

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

ELSON FOSTER,
Plaintiff,

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v.

CIVIL ACTION NO. 1:20-cv-2296

BRIAN FLYNN,
CHARLENE BENTON, and
RUTH ANN BRIGHAM,
Defendants.

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, ELSON FOSTER, Plaintiff, complaining of BRIAN FLYNN, CHARLENE BENTON, and RUTH ANN BRIGHAM, and for causes of action will respectfully show unto the Court as follows:

I.
PARTIES

1. Plaintiff Elson Foster is a resident of Mesa County, Colorado.
2. Defendant Brian Flynn is an individual residing in Grand Junction, Mesa County, Colorado and is the Chief Judge for the 21st Judicial District. Chief Judge Flynn may be served at his place of employment at the Mesa County Justice Center located at 125 N Spruce St., Grand Junction, CO 81501, or wherever he may be found. Chief Judge Flynn is being sued in his individual capacity.
3. Defendant Charlene Benton is an individual residing in Grand Junction, Mesa County, Colorado and is the Clerk of Court for the 21st Judicial District. Defendant Benton may be served at her place of employment at the Mesa County Justice Center located at 125 N Spruce St., Grand Junction, CO 81501, or wherever she may be found. Defendant Benton is being sued in her individual capacity.

4. Defendant Ruth Ann Brigham (Ann Brigham) is an individual residing in Grand Junction, Mesa County, Colorado and is a “Supervisor I” for the 21st Judicial District. Defendant Brigham may be served at her place of employment at the Mesa County Justice Center located at 125 N Spruce St., Grand Junction, CO 81501, or wherever she may be found. Defendant Brigham is being sued in her individual capacity.

II.
JURISDICTION AND VENUE

5. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343 since Plaintiff is suing for relief under 42 U.S.C. § 1983.

6. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391 because the Defendants are domiciled and/or reside in the District of Colorado, and all or a substantial part of the causes of action accrued in the District of Colorado.

III.
FACTS AND ALLEGATIONS

7. Colorado is divided into 22 judicial districts, each with a Chief Judge.

8. The 21st Judicial District serves Mesa County, Colorado.

9. Brian Flynn is the Chief Judge of the 21st Judicial District of Colorado.

10. Judge Flynn was appointed as the Chief Judge by Colorado Supreme Court Chief Justice Nancy Rice.

11. Chief Judge Flynn’s appointment was effective on August 12, 2016.

12. Judge Flynn replaced retired Chief Judge David Bottger, who served as Chief Judge of the 21st Judicial District since 2005.

13. In addition to his judicial duties, as Chief Judge, Judge Flynn serves as the administrative head of the 21st Judicial District and makes administrative decisions for the district.

14. As administrative head, Chief Judge Flynn is responsible for appointing the district administrator, chief probation officer and clerks of court, assisting in the personnel, financial and case-management duties of the district, and seeing that the business of the courts is conducted efficiently and effectively.

Mandatory Protection Orders are No Longer Valid Once the Sentence is Complete

15. In Colorado, a mandatory protection order is issued against any person charged with a violation of any of the provisions of the Criminal Code, and the mandatory protection order shall remain in effect from the time that the person is advised of his or her rights at arraignment or the person's first appearance before the court and informed of such order until final disposition of the action. Colo. Rev. Stat. Ann. § 18-1-1001(1).

16. “Until final disposition of the action” means until the case is dismissed, until the defendant is acquitted, or until the defendant completes his or her sentence. A defendant sentenced to incarceration is deemed to have completed his or her sentence upon release from incarceration and discharge from parole supervision. Colo. Rev. Stat. Ann. § 18-1-1001(8)(b).

17. This means that if a person is convicted of a criminal offense in Colorado, the mandatory protection order, which is associated with that criminal conviction, will remain valid until the completion of the sentence – including any parole sentence. By law, the mandatory protection order is no longer valid after the completion of the sentence – including any parole sentence. Colo. Rev. Stat. Ann. § 18-1-1001.

Vacating Mandatory Protection Orders is an Administrative Task

18. In the 21st Judicial District, protection orders are manually entered into the ICONE/Eclipse system using a computer, which are then posted to the Central Registry (CCIC) and ultimately the Federal Registry (NCIC).

19. In the 21st Judicial District, the process of entering mandatory protection orders into the ICONE/Eclipse system is an administrative data entry task completed by clerks, judicial assistants, and administrative support specialists.

20. In the 21st Judicial District, the process of vacating mandatory protection orders from the ICONE/Eclipse system is not a judicial task but is an administrative data entry task completed by clerks, judicial assistants, and administrative support specialists.

21. These clerks, judicial assistants, and administrative support specialists are supervised by their superiors, including the Clerk of Court and “Supervisor I” positions.

22. The Clerk of Court for the 21st Judicial District provides technical, administrative, and supervisory work in the operation of the Clerk’s Office of the Colorado Judicial Branch.

23. The Clerk of Court receives supervision from the Chief Judge, who is the administrative head of the Judicial District and makes administrative decisions for the district.

24. In 2018, and at all times relevant to this lawsuit, the Clerk of Court in the 21st Judicial District was Charlene Benton.

25. The “Supervisor I” position supervises case processing, technical, and/or administrative staff in the 21st Judicial District. Supervisory activities of this position include establishing expectations, checking work product, providing training, conducting

performance evaluations, coaching and guiding staff, and participating in the hiring and termination of staff.

26. In 2018, Ann Brigham was employed in the 21st Judicial District in the “Supervisor I” position.

Law Enforcement Rely on the Central Registry to Determine if there is a Protection Order

27. Law enforcement officers review CCIC and NCIC to determine the existence of a protection order related to individuals they come into contact with while on duty.

28. If upon review, CCIC and/or NCIC show a protection order associated with an individual and the law enforcement officer believes the person to be in violation of that protection order, then the officer will believe they have probable cause to arrest the person for violating a protection order.

29. Thus, it is imperative that protection orders be vacated when they are no longer valid so that citizens are not falsely or wrongly arrested for violating protection orders that are no longer valid.

30. In Colorado, it is possible for a department of corrections and/or parole sentence to be discharged earlier than originally ordered due to the convicted person receiving earned time credits, which reduce the length of the sentence. Colo. Rev. Stat. Ann. § 17-22.5-405.

31. When a department of corrections or parole sentence is discharged early due to earned time credits, any mandatory protection order associated with the sentence is also discharged and is no longer valid since the sentence is complete. Colo. Rev. Stat. Ann. § 18-1-1001.

The 21st Judicial District has a Pattern and Practice of Not Vacating Mandatory Protection Orders When Sentences are Discharged Early

32. The 21st Judicial District has a pattern and practice of not vacating mandatory protection orders when sentences are discharged early.

33. On February 5, 2016, Deputy Public Defender Scott Burrill sent an email to the Chief Judge at the time, Chief Judge David Bottger, informing him of an issue with protection orders remaining in effect after sentences had been discharged. Burrill explained to Chief Judge Bottger that “when clients terminate sentences early through good time, earned time, etc., at either community corrections (felonies) or work release/jail (for [misdemeanors]) the protection orders are remaining in effect.”

34. Burrell went on to inform Chief Judge Bottger of three public defender clients that had completed their sentences but had subsequently been arrested and charged with violating protection orders that were no longer valid.

35. That same day, Chief Judge Bottger responded by email to Burrill that it appeared to be a **clerical issue**, and then informed Burrill that Heather Siegfried had been **working on the problem**.

36. Later that day, Heather Siegfried emailed Burrill that Chief Judge Bottger forward her Burrill’s initial email and she hoped that she could help resolve the issue.

37. At the time, Heather Siegfried was a Unit Supervisor with the 21st Judicial District Court.

38. Despite Chief Judge Bottger being made aware of the issue, the problem persisted.

The Defendants were Notified Their Procedure for Vacating Mandatory Protection Orders Caused Innocent People to be Wrongly Arrested

39. On June 14, 2017, Burrill emailed the new Chief Judge, Judge Brian Flynn, regarding the same issue.

40. In the June 14, 2017 email, Burrill explained to Chief Judge Flynn that,

“we have recently been having an issue where a defendant completely discharges a [department of corrections] sentence (and his or her parole) or community corrections sentence in a case where there was a protection order. Due to earned time calculations (or an early parole decisions[sic]), they are discharging a 2 year sentence (or whatever sentence was imposed) prior to an actual 2 year time period. Despite completing both the incarceration portion of the sentence and parole, the court computer is keeping the protection order active for a whole 2 year time period (or whatever time period) from when the subject was sentenced. This is despite there being no lawful authority for an 18-1-1001 [protection order] to remain in place once a sentence is completely discharged.”

41. Burrill then offered to provide Chief Judge Flynn with specific examples of the problem and explained that he previously raised this issue with former Chief Judge Bottger, that former Chief Judge Bottger put him in touch with Heather Siegfried, and that despite his discussions with both former Chief Judge Bottger and Heather Siegfried, the problem persisted.

42. Two days later, on June 16, 2017, Chief Judge Flynn emailed Burrill requesting specific examples of the problem.

43. Burrill responded by email with the following examples:

Robert Knight 2015M830 put on diversion. There is a no contact order issued the very first day of the case with an expiration date in 2018. In 2015 he goes on diversion. He got picked up on VPO later.

Alicia Pearson 16M705. Finished CC sentence early yet picked up a VPO based on the CC case.

Russell Jones 17M1461. This case (and 17M1103, where we realized there is some computer issue) spawned me sending you the email in the first place.

Randy McNamara 13CR540. He completed his CC sentence early with earned time and then once he was out, got picked up on a VPO based on 13CR540 (15M2034).

44. Burrill also stated that there are **more examples** than just these four individuals, putting Chief Judge Flynn on notice that this was a widespread problem and not an isolated occurrence.

45. **A year later**, on June 18, 2018, Burrill emailed Chief Judge Flynn again stating,

“It appears we are still having the issue with protection orders remaining in effect once parole is discharged. I cannot provide a specific case number as we are actively representing the gentleman at issue, but I would like to get some more information about how the courts are removing criminal protection orders from the system once someone discharges parole. **It seems to pop up every few months or so** and I am just wondering what more we can do to address the issue.” (emphasis added).

46. Almost a month later, on July 10, 2018, Burrill emailed Chief Judge Flynn again stating:

“I never heard back on this protection order issue. Is there a way you could update us on how protection orders are vacated once someone discharges parole? I ask because **we continue to get cases every few months where someone who discharged parole is arrested for a [Violation of Protection Order] based on the discharged parole case.**” (emphasis added).

47. That same day, Chief Judge Flynn finally responded by email to Burrill. On the email, Chief Judge Flynn copied, *inter alia*, Ann Brigham and Charlene Benton.

48. In that email, Chief Judge Flynn responded to Burrill that the State Court Administrator's Office had been sending the 21st Judicial District a list of defendants who were close to completing parole or who were being released from the department of corrections for time served.

49. Chief Judge Flynn also stated in that July 20, 2018 email that the 21st Judicial District was **relying on defendants to notify the district** of when their parole has been completed.

50. Finally, Chief Judge Flynn directed Burrill to contact Ann Brigham, Charlene Benton, or Linda Robinson with any further questions or concerns as "they will have the most current information about the issue."

51. Charlene Benton was the Clerk of Court.

52. Ann Brigham was a "Supervisor I."

53. Linda Robinson was the Chief Probation Officer.

54. Burrill responded to Chief Judge Flynn asking if this was how other jurisdictions were handling the issue.

55. However, **Chief Judge Flynn did not respond.**

56. To be clear, the way that the 21st Judicial District, at the direction of Chief Judge Flynn, was handling the administrative task of vacating mandatory protection orders was by relying on defendants to inform the court that their parole had been completed.

57. The fact that the State Court Administrator's Office had been sending the 21st Judicial District a list of defendants who were close to completing parole or who were

being released from the department of corrections for time served demonstrates that it was the responsibility of the 21st Judicial District – not the defendants themselves – to vacate mandatory protection orders when they were no longer valid.

58. Chief Judge Flynn, as the administrative head of the 21st Judicial District, is responsible for overseeing the administrative functions of the district.

59. This administrative supervision is not done in his judicial capacity.

60. These administrative functions include the clerical processes of entering and vacating mandatory protection orders.

61. Charlene Benton, as the Clerk of Court of the 21st Judicial District who provides technical, administrative, and supervisory work in the operation of a Clerk's Office of the Colorado Judicial Branch, is responsible for overseeing the administrative functions of the district as directed by Chief Judge Flynn.

62. These administrative functions include the processes of entering and vacating mandatory protection orders as these are clerical according to former Chief Judge Bottger, and Chief Judge Flynn directed Burrill to contact Charlene Benton with any further questions or concerns as she “will have the most current information about the issue.”

63. Ann Brigham, as a “Supervisor I” in the 21st Judicial District who supervises case processing, technical, and/or administrative staff, is responsible for overseeing the administrative staff who are performing the administrative functions of the district as directed by Clerk of Court Charlene Benton and Chief Judge Flynn.

64. These administrative functions include the processes of entering and vacating mandatory protection orders as these are clerical according to former Chief Judge Bottger, and Chief Judge Flynn directed Burrill to contact Ann Brigham with any

further questions or concerns as she “will have the most current information about the issue.”

65. Knowing that the procedure being used and enforced was allowing people to be wrongly and illegally arrested and held in custody on invalid protection order violations because of the emails and specific examples from Burrill, Chief Judge Flynn continued to implement the same procedures.

66. Knowing that the procedure being used and enforced was allowing people to be wrongly and illegally arrested and held in custody on invalid protection order violations because of the emails between Burrill and Chief Judge Flynn, Clerk of Court Charlene Benton continued to implement, train, and oversee personnel using the same procedures.

67. Knowing that the procedure being used and enforced was allowing people to be wrongly and illegally arrested and held in custody on invalid protection order violations because of the emails between Burrill and Chief Judge Flynn, Supervisor I Ann Brigham continued to train and oversee her administrative personnel using the same procedures.

Elson Foster was Wrongly Arrested Seven Times for Violating an Invalid Protection Order Following His Discharge from Parole

68. On August 4, 2018, Plaintiff Elson Foster was arrested for violating a mandatory protection order stemming from case 14CR964 pursuant to Colo. Rev. Stat. Ann. § 18-1-1001.

69. The protection order contained a prohibition from consuming alcohol.

70. The arresting officer contacted Mr. Foster, reviewed CCIC/NCIC to determine if there were any protection orders, and found the protection order stemming from case 14CR964.

71. The arresting officer believed Mr. Foster was in violation of the prohibition against consuming alcohol in the protection order and arrested Mr. Foster.

72. However, the protection order stemming from case 14CR964 was no longer valid on August 5, 2018 because Mr. Foster successfully discharged his parole on July 25, 2018.¹ Colo. Rev. Stat. Ann. § 18-1-1001.

73. The invalid protection order was still in CCIC/NCIC as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

74. Accordingly, Mr. Foster was wrongly and illegally arrested in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution for violating an invalid protection order.

75. This is the exact issue that Burrill brought to the attention of Chief Judge Flynn in June 2017, June 2018, and July 2018.

76. This is the exact issue that Chief Judge Flynn informed Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham about on July 10, 2018.

77. This is the exact issue that Burrill provided Chief Judge Flynn specific examples, at Chief Judge Flynn’s request, in June 2017.

78. At his Video Arraignment on August 6, 2018, Mr. Foster received a personal recognizance bond and was released after spending a night in the County jail.

¹ Mr. Foster’s parole discharge paperwork is attached as Exhibit A and is fully incorporated herein.

Wrongful Arrest Number Two

79. On August 9, 2018, Mr. Foster was arrested for violating the mandatory protection order stemming from case 14CR964 pursuant to Colo. Rev. Stat. Ann. § 18-1-1001.

80. This was the same invalid protection order he was arrested for violating on August 5, 2018.

81. The protection order contained a prohibition from consuming alcohol.

82. The arresting officer contacted Mr. Foster, reviewed CCIC/NCIC to determine if there were any protection orders, and found the protection order stemming from case 14CR964.

83. The arresting officer believed Mr. Foster was in violation of the prohibition against consuming alcohol in the protection order and arrested Mr. Foster.

84. However, the protection order stemming from case 14CR964 was no longer valid on August 9, 2018 because Mr. Foster successfully discharged his parole on July 25, 2018. Colo. Rev. Stat. Ann. § 18-1-1001.

85. The invalid protection order was still in CCIC/NCIC as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

86. Accordingly, for a **second time**, Mr. Foster was wrongly and illegally arrested in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution for violating an invalid protection order.

87. On August 10th, 2018, Mr. Foster was seen for his Video Arraignment hearing in front of Judge Bruce Raaum. At this hearing, defense counsel explained to the Court that Mr. Foster was discharged from parole and the protection order was no longer

valid. Mr. Foster was given a personal recognizance bond and released from custody after spending a night in the County jail.

Wrongful Arrest Number Three

88. On August 12, 2018, Mr. Foster was arrested again for violating the mandatory protection order stemming from case 14CR964 pursuant to Colo. Rev. Stat. Ann. § 18-1-1001.

89. This was the same invalid protection order he was arrested for violating on August 5, 2018 and August 9, 2018.

90. The protection order contained a prohibition from consuming alcohol.

91. The arresting officer contacted Mr. Foster, reviewed CCIC/NCIC to determine if there were any protection orders, and found the protection order stemming from case 14CR964.

92. The arresting officer believed Mr. Foster was in violation of the prohibition against consuming alcohol in the protection order and arrested Mr. Foster.

93. However, the protection order stemming from case 14CR964 was no longer valid on August 12, 2018 because Mr. Foster successfully discharged his parole on July 25, 2018. Colo. Rev. Stat. Ann. § 18-1-1001.

94. The invalid protection order was still in CCIC/NCIC as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

95. Accordingly, for a **third time**, Mr. Foster was wrongly and illegally arrested in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution for violating an invalid protection order.

96. On August 13th, 2018, Mr. Foster was seen for his Video Arraignment hearing in front of Judge Michael Grattan. At this hearing, defense counsel explained to the Court that Mr. Foster was discharged from parole and the protection order was no longer valid. Mr. Foster was given a personal recognizance bond and released from custody after spending a night in the County jail.

Wrongful Arrest Number Four

97. On August 15, 2018, Mr. Foster was arrested again for violating the mandatory protection order stemming from case 14CR964 pursuant to Colo. Rev. Stat. Ann. § 18-1-1001.

98. This was the same invalid protection order he was arrested for violating on August 5, 2018, August 9, 2018, and August 12, 2018.

99. The protection order contained a prohibition from consuming alcohol.

100. The arresting officer contacted Mr. Foster, reviewed CCIC/NCIC to determine if there were any protection orders, and found the protection order stemming from case 14CR964.

101. The arresting officer believed Mr. Foster was in violation of the prohibition against consuming alcohol in the protection order and arrested Mr. Foster.

102. However, the protection order stemming from case 14CR964 was no longer valid on August 15, 2018 because Mr. Foster successfully discharged his parole on July 25, 2018. Colo. Rev. Stat. Ann. § 18-1-1001.

103. The invalid protection order was still in CCIC/NCIC as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

104. Accordingly, for a **fourth time**, Mr. Foster was wrongly and illegally arrested in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution for violating an invalid protection order.

105. On August 16th, 2018, Mr. Foster was seen for his Video Arraignment hearing in front of Judge Michael Grattan. At this hearing, defense counsel explained to the Court that “He finished his parole and I – so just last month, and he keeps getting re-arrested with run-in because it has not updated into the electronic system that that case has reached final disposition.” Defense counsel went on to tell the court that she had **“another client in this same position who’s been arrested four times also.”**

106. Mr. Foster even explained to the court that, “I have my discharge paperwork at the house. I even told them last night when I got arrested. I’ve got the discharge papers, if you guys will walk down there with me I’ll show you. They said, ‘we can’t, we’ve got to arrest you.’”

107. Mr. Foster was given another personal recognizance bond and released from custody after spending a night in the County jail.

108. **On August 17, 2018, Mr. Foster filed his parole discharge paperwork with the court.**

Wrongful Arrest Number Five

109. However, on September 24, 2018, Mr. Foster was arrested again for violating the mandatory protection order stemming from case 14CR964 pursuant to Colo. Rev. Stat. Ann. § 18-1-1001.

110. This was the same invalid protection order he was arrested for violating on August 5, 2018, August 9, 2018, August 12, 2018, and August 15, 2018.

111. The protection order contained a prohibition from consuming alcohol.

112. The arresting officer contacted Mr. Foster, reviewed CCIC/NCIC to determine if there were any protection orders, and found the protection order stemming from case 14CR964.

113. The arresting officer believed Mr. Foster was in violation of the prohibition against consuming alcohol in the protection order and arrested Mr. Foster.

114. However, the protection order stemming from case 14CR964 was no longer valid on September 25, 2018 because Mr. Foster successfully discharged his parole on July 25, 2018. Colo. Rev. Stat. Ann. § 18-1-1001.

115. The invalid protection order was still in CCIC/NCIC as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

116. Accordingly, for a **fifth time**, Mr. Foster was wrongly and illegally arrested in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution for violating an invalid protection order.

117. On September 25th, 2018, Mr. Foster was seen for his Video Arraignment hearing in front of visiting Judge Thomas Ossola. At this hearing, the prosecutor, Bo Zeerip, explained to the Court that Mr. Foster “**was arrested based on a protection order that had not been canceled as it should have been in -- in the court system.**”

118. The court then told Mr. Foster, “well sir, it appears that you were arrested on an **administrative error.**”

119. While it is clear that this was an administrative issue, it was not an error; but instead, the product of an unconstitutional policy and procedure put in place by Chief

Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

120. The case was dismissed, and Mr. Foster was released from custody after spending a night in the County jail.

Wrongful Arrest Number Six

121. On September 30, 2018, Mr. Foster was arrested again for violating the mandatory protection order stemming from case 14CR964 pursuant to Colo. Rev. Stat. Ann. § 18-1-1001.

122. This was the same invalid protection order he was arrested for violating on August 5, 2018, August 9, 2018, August 12, 2018, August 15, 2018, and September 24, 2018.

123. The protection order contained a prohibition from consuming alcohol.

124. The arresting officer contacted Mr. Foster, reviewed CCIC/NCIC to determine if there were any protection orders, and found the protection order stemming from case 14CR964.

125. The arresting officer believed Mr. Foster was in violation of the prohibition against consuming alcohol in the protection order and arrested Mr. Foster.

126. However, the protection order stemming from case 14CR964 was no longer valid on September 30, 2018 because Mr. Foster successfully discharged his parole on July 25, 2018. Colo. Rev. Stat. Ann. § 18-1-1001.

127. The invalid protection order was still in CCIC/NCIC as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

128. Accordingly, for a **sixth time**, Mr. Foster was wrongly and illegally arrested in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution for violating an invalid protection order.

129. On October 1st, 2018, Mr. Foster was seen for his Video Arraignment hearing in front of Judge Craig Henderson. At this hearing, defense counsel explained to the Court that Mr. Foster was discharged from parole and the protection order was no longer valid. The clerk in Judge Henderson's courtroom looked up the cases and told Judge Henderson that Mr. Foster's previous case for violating the invalid protection order "was just an error and its being dismissed right now." Judge Henderson then asked the clerk, "Because of the other case not having a protection order?" The clerk responded, "Yes."

130. Mr. Foster was given a personal recognizance bond and released from custody after spending a night in the County jail.

Wrongful Arrest Number Seven

131. On October 25, 2018, Mr. Foster was arrested again for violating the mandatory protection order stemming from case 14CR964 pursuant to Colo. Rev. Stat. Ann. § 18-1-1001.

132. This was the same invalid protection order he was arrested for violating on August 5, 2018, August 9, 2018, August 12, 2018, August 15, 2018, September 24, 2018, and September 30, 2018.

133. The protection order contained a prohibition from consuming alcohol.

134. The arresting officer contacted Mr. Foster, reviewed CCIC/NCIC to determine if there were any protection orders, and found the protection order stemming from case 14CR964.

135. The arresting officer believed Mr. Foster was in violation of the prohibition against consuming alcohol in the protection order and arrested Mr. Foster.

136. However, the protection order stemming from case 14CR964 was no longer valid on October 25, 2018 because Mr. Foster successfully discharged his parole on July 25, 2018. Colo. Rev. Stat. Ann. § 18-1-1001.

137. The invalid protection order was still in CCIC/NCIC as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

138. Accordingly, for a **seventh time**, Mr. Foster was wrongly and illegally arrested in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution for violating an invalid protection order.

139. On October 26th, 2018, Mr. Foster was seen for his Video Arraignment hearing in front of Judge Craig Henderson. At this hearing, defense counsel was unaware of the issues with the protection order being invalid and unfortunately did not make this argument to the court. The Court stated that it “does not think it appropriate to do any kind of [personal recognizance] bond or even a low bond in this matter given that we have a pending case for the same kind of behavior, given the four on the CPAT, and given the number of violation of protection orders that we have in our past it’s just not appropriate.”

140. However, the “pending case for the same kind of behavior” was based off of the same invalid protection order and was ultimately dismissed, and the “number of violation of protection orders” were based off of the same invalid protection order and were not actually crimes.

141. Mr. Foster was given a \$3,000.00 cash only bond and held in custody in the County jail.

142. On October 30, 2018, Assistant District Attorney Steven Crague sent an email to the court in Mr. Foster’s violation of protection order cases stating,

“I just filed two motions to dismiss these cases. Mr. Foster was arrested in error. There is a lingering protection order in a felony case that states that Mr. Foster is restrained from possessing or consuming alcohol. That case is closed and Mr. Foster is no longer on parole, but the protection order is somehow still in the system and causing a great deal of problems for Mr. Foster.”

143. As a result of Chief Judge Flynn, Clerk of Court Charlene Benton, and “Supervisor I” Ann Brigham continuing to use the same procedures and processes to vacate mandatory protection orders, including relying on defendants to update the court on their discharge from parole, innocent citizens continued to be wrongly arrested, like Plaintiff in this case and the other examples given to Chief Judge Flynn by Burrill.

144. Upon information and belief, after a reasonable opportunity for further discovery, Mr. Foster will be able to produce additional examples of innocent citizens being wrongly and illegally arrested as a result of the unconstitutional policies put in place by Chief Judge Flynn and carried out by Clerk of Court Charlene Benton and “Supervisor I” Ann Brigham.

Chief Judge Flynn’s Written Policies Admit Wrongful Arrests are Occurring

145. Burrill put Chief Judge Flynn on notice that his unwritten policies, including the policy of “relying on defendants to notify the district of when their parole has been completed,” were causing Constitutional violations as innocent people continued to be arrested “every few months.”

146. However, Chief Judge Flynn was already on notice of this Constitutional problem, as the written policies themselves acknowledge the ongoing issue.

147. According to the 21st Judicial District’s policies regarding protection orders, which was revised in November of 2017,

Additionally, temporary and mandatory protection orders without expiration dates **have not consistently been purged from the Central Registry or from the court record in ICON/Eclipse**. Though the protection order should no longer be valid, it may still appear on the Central Registry and again, **law enforcement officers may enforce a protection order that should no longer be active**. (emphasis added).

...

In circumstances where the sentence is terminated early, the MRO/MRI should be vacated **whenever possible**. This will help **reduce the possibility** that a person will be **falsely arrested based on a protection order that should have been removed from the Central Registry**. (emphasis added).

148. Chief Judge Flynn was already on notice that his policies related to vacating mandatory protection orders were allowing innocent citizens’ constitutional rights to be violated by being illegally arrested and detained. His written policy literally acknowledges the exact injuries suffered by Mr. Foster in this case; however, he failed to act in a manner that would prevent the constitutional violations.

149. This written policy does not require that mandatory protection orders shall be vacated upon completion of the sentence – which is the law. Instead, the written policy suggests that the mandatory protection orders be vacated “whenever possible,” inherently allowing for situations where the mandatory protection orders will not be vacated and these citizens will be left vulnerable to constitutional violations.

150. This written policy does not seek to prevent false arrests, i.e., Fourth and Fourteenth Amendment violations. Instead, the written policy only seeks to “help reduce the possibility” of these people being falsely arrested.

151. Chief Judge Flynn, **in his role as administrative head of the 21st Judicial District responsible for making administrative decisions for the district**, was responsible for the continued operation of the policies and procedures on how his administrative employees would vacate mandatory protection orders.

152. At the direction of Chief Judge Flynn, Charlene Benton, as the Clerk of Court of the 21st Judicial District who provides technical, administrative, and supervisory work in the operation of a Clerk's Office of the Colorado Judicial Branch and is responsible for overseeing the administrative functions of the district as directed by Chief Judge Flynn, implemented these unconstitutional policies and was responsible in her supervisory role for the continued operation of these policies and procedures regarding how her administrative staff would vacate mandatory protection orders.

153. At the direction of both Chief Judge Flynn and Clerk of Court Charlene Benton, Ann Brigham, as a "Supervisor I" in the 21st Judicial District who supervises case processing, technical, and/or administrative staff and is responsible for overseeing the administrative staff who are performing the administrative functions of the district, implemented these unconstitutional policies and was responsible in her supervisory role for the continued operation of these policies and procedures regarding how her administrative staff would vacate mandatory protection orders.

154. Mr. Foster suffered deprivations of his liberty and freedom as a result of the constitutional violations caused by Defendant Chief Judge Flynn, Defendant Benton, and Defendant Brigham, when he was wrongly and illegally arrested, placed into handcuffs, placed into a police car, booked into the Mesa County Jail, and held in custody following each illegal arrest.

155. As a result, Mr. Foster suffered mental anguish and emotional distress.

156. Chief Judge Flynn was at all times acting under color and authority of law as he was acting in his role as administrative head of the 21st Judicial District.

157. Defendant Benton was at all times acting under color and authority of law as she was acting in her role as Clerk of Court for the 21st Judicial District.

158. Defendant Brigham was at all times acting under color and authority of law as she was acting in her role as Supervisor I and District Court Supervisor for the 21st Judicial District.

IV. CAUSES OF ACTION

Count One

Deliberate Indifference to Constitutional Violations Under the Fourth and Fourteenth Amendments Pursuant to 42 U.S.C. § 1983 (Chief Judge Brian Flynn)

159. Foster repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

160. As a preliminary matter, Chief Judge Flynn is not being sued in his capacity as a judge, but in his capacity as the administrative head of the 21st Judicial District.

161. As the Supreme Court has explained, there is an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform. *Forrester v. White*, 484 U.S. 219, 227, 108 S. Ct. 538, 544, 98 L. Ed. 2d 555 (1988).

162. Administrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts. *Id.* at 228.

163. Administrative acts – like many others involved in supervising court employees and overseeing the efficient operation of a court – may be quite important in

providing the necessary conditions of a sound adjudicative system; however, are not themselves judicial or adjudicative. *Id.* at 229.

164. Chief Judge Flynn is being sued in his individual capacity.

165. It was clearly established by 2018 that officials may be held individually liable for policies they promulgate, implement, or maintain that deprive persons of their federally protected rights. *Dodds v. Richardson*, 614 F.3d 1185, 1207 (10th Cir. 2010).

166. Chief Judge Flynn is being sued in his role as a supervisor and administrator.

167. Section 1983 allows a plaintiff to impose liability upon a defendant-supervisor who creates, promulgates, implements, or in some other way possesses responsibility for the continued operation of a policy the enforcement (by the defendant-supervisor or her subordinates) of which “subjects, or causes to be subjected” that plaintiff “to the deprivation of any rights ... secured by the Constitution”*Id.* at 1199 (quoting 42 U.S.C. § 1983).

168. The establishment or utilization of an unconstitutional policy or custom can serve as the supervisor's ‘affirmative link’ to the constitutional violation.... [W]here an official with policymaking authority creates, actively endorses, or implements a policy which is constitutionally infirm, that official may face personal liability for the violations which result from the policy's application.” *Id.*

169. The lack of evidence of any direct contact between the defendant-supervisor and the Plaintiff or that the defendant-supervisor actually knew of the Plaintiff's specific circumstances is of no consequence. *Wilson v. Montano*, 715 F.3d 847, 858 (10th Cir. 2013); *See Dodds*, 614 F.3d at 1195.

170. A plaintiff may therefore succeed in a § 1983 suit against a defendant-supervisor by demonstrating: (1) the defendant promulgated, created, implemented or possessed responsibility for the continued operation of a policy that (2) caused the complained of constitutional harm, and (3) acted with the state of mind required to establish the alleged constitutional deprivation. *Dodds*, 614 F.3d at 1199.

(1) The defendant promulgated, created, implemented, or possessed responsibility for the continued operation of a policy

171. Chief Judge Flynn was appointed as the administrative head of the 21st Judicial District, and under his watch, the policies which caused Plaintiff's constitutional injuries continued to operate; therefore, Chief Judge Flynn played more than a passive role in the constitutional violations by deliberately enforcing and actively maintaining the policies allowing innocent citizens to be illegally arrested, including the written policies and the unwritten policy of "relying on defendants to notify the district of when their parole has been completed" before vacating protection orders that legally should have been vacated upon the completion of the person's sentence. *Id.* at 1203-04.

172. Chief Judge Flynn, in response to being asked "how protection orders are vacated once someone discharges parole," stated in his July 20, 2018 email that the 21st Judicial District was "relying on defendants to notify the district of when their parole has been completed."

173. In addition, as the administrative head who is responsible for making administrative decisions of the district as well as for appointing the district administrator, chief probation officer and clerks of court, assisting in the personnel, financial and case-management duties of the district, and seeing that the business of the courts is conducted

efficiently and effectively, Chief Judge Flynn was aware of the written policies regarding protection orders.

174. The written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” was promulgated, created, and implemented by Chief Judge Flynn because as Chief Judge of the 21st Judicial District, he was the administrative head who is responsible for making administrative decisions of the district as well as for appointing the district administrator, chief probation officer and clerks of court, assisting in the personnel, financial and case-management duties of the district, and seeing that the business of the courts is conducted efficiently and effectively.

175. In the alternative, Chief Judge Flynn was responsible for the continued operation of the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” because he was the administrative head who is responsible for making administrative decisions of the district as well as for appointing the district administrator, chief probation officer and clerks of court, assisting in the personnel, financial and case-management duties of the district, and seeing that the business of the courts is conducted efficiently and effectively.

176. Thus, Plaintiff has demonstrated the first prong of a § 1983 suit against defendant-supervisor Chief Judge Flynn.

(2) That caused the complained of constitutional harm

177. The law was and is unambiguous: a government official must have probable cause to arrest an individual. *Cortez v. McCauley*, 478 F.3d 1108, 1117 (10th Cir. 2007) *See Tennessee v. Garner*, 471 U.S. 1, 7, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985); *United States v. Watson*, 423 U.S. 411, 417–22, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976); U.S. Const. amend. IV.

178. “[A] government official violates an individual's Fourteenth Amendment rights by injuring his or her life, liberty, or property with deliberate or reckless intent.” *Dodds*, 614 F.3d at 1205; quoting *Webber v. Mefford*, 43 F.3d 1340, 1342 (10th Cir.1994); U.S. Const. amend. XIV (“nor shall any State deprive any person of life, liberty, or property, without due process of law”).

179. Chief Judge Flynn’s written policies and his unwritten policy of “relying on defendants to notify the district of when their parole has been completed” caused law enforcement officers to arrest citizens without probable cause that a crime had been committed because this policy did not require mandatory protection orders to be vacated from the Central Registry upon successful completion of a criminal sentence as is mandated by state law. Colo. Rev. Stat. Ann. § 18-1-1001.

180. Instead, Chief Judge Flynn’s written policies and his unwritten policy of “relying on defendants to notify the district of when their parole has been completed” allowed the continued arrest and detention of citizens who had not committed a crime in violation of their Fourth and Fourteenth Amendment rights to be free from unreasonable seizures.

181. As a result, Chief Judge Flynn’s written policies and his unwritten policy of “relying on defendants to notify the district of when their parole has been completed” caused Constitutional violations pursuant to the Fourth and Fourteenth Amendments of the United States of America.

182. In this case, Chief Judge Flynn’s written policies and his unwritten policy of “relying on defendants to notify the district of when their parole has been completed” caused Mr. Foster to be illegally arrested and detained in the County Jail seven separate times in violation of his Fourth and Fourteenth Amendment rights.

183. Thus, Plaintiff has demonstrated the second prong of a § 1983 suit against defendant-supervisor Chief Judge Flynn.

(3) Acted with the state of mind required to establish the alleged constitutional deprivation.

184. Plaintiff must show that the defendant-supervisor behaved “knowingly or with ‘deliberate indifference’ that a constitutional violation would occur” at the hands of his subordinates, if that is the same state of mind required for the constitutional deprivation he alleges. *Dodds*, 614 F.3d at 1204.

185. The mental state which must be shown for violations of Mr. Foster’s rights under the Fourth and Fourteenth Amendments is that of deliberate indifference. *Wilson*, 715 F.3d at 858; *See Porro v. Barnes*, 624 F.3d 1322, 1327–28 (10th Cir.2010); *See Dodds*, 614 F.3d at 1204.

186. “[D]eliberate indifference’ is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Schneider v. City of Grand Junction Police Dep’t*, 717 F.3d 760, 769 (10th Cir. 2013) (quoting *Bd. of Cnty. Comm’rs v. Brown*, 520 U.S. 397, 410, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997)).

187. Deliberate indifference can be satisfied by evidence showing that the defendant “knowingly created a substantial risk of constitutional injury.” *Id.* (citing *Dodds*, 614 F.3d at 1206).

188. “[A] local government policymaker is deliberately indifferent when he deliberately or consciously fails to act when presented with an obvious risk of constitutional harm which will almost inevitably result in constitutional injury of the type

experienced by the plaintiff.” *Id.* (quoting *Hollingsworth v. Hill*, 110 F.3d 733, 745 (10th Cir.1997) (internal quotation marks omitted).

189. Chief Judge Flynn was deliberately indifferent when he deliberately and consciously failed to alter his policies regarding when mandatory protection orders would be vacated including his written policies and his unwritten policy of “relying on defendants to notify the district of when their parole has been completed” despite the fact that he was presented with an obvious risk of constitutional harm which would inevitably result in constitutional injury by way of illegal arrests and detentions in violation of the Fourth and Fourteenth Amendments, which Chief Judge Flynn was aware of because Burrill emailed him on June 14, 2017 to inform him of this precise problem, June 16, 2017 to inform him of specific examples and to let him know there were many other examples, June 18, 2018 to let him know this problem was occurring every few months, and July 10, 2018 to again bring to his attention that this problem was occurring every few months. Additionally, Chief Judge Flynn was aware of the inevitable false arrests due to mandatory protection orders not being vacated upon the completion of criminal sentences because his own written policies concede the constitutional violations are occurring and do nothing to prevent or require a change to prevent the constitutional violations from continuing to occur.

190. Thus, Chief Judge Flynn was presented, through multiple emails from Burrill and though the statements in the written policies, with an obvious risk of constitutional harm – innocent citizens being falsely arrested in violation of their Fourth and Fourteenth Amendment rights as a result of mandatory protection orders not being vacated upon their completion of criminal sentences – and Chief Judge Flynn deliberately failed to correct his policies, which lead to Plaintiff in this case being falsely arrested in

violation of his Fourth and Fourteenth Amendment rights as a result of his mandatory protection order not being vacated upon his successful completion of his criminal sentence.

191. Thus, Plaintiff has demonstrated the third prong of a § 1983 suit against defendant-supervisor Chief Judge Flynn.

192. Chief Judge Flynn was at all times acting under color and authority of law as he was acting in his role as administrative head of the 21st Judicial District.

193. As a result of Chief Judge Flynn's deliberate indifference, Mr. Foster's Constitutional rights under the Fourth and Fourteenth Amendments were violated when he was wrongly and illegally arrested and detained seven times for violating a mandatory protection order that was no longer valid.

Count Two

Deliberate Indifference to Constitutional Violations Under the Fourth and Fourteenth Amendments Pursuant to 42 U.S.C. § 1983 (Charlene Benton)

194. Foster repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

195. Defendant Benton is being sued in her individual capacity.

196. It was clearly established by 2018 that officials may be held individually liable for policies they promulgate, implement, or maintain that deprive persons of their federally protected rights. *Dodds*, 614 F.3d at 1207.

197. Defendant Benton is being sued in her role as a supervisor.

198. Section 1983 allows a plaintiff to impose liability upon a defendant-supervisor who creates, promulgates, implements, or in some other way possesses

responsibility for the continued operation of a policy the enforcement (by the defendant-supervisor or her subordinates) of which “subjects, or causes to be subjected” that plaintiff “to the deprivation of any rights ... secured by the Constitution” *Id.* at 1199 (quoting 42 U.S.C. § 1983).

199. The establishment or utilization of an unconstitutional policy or custom can serve as the supervisor's ‘affirmative link’ to the constitutional violation.... [W]here an official with policymaking authority creates, actively endorses, or implements a policy which is constitutionally infirm, that official may face personal liability for the violations which result from the policy's application.” *Id.*

200. The lack of evidence of any direct contact between the defendant-supervisor and the Plaintiff or that the defendant-supervisor actually knew of the Plaintiff's specific circumstances is of no consequence. *Wilson*, 715 F.3d at 858; *See Dodds*, 614 F.3d at 1195.

201. A plaintiff may therefore succeed in a § 1983 suit against a defendant-supervisor by demonstrating: (1) the defendant promulgated, created, implemented or possessed responsibility for the continued operation of a policy that (2) caused the complained of constitutional harm, and (3) acted with the state of mind required to establish the alleged constitutional deprivation. *Dodds*, 614 F.3d at 1199.

(1) The defendant promulgated, created, implemented, or possessed responsibility for the continued operation of a policy

202. In 2017 and 2018, Defendant Benton was the Clerk of Court for the 21st Judicial District, and under her watch, the policies which caused Plaintiff's constitutional injuries were implemented and continued to operate; therefore, Defendant Benton played more than a passive role in the constitutional violations by deliberately enforcing and actively maintaining the policies allowing innocent citizens to be illegally arrested,

including the policy of “relying on defendants to notify the district of when their parole has been completed,” before vacating protection orders that legally should have been vacated upon the completion of the person’s sentence. *Id.* at 1203-04.

203. Defendant Benton was copied on the July 20, 2018 email where Chief Judge Flynn, in response to being asked “how protection orders are vacated once someone discharges parole,” stated that the 21st Judicial District was “relying on defendants to notify the district of when their parole has been completed.”

204. In addition, Defendant Benton, as Clerk of Court, was aware of the written policies regarding protection orders, since she was responsible for providing technical, administrative, and supervisory work in the operation of a Clerk’s Office of the Colorado Judicial Branch and is responsible for overseeing the administrative functions of the district as directed by Chief Judge Flynn.

205. The written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” were implemented by Defendant Benton because as Clerk of Court for the 21st Judicial District, she is responsible for providing technical, administrative, and supervisory work in the operation of a Clerk’s Office of the Colorado Judicial Branch and is responsible for overseeing the administrative functions of the district as directed by Chief Judge Flynn.

206. In the alternative, Defendant Benton was responsible for the continued operation of the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” because as Clerk of Court for the 21st Judicial District, she is responsible for providing technical, administrative, and supervisory work in the operation of a Clerk’s Office of the Colorado Judicial Branch and

is responsible for overseeing the administrative functions of the district as directed by Chief Judge Flynn.

207. Thus, Plaintiff has demonstrated the first prong of a § 1983 suit against defendant-supervisor Defendant Benton.

(2) That caused the complained of constitutional harm

208. The law was and is unambiguous: a government official must have probable cause to arrest an individual. *Cortez*, 478 F.3d at 1117; *See Garner*, 471 U.S. at 7; *Watson*, 423 U.S. at 417–22; U.S. Const. amend. IV.

209. “[A] government official violates an individual's Fourteenth Amendment rights by injuring his or her life, liberty, or property with deliberate or reckless intent.” *Dodds*, 614 F.3d at 1205; quoting *Webber*, 43 F.3d at 1342; U.S. Const. amend. XIV (“nor shall any State deprive any person of life, liberty, or property, without due process of law”).

210. Defendant Benton implemented and was responsible for continuing the operation of the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed.” These policies caused law enforcement officers to arrest citizens without probable cause that a crime had been committed because this policy did not require mandatory protection orders to be vacated from the Central Registry upon successful completion of a criminal sentence as is mandated by state law. Colo. Rev. Stat. Ann. § 18-1-1001.

211. Instead, the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” allowed the continued arrest and detention of citizens who had not committed a crime in violation of their Fourth and Fourteenth Amendment rights to be free from unreasonable seizures.

212. As a result, the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” caused Constitutional violations pursuant to the Fourth and Fourteenth Amendments of the United States of America.

213. In this case, the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” caused Mr. Foster to be illegally arrested and detained in the County Jail seven separate times.

214. Thus, Plaintiff has demonstrated the second prong of a § 1983 suit against defendant-supervisor Defendant Benton.

(3) Acted with the state of mind required to establish the alleged constitutional deprivation.

215. Plaintiff must show that the defendant-supervisor behaved “knowingly or with ‘deliberate indifference’ that a constitutional violation would occur” at the hands of his subordinates, if that is the same state of mind required for the constitutional deprivation he alleges. *Dodds*, 614 F.3d at 1204.

216. The mental state which must be shown for violations of Mr. Foster’s rights under the Fourth and Fourteenth Amendments is that of deliberate indifference. *Wilson*, 715 F.3d at 858; *See Porro*, 624 F.3d at 1327–28; *See Dodds*, 614 F.3d at 1204.

217. “[D]eliberate indifference’ is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Schneider*, 717 F.3d at 769; quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 410.

218. Defendant Benton was deliberately indifferent when she deliberately and consciously failed to alter the policies and procedures regarding when mandatory protection orders would be vacated including Chief Judge Flynn’s policy of “relying on

defendants to notify the district of when their parole has been completed” despite the fact that she was presented with an obvious risk of constitutional harm which would inevitably result in constitutional injury by way of illegal arrests and detentions in violation of the Fourth and Fourteenth Amendments, which Defendant Benton was aware of because Chief Judge Flynn copied her on the July 10, 2018 email to Burrill where Chief Judge Flynn addressed the issue and stated that Defendant Benton “would have the most current information about the issue.” Additionally, Defendant Benton was aware of the inevitable false arrests due to mandatory protection orders not being vacated upon the completion of criminal sentences because the written policies concede the constitutional violations are occurring and do nothing to prevent or require a change to prevent the constitutional violations from continuing to occur.

219. Thus, Defendant Benton was presented, through an email exchange between Burrill and Chief Judge Flynn and though the statements in the written policies, with an obvious risk of constitutional harm – innocent citizens being falsely arrested in violation of their Fourth and Fourteenth Amendment rights as a result of mandatory protection orders not being vacated upon their completion of criminal sentences – and Defendant Benton deliberately failed to address the policies or procedures of her staff, which lead to Plaintiff in this case being falsely arrested seven times in violation of his Fourth and Fourteenth Amendment rights as a result of his mandatory protection order not being vacated upon his successful completion of his criminal sentence.

220. Thus, Plaintiff has demonstrated the third prong of a § 1983 suit against defendant-supervisor Defendant Benton.

221. Defendant Benton was at all times acting under color and authority of law as she was acting in her role as Clerk of Court for the 21st Judicial District.

222. As a result of Defendant Benton’s deliberate indifference, Mr. Foster’s Constitutional rights under the Fourth and Fourteenth Amendments were violated when he was wrongly and illegally arrested and detained seven times for violating a mandatory protection order that was no longer valid.

Count Three

Deliberate Indifference to Constitutional Violations Under the Fourth and Fourteenth Amendments Pursuant to 42 U.S.C. § 1983 (Ruth Ann Brigham)

223. Foster repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

224. Defendant Brigham is being sued in her individual capacity.

225. It was clearly established by 2018 that officials may be held individually liable for policies they promulgate, implement, or maintain that deprive persons of their federally protected rights. *Dodds*, 614 F.3d at 1207.

226. Defendant Brigham is being sued in her role as a supervisor.

227. Section 1983 allows a plaintiff to impose liability upon a defendant-supervisor who creates, promulgates, implements, or in some other way possesses responsibility for the continued operation of a policy the enforcement (by the defendant-supervisor or her subordinates) of which “subjects, or causes to be subjected” that plaintiff “to the deprivation of any rights ... secured by the Constitution”*Id.* at 1199 (quoting 42 U.S.C. § 1983).

228. The establishment or utilization of an unconstitutional policy or custom can serve as the supervisor’s ‘affirmative link’ to the constitutional violation.... [W]here an official with policymaking authority creates, actively endorses, or implements a policy

which is constitutionally infirm, that official may face personal liability for the violations which result from the policy's application.” *Id.*

229. The lack of evidence of any direct contact between the defendant-supervisor and the Plaintiff or that the defendant-supervisor actually knew of the Plaintiff's specific circumstances is of no consequence. *Wilson*, 715 F.3d at 858; *See Dodds*, 614 F.3d at 1195.

230. A plaintiff may therefore succeed in a § 1983 suit against a defendant-supervisor by demonstrating: (1) the defendant promulgated, created, implemented or possessed responsibility for the continued operation of a policy that (2) caused the complained of constitutional harm, and (3) acted with the state of mind required to establish the alleged constitutional deprivation. *Dodds*, 614 F.3d at 1199.

(1) The defendant promulgated, created, implemented or possessed responsibility for the continued operation of a policy

231. In 2017 and 2018, Defendant Brigham was a Supervisor I and the District Court Supervisor for the 21st Judicial District, and under her watch, the policies which caused Plaintiff's constitutional injuries were implemented and continued to operate; therefore, Defendant Brigham played more than a passive role in the constitutional violations by deliberately enforcing and actively maintaining the policies allowing innocent citizens to be illegally arrested, including the policy of “relying on defendants to notify the district of when their parole has been completed,” before vacating protection orders that legally should have been vacated upon the completion of the person's sentence. *Id.* at 1203-04.

232. Defendant Brigham was copied on the July 20, 2018 email where Chief Judge Flynn, in response to being asked “how protection orders are vacated once someone

discharges parole,” stated that the 21st Judicial District was “relying on defendants to notify the district of when their parole has been completed.”

233. In addition, Defendant Brigham, as Supervisor I and District Court Supervisor, was aware of the written policies regarding protection orders, since she was responsible for supervising case processing, technical and/or administrative staff and for overseeing the administrative staff who are performing the administrative functions of the district.

234. The written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” were implemented by Defendant Brigham because as Supervisor I and District Court Supervisor for the 21st Judicial District, she is responsible for supervising case processing, technical and/or administrative staff and for overseeing the administrative staff who are performing the administrative functions of the district.

235. In the alternative, Defendant Brigham was responsible for the continued operation of the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” because as Supervisor I and District Court Supervisor for the 21st Judicial District, she is responsible for supervising case processing, technical and/or administrative staff and for overseeing the administrative staff who are performing the administrative functions of the district.

236. Thus, Plaintiff has demonstrated the first prong of a § 1983 suit against defendant-supervisor Defendant Brigham.

(2) That caused the complained of constitutional harm

237. The law was and is unambiguous: a government official must have probable cause to arrest an individual. *Cortez*, 478 F.3d at 1117; *See Garner*, 471 U.S. at 7; *Watson*, 423 U.S. at 417–22; U.S. Const. amend. IV.

238. “[A] government official violates an individual's Fourteenth Amendment rights by injuring his or her life, liberty, or property with deliberate or reckless intent.” *Dodds*, 614 F.3d at 1205; quoting *Webber*, 43 F.3d at 1342; U.S. Const. amend. XIV (“nor shall any State deprive any person of life, liberty, or property, without due process of law”).

239. Defendant Brigham implemented and was responsible for continuing the operation of the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed.” These policies caused law enforcement officers to arrest citizens without probable cause that a crime had been committed because this policy did not require mandatory protection orders to be vacated from the Central Registry upon successful completion of a criminal sentence as is mandated by state law. Colo. Rev. Stat. Ann. § 18-1-1001.

240. Instead, the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” allowed the continued arrest and detention of citizens who had not committed a crime in violation of their Fourth and Fourteenth Amendment rights to be free from unreasonable seizures.

241. As a result, the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” caused Constitutional violations pursuant to the Fourth and Fourteenth Amendments of the United States of America.

242. In this case, the written policies and the unwritten policy of “relying on defendants to notify the district of when their parole has been completed” caused Mr. Foster to be illegally arrested and detained in the County Jail seven separate times.

243. Thus, Plaintiff has demonstrated the second prong of a § 1983 suit against defendant-supervisor Defendant Brigham.

(3) Acted with the state of mind required to establish the alleged constitutional deprivation.

244. Plaintiff must show that the defendant-supervisor behaved “knowingly or with ‘deliberate indifference’ that a constitutional violation would occur” at the hands of his subordinates, if that is the same state of mind required for the constitutional deprivation he alleges. *Dodds*, 614 F.3d at 1204.

245. The mental state which must be shown for violations of Mr. Foster’s rights under the Fourth and Fourteenth Amendments is that of deliberate indifference. *Wilson*, 715 F.3d at 858; *See Porro*, 624 F.3d at 1327–28; *See Dodds*, 614 F.3d at 1204.

246. “ ‘[D]eliberate indifference’ is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Schneider*, 717 F.3d at 769; quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 410.

247. Defendant Brigham was deliberately indifferent when she deliberately and consciously failed to change the policies and procedures that her staff would follow regarding when mandatory protection orders would be vacated including Chief Judge Flynn’s policy of “relying on defendants to notify the district of when their parole has been completed” despite the fact that she was presented with an obvious risk of constitutional harm which would inevitably result in constitutional injury by way of illegal arrests and detentions in violation of the Fourth and Fourteenth Amendments, which Defendant

Brigham was aware of because Chief Judge Flynn copied her on the July 10, 2018 email to Burrill where Chief Judge Flynn addressed the issue and stated that Defendant Brigham “would have the most current information about the issue.” Additionally, Defendant Brigham was aware of the inevitable false arrests due to mandatory protection orders not being vacated upon the completion of criminal sentences because the written policies concede the constitutional violations are occurring and do nothing to prevent or require a change to prevent the constitutional violations from continuing to occur.

248. Thus, Defendant Brigham was presented, through an email exchange between Burrill and Chief Judge Flynn, through a conversation with Chief Judge Flynn and herself, and though the statements in the written policies, with an obvious risk of constitutional harm – innocent citizens being falsely arrested in violation of their Fourth and Fourteenth Amendment rights as a result of mandatory protection orders not being vacated upon their completion of criminal sentences – and Defendant Brigham deliberately failed to address the policies or procedures of her staff, which lead to Plaintiff in this case being falsely arrested seven times in violation of his Fourth and Fourteenth Amendment rights as a result of his mandatory protection order not being vacated upon his successful completion of his criminal sentence.

249. Thus, Plaintiff has demonstrated the third prong of a § 1983 suit against defendant-supervisor Defendant Brigham.

250. Defendant Brigham was at all times acting under color and authority of law as she was acting in her role as Supervisor I and District Court Supervisor for the 21st Judicial District.

251. As a result of Defendant Brigham’s deliberate indifference, Mr. Foster’s Constitutional rights under the Fourth and Fourteenth Amendments were violated when

he was wrongly and illegally arrested and detained seven times for violating a mandatory protection order that was no longer valid.

V.
PUNITIVE DAMAGES

252. Foster repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

253. When viewed objectively from the standpoint of Defendant Chief Judge Flynn, Defendant Benton, and Defendant Brigham, at the time of the occurrence, Defendant Chief Judge Flynn, Defendant Benton, and Defendant Brigham's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others.

254. As a direct, proximate, and producing cause and the intentional, egregious, malicious conduct by Defendant Chief Judge Flynn, Defendant Benton, and Defendant Brigham, Foster is entitled to recover punitive damages in an amount within the jurisdictional limits of this Court.

VI.
DAMAGES

255. Foster repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

256. Foster's injuries were a foreseeable event. Those injuries were directly and proximately caused by Defendant Chief Judge Flynn, Defendant Benton, and Defendant Brigham's deliberate indifference shown toward Plaintiff's Constitutional rights.

257. As a result, Foster is entitled to recover all actual damages allowed by law. Foster contends Defendant Chief Judge Flynn, Defendant Benton, and Defendant Brigham's conduct constitutes malice, evil intent, or reckless or callous indifference to

Foster's constitutionally protected rights. Thus, Foster is entitled to punitive damages against Defendant Chief Judge Flynn, Defendant Benton, and Defendant Brigham.

258. As a direct and proximate result of the occurrence which made the basis of this lawsuit, Foster was forced to suffer:

- a. Losses of Liberty and Freedom; and
- b. Emotional distress, torment, and mental anguish.

259. Pursuant to 42 U.S.C. § 1983 and 1988, Plaintiff seeks to recover, and hereby requests the award of punitive damages, reasonable attorney's fees, and costs of court.

VII.
ATTORNEY'S FEES

260. If Plaintiff prevails in this action, by settlement or otherwise, Plaintiff is entitled to and hereby demands attorney's fees under 42 U.S.C. § 1988.

VIII.
JURY REQUEST

261. Plaintiff respectfully requests a jury trial.

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that judgment be rendered against the Defendants, for an amount in excess of the jurisdictional minimum of this court. Plaintiff further prays for all other relief, both legal and equitable, to which he may show himself justly entitled.

Respectfully submitted,

/s/ Scott H. Palmer

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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Elson Foster
(b) County of Residence of First Listed Plaintiff Mesa County, Colorado
(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott H. Palmer, P.C., 15455 Dallas Parkway, Suite 540, Addison, Texas 75001
(214) 987-4100. Scott H. Palmer
James P. Roberts

DEFENDANTS
Brian Flynn, Charlene Benton and Ruth Ann Brigham
County of Residence of First Listed Defendant Mesa County, Colorado
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Tort Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Med. Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS - Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
CIVIL RIGHTS: 440 Other Civil Rights, 441 Voting, 442 Employment, 443 Housing/Accommodations, 445 Amer. w/Disabilities Employment, 446 Amer. w/Disabilities Other, 448 Education
PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty; Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42. U.S.C. Sec. 1983
Brief description of cause: AP Docket
Violation of rights and privileges secured by the Fourteenth Amendment of the United States Constitution

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

DATE: 08/04/2020
SIGNATURE OF ATTORNEY OF RECORD: /s/ Scott H. Palmer

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE