has been issued against him or her only because the police officer has threatened to issue the Wanted. See, e.g., Ex. 7, 152:22-153:5 (Furlow). There is no database available to citizens to verify whether a Wanted has been issued against them, and if so, why. There is also no mechanism by which an individual can address or rectify a Wanted other than surrendering to the authorities. *See, e.g.,* Ex. 4, 65:2-19 (Partin).

Other Jurisdictions Prosecute Crimes Without Wanteds

The Wanteds system is not consistent with generally accepted police practices. *See* Ex. 53, at 6 (Noble Report); Ex. 54, at 9 (Bowman Report). Police officers in other jurisdictions are generally trained that once they have probable cause to believe a person has committed a crime, and there are no exigent circumstances present, they should either apply for a warrant or—if that person is in that officer's presence, or in the presence of a fellow officer who is aware of that officer's basis for probable cause—arrest the person on the scene and promptly seek a warrant thereafter. Ex. 54, at 10-11 (Bowman Report). Further, there are alternative strategies that are routinely used by police agencies across the nation to implement the same law enforcement goals. Ex. 53, at 6 (Noble Report).

In St. Louis County, on the other hand, even where an SLCPD officer believes she has probable cause to arrest, she cannot persuade the prosecutors to apply for a warrant unless she has also attempted to interrogate the suspect in person. *See* Ex. 62, at 15 (CJIS Newsletter) ("A Stop Order should be issued when the investigating officer has probable cause to believe a person has been involved in a crime, but is unable to obtain a warrant until further information can be derived from the said individual.").

The Wanted System Poses Significant Risks

As the Court knows, the Civil Rights Division of the U.S. Department of Justice ("DOJ") investigated the Ferguson Police Department after the August 2014 shooting of Michael Brown. Ferguson's own "Wanteds" system—essentially identical to that of the SLCPD—came up in some of the DOJ's witness interviews, and the DOJ's March 4, 2015 report discussed the Wanteds system. Ex. 41 (DOJ Ferguson Report). The Report warned that Wanteds serve as an "end-run around the judicial system," and noted that even though the Ferguson Police Department nominally required probable cause and supervisory review before a Wanted could be issued, people were routinely arrested on Wanteds that were unsupported by probable cause and that lacked meaningful supervisory review. *Id.* at 22. The DOJ concluded that the Wanteds system "poses a significant risk of abuse." *Id.* at 19.

In the SLCPD, department policy and procedure are embodied in departmental General Orders ("G.O.s"). *See* Ex. 2, 77:7-9 (Gomez). For many years, the governing policy on Wanteds did not mention "probable cause" as a requirement to issue a Wanted, although the County maintains—and for purposes of this motion only Plaintiffs accept—that probable cause has always been required to issue a Wanted. Ex. 21 (G.O. 11-26); Ex. 13, 64:8-14 (Morrow). On July 15, 2015, four months after the Ferguson Report

found that Ferguson police officers were routinely issuing Wanteds without probable cause, the SLCPD added language to the Wanteds G.O. policy to explicitly indicate that probable cause is necessary to issue a Wanted. Ex. 22 (G.O. 15-26); Ex. 41 (DOJ Ferguson Report). The SLCPD's 30(b)(6) witness confirmed that this change was a direct result of the Ferguson Report, as did the retired lieutenant who was involved in making the change. Ex. 13, 54:16-55:17 (Morrow); Ex. 15, 135:3-9 (Burk).

On September 14, 2016, the SLCPD issued a new G.O. related to Wanteds, requiring that a supervisor review a Wanted before it is issued. Ex. 23 (G.O. 16-26). The SLCPD admits that mandatory supervisory review prior to issuance of a Wanted was a new policy. Ex. 13, 71:19-23 (Morrow). While a police supervisor must now review a Wanted before issuance, however, there is still no judicial review. Wanteds still operate as an "end-run around the judicial system." *See* Ex. 41, at 22 (DOJ Ferguson Report). And the value of this supervisory review is unclear. Officers Schlueter and Partin each testified that under this new policy they have never had a supervisor reject a proposed Wanted for lack of probable cause. Ex. 6, 67:22-68:1 (Schlueter); Ex. 4, 104:1-6 (Partin). Similarly, the DOJ found that in Ferguson, where supervisory review has been required since at least December 2012, the supervisors stated "that they had never declined to authorize a wanted." Ex. 41, at 24 (DOJ Ferguson Report).

The SLCPD did not conduct a systematic review of its officers or policies in the aftermath of the Ferguson Report. But a senior SLCPD officer, Lt. Morrow, candidly testified: "I recall wondering where we stood as a police department with 20 times the amount of people that Ferguson had, officers—sworn officers, you know, their 30 or 40 to our 800, 850. I'm wondering where we might stand on a review like this, especially

regarding wanted." Ex. 13, 75:3-8 (Morrow). Indeed, with a police force of over 800 officers compared to Ferguson's 40 and more than 15,000 Wanteds having been issued between 2011-2016 alone, with over 2,500 arrests made pursuant to those Wanteds during that time period, the potential for abuse is much higher for the SLCPD. Ex. 59 (SLCPD Wanteds Data 2011-2016).

This concern is underscored by the confusion among SLCPD officers about whether an arrest pursuant to a Wanted—entailing forced custodial detention—is really an "arrest" at all. Officer Schlueter testified that the goal in a Wanted is not to arrest the suspect, but to reach out to them and give them a chance to speak before a warrant is put out for their arrest:

> Q: What is the goal of entering a wanted? Is—if you enter a wanted, is the goal that the person who is the subject of the wanted will be arrested?
>
> A: To be arrested? No, my goal is to reach out to them[.]

Ex. 6, 37:4-18 (Schlueter). He explained that a Wanted gives a "possible suspect" an opportunity "to give their side of the story," and elaborated that, personally, "I'd like somebody to talk to me before putting a warrant out for my arrest." *Id.* at 95:13-23. Lt. Burk agreed that he would issue a Wanted rather than seek a warrant to "make sure that – that the person I'm looking for has a chance to tell their side of the story." Ex. 15, 28:2-14 (Burk). Officers called being arrested on a Wanted an "opportunity" for the person being arrested. Ex. 2, 133:15-16 (Gomez); Ex. 4, 42:2-5 (Partin).

This concern is further underscored by the lack of substantial training on Wanteds. The Defendants freely concede that there is no training regarding Wanteds at the Academy other than telling officers that an arrest always requires probable cause and having them read the G.Os. *See* Ex. 19, ¶¶ 1-11 (RFA Responses); Ex. 15, 90:19-23

(Burk); Ex. 6, 34:5-20 (Schlueter). To be clear, there is training (by non-lawyers) on how to enter a Wanted into the REJIS or MULES system and how to search for existing Wanteds. *See* Ex. 12, 30:9-21, 33:10-20, 45:8-10, 65:11-17, 66:4-8 (Jennings). The training on the Fourth Amendment and arrests in general, which Defendants have pointed to as sufficient, is taught by an instructor with no background in Constitutional Law. *See* Ex. 13, 50:18-25, 95:17-24, 96:15-18, 98:1-15 (Morrow); Ex.19, ¶ 1 (RFA Responses); Ex. 55 (Grames CV).

There Is Strong Evidence That Wanteds Are Issued Without Probable Cause

The SLCPD insists that probable cause is required to issue a Wanted, just as it is required for any custodial arrest, and that its officers invariably meet this standard. Plaintiffs are constrained on this motion to accept the SLCPD's version of the facts, and thus for this motion only Plaintiffs assume that there was, in fact, probable cause supporting each Wanted. If there is a trial in this case, however, Plaintiffs will prove that SLCPD officers issue Wanteds without probable cause, and did so in these Plaintiffs' own cases. The risk of such an outcome bears on the issues in this motion, too, as the Court assesses the constitutionality of the Wanteds "end run" around the Fourth Amendment.

- Both Wanteds for Mr. Liner were issued on nothing more than unsubstantiated accusations. The first, issued before the SLCPD amended its G.O. to indicate that probable cause is required to issue a Wanted, was supported only by Mr. Liner's girlfriend's allegation that he had stolen her vehicle, when in fact it had been repossessed. Exhibit 29, 3 (Liner SLCPD IR, 3-15). The officer simply took her word, without investigating, even though "probable cause does not exist where a minimal further investigation would have exonerated the suspect." *Clary* v. *City of Cape*

Girardeau, 165 F.Supp.3d 808, 827 (E.D. Mo. 2016) (quoting *Kuehl* v. *Burtis*, 173 F.3d 646, 650 (8th Cir. 1999)). And the second Wanted was issued based on allegations that Mr. Liner had stolen tires and rims, an accusation that was disproved as soon as Mr. Liner—by then in custody for 29 hours—was asked his version of events. The Officer promptly concluded he had "nothing." Ex. 6, 144:25-145:1 (Schlueter).

- The first Wanted for Dwayne Furlow was issued based on the say-so of his complainant neighbor and one eye-witness whose credibility was unknown, yet Officer Partin did not interview the taxi driver who also witnessed the supposed encounter. Ex. 4, 212:13-25 (Partin). Failing to interview an eye-witness is a sufficient breach of the probable-cause rules that it abrogates qualified immunity. *See Kuehl*, 173 F.3d at 651.

- And Mr. Torres was arrested on a Wanted two days after the underlying allegation against him had been rejected by the MDSS, which neither the arresting officer nor the issuing officer knew at the time. His warrantless arrest was based solely on the statements of his ex-wife and conflicting statements from their child, with no additional investigation, even though "the victim's report show[ed] signs that it was not credible" and there were no exigent circumstances requiring immediate action. *Rohlfing* v. *City of St. Charles, Mo.*, No. 4:12-CV-01670-SPM, 2013 WL 1789269, at *7 (April 26, 2013); s*ee also Amrine* v. *Brooks*, 522 F.3d 823, 832-33 (8th Cir. 2008). This Wanted was also issued prior to "probable cause" being explicitly referenced in the relevant General Order.

The notion that probable cause is a prerequisite for issuing a Wanted is undercut by the investigatory purpose of a Wanted. Several witnesses testified that, quite apart

from any PAO requirement, they view Wanteds as necessary before seeking a warrant because the suspect could exonerate herself. Lt. Burk noted that after arresting a person on a Wanted, "I might interview this person and find out that they're not even involved, you know, that the other person maybe was less truthful to me than what they could have been." Ex. 15, 185:5-9 (Burk). When asked why he would seek a Wanted rather than a Warrant, Officer Schlueter said, "Unfortunately, people don't always tell us the truth, so there's times when I want to reach out to that suspect first. Before pushing a case against them to the prosecutor is that I'd rather talk to them to get more facts upon the case." Ex. 6, 36:3-7 (Schlueter). Officer Schlueter elaborated that "[S]ometimes there's a lot more to a story or facts that we can -- to learn about a case if we were able to talk to the person instead of just putting a warrant out for the arrest before talking to the other side. I think it's only fair to get their side as well if I can." *Id.* at 36:23-37:3. These admissions flout the clear Eighth Circuit law that "[w]hen information supplied by an informant forms the basis for probable cause in a warrant, the core question in assessing probable cause . . . is whether the information is reliable." *U.S.* v. *Nieman*, 520 F.3d 834, 839-40 (8th Cir. 2008).

Even where a Wanted is issued based on probable cause, that probable cause may have dissipated by the time of the actual arrest on the Wanted, which may come months or years after its issuance. While there is a validation process to ensure that a Wanted is still active at the time of arrest, that validation may not occur until after the person is already in custody: "Q: And do they do that before or after taking the person into custody? A: It could be both ways." Ex. 15, 109:4-17 (Burk). In fact, where SLCPD officers execute a Wanted from another municipality, they do not validate the Wanted at

all, they simply arrest the person. *See id.* at 121:10-18. That there is no factual basis for the Wanted in the system makes it impossible for the arresting officer to determine if there is still probable cause at the time of the arrest.

Notably, St. Louis County does not maintain records on how frequently judges reject warrant applications for lack of probable cause where the suspect has already been arrested pursuant to a Wanted. *See* Ex. 2, 230:17-23 (Gomez); Ex. 14, 78:1-9 (Monahan); Ex. 18, at 4 (Interrogatory Responses). They do not maintain data about how often a warrant is even sought where a Wanted is issued. Ex. 18, at 4 (Interrogatory Responses). The experiences of the three Named Plaintiffs confirm that the answer is "far from routinely"—no warrant application was brought before a neutral magistrate for any of their arrests.

ARGUMENT

Plaintiffs bear the burden of proof, *see Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986), and have presented the undisputed facts as the Court must view them, in the light most favorable to the Defendants. *See AgriStor Leasing* v. *Farrow*, 826 F.2d 732, 734 (8th Cir. 1987); Fed. R. Civ. P. 56(a).

I. Defendants' Arrest of Plaintiffs Pursuant to Wanteds Violated the Fourth Amendment's Prohibitions Against Warrantless Arrests and Arrests for Further Investigation

The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV; U.S. Const. amend. XIV; *Maryland* v. *Pringle,* 540 U.S. 366, 369 (2003) (citing *Mapp* v. *Ohio*, 367 U.S. 643

(1961)). The Supreme Court has long held that the issuance of a warrant is something that must be done by a "neutral and detached magistrate," not by the officer investigating the crime: "the usual inferences which reasonable men draw from evidence" must "be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." *Johnson* v. *United States*, 333 U.S. 10, 13–14 (1948).

While a police officer may arrest a suspect without a warrant where that officer has probable cause to believe a crime has been committed and the suspect committed it, the suspect must be brought before a neutral magistrate within 48 hours of being detained on a warrantless arrest. *Gerstein* v. *Pugh*, 420 U.S. 103 (1975); *Cty of Riverside* v. *McLaughlin*, 500 U.S. 44, 56 (1991). A suspect may not be kept into custody "for the purpose of gathering additional evidence to justify the arrest." *Riverside*, 500 U.S. at 56.

Accepting the undisputed facts in the light most favorable to the Defendants, the arrests of all three Plaintiffs under the SLCPD Wanted policy violated the Fourth Amendment, in two ways: (i) Plaintiffs' arrests pursuant to Wanteds were made by officers who had no knowledge of the probable cause supporting the Wanteds where the circumstances afforded ample time to seek a warrant from a judge, and (ii) Plaintiffs were taken into custody to be interrogated, not so that a warrant could quickly be sought.[3]

[3] The record evidence strongly supports the conclusion that the Wanted policy contravenes the Fourth Amendment in two additional ways—suspects are routinely arrested on Wanteds without probable cause, and are held for 24 hours for no reason other than to hold them—but Plaintiffs recognize that those facts are disputed and look forward to exploring those claims at trial.

A. The Fourth Amendment Prohibits a System in Which Officers With No Personal Knowledge Routinely Make Warrantless Arrests And No Judge Has Approved the Basis for the Arrest

In *Gerstein* and *Riverside*, the Supreme Court created a narrow exception to the usual practice that an officer obtain an arrest warrant from a detached, neutral magistrate: Where the officer observes a crime in progress, or otherwise has personal knowledge giving rise to probable cause, the officer may arrest the suspect without a warrant and then promptly present that suspect to the magistrate. *Gerstein*, 420 U.S. at 125; *Riverside*, 500 U.S. at 56. The Wanteds system turns this on its head, allowing an officer who (for purposes of this motion) has probable cause to enter an order so that some other officer, someday, can arrest the subject. In so doing, the SLCPD has missed the point of the Supreme Court's teachings, and violated the Fourth Amendment.

Gerstein and *Riverside* involved a practical compromise, rooted in common law, under which "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of a crime." *Gerstein*, 420 U.S. at 113-14. Mindful of "the Fourth Amendment's protection against unfounded invasions of liberty and privacy," the Court stressed that a warrantless arrest should be the exception: the Fourth Amendment "require[s] that the existence of probable cause be decided by a neutral and detached magistrate whenever possible." *Id*. at 112 (emphasis added). The Court reiterated a "preference for the use of arrest warrants when feasible." *Id*. at 113.

The officers effectuating Plaintiffs' arrests made no on-the-scene assessment of probable cause and had no knowledge of the facts giving rise to the Wanteds. This is undisputed: Officer Leible arrested Mr. Torres with no knowledge of the facts underlying Defendant Clements's Wanted; Mr. Liner was arrested by officers from another police force altogether, who had no knowledge of why Officer Schlueter had issued a Wanted

for Mr. Liner; the officers who stopped Mr. Furlow for a routine traffic stop had no idea why Defendant Walsh had issued a Wanted for him.

To be sure, police officers arrest people every day based on arrest warrants in law-enforcement databases. Those warrants, however, carry a judicial imprimatur of probable cause—the very safeguard the Framers constructed to protect our liberty. Further, cases allowing for probable cause to be "based on the collective knowledge of all law enforcement officers involved in an investigation," *e.g., U.S.* v. *Morales*, 238 F.3d 952, 953-54 (8th Cir. 2001) (quoting *U.S.* v. *Horne*, 4 F.3d 579, 585 (8th Cir. 1993)), apply, for example, where several officers work together on an investigation but not every officer knows every piece of evidence. In contrast, the officers who arrested the Plaintiffs had no knowledge of any facts underlying the probable cause, and indeed all were clear that no such knowledge is required to arrest on a Wanted.

Moreover, the record is devoid of any evidence that the judges of St. Louis County are unavailable for large blocks of time, that any structural impediment prevents the SLCPD and PAO from obtaining arrest warrants, or that there was any reason to delay seeking a warrant for the Plaintiffs. For each Plaintiff, over one month elapsed between the time the Wanted was issued and the time he was arrested (or, in the case of Mr. Furlow, turned himself in to avoid arrest). No one has suggested that the SLCPD and PAO could not have sought a warrant during the time the Wanteds were active.

Defendants have blamed the PAO policy requiring an in-person interview before the prosecutors will consider seeking an arrest warrant. That is no defense of the Wanteds system. Nothing in *Gerstein* or *Riverside* or any case to Plaintiffs' knowledge permits police officers, especially ones who have no understanding of the basis for

probable cause, to make warrantless arrests because prosecutors refuse to seek a warrant. Accepting as true for this motion that the PAO will not seek a warrant unless the SLCPD has questioned a suspect in person, the solution to that self-imposed problem is that the SLCPD needs to do more legwork to interview suspects in person outside of custody. The record evidence is undisputed that the PAO's requirement (if there is one) is satisfied by a suspect's in-person, out-of-custody refusal to answer questions.

B. The Fourth Amendment Prohibits a System of Arresting People Without Warrants To Conduct Custodial Interrogation

Warrantless arrests by officers require an immediate post-arrest shift to seeking a warrant based on the information already known. *Gerstein* thus allows detention for a "brief period" in order "to take the administrative steps incident to arrest." *See* 420 U.S. at 113-14. The Eighth Circuit has since held that once those administrative steps are complete, it is unconstitutional to keep an individual detained without a warrant based solely on an officer's assessment of guilt. *See Wayland* v. *Springdale*, 933 F.2d 668, 670 (8th Cir. 1991); *accord Gramenos* v. *Jewel Companies, Inc.,* 797 F.2d 432, 437 (7th Cir. 1986) ("When the 'administrative steps' have been completed, the police must take the suspect before a magistrate to establish probable cause, or they must let him go.") To that end, a suspect must be brought before a neutral magistrate within 48 hours. *See Riverside*, 500 U.S. at 56. This 48-hour limit rests on the "practical realities" of policing, including "often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest[.]" *Id.* at 57.

The Court made clear, however, that even a less-than-48-hour detention is unreasonable under the Fourth Amendment if it is "for the purpose of gathering additional evidence to justify the arrest." *Id*. at 56. The Eighth Circuit has thus observed that officers have a duty to conduct a reasonably thorough investigation before arresting a suspect, barring exigency or some reason to believe the investigation would be hampered by delay. *See Kuehl* v. *Burtis*, 173 F.3d 646, 650 (8th Cir. 1999). Holding a suspect for as little as two hours could be unconstitutional, if the sole purpose of that detention were to interrogate the suspect for a crime unrelated to their arrest. *See U.S.* v. *Davis*, 174 F.3d 941 (8th Cir. 1999). The *Davis* court noted that "the fact that probable cause supported the initial arrest does not make Davis' subsequent detention constitutional." *Id.* at 944.

The Wanteds issued for the arrest of all three Plaintiffs were issued for the precise, unconstitutional reason the cases forbid: gathering evidence. The evidence on this point is undisputed, not just as a purpose of issuing a Wanted, but as the sole purpose. *See supra*, at 12. Defendant Burk, who retired from the SLCPD as a lieutenant in 2016, was a member of the Law Enforcement Policy Advisory Committee, and was the only person listed as knowledgeable about Wanteds in the County's Rule 26(a) disclosures, testified unequivocally that Wanteds are an investigatory tool:

> Q: Is it fair to say that a purpose of a wanted is to gather additional evidence?
>
> A: Yes. Since the purpose of the wanted is an investigatory tool to provide the most complete investigation that you can.

Ex. 15, 35:24-36:3 (Burk). He said that there is no requirement that an officer seek a warrant, indictment, or otherwise involve a judge during the period in which a person arrested on a Wanted is held. *See id.* at 34:13-35:5. And the other witnesses agreed that they use Wanteds to further investigate. *See*, *e.g.*, Ex. 3, 29:24-30:2 (Clements) ("Q:

What is it that you want or intend to happen when you request that wanted? A: I want to be able to contact that individual."). This is exactly what happened with Mr. Torres, Mr. Furlow, and Mr. Liner. All three Plaintiffs were taken into custody, and there is no record evidence that a warrant was applied for by the PAO, and it is undisputed that no warrant ever issued. They were arrested so that the officers could further their investigations, and the investigations then ended, in the case of Mr. Liner, for example, because the officer realized he "had nothing."

Arrests pursuant to systems like this have been held unconstitutional. In *Robinson* v. *City of Chicago*, an officer arrested a suspected arsonist without a warrant, and detained him for three days pursuant to a then-existing Chicago Police Department policy permitting detention to "continue the investigation." 638 F.Supp. 186, 186-188 (N.D. Ill. 1986), *rev'd* on standing grounds, 868 F.2d 959 (7th Cir. 1989). The court held that the Chicago policy violated the Fourth Amendment because it permits police officers to "circumvent" the requirement of a judicial determination of probable cause. *Id.* at 193. Certain parts of Tennessee, too, seem to have had a policy of arresting people without warrants in order to continue investigations, a policy that reportedly was based on a misreading of *Riverside* as permitting any detention of less than 48 hours. Officials in Tennessee have since "publicly acknowledged that arresting someone for investigative purposes was 'misconduct.'" Steven J. Mulroy, *'Hold' On: The Remarkably Resilient, Constitutionally Dubious 48-Hour Hold*, 63 Case W. Res. 815, 827 (2013).

One final point deserves mention: Several witnesses sought to justify these investigatory arrests by resort to a Missouri statute that provides that any person who has been arrested must be taken before a judicial officer for a probable-cause determination

within 24 hours. *See* Mo. Rev. Stat. § 544.170(1). (In prior versions of the statute the period was 20 hours.) One of the Department's 30(b)(6) witnesses, Lt. Morrow, testified that this statute "allows peace officers to hold a suspect without a warrant for 24 hours." Ex. 13, 121:15-21 (Morrow). And Defendant Clements testified that she ordered Mr. Torres held for a full 24 hours even though her investigation was already complete, because the Missouri statute gives her that "option." Ex. 3, 233:2-7 (Clements). Defendants' brief will show whether the Defendants actually adopt this position. Given the overwhelming case law rejecting it, Plaintiffs suspect that Defendants will simply disavow Lt. Morrow's testimony and condemn Defendant Clements's actions. To be clear, however, Mo. Rev. Stat. § 544.170(1) does not permit warrantless arrests for the purposes of investigation. That statute "does not provide any authority to arrest persons without a warrant and hold them in custody for twenty hours." *U.S.* v. *Oropesa*, 316 F.3d 762, 768 (8th Cir. 2003). Indeed, that statute "does not purport to give anyone a power to arrest" at all; it is "concerned not with the authority to arrest but with the rights of persons who have already been arrested." *U.S.* v. *Clarke*, 110 F.3d 612, 614 (8th Cir. 1997). As the Western District of Missouri has noted: "This statute is not a sword in the hands of the police, but rather a shield for the citizen." *U.S.* v. *Roberts*, 928 F. Supp. 910, 932-33 (W.D. Mo. 1996).

It is undisputed that the arrests of Mr. Torres, Mr. Furlow, and Mr. Liner were effectuated by officers who had no knowledge of the evidentiary basis to justify the arrest, and that their purpose was to allow the issuing officer to interrogate these men in custody. The Constitution forbids this.

II. St. Louis County and Chief Jon Belmar are Liable for These Constitutional Violations Under *Monell*

A government entity may be held liable for the unconstitutional acts of its officials or employees when those acts implement or execute an official unconstitutional policy or custom. *Monell* v. *Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978); *see also Mettler* v. *Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999). For liability to attach to the County, there must be a violation on the individual level. *McCoy* v. *City of Monticello*, 411 F.3d 920, 922 (8th Cir. 2005). A Plaintiff must show that the County's "*deliberate* conduct . . . was the 'moving force' behind the injury alleged." *Bd. of the Cnty. Comm'rs* v. *Brown*, 520 U.S. 397, 404 (1997) (emphasis in the original).

For the reasons explained above, all three Plaintiffs suffered constitutional violations when they were arrested and detained on Wanteds for no purpose other than to interrogate them. 42 U.S.C. § 1983 liability may attach to a municipality where plaintiffs show there is either an official municipal policy or an unofficial custom. *Atkinson* v. *City of Mountain View*, 709 F.3d 1201, 1214-1216 (8th Cir. 2013). Customs and usages were included within the scope of municipal § 1983 liability because "[a]lthough not authorized by written law, such practices of state official could well be so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Monell*, 436 U.S. 691. There is no genuine dispute that the Wanteds system exists pursuant to an unwritten, but universally acknowledged, SLCPD policy or custom.

All officers, including both SLCPD 30(b)(6) witnesses, stated they would not be able to apply for a warrant without first interviewing the suspect, noting that sometimes issuing a Wanted is the only way to accomplish this. Lt. Gomez testified, on behalf of the County, that a Wanted indicates that a person is wanted for further questioning; that is

why it is called a "Wanted." Ex. 2, 65:8-66:7 (Gomez). In the words of Lt. Morrow: "Since the time I started in '94, this has – this has been the practice." Ex. 13, 77:9-10 (Morrow); *see also id.* at 38:11-19. Further, officers view themselves as operating within, and constrained by, SLCPD policy. *See* Ex. 5, 165:2-20 (Walsh) ("Q: [from Mr. Hughes]: You're not some sort of rogue cop . . . going outside the policy; is that correct? A: Yes."); Ex. 3, 52:12-17 (Clements) (discussing arresting to interrogate as St. Louis County policy). Far from the product of "rogue cops," Wanteds are issued by officers like Ed Schlueter, who is so well regarded that he was named the City of Dellwood's Officer of the Year. Ex. 6, 170:4-5, 173:24-174:8 (Schlueter) (confirming that under SLCPD policy, a Wanted authorizes arrest and an officer is allowed to hold the arrestee for up to 24 hours). There is simply no reason to believe, and the County would be hard-pressed to dispute now, after every deposed officer has acknowledged this policy, that Wanteds are anything but a policy or custom of the SLCPD. Accordingly, St. Louis County and Chief Jon Belmar should be held responsible as the moving force behind the arrests of Mr. Furlow, Mr. Liner, and Mr. Torres pursuant to Wanteds.

CONCLUSION

For the reasons set forth above, the Court should declare the Wanteds system as unconstitutional and enter summary judgment on Count I on this issue, and that the County of St. Louis and Chief Jon Belmar are liable because this unconstitutional system operates as an official policy or custom of the County.

Dated: August 25, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the *Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment* was served upon all parties of record by this Court's CM/ECF electronic notification system on this 25th day of August, 2017:

_/s/ *Eric Alan Stone*_____
Eric Alan Stone