



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Ronald H. Posyton, III
868 Carleton Road,
Westfield, NJ 07090

Plaintiff,

Vs.

Township of Westfield

Case No.: _____

Serve: Andy Skibitsky
1001 Irving Avenue,
Westfield, NJ 07090

And

David Wayman & Kevin O’Keefe &
Steven Martinez & John Roe & John Poe
425 E Broad Street
Westfield, NJ 07090

Defendants

ORIGINAL VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Ronald H. Posyton, III, proceeding *pro se*, seeking damages, declaratory judgment, and injunction relief from the above-named *Defendants* pursuant to 42 U.S.C. § 1983, 20 U.S.C. § 1681, and N.J.S.A § 10:6-1 *et seq.*, regarding, *inter alia*, *Monell*, and unconstitutional custom and practice claims, and in support thereof, respectfully submits, if this Honorable Court agrees, this plausible *Iqbal*, *Twombly*, and *in forma pauperis* Complaint-Brief for relief, and under penalty of perjury, alleges as follows:

PREFATORY

1. “The suspicionless search is the *very evil* the Fourth Amendment was intended to stamp out.” *Samson v. California*, 547 U.S. 843, 858 (2006) (Stevens, J., dissenting) (emphasis added) (citing *Boyd v. United States*, 116 U.S. 616, 625-630 (1886)); see *Maryland v. King*, 569 U.S. ___, 133 S.Ct. 1958, 1980 (2013) (Scalia, J., dissenting) (The prohibition against the suspicionless



search “is categorical and without exception; it lies at the very heart of the Fourth Amendment.”)

JURISDICTION & VENUE

2. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343, 1367, 2201, 2202, and Fed.R.Civ.P. 65. Venue is proper pursuant to 28 U.S.C § 1391.

PARTIES

3. *Plaintiff*, Ronald H. Posyton, III (“Mr. Posyton”) is 22 years old. Mr. Posyton has lived at 868 Carleton Road Westfield, New Jersey, for the past seven years of his life.

4. *Defendant*, Township of Westfield (“Westfield”) is a creature of the State of New Jersey, and has very low crime rate; according to neighborhood scout,¹ Westfield is ranked the 45th safest city in the nation. Westfield operates the Westfield Police Department (“WPD”). Westfield receives federal funding, and thus, is subject to abide by § 1681.

5. *Defendant*, Chief David Wayman (“Chief Wayman”) is chief and policy shaper of WPD.

6. *Defendant*, Officer Kevin O’Keefe (“Officer O’Keefe”) is a police officer of WPD.

7. *Defendant*, Officer Steven Martinez (“Officer Martinez”) is a police officer of WPD.

8. *Defendant*, Officer John Poe (“Officer Poe”) is a police officer of WPD.

9. *Defendant*, Officer John Roe (“Officer Roe”) is a police officer of WPD.

10. Chief Wayman, and Officers O’Keefe, Martinez, Poe, and Roe (collectively, the “Officers”) serve under color of law, and are being sued in their personal capacities for the § 1983 and N.J.S.A § 10:6-1 *et seq.* claims, and in both capacities for the § 1681 claim.

INTRODUCTION

11. ““To justify a patdown ... the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.”” *U.S. v. Pittman*, 338 Fed.Appx. 147, 148 (3d Cir.

¹ <https://www.neighborhoodscout.com/blog/top100safest>



2009) (quoting *Arizona v. Johnson*, 555 U.S. 323, 327 (2009)); see *U.S. v. Chaney*, 584 F.3d 20, 24 (1st Cir. 2009); see also *Dancy v. McGinley*, 843 F.3d 93, 107 (2d Cir. 2016); *United States v. George*, 732 F.3d 296, 299 (4th Cir. 2013); *James by James v. Sadler*, 909 F.2d 834, 838 (5th Cir. 1990); *U.S. v. McDaniel*, 371 Fed.Appx. 617, 620 (6th Cir. 2010); *Huff v. Reichert*, 744 F.3d 999, 1009 (7th Cir. 2014); *United States v. Flett*, 806 F.2d 823, 827 (8th Cir. 1986); *Tuttelman v. City of San Jose*, 420 Fed.Appx. 758, 761 (9th Cir. 2011); *United States v. Salas–garcia*, 698 F.3d 1242, 1249 (10th Cir. 2012); *U.S. v. Packer*, 375 Fed.Appx. 976, 979 (11th Cir. 2010); *Ybarra v. Illinois*, 444 U.S. 85, 94 (1979) (“The ‘narrow scope’ of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked.”) “The purpose of this limited search is not to discover evidence of crime,” *Adams v. Williams*, 407 U.S. 143, 146 (1972), and the suspicion of weapons or danger must be “something more than an ‘inchoate and unparticularized ... hunch.’” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)); cf. *U.S. v. Broomfield*, 417 F.3d 654, 655 (7th Cir. 2005) (“Whether you stand still or move ... you will be described by the police as acting suspiciously.”) Rather, there must be a fair probability of finding weapons, which is articulable through objective facts, information, and officer experience. See *Terry*, 392 U.S. at 21. In short, officers engaging “in pat frisks ... for no reason other than that they [are] trained to do so,” is “a policy which *flagrantly* violates the Fourth Amendment.” *United States v. Johnson*, 2017 U.S. Dist. LEXIS 78035, at 45 (D. Md. May. 22, 2017) (emphasis added) (citing *Johnson*, 555 U.S. at 326); see *Ybarra*, 444 U.S. at 92; see also *Floyd v. City of N.Y.*, 959 F.Supp.2d 540, 667 (S.D.N.Y. 2013) (Holding city liable for a policy and custom of suspicionless stop and frisks).

STATEMENT OF FACTS

12. At all times herein, Mr. Posyton acted in a calm and respectful manner towards the Officers, and did nothing illegal or wrong whatsoever.



1 13. In December of 2009, Officer Martinez participated in illegally arresting Austin Rolnick,
2 and illegally entered into his parent's home. Subsequently, Westfield continued to employ Officer
3 Martinez. Eventually, the Rolnick's filed a federal lawsuit against Officer Martinez, Westfield,
4 and other WPD officers. *See Rolnick, et al v. Westfield, et al* Case No. 2:11-cv-07414 (D. N.J.
5 Dec. 21, 2011). In the end, the Rolnick's settled out of court for approximately one million dollars.

6 14. On September 18, 2015, at the University of Maryland, College Park ("UMCP") which is
7 located in College Park, Maryland, Mr. Posyton sat down next to Madison Garey ("Ms. Garey")
8 on the grass outside of Mckeldin Library. Mr. Posyton and Ms. Garey did not know each other
9 before this encounter. After Mr. Posyton and Ms. Garey had been talking for some time, Mr.
10 Posyton briefly and non-violently touched Ms. Garey twice, once on the shin, and once on the
11 outer thigh (the "First Touch"). Ms. Garey did not suffer any physically injury whatsoever. Even-
12 tually, Mr. Posyton said goodbye to Ms. Garey, and walked away. Unbeknownst to Mr. Posyton,
13 Ms. Garey has devoted her entire life to the greater awareness of the rape problem. Accordingly,
14 Ms. Garey called the University of Maryland Police Department ("UMPD") to report that she had
15 been assaulted. When UMPD officer Michael Thomas ("Mr. Thomas") arrived at Mckeldin Li-
16 brary, Ms. Garey told Mr. Thomas that she had been touched by an unknown male. Mr. Thomas,
17 and detectives William Mable ("Mr. Mable") and John Doe ("Mr. Doe") (collectively, the "Mar-
18 yland Officers"), were tasked with investigating the First Touch.

19 15. During that same day, Mr. Posyton received an email from UMPD, which was also sent
20 to the entire UMCP population; the email stated that Ms. Garey had been assaulted by an unknown
21 male. Mr. Posyton decided not to come forward because he was afraid of what might happen.

22 16. For the next five days, UMPD launched an extensive investigation into the First Touch,
23 during which, the Maryland Officers interview multiple witnesses, including Ms. Garey three
24 times, reviewed video footage, and collected much evidence.



1 17. On September 21, 2015, Mr. Mable received info on a person of interest, who happened
2 to be Mr. Posyton. Mr. Mable then searched Mr. Posyton's internet usage history, to check if he
3 had been in the area when the First Touch occurred, and confirmed that Mr. Posyton had been.

4 18. On September 23, 2015, Mr. Mable, Mr. Thomas, and Mr. Doe, who were dressed in suits
5 and ties, and armed with weapons, arrived at Mr. Posyton's dorm room unannounced, and began
6 to pound on his door until they awoke him from sleeping. After Mr. Posyton opened his door, Mr.
7 Mable and Mr. Thomas pressed their bodies up against Mr. Posyton's doorframe and sternly asked
8 Mr. Posyton three times to accompany them to UMPD headquarters. Ultimately, Mr. Posyton
9 agreed to go, and then was transported by convoy of police vehicles to UMPD headquarters. Once
10 the men arrived at UMPD headquarters, Mr. Posyton was placed inside of a ten foot by ten foot
11 box, which contained a one way see through mirror, and a pair of handcuffs that were bolted to a
12 wall. After Mr. Mable and Mr. Thomas entered the room, Mr. Mable told Mr. Posyton that he did
13 not want to interrogate him "for five hours." Thereafter, Mr. Posyton confessed to the First Touch.
14 At the end of Mr. Posyton's interrogation, Mr. Posyton asked Mr. Mable, "Is that a crime?" In
15 the end, Mr. Posyton was charged with second degree assault, which is the lowest degree of as-
16 sault in the State of Maryland, and which charges will eventually be *nolle prosequi*.

17 19. On June 26, 2017, at approximately 10:00pm Mr. Posyton walked from his home to down-
18 town Westfield, and eventually entered 16 Prospect Street Wine Bar and Bistro (the "Restau-
19 rant"). While Mr. Posyton was inside of the Restaurant, John Loe ("Mr. Loe") without any prov-
20 ocation from Mr. Posyton whatsoever, placed his hands on Mr. Posyton without his consent. Mr.
21 Posyton then told Mr. Loe, "Don't assault me." Thereafter, Mr. Loe placed his hands on Mr.
22 Posyton again without consent (the "Second Touch"). Subsequently, Mr. Posyton walked outside
23 of the Restaurant. Although Mr. Posyton was not injured from Mr. Loe's nonconsensual touching,
24



Mr. Posyton decided to call WPD to report that he had been assaulted and battered, and subsequently did so. Successively, while Mr. Posyton was standing on the side-walk outside of the Restaurant waiting for the police, Officer Martinez arrived. Chronologically, Mr. Loe walked out of the Restaurant, and Mr. Posyton then informed Officer Martinez that Mr. Loe was the man who touched Mr. Posyton without consent. Mr. Posyton told Officer Martinez, "I want him arrested." Successively, Officers O'Keefe, Poe, and Roe arrived at the Restaurant. At this point, Mr. Posyton, Mr. Loe, and the Officers were standing outside of the Restaurant, and Mr. Posyton was apprising the Officers of the situation, which interview lasted for about two minutes.

20. Subsequently, for an unknown reason, the Officers decided that they were going to escort Mr. Posyton to his home, and told Mr. Posyton to enter one of the police vehicles (the "Car"). However, Mr. Posyton told the Officers, "I don't wanna go home." Thereafter, Officer O'Keefe told Mr. Posyton that the Officers would transport him to Elizabeth if he did not go home. Subsequently, Mr. Posyton asked if he could simply walk home instead of being transported home, but Officer O'Keefe told Mr. Posyton that he could not walk home. So, as Mr. Posyton proceeded to peacefully enter the back seat of the Car at the Officer's directions, Officers Roe and Martinez, who were completely outside of Mr. Posyton's viewpoint, came up from behind Mr. Posyton, and roughly shook and grabbed him without consent. Thereafter, Officer Roe simply started to frisk Mr. Posyton's entire body without consent, including in-between his thighs, and around his private parts, notwithstanding Mr. Posyton was carrying no weapons or contraband of any sort. Officer Martinez only participated in the frisk by patting Mr. Posyton a couple of times on his upper body. Nonetheless, Mr. Posyton was given no time to consent to the frisk, and was given no warning that the frisk was coming. Mr. Posyton was not asked for his consent to be frisked, and Mr. Posyton would not have consented to the frisk if he was given a choice, or even if Officers Martinez and Roe had asked for his consent to frisk him. As Mr. Posyton was being frisked by



Officers Martinez and Roe, which placed Mr. Posyton in a state of great shock, Mr. Posyton asked them, “Why are you touching me?” Officer Martinez responded, “Were trained to,” and explained that WPD officers are trained to frisk every citizen who enters one of their police vehicles. After Officers Martinez and Roe were done frisking Mr. Posyton, he entered the Car, Officer Roe fastened Mr. Posyton’s seatbelt, and then closed the door, and thereby, locking Mr. Posyton inside of the Car. The Car’s back seats were made of some black plastic; a giant piece of clear plastic separated the two back seats, a clear piece of plastic separated the back seats from the front seats, and the back seat windows had iron bars attached to them. Mr. Posyton was basically locked inside a three foot by three foot jail cell.

21. Either during Mr. Posyton’s frisk, or after Mr. Posyton had been secured in the Car, the Officers decided to secretly search Mr. Posyton’s name in the nationwide warrant database. Eventually, the Officers discovered and thought that they confirmed that Mr. Posyton might have a warrant out for his arrest in South Carolina, notably *after* Mr. Posyton had been frisked. Nevertheless, Officer Martinez was then informed that Mr. Posyton might have a warrant of for his arrest, and then entered the Car’s driver seat. At this point, Mr. Posyton was unaware of this information, but was getting nervous because he had been sitting in the motionless, uncomfortable, and locked police Car for some time. Subsequently, Mr. Posyton asked Officer Martinez if he could exit the Car so that he could walk home, but Officer Martinez avoided Mr. Posyton’s question. Thereafter, Mr. Posyton told Officer Martinez that if Mr. Posyton went back home with the Officers, his mother was going to freak out. However, Officer Martinez assured Mr. Posyton that she would not go insane, even though Mr. Posyton fully understood that his mother would reprimand and start yelling at him if he came home with the police. Still, Mr. Posyton was becoming extremely nervous, and again asked if he could be let out of the Car. However, Officer Martinez simply told the other Officers, “He’s getting antsy back here,” but Officer Martinez



received no response or instructions. Uninterruptedly, notwithstanding that Officer O’Keefe had just told Mr. Posyton that he would be involuntarily transported to Elizabeth if he did not go home, but Mr. Posyton asked Officer Martinez, “Am I being detained?” Although Mr. Posyton was being detained ever since Officer O’Keefe gave Mr. Posyton the ultimatum to either go to Elizabeth or to his home, as no reasonable person would feel free to terminate the encounter with the Officers at that point, but in lieu of having just learned of the possible warrant out for Mr. Posyton’s arrest, Officer Martinez responded by saying, “Yes, you’re being detained,” which greatly frightened Mr. Posyton. A few minutes later, Officer O’Keefe opened the Car’s door, and told Mr. Posyton that there was a warrant out for his arrest in South Carolina, which greatly scared Mr. Posyton. However, Mr. Posyton responded, “I’ve never been to South Carolina in my life.” Thereafter, Officer O’Keefe shut the Car’s door. After a few more minutes past, the police radio emitted some code or instruction, and then Officer Martinez said “We’re all good.” The Officers learned that the warrant was for Mr. Posyton’s father, Ronald H. Posyton Jr., who is a 55-year-old man that lives in Mountainside, New Jersey. Mr. Posyton, who is 22-years-old, has no warrant out for his arrest. Officer O’Keefe discovered that Mr. Posyton did not have a warrant out for his arrest because Mr. Posyton’s birthday did not match the birthday on the warrant. No reasonable officer would have thought that Mr. Posyton had a warrant out for his arrest; considering there are probably hundreds of warrants out for the arrests of citizens who have the same name as other citizens, no reasonable officer simply searches the name of a citizen in the national warrant database without checking if the birthday of the citizen being searched matches with the birthday on the warrant. At this point, Mr. Posyton was very upset, and wanted to exit the locked Car. However, Officer Martinez avoided Mr. Posyton’s requests to exit. Afterwards, Officer O’Keefe opened the vehicles door, and Mr. Posyton asked, “Am I being detained? Can I walk home?”



1 However, Officer O’Keefe sternly said something like, “We’re gonna take you home.” Mr. Po-
2 syton was never told that he was free to leave. At all times while Mr. Posyton was secured inside
3 of the Car, Mr. Posyton believed that he was not free to leave. In addition, Officer O’Keefe then
4 told Mr. Posyton, “No one was assaulted.” The Officers investigation into the Second Touch
5 lasted about seven minutes, during which, besides for interviewing Mr. Posyton and Mr. Loe for
6 about two minutes each, the Officers interviewed no witnesses, reviewed no video footage, es-
7 sentially collected no evidence, and decided not to charge Mr. Loe with assault, notwithstanding
8 that Mr. Loe intentionally placed his hands on Mr. Posyton without consent after Mr. Posyton
9 specifically told Mr. Loe not to assault him. Thereafter, Officer O’Keefe eventually closed the
10 Car’s door, and thus, once again locking Mr. Posyton inside of the Car. Ultimately, Officer Mar-
11 tinez began to drive Mr. Posyton away from the Restaurant against his will, and Officer Poe fol-
12 lowed Mr. Posyton and Officer Martinez in another police vehicle. During the approximately mile
13 and a half drive back to Mr. Posyton’s home, Mr. Posyton told Officer Martinez not to drive him
14 home, but Officer Martinez did not respond and kept drive towards Mr. Posyton’s home. Once
15 Mr. Posyton and Officer Martinez arrived on Mr. Posyton’s street, Carleton Road, Mr. Posyton
16 demanded that Officer Martinez stop the Car and let him exit. Mr. Posyton said, “Stop the car.
17 Pull over. Let me out. Now!” However, Officer Martinez refused, and kept driving down Carleton
18 Road towards Mr. Posyton’s home. During the drive down Carleton Road towards Mr. Posyton’s
19 home, Mr. Posyton continued to demand to be let out of the Car, but his pleas fell on deaf ears.
20 Consequently, Officer Martinez and Mr. Posyton, and Officer Poe, who was still following behind
21 in another vehicle, eventually arrived in front of Mr. Posyton’s home at about 1:00am. After-
22 wards, Officers Martinez and Poe opened the Car’s door and allowed Mr. Posyton to exit. There-
23 after, Mr. Posyton, who was very distraught and agitated, told Officers Martinez and Poe, “I don’t
24 want anyone going on my property. You don’t have my leave.” Mr. Posyton then recited a passage



from *Entick v. Carrington*, 95 Eng. Rep. 807, 817 (C. P. 1765), and said to Officers Martinez and Poe, “No man can set his foot upon his neighbour’s close without his leave; if he does, he is a trespasser.” Subsequently, Mr. Posyton told Officers Martinez and Poe that would happily go inside of his home if they vacated the premises because he did not want his mother seeing him with the police, but Officers told Mr. Posyton that such a situation was not going to happen, and Officer Martinez subsequently walked onto the curtilage of Mr. Posyton’s home without consent, all in an effort to ring Mr. Posyton’s doorbell to check if anyone was inside of his home. Successively, while Officer Martinez was going to ring Mr. Posyton’s doorbell, Mr. Posyton began to walk away from his home, as he was afraid of his mother seeing him with the police. However, Officer’s Martinez and Poe were keen on showing Mr. Posyton’s mother that Mr. Posyton, who is a grown man, arrived home with the police, and Officer Poe refused to allow Mr. Posyton walk away, and told Mr. Posyton, “You’re being detained.” Chronologically, Mr. Posyton’s mother answered the door. Afterwards, Officer Poe implied for Mr. Posyton to go to his mother, so Mr. Posyton walked onto the curtilage of his home. Next, Officer Poe walked onto the curtilage of Mr. Posyton’s home without consent. Thereafter, Officers Martinez and Poe released Mr. Posyton, who subsequently went inside of his home. Successively, Officers Martinez and Poe vacated the premises, and then Mr. Posyton’s mother started to reprimand and yell at him for arriving at his home with the police.

CAUSES OF ACTION

22. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

23. Notice is not required for § 10:6-1 *et seq.* See *Owens v. Feigin*, 194 N.J. 607 (N.J. 2008).

24. It is well-established that “the burden is on the official claiming immunity to demonstrate his entitlement.” *Dennis v. Sparks*, 449 U.S. 24, 29 (1980). “[E]vidence of improper motive,” *Crawford-El v. Britton*, 523 U.S. 574, 589 (1998), an officer’s “subjective beliefs,” *Anderson v.*



1 *Creighton*, 483 U.S. 635, 641 (1987), and “the subjective intent of the law enforcement officer,”
2 *Bond v. United States*, 529 U.S. 334, 338, n.2 (2000), are absolutely *irrelevant* in the qualified
3 immunity analysis. What matters is an officer’s objective actions and nothing else; “[w]hether a
4 ... violation has occurred turns on an objective assessment of the officer’s actions’ ... and not on
5 the officer’s actual state of mind.” *Maryland v. Macon*, 472 U.S. 463, 470 (1985) (quoting *Scott*
6 *v. United States*, 436 U.S. 128, 136 (1978)). “[T]o establish personal liability ... it is enough to
7 show that the official ... caused the deprivation of a federal right.” *Kentucky v. Graham*, 473 U.S.
8 159, 166 (1985) (citing *Monroe v. Pape*, 365 U.S. 167 (1961)); see *Gomez v. Toledo*, 446 U.S.
9 635, 639-640 (1980) (“Nothing in the language or legislative history of § 1983, however, suggests
10 that ... a plaintiff must allege bad faith in order to state a claim for relief.”) Ultimately, officers
11 are subject to suit if they had “notice” that their conduct was “unlawful,” *Saucier v. Katz*, 533
12 U.S. 194, 202 (2001), and there need not be a case directly on point giving them that notice,² as
13 ““officials can still be on notice that their conduct violates established law.”” *Safford Unified*
14 *School District v. Redding*, 557 U.S. 364, 377 (2009) (quoting *Hope v. Pelzer*, 536 U.S. 730, 739
15 (2002)). Anything less than this standard would invite the government to test the limits of arbi-
16 trariness. Therefore, if “the law was clearly established, the immunity defense ... fail[s], since a
17 reasonably competent public official should know the law governing his conduct.” *Harlow v.*
18 *Fitzgerald*, 457 U.S. 800, 818-819 (1982); see *id.*, at 820-21 (Brennan, J., concurring); see also
19 *Malley v. Briggs*, 475 U.S. 335, 341 (1986) (Holding that qualified immunity does not shield “the
20 plainly incompetent.”) The Fourth Circuit has even said that “an officer acts with malice when ...

21
22 ² Officers can be subject to liability for violating ambiguous rights if they violate clearly es-
23 tablished rights in the process. Hence, for example, if an officer illegally enters a home, and the
24 citizen subjected to the unlawful entry brings suit alleging an unlawful entry claim, but also al-
leges that the officer simultaneously violated another right in the process of committing the un-
lawful entry which was not clearly established, the officer is subject to liability for violating the
right that was not clearly established because he violated clearly established rights in the process.



he violates a clearly established right.” *Cooper v. Sheehan*, 735 F.3d 153, 160 (4th Cir. 2013) (citing *Bailey v. Kennedy*, 349 F.3d 731, 742 (4th Cir. 2003)). Still, since the test for whether a “right is clearly established cannot be so narrow that qualified immunity is transformed into absolute immunity,” *Amili v. City of Tukwila*, 31 F.Supp.3d 1274, 1282 (W.D. Wash. 2014) (citing *Torres v. City of Madera*, 648 F.3d 1119, 1129 (9th Cir. 2011)), a good standard for determining whether the law is clearly established is whether a statute’s plain language says it is, *see Owens v. Balt. City State’s Attorney’s Office*, 767 F.3d 379, 399 (4th Cir. 2014), or “when the law has been authoritatively decided by the Supreme Court, the appropriate United States Court of Appeals, or the highest court of the state in which the action arose,” *Norwood v. Bain*, 166 F.3d 243, 252 (4th Cir. 1999) (citing *Jean v. Collins*, 155 F.3d 701, 709 (4th Cir. 1998) (en banc)); *see United States v. Lanier*, 520 U.S. 259, 269 (1997), and “[w]hen there are no such decisions from courts of controlling authority, we may look to ‘a consensus of cases of persuasive authority.’” *Owens v. Lott*, 372 F.3d 267, 280 (4th Cir. 2004) (quoting *Wilson v. Layne*, 526 U.S. 603, 617 (1999)); *cf. Hope*, 536 U.S. at 741 (Holding that “Eleventh Circuit precedent, an Alabama Department of Corrections (ADOC) regulation, and a DOJ report” made the law clearly established). Nevertheless, no reasonable officer can claim to be unaware of the basic rule, well established by the Supreme Court’s cases: Without due process of law, “[t]he right of the people to be secure in their persons, houses, papers, and effects ... shall not be violated.” US Const. Amend. IV.

COUNT ONE

§ 1983 & § 10:6-1 et seq.

Violation & Deprivation of Fourth Amend. & Art. I ¶ 7 Rights: Unreasonable Search (Mr. Posyton -vs- Martinez & Roe)

25. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

26. Mr. Posyton enjoys a clearly established liberty interest against being searched by actions of the government without due process of law, as guaranteed by the Fourth Amendment and Art.



I ¶ 7 to the U.S. and N.J. Constitutions. The Fourth Amendment is applied to the states through the due process clause of the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643 (1961). ““Searches conducted outside the judicial process ... are *per se* unreasonable.” *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967)); *see Mincey v. Arizona* 437 U.S. 385, 390 (1978). Officers are attempting to gather information when they frisk a citizen; a “frisk constitutes a search ... under the Fourth Amendment.” *Yin v. State of California*, 95 F.3d 864, 870 (9th Cir. 1996) (citing *Terry*, 392 U.S. at 16); *see U.S. v. Camacho*, 661 F.3d 718, 724, n.2 (1st Cir. 2011); *see also Mobley v. City of Detroit*, 938 F.Supp.2d 669, 680 (E.D. Mich. 2012); *Adams v. Williams*, 407 U.S. 143, 158, n.2 (1972) (Douglas, J., dissenting) (“*Terry* ... makes it clear that a ... frisk is a search ... within the meaning of the Fourth Amendment.”) Conducting a frisk without due process of law constitutes an unreasonable search. *See Johnson*, 555 U.S. at 327; *see also Ybarra*, 444 U.S. at 94. Being frisked by the police “is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.” *Terry*, 392 U.S. at 17. To justify frisking a citizen, the police must either have a warrant, probable cause, consent, or harbor particularized and reasonable suspicion articulable through objective facts, information, or officer experience indicating that the citizen subjected to the frisk is “armed and dangerous.” *Johnson*, 555 U.S. at 327.

27. A citizen who lives in Westfield has a 1 in 2,777, or 0.0003% chance of becoming a victim of a violent crime.³ Mr. Posyton was in the 45th safest city in the nation, he had no bulges emitting from his clothing, and had just called WPD to report that he had been a *victim* of an assault and battery. Mr. Posyton acted in a very pleasant manner while engaging with the Officers, emitted no sense of danger, and Officers Martinez and Roe displayed a pleased appearance as they talked

³ <https://www.neighborhoodscout.com/nj/westfield/crime>



with Mr. Posyton on the side-walk. Officers Martinez and Roe only frisked Mr. Posyton before he entered the Car because Westfield and Chief Wayman trained them to do so. However, there is “no defense for an officer to claim he was simply ‘following orders.’” *Harvey v. Plains Tp. Police Dept*, 421 F.3d 185, 199 (3d Cir. 2005) (quoting *Villanueva v. George*, 659 F.2d 851, 855 (8th Cir. 1981) (en banc)). This is because “since World War II, the just following orders defense has not occupied a respected position in our jurisprudence.” *Kennedy v. City Of Cincinnati*, 595 F.3d 327, 336 (6th Cir. 2010); see *Brent v. Ashley*, 247 F.3d 1294, 1305 (11th Cir. 2001) (“[F]ollowing orders does not immunize government agents from civil rights liability”):

Finally, important to our conclusion was the reliance by the United States marshals in this case on a Marshal's Service ride-along policy explicitly contemplated that media who engaged in ride-alongs might enter private homes with their cameras as part of fugitive apprehension arrests ... *Such a policy, of course, could not make reasonable a belief that was contrary to a decided body of case law.*

Layne, 526 U.S. at 617 (emphasis added). This “principle is so longstanding that in an 1804 opinion by Chief Justice Marshall, the Supreme Court upheld a damages award against the commander of an American warship for unlawfully seizing a Danish vessel, even though the seizure was made pursuant to a superior’s instructions.” *Peralta v. Dillard*, 704 F.3d 1124, 1134 (9th Cir. 2013) (citing *Little v. Barreme*, 6 U.S. (2 Cranch) 170, 178-179 (1804) (Marshall, C.J.)); see *Busche v. Burkee*, 649 F.2d 509, 517 (7th Cir. 1981) (Discussing *Little*). Officers Martinez and Roe, who were incompetently or willfully acting with a callous and reckless indifference for Mr. Posyton’s state and federal constitutional rights, frisked and searched Mr. Posyton’s entire body, in-between his thighs, and around his private parts, without a warrant, probable cause, consent, or any particularized or reasonable suspicion whatsoever indicating that Mr. Posyton was armed or dangerous, which in effect, demonstrates a violation of Mr. Posyton’s clearly established Fourth Amendment and Art. I ¶ 7 rights to the U.S. and N.J. Constitutions. See, *supra*. The Officers did not think that Mr. Posyton might have had a warrant out for his arrest until *after* Officers Martinez and Roe



frisked Mr. Posyton. Even assuming *arguendo* that the Officers thought that Mr. Posyton had a warrant out for his arrest before (they did not) they frisked him, a search incident to a detention is clearly unlawful without reasonable suspicion indicating danger. *Cf. inter alia Knowles v. Iowa*, 525 U.S. 113, 118-119 (1998) (Refusing to extent that “bright line rule” to a search incident to a citation, which certainly implies that an officer must officially place a citizen under arrest before they conduct a search incident to an arrest). Nevertheless, the Officers should have realized that the warrant was for a man who was over twice Mr. Posyton’s age. *Cf. Malley*, 475 U.S. at 341. Considering there are probably hundreds of warrants out for the arrests of citizens with the same name, no reasonable officer would have thought that Mr. Posyton had a warrant out for his arrest.

COUNT TWO

§ 1983 & § 10:6-1 *et seq.*

***Violation & Deprivation of Fourteenth Amend. & Art. I ¶ 1 Rights:*
Unconstitutional Policy, Custom, Practice, & Training
(Mr. Posyton -vs- Westfield & Wayman)**

28. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

29. There is no § 1983 *respondent superior* liability; this principal does extent to a policy or custom shaper. Under § 1983, municipal defendants, alike Westfield, are “persons” which can be found and held liable for employing unconstitutional customs, practices, or policies, or for failing to train their law enforcement officers. *See Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978) *overruling Monroe*, 365 U.S. 167; *see also Canton v. Harris*, 489 U.S. 378 (1989). Municipal defendants, alike Westfield are not entitled to good faith or qualified immunity, *see Owen v. City of Independence*, 445 U.S. 622 (1980), and therefore, the unconstitutionality of a policy, custom, or practice that the municipality employs or executes, or how the municipality fails to train its law enforcement officers, does not have to be clearly unconstitutional for the municipality to be found and held liable for employing and implementing said unconstitutional



conditions. New Jersey municipal defendants, alike Westfield, can be subject to pay out compensatory and punitive damages for employing unconstitutional policies, customs, or practices, or for failing to train their law enforcement officers. *See Gares v. Willingboro Township*, 90 F.3d 720 (3d Cir. 1996). A custom is “‘so permanent and well settled’ as to virtually constitute law.” *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990) (quoting *Monell*, 436 U.S. at 690), and a “[p]olicy is made when a ‘decision maker possess[ing] final authority to establish municipal policy with respect to the action’ issues an official proclamation, policy, or edict.” *Andrews*, 895 F.2d at 1480 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986)). Even a single decision by a policy maker is enough to establish an official governmental policy. *See Brennan v. Norton*, 350 F.3d 399, 428 (3d Cir. 2003) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986)). In *Allison v. The Geo Group, Inc.*, 611 F. Supp.2d 433, 435 (E.D. Pa. 2009), the court held that a “blanket policy of strip searching all arrestees” violates the Fourth Amendment. *Id.* Although the Third Circuit had not ruled on the issue, the *Allison* court found pervasive that “all nine circuits found suspicionless strip searches of recently arrested persons” to be “unconstitutional.” *Id.*, at 451; *see Swain v. Spinney*, 117 F.3d 1, 7 (1st Cir. 1997); *see also Weber v. Dell*, 804 F.2d 796, 802 (2d Cir. 1986); *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981); *Stewart v. Lubbock County*, 767 F.2d 153, 156-157 (5th Cir. 1985); *Masters v. Crouch*, 872 F.2d 1248, 1255 (6th Cir. 1989); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1273 (7th Cir. 1984); *Jones v. Edwards*, 770 F.2d 739, 741-742 (8th Cir. 1985); *Giles v. Ackerman*, 746 F.2d 614, 617 (9th Cir. 1984); *Hill v. Bogans*, 735 F.2d 391, 394-395 (10th Cir. 1984). If policies permitting officials to conduct suspicionless searches of arrestees are unconstitutional, one would think policies permitting the police to conduct suspicionless searches of innocent citizens can only be the ideology of a police state. Conducting “pat frisks as a matter of course, without a specific basis to reasonably believe that a suspect is armed and dangerous, plainly violates the



Fourth Amendment.” *Johnson*, 2017 U.S. Dist. LEXIS 78035, at 17-18 (citing *Johnson*, 555 U.S. at 327 & *United States v. Burton*, 228 F.3d 524, 528 (4th Cir. 2000)).

30. Westfield’s officers have a policy, custom, and practice to automatically frisk any citizen who is about to enter one of their police vehicles, even if the frisking officers lack a warrant, consent, probable cause, or reasonable suspicion indicating that the citizen subjected to the frisk might be armed and dangerous. Westfield’s officers have been, and continue to this day to engage in widespread and persistent patterns of frisking its citizens, including Mr. Posyton, without due process of law before they enter police vehicles. Westfield and Chief Wayman approved of this policy, custom, and practice, which was implemented to search citizens for contraband. Westfield, Chief Wayman, and their officers have incompetently or willfully acted with a callous, reckless, and deliberate indifference for the state and federal constitutional rights of their citizens, including Mr. Posyton, and knew, or should have known that they were employing and executing an unconstitutional policy, custom, and practice, and that they failed to train their law enforcement officers by training them to the contrary, *i.e.*, to frisk citizens, including Mr. Posyton, without warrants, probable cause, consent, or particularized or reasonable suspicion indicating that they might be armed and dangerous, which in effect, demonstrates a violation of Mr. Posyton’s Fourteenth Amendment and Art. I ¶ 1 rights to the U.S. and N.J. Constitutions. *See Johnson*, 2017 U.S. Dist. LEXIS 78035, at 45; *see also Johnson*, 555 U.S. at 327; *Ybarra*, 444 U.S. at 94.

COUNT THREE

§ 1983 & § 10:6-1 *et seq.*

Violation & Deprivation of Fourth Amend. & Art. I ¶ 7 Rights: Unreasonable Seizure (Mr. Posyton -vs- O’Keefe & Martinez & Roe & Poe)

31. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

32. Mr. Posyton enjoys a clearly established liberty interest against seizures of his person by actions of the government without due process of law, as guaranteed by the Fourth Amendment



and Art. I ¶ 7 to the U.S. and N.J. Constitutions. “[S]eizures conducted outside the judicial process ... are *per se* unreasonable.” *U.S. v. Hartwell*, 436 F.3d 174, 177 (3d Cir. 2006) (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 372-373 (1993)). “[T]he Fourth Amendment’s protection against unreasonable ... seizures includes seizure of the person.” *California v. Hodari D.*, 499 U.S. 621, 624 (1991) (citing *Henry v. United States*, 361 U.S. 98, 100 (1959)). A “detention constitutes a seizure under the Fourth Amendment.” *United States v. Briggs*, 720 F.3d 1281, 1283 (10th Cir. 2013) (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)); *see U.S. v. Ruidíaz*, 529 F.3d 25, 28 (1st Cir. 2008). An arrest likewise constitutes a seizure under the Fourth Amendment. For an officer to detain a citizen, they must have either a warrant, probable cause, or particularized and reasonable suspicion articulable through objective facts, information, or officer experience indicating that the citizen subjected to the brief detention in a *specific* location has committed or is about to commit an offense. *See Illinois v. Wardlow*, 528 U.S. 119, 123 (2000); *see also Brown v. Texas*, 443 U.S. 47, 52 (1979); *cf. Florida v. Royer*, 460 U.S. 491, 500 (1983) (“[T]he investigative methods employed [during a *Terry* stop] should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion.”) For an officer to arrest a citizen, they must have either have a warrant or probable cause indicating that said citizen committed a crime,⁴ and officers involuntarily transporting citizens to completely different locations constitutes an arrest. *See Kaupp v. Texas*, 538 U.S. 626 (2003) (*per curiam*); *see also Dunaway v. New York*, 422 U.S.

⁴ In regards to misdemeanors, many courts have held that the Fourth Amendment does not have an ‘in the presence’ requirement. *But see United States v. McNeill*, 420 F. Supp.2d 447, 452 (D. Md. 2006) (Holding that the Fourth Amendment has an in the presence requirement for misdemeanors). However, Art. I ¶ 7 of the New Jersey Constitution clearly mandates that in regards to misdemeanors, officers cannot arrest without a warrant unless they actually observe the offense. *Cf. N.J.S.A. § 2A:169-3*. This is because Art. I ¶ 7 affords NJ citizens greater protections against unreasonable searches and seizures than the Fourth Amendment, coupled with the fact that “New Jersey follows the common law of arrest.” *State v. Fariello*, 71 N.J. 552, 568 (N.J. 1976); *see State v. Fair*, 45 N.J. 77, 86 (N.J. 1965) (“The common law of arrest is extant in New Jersey.”)



200 (1979); *Davis v. Mississippi*, 394 U.S. 721 (1969); *Morales v. New York*, 396 U.S. 102 (1969); *Hayes v. Florida*, 470 U.S. 811, 816 (1985) (“[T]he line is crossed when the police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him” to a different location).

33. A citizen has been seized within the meaning of the Fourth Amendment if a reasonable person of similar characteristics,⁵ placed in an identical position as the citizen alleging to have been seized, would not have felt “free to leave” the officer’s presence, or otherwise, not have felt free to terminate the encounter with the officer. *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *see also United States v. Drayton*, 536 U.S. 194, 201 (2002); *Florida v. Bostick*, 501 U.S. 429, 436 (1991); *INS v. Delgado*, 466 U.S. 210, 215 (1984); *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988); *Brendlin v. California*, 551 U.S. 249, 255 (2007); *Kaupp*, 538 U.S. at 629; *Hodari D.*, 499 U.S. at 628; *Royer*, 460 U.S. at 502-503 (Seizure occurred when the police simply asked *Royer* to “accompany them to the police room.”) “Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *Mendenhall*, 446 U.S. at 554; *see Kaupp*, 538 U.S. at 630. Some other factors which indicate that a seizure has occurred include a citizen being locked inside of a police vehicle, when police tell a citizen that they are being detained, when police remove “the person to a different location,” *United States v. Tyler*, 512 F.3d 405, 410 (7th Cir. 2008), or when police fail to inform the citizen that they are free to leave, or that they have “a right to

⁵ “[T]he precise legal definition of ‘reasonable person’ may, depending on legal context, appropriately account for certain personal characteristics . . . including physical disability, youth, or advanced age.” *Yarborough v. Alvarado*, 541 U.S. 652, 674 (2004) (Beyer, J., dissenting).



1 terminate the encounter.” *United States v. Washington*, 490 F.3d 765, 772 (9th Cir. 2007). Lastly,
2 an “account must be taken of ... the state of the [citizen’s] mind, and the failure of the police to
3 advise the [citizen] of his rights.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 227-229 (1973).

4 34. No reasonable 22-year-old,⁶ would feel free to terminate an encounter with a squad of
5 officers after being told that the officers would transport the citizen to a police station if they did
6 not go home, and then the officers frisk the citizen, locked them inside of a police vehicle, and
7 tell the citizen that they were being detained; thereafter, the officers refuse to let the citizen exit
8 the locked police vehicle, and then the officers drive the citizen away against their will. Mr. Po-
9 syton was initially and illegally detained on the sidewalk when Officer O’Keefe gave Mr. Posyton
10 an ultimatum to either go home or go to a police station, as no reasonable person would have felt
11 free to terminate the encounter with the Officers after such an ultimatum. Thereafter, due to in-
12 competent actions of the Officers, as no reasonable officer would had thought that Mr. Posyton
13 had a warrant out for his arrest, the Officers continued to illegally detain Mr. Posyton inside of
14 the Car because they thought that Mr. Posyton might have a warrant out for his arrest, which he
15 did not. After the Officers discovered that Mr. Posyton did not have a warrant out for his arrest,
16 they continued to illegally detain him. Thereafter, the Officers drove Mr. Posyton away from the
17 Restaurant against his will, which constituted an illegal arrest. Subsequently, Officer Martinez
18 continued to illegally hold Mr. Posyton under arrest while they were driving on Carleton Road,
19 as no reasonable person would feel free to leave a locked moving vehicle after demanding to be
20

21
22 ⁶ “People under twenty-five feel ... less free to leave [during] encounters with the police ...
23 The average freedom-to-leave score for respondents under twenty-five was 2.41 and 2.26, while
24 the averages for respondents over twenty-five were 2.65 and 2.58 (Table 3).” David K. Kessler,
Free To Leave? An Empirical Look at the Fourth Amendment's Seizure Standard, 99 J. Crim L
& Criminology 51, 75-6 (2009) (Study gathering empirical data and concluding that the average
citizen does not feel free to leave an officer’s presence).



let out, and then being denied permission to exit by the police. Successively, Officer Poe continued to illegally hold Mr. Posyton under arrest on the side walk of Carleton Road, as no reasonable person would feel free to terminate an encounter with a police officer after having walked away from that officer, and then told that they were being detained. Mr. Posyton was illegally detained for approximately 15 minutes, and transported against his will to a destination that was located over a mile away from the place of his initial illegal detention, which constituted an illegal arrest. The Officers, who were incompetently or willfully acting with a callous and reckless indifference for Mr. Posyton's state and federal constitutional rights, illegally detained, falsely arrested, and unreasonably seized Mr. Posyton without either a warrant, consent, probable cause, or particularized and reasonable suspicion indicating that he had committed or was about to commit an offense, which in effect, demonstrates a violation of Mr. Posyton's clearly established Fourth Amendment and Art. I ¶ 7 rights to the U.S. and N.J. Constitutions. *See Brown*, 443 U.S. at 52; *cf. Kaupp*, 538 U.S. at 630; *Hayes*, 470 U.S. at 816; *Malley*, 475 U.S. at 341.

COUNT FOUR

§ 1983 & § 10:6-1 *et seq.*

Violation & Deprivation of Fourteenth Amend. & Art. I ¶ 1 Rights: False Imprisonment* **(Mr. Posyton -vs- O'Keefe & Martinez & Roe & Poe)*

35. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

36. Mr. Posyton enjoys a clearly established liberty interest against being imprisoned or deprived of his freedom of movement by actions of the government without due process of law, as guaranteed by the Fourteenth Amendment and Art. I ¶ 1 to the U.S. and N.J. Constitutions. "A false imprisonment claim under 42 U.S.C. § 1983 is [guided by common law principles, and is] based on the Fourteenth Amendment protection against deprivations of liberty without due process of law." *Groman v. Township of Manalapan*, 47 F.3d 628, 636 (3d Cir. 1995) (citing *Baker v. McCollan*, 443 U.S. 137, 142 (1979)). Hence, for example, if a police officer arrests a citizen



for a misdemeanor not committed in their presence without a warrant, the officer is liable for false imprisonment; ““a constable cannot arrest, but when he sees an actual breach of the peace; and if the affray be over, he cannot arrest.”” *Atwater v. City of Lago Vista*, 532 U.S. 318, 329 (2001) (quoting *Queen v. Tooley*, 2 Ld. Raym. 1296, 1301, 92 Eng. Rep. 349, 352 (Q. B. 1710)). “[P]robable cause is not a defense to an action for false imprisonment but legal justification is.” *Ashton v. Brown*, 339 Md. 70, 121 (Md. 1995); see *Wiegand v. Meade*, 108 N.J.L. 471, 473 (N.J. 1932) (“The essential thing in an action for false imprisonment is the constraint of the person without legal justification,” and the “good or evil intention of the defendant does not excuse or create the tort.”)

37. The Officers, who were incompetently or willfully acting with a callous and reckless indifference for Mr. Posyton’s state and federal constitutional rights, imprisoned Mr. Posyton by depriving him of his liberty by intentionally detaining and arresting him without legal justification, which in effect, demonstrates a violation of Mr. Posyton’s clearly established Fourteenth Amendment and Art. I ¶ 1 rights to the U.S. and N.J. Constitutions. *See, supra*.

COUNT FIVE

§ 10:6-1 et seq.

Violation & Deprivation of Art. I ¶ 1 Rights: Tarnished Reputation (Mr. Posyton -vs- O’Keefe & Martinez & Roe & Poe)

38. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

39. Mr. Posyton enjoys a clearly established liberty interest against having his reputation tarnished by actions of the government without due process of law, as guaranteed by Art. I ¶ 1 to the N.J. Constitution. First, as Justice Jackson once said: “Arrest without more may nevertheless impair or cloud one’s reputation. False arrest may do that.” *Michelson v. United States*, 335 U.S. 469, 482 (1948). “To be sure, the fact of arrest can be a plaguing ‘blight in one's background.’” *Carlson v. Schlesinger*, 364 F. Supp. 626, 631 (D.D.C. 1973) (quoting *Bilick v. Dudley*, 356 F.



Supp. 945, 951 (S.D.N.Y. 1973)). Now, in *Paul v. Davis*, 424 U.S. 693, 712 (1976) the Supreme Court held that reputational harm, standing alone, is not a due process violation. *Id.* However, this holding is of no concern to the present case; a citizen need only “a reputation to be at stake as a protectable interest in New Jersey.” *Filgueiras v. Newark Pub. Sch.*, 45 A.3d 986, 996-997 (N.J. Super. 2012) (citing *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367 (1995)). “While the New Jersey Constitution ‘does not explicitly enumerate the right to possession or protecting reputation, that right ... was understood to be guaranteed by Article I, paragraph 1 of the Constitution of 1844.’” *Torrey v. New Jersey*, 2014 U.S. Dist. LEXIS 31146, at 47 (D.N.J. Mar. 11, 2014) (brackets omitted) (quoting *Doe*, 142 N.J. at 104). With regards to reputation, the New Jersey Supreme Court’s “analysis differs from that under the Federal Constitution only to the extent that [it] find[s] a protectible interest in reputation without requiring any other tangible loss.” *Torrey*, 2014 U.S. Dist. LEXIS 31146, at 47 (brackets omitted) (quoting *Doe*, 142 N.J. at 105). Accordingly, under New Jersey law, “injury to reputation alone suffice[s]” to state a claim for relief, and *Davis*’s “stigma-plus test d[oes] not apply.” *Filgueiras*, 45 A.3d at 997 (citing *Doe*, 142 N.J. at 104).

40. By detaining and arresting Mr. Posyton on the streets of Westfield in front of the public without a warrant, probable cause, or reasonable suspicion, and showing Mr. Posyton to his mother while he was under arrest, the Officers damaged Mr. Posyton’s reputation with the public and with his mother without due process of law or an opportunity for him to be heard and contest the illegality of the Officer’s actions, which in effect, demonstrates a violation of Mr. Posyton clearly established Art. I ¶ 1 rights to the N.J. Constitution. *See Doe*, 142 N.J. at 103-104.

COUNT SIX

§ 1983 & § 10:6-1 et seq.

***Violation & Deprivation of Fourth Amend. & Art. I ¶ 7 Rights: Unlawful Entry
(Mr. Posyton -vs- Martinez & Poe)***

41. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.



42. Mr. Posyton enjoys a clearly established liberty interest against entries onto the curtilage of his home by actions of the government without due process of law, as guaranteed by the Fourth Amendment and Art. I ¶ 7 to the U.S. and N.J. Constitutions. No “man can set his foot upon his neighbour’s close without his leave; if he does, he is a trespasser.” *United States v. Jones*, 565 U.S. ___, ___, 132 S.Ct. 945, 949 (2012) (quoting *Entick v. Carrington*, 95 Eng. Rep. 807, 817 (C. P. 1765)); cf. *Semayne’s Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K. B. 1604) (“[T]he house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose.”) The home’s “curtilage or homestall,” 4 W. Blackstone, *Commentaries on the Laws of England* 223, 225 (1769), is “considered part of [the] home itself,” *Oliver v. United States*, 466 U.S. 170, 180 (1984), and therefore, protected by the Constitution. See *Florida v. Jardines*, 569 U.S. 1, ___, 133 S.Ct. 1409, 1414 (2013). The Fourth Amendment not only draws “firm” and “bright” lines at the entrance to the home, *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980)), but “[t]hat ‘firm’ and ‘bright’ rule governs” the curtilage of the home. *Jardines*, 133 S.Ct. at 1419 (Kagan, J., concurring). For a police officer to enter onto the curtilage of a citizen’s home, they must either have a warrant, consent, or probable cause and exigent circumstances. *Id.*, at 1420 (Kagan, J., concurring). Although the police have an implied license “to walk up the steps and knock on the front door of any man’s ‘castle,’” *Davis v. United States*, 327 F.2d 301, 303 (9th Cir. 1964); see *Kentucky v. King*, 563 U.S. 452, 469 (2011), this license can unquestionably be revoked “by notice or order.” *Breard v. Alexandria*, 341 U.S. 622, 626 (1951); see *United States v. Holmes*, 143 F.Supp.3d 1252 (M.D. Fla. 2015); see also *United States v. Carloss*, 818 F.3d 988, 1003 (10th Cir. 2016) (Gorsuch, J., dissenting); *State v. Christensen*, 131 Idaho 143, 953 P.2d 583, 587-588 (1998) *State v. Grice*, 767 S.E.2d 312, 319 (N.C. 2015) (“The implicit license enjoyed by law enforcement and citizens alike to approach the front doors of homes may be limited or rescinded by clear demonstrations.”)



In addition, most courts hold that this implied license is generally limited to encounters “at high noon,” *Davis*, 327 F.2d at 303 (emphasis added), as “[o]ur jurisprudence interpreting the Fourth Amendment has long recognized that police encounters at a person’s dwelling in the middle of the night are especially intrusive.” *U.S. v. Jerez*, 108 F.3d 684, 690 (7th Cir. 1997) (citing *Monroe*, 365 U.S. at 210 (Frankfurter, J., dissenting)); see *United States v. Young*, 877 F.2d 1099, 1104 (1st Cir. 1989) (Breyer, J.); cf. *United States v. Lundin*, 47 F.Supp.3d 1003, 1013 (N.D. Cal. 2014) (“Courts have emphasized that the implied license [for the police or strangers] to visit is generally understood to extend during daylight hours.”) This is because the license that “‘may be implied from the habits of the country,’” *Jardines*, 133 S.Ct. at 1415 (quoting *McKee v. Gratz*, 260 U.S. 127, 136 (1922)), does “not include making uninvited visits at 4:00 a.m.,” *Lundin*, 47 F.Supp.3d at 1013, as those type of intrusions dignify “‘a ‘police state’ lacking in the respect for due process and the right of privacy dictated by the U.S. Constitution.’” *Gooding v. United States*, 416 U.S. 430, 460 (1974) (Douglas, J., dissenting) (citation omitted). “We think a typical person would find it ‘a cause for great alarm’ (the kind of reaction the dissent quite rightly relies upon to justify its no-night-visits rule) ... to find a stranger snooping about his front porch [at night] *with or without* a dog.” *Jardines*, 133 S.Ct. at 1416, n.3 (emphasis in original) (quoting *id.*, at 1442 (Alito, J., dissenting)). “Nor ... may a visitor come to the front door in the middle of the night without an express invitation.” *Id.*, at 1442 (Alito, J., dissenting). The Supreme Court explicitly declares in *Jardines*, and implicitly in *King*, that police officers have no implied right to walk up to a home in the middle of the night without an express invitation; in *King*, the Supreme Court did not mention the word ‘night’ once, and specifically limited its opinion to daytime knock-and-talks. In short, officers are allowed to go onto the curtilage of a home to knock on the door in the daytime because “they do no more than [what] any citizen might do.” *King*, 563 U.S. at 469. However,



neither a private citizen nor a reasonable officer would attempt to go onto the curtilage of a citizen's home at 1:00 a.m. after the occupant specifically told the citizen or officer not to so. *Cf. Georgia v. Randolph*, 547 U.S. 103 (2006) (Holding that once an occupant tells the police not to enter their home, the police cannot enter, even if another occupant invites them inside).

43. Notwithstanding that Mr. Posyton specifically and unequivocally told Officers Martinez and Poe not to go onto the curtilage of Mr. Posyton's home, Officers Martinez and Poe, who were incompetently or willfully acting with a callous and reckless indifference for Mr. Posyton's state and federal constitutional rights, nonetheless entered onto the curtilage of Mr. Posyton's home at approximately 1:00 a.m. without either a warrant, consent, probable cause, reasonable suspicion, or exigent circumstances, which in effect, demonstrates a violation of Mr. Posyton's clearly established Fourth Amendment and Art. I ¶ 7 rights to the U.S. and N.J Constitutions. *See Jardines*, 133 S.Ct. at 1415; *see also id.*, at 1419 (Kagan, J., concurring); *id.* at 1422 (Alito, J., dissenting); *Jones*, 132 S.Ct. at 949; *Entick*, 95 Eng. Rep. at 817. Although Officer Poe and Martinez did not enter the structure of Mr. Posyton's home, they crossed *Payton's* 'firm' and *Kyllo's* 'bright' lines, which are applied to the curtilage of the home. *Jardines*, 133 S.Ct. at 1419 (Kagan, J., concurring). The sanctity of the home is so potent that in *Loria v. Gorman*, 306 F.3d 1271, 1284 (2d Cir. 2002), the Second Circuit denied immunity to an officer regarding an unlawful entry claim because he took "one or two steps" into the home. *Id.*

COUNT SEVEN

§ 1983 & § 10:6-1 et seq.

Violation & Deprivation of Fourth Amend. & Art. I ¶ 7 Rights: Privacy Rights (Mr. Posyton -vs- Martinez & Poe)

44. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

45. Mr. Posyton enjoys a clearly established liberty interest against intrusions of his privacy by actions of the government without due process of law, as guaranteed by the Fourth Amendment



and Art. I ¶ 7 to the U.S. and N.J. Constitutions. The right to privacy, *see* Warren Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890), which is ““derived from natural law,”” *Griswold v. Connecticut*, 381 U.S. 479, 509, n.1 (1965) (White, J., concurring) (quoting *Pavesich v. New England Life Ins. Co*, 122 Ga. 190, 193 (Ga. 1905)), is ““implicit in the concept of ordered liberty,”” *Wolf v. Colorado*, 338 U.S. 25, 27 (1949) (quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)), and thus, protected by the Constitution. *See Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1891); *see also Griswold*, 381 U.S. at 484-485; *id.*, at 486 (Goldberg, J., concurring); *Terry*, 392 U.S. at 8-9; *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Katz*, 389 U.S. at 350-351; *id.*, at 361 (Harlan, J., concurring). After Mr. Posyton specifically and unequivocally told the government not to step onto the curtilage of his home, he possessed an expectation of privacy that society recognizes as reasonable on it because at that point, Mr. Posyton was attempting to protect something from government intrusion. *Cf. Brown v. State*, 152 So.3d 619, 622-624 (Fla. Dist. Ct. App. 2014) (Holding that a defendant, who put up a fence and no trespassing signs, and who “immediately told the police to get off of his property,” established a “subjective expectation of privacy that society is prepared to recognize as reasonable.”)

46. Officers Martinez and Poe, who were incompetently or willfully acting with a callous and reckless indifference for Mr. Posyton’s state and federal constitutional rights, unreasonably violated his privacy by stepping onto the curtilage of his home without a warrant, consent, probable cause, reasonable suspicion, or exigent circumstances, which in effect, demonstrates a violation of Mr. Posyton’s clearly established Fourth Amendment and Art. I ¶ 7 rights to the U.S. and N.J. Constitutions. *See, supra*.



COUNT EIGHT

§ 1983 & § 10:6-1 et seq.

***Violation & Deprivation of Fourth Amend. & Art. I ¶ 7 Rights: Unreasonable Search
(Mr. Posyton -vs- Martinez)***

47. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

48. Mr. Posyton enjoys a clearly established liberty interests against searches of the curtilage of his home by actions of the government without due process of law, as guaranteed by the Fourth Amendment and Art. I ¶ 7 to the U.S. and N.J. Constitutions. “[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable.” *Kyllo*, 533 U.S. at 33 (citing *Katz*, 389 U.S. at 361 (Harlan, J., concurring)); see *Maryland v. Macon*, 472 U.S. 463, 469 (1985); see also *Smith v. Maryland*, 442 U.S. 735, 740 (1979); *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). However, the “*Katz* reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test.” *Jones*, 132 S.Ct. at 952 (emphasis in original). A Fourth Amendment search may also occur “[w]hen the Government physically invades personal property to gather information.” *Jones*, 132 S.Ct. at 955. Accordingly, the Third Circuit, along with many other jurisdictions, have already held that an officer’s physical entry into the structure of a home without consent constitutes a search.⁷ See *United States v. Harrison*, 689 F.3d 301, 307, n.2 (3d Cir. 2012) (“[A] common law trespass constitutes a search under the Fourth Amendment.”) Once a citizen establishes an expectation of privacy that society recognizes as reasonable on the curtilage of their home, officers conduct an unreasonable search when they enter onto it to gather information without a warrant, consent, probable cause, or exigent circumstances, as such an act violates the citizen’s privacy, constitutes a trespass, and is committed without due process of law.

⁷ *O'Rourke v. Hayes*, 378 F.3d 1201, 1208 (11th Cir. 2004); see also *United States v. Cannon*, 264 F.3d 875, 879 (9th Cir. 2001); *United States v. Newman*, 472 F.3d 233, 236, n.1 (5th Cir. 2006); *Leaf v. Shelnutt*, 400 F.3d 1070, 1081 (7th Cir. 2005).



49. Officer Martinez, who was incompetently or willfully acting with a callous and reckless indifference for Mr. Posyton's state and federal constitutional rights, unreasonably searched the curtilage of Mr. Posyton's home by stepping onto it after being specifically told not to, and thereby, violating Mr. Posyton's privacy, and then going to ring Mr. Posyton's doorbell to gather information regarding whether anyone was home without a warrant, consent, probable cause, reasonable suspicion, or exigent circumstances, which in effect, demonstrates a violation of Mr. Posyton's clearly established Fourth Amendment and Art. I ¶ 7 rights to the U.S. and N.J. Constitutions. *See Jardines*, 133 S.Ct. at 1415; *see also Jones*, 132 S.Ct. at 955; *Kyllo*, 533 U.S. at 33. Accordingly, the Supreme Court, Fourth Circuit, and the United States District Court of New Jersey have always denied immunity to police officers who have violated "the basic rule, well established by our cases." *Gregg v. Ham*, 678 F.3d 333, 341, n.7 (4th Cir. 2012) (quoting *Groh*, 540 U.S. at 564); *see Covey v. Assessor of Ohio Cnty*, 777 F.3d 186, 196 (4th Cir. 2015); *see also Bostrom v. N.J. Div. of Youth & Family Servs.*, 969 F.Supp.2d 393, 409 (D.N.J. 2013).

COUNT NINE

§ 1983 & § 10:6-1 et seq.

Violation & Deprivation of Fourth Amend. & Art. I ¶ 7 Rights: Excessive Force (Mr. Posyton -vs- Martinez & Roe)

50. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

51. Mr. Posyton enjoys a clearly established liberty interest against being subjected to excessive force by actions of the government without due process of law, as guaranteed by the Fourth Amendment and Art. I ¶ 7 to the U.S. and N.J. Constitutions. "[A] *de minimis* injury does not ... 'foreclose a claim of excessive force.'" *Atkinson v. City of Mountain View*, 709 F.3d 1201, 1210-11 (8th Cir. 2013) (quoting *Chambers v. Pennycook*, 641 F.3d 898, 906 (8th Cir. 2011)) (brackets omitted); *cf. Robison v. Via*, 821 F.2d 913, 924 (2d Cir. 1987) (A "plaintiff may recover even if the injuries inflicted were not permanent or severe.") While a citizen must suffer from "at least



some injury” for an excessive force claim to survive, *Jackson v. R.E. Culbertson*, 984 F.2d 699, 700 (5th Cir. 1993), “psychological injuries may sustain a Fourth Amendment Claim.” *Flores v. City of Palacios*, 381 F.3d 397-98 (5th Cir. 2004); *cf. Baird v. Renbarger*, 576 F.3d 340, 344 (7th Cir. 2009) (A citizen “need not show physical injury in order to sustain an excessive force claim.”) The Ninth Circuit has reached a similar conclusion by stating that “[a]n officer’s show of force is subject to Fourth Amendment reasonableness requirements even where no actual force is applied.” *Motley v. Parks*, 432 F.3d 1072, 1088 (9th Cir. 2005) (citing *Robinson v. Solano County*, 278 F.3d 1007, 1014-15 (9th Cir. 2001)). Nevertheless, an excessive force claim is premised on whether the amount of force applied was objectively reasonable under the totality of the circumstances. *See Graham v. Connor*, 490 U.S. 386, 388-398 (1989). In assessing objective reasonableness, a court should balance “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the governmental interests at stake.” *Graham*, 490 U.S. at 396 (citing *United States v. Place*, 462 U.S. 696, 703 (1983)). Factors involved in this inquiry include, (1) whether the citizen poses a danger to the officers, and if so, how severe, (2) whether the citizen has committed a crime, and if so, how severe was the crime, (3) whether the officer is attempting to detain or arrest the citizen, and (4) whether the citizen is attempting to resist the detention or arrest. Hence, for example, “in the context of custodial interrogation, the use of nearly any amount of force may result in a constitutional violation when a suspect ‘poses no threat to the officers safety or that of others, and the suspect does not otherwise initiate action which would indicate to a reasonably prudent police officer that the use of force is justified.’” *Blair*, 101 F.3d at 434 (emphasis added; brackets omitted) (quoting *Ware v. Reed*, 709 F.2d 345, 351 (5th Cir. 1983)); *see Bieros v. Nicola*, 860 F. Supp. 226, 233 (E.D. Pa. 1994) (Holding that “any amount of force used during an interrogation violates one’s constitutional right.”) In *Schwab v. Wood*, 767 F. Supp. 574, 585 (D. Del. 1991), the court held that officers who detain a suspect without a



reasonable suspicion are liable for harm caused by the use of any amount of force in effectuating that detention. *Id.* (“When a police officer has no reasonable suspicion to detain an individual, the government’s interest in any form of intrusion, let alone the use of force, is nil. Consequently, all uses of alleged force against Schwab present in this record violate the fourth amendment.”) In short, citizens who have committed no crimes, pose no danger to officer safety, and when officers lack justification to detain or arrest the citizen, such citizens possess viable excessive force claims against officers who start touching them around their private parts without consent, as such application of force is clearly unreasonable.

52. Officers Martinez and Roe, who were acting in an objectively unreasonable manner under the totality of the circumstances, either with incompetency or a callous and reckless indifference for Mr. Posyton’s state and federal constitutional rights, and without any justification, roughly grabbed, shook, and frisked Mr. Posyton without due process of law, and caused him psychological injuries regarding, *inter alia*, frustration, anxiety, annoyance, humiliation, and extreme constitutional trauma notwithstanding Officers Martinez and Roe lacked justification to detain or arrest Mr. Posyton, Mr. Posyton posed no threat to them, Mr. Posyton committed no crime, and Mr. Posyton was not attempting to resist the frisk, detention, or arrest, which in effect, demonstrates a violation of Mr. Posyton’s clearly established Fourth Amendment and Art. I ¶ 7 rights to the U.S. and N.J. Constitutions. *See Graham*, 490 U.S. 386; *cf. Blair*, 101 F.3d at 434; *Schwab*, 767 F. Supp. at 585.

COUNT TEN

§ 1983 & § 10:6-1 *et seq.*

Violation & Deprivation of Fourteenth & Amend. & Art. I ¶ 1 Rights: Privacy Rights (Mr. Posyton -vs- Martinez & Roe)

53. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

54. Mr. Posyton enjoys a clearly established liberty interest against intrusions of his personal



1 privacy or bodily integrity by actions of the government without due process of law, as guaranteed
2 by the Fourteenth Amendment and Art. I ¶ 1 to the U.S. and N.J. Constitutions. Mr. Posyton
3 possesses an expectation of privacy that society recognizes as reasonable on his person and in his
4 “bodily integrity,” which “implicates an individual’s ‘most personal and deep-rooted expectations
5 of privacy.’” *Missouri v. McNeely*, 569 U.S. ___, ___, 133 S.Ct. 1552, 1558 (2013) (quoting *Winston*
6 *v. Lee*, 470 U.S. 753, 760 (1985)); see *Rochin v. California*, 342 U.S. 165, 172 (1952); see also
7 *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 616 (1989); *Botsford*, 141 U.S. at 251.

8 55. Officers Martinez and Roe, who were incompetency or willfully acting with a callous and
9 reckless indifference for Mr. Posyton’s state and federal constitutional rights, unreasonably in-
10 trude on Mr. Posyton’s personal privacy and bodily integrity by touching him without a warrant,
11 consent, probable cause or reasonable suspicion indicating that he was armed or dangerous, which
12 in effect, demonstrates a violation of Mr. Posyton’s clearly established Fourteenth Amendment
13 and Art. I ¶ 1 rights to the U.S. and N.J. Constitutions.

14 **COUNT ELEVEN**

15 **§ 1983 & § 10:6-1 et seq.**

16 ***Violation & Deprivation of Fourteenth Amend. & Art. I ¶ 1 Rights: Unconstitutional Hiring*** 17 **(Mr. Posyton -vs- Westfield & Wayman)**

18 56. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

19 57. Mr. Posyton enjoys a clearly established liberty interest against the government hiring
20 incompetent officers to police him, as guaranteed by the Fourteenth Amendment and Art. I ¶ 1 to
21 the U.S. and N.J. Constitutions. Hiring decisions or retention of an employee is a policy decision
22 because as previously stated, a single decision by a department head can establish a policy. “To
23 impose § 1983 liability based on a hiring decision, a plaintiff must demonstrate that the municipal
24 actor disregarded a known or obvious consequence of hiring the applicant.” *Griffin v. City of Opa-*
Locka, 261 F.3d 1295, 1313 (11th Cir. 2001). In *Romero v. City of Clanton*, 220 F. Supp. 2d 1313,



1 1318 (M.D. Ala. 2002), the court held that allegations of a police officer being dismissed from
2 another police department based upon allegations that he indecently exposed himself, coupled
3 with allegations that the police department knew or suspected this misconduct were adequate
4 allegations that supported a claim of deliberate indifference in failing to screen the officer. *Id.*

5 58. Notwithstanding that Officer Martinez illegally arrested Austin Rolnick and illegally en-
6 tered his parent's home, Westfield and Chief Wayman, who knew of this incident, continued to
7 employ Officer Martinez, who *inter alia* illegally frisked, detained, and arrested Mr. Posyton, and
8 illegally entered and trespassed onto and searched the curtilage of his home, and assaulted and
9 battered Mr. Posyton. Upon information and belief, Officer Martinez has subjected other citizens
10 to his tortious conduct which Westfield and Chief Wayman knew and did nothing about it. West-
11 field and Chief Wayman, who have either incompetently or willfully acted with a callous, reck-
12 less, and deliberate indifference towards the state and federal constitutional rights and protection
13 of Mr. Posyton, breached their constitutional duty to hire competent police officers, which was
14 owed to Mr. Posyton, by continuing to employ Officer Martinez, who injured Mr. Posyton, not-
15 withstanding they knew, or should have known that Officer Martinez was incompetent to perform
16 his employment duties, which in effect, demonstrates a violation of Mr. Posyton's clearly estab-
17 lished Fourteenth Amendment and Art. I ¶ 1 rights to the U.S. and N.J. Constitutions.⁸

18 **COUNT TWELVE**

19 **§ 1681**

20 ***Investigatory Discrimination***

21 **(Mr. Posyton -vs- Westfield & O'Keefe & Martinez & Roe & Poe)**

22 59. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

23 ⁸ Police officers are generally forbidden from divulging their departmental policies to the pub-
24 lic. Accordingly, another example of Officer Martinez's incompetency is that he freely told Mr.
Posyton that Westfield's officers have a policy to illegally frisk every citizen who enters one of
their police vehicles.



60. Mr. Posyton shall not be discriminated against because he is a male, as guaranteed by § 1681. Congress has abrogated Westfield's immunity for § 1681 claims. Westfield can be subject to pay out damages for its officer's violations of § 1681 if they are found and held liable for such violations, and their officer's violations of § 1681 in the official capacity do not have to be clearly established for Westfield to be subject to pay out damages. Mr. Posyton is a male, and a member of a protected class under § 1681. To establish a *prima facie* sex discrimination case, Mr. Posyton must ultimately demonstrate that he was treated differently than a member of different class in a similar situation as him, or otherwise, that Mr. Posyton was denied benefits that a member of a different class would have received. *Cf. McDonnell Douglas v. Green*, 411 U.S. 792 (1973).

61. UMPD assigned at least two experienced detectives to investigate the First Touch. The Maryland Officers launched an extensive investigation regarding the First Touch, which spanned over one week. The Maryland Officers interviewed multiple witnesses, reviewed video footage, collected much evidence, interviewed Ms. Garey three times, interrogated Mr. Posyton for over three hours, and eventually charged Mr. Posyton with assault because he touched a female. WPD assigned no detectives to investigate the Second Touch. The Officers investigated the Second Touch for roughly seven minutes, and, other than interviewing Mr. Posyton and Mr. Loe for roughly two minutes each, interviewed no witnesses, reviewed no video footage, collected no evidence, and elected not to charge Mr. Loe with assault, notwithstanding that Mr. Loe intentionally placed his hands on Mr. Posyton after Mr. Posyton specifically told Mr. Loe not to assault him. The Officers would have investigated the Second Touch to a greater extent if Mr. Posyton had been a female assaulted by a male, similar to how the Maryland Officers investigated the First Touch. The Officers would have charged Mr. Loe with assault if Mr. Posyton had been a female. A reasonable person would have been offended by the Officer's conduct. The Offices, who were incompetently or willfully acting with a callous and reckless indifference for Mr. Posyton's rights,



chose to not fully and effectively investigate the Second Touch, and elected not to charge Mr. Loe with assault because Mr. Posyton was a male touched by a male, rather than a female touched by a male, and thereby, denying Mr. Posyton the benefits of a full investigation, and of law, which in effect, demonstrates a violation of Mr. Posyton's clearly established rights under § 1681.

EPILOUGE

62. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

63. "Voluntariness," *Schneckloth*, 412 U.S. at 248, "the existence of probable cause" or reasonable suspicion, *Sherwood v. Mulvihill*, 113 F.3d 396, 401 (3d Cir. 1997) (citing *Groman v. Township of Manalapan*, 47 F.3d 628, 635 (3d Cir. 1995)), and the assessment for whether an officer's actions were objectively reasonable, *Abraham v. Raso*, 183 F.3d 279, 290 (3d Cir. 1999) (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)), are questions of fact which need to be determined by a jury. "It is the duty of [the] courts to be watchful for the constitutional rights of the citizen," *Schneckloth*, 412 U.S. at 229 (quoting *Boyd*, 116 U.S. at 635), and thus, they "must 'indulge every reasonable presumption against waiver of' ... constitutional rights," *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (quoting *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393 (1937)), and construe liberally "provisions for the security of person and property," *Schneckloth*, 412 U.S. at 229 (quoting *Boyd*, 116 U.S. at 635), all in an effort "to secure conditions favorable to the pursuit of happiness." *Griswold*, 381 U.S. at 494 (Goldberg, J., concurring) (quoting *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandis, J., dissenting)); see *Stanley*, 394 U.S. at 564. These conditions do not include governmental intrusions onto personal property, against personal security, or into personal privacy *without due process of law*. "The makers of our Constitution ... conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men." *Griswold*, 381 U.S. at 494



(Goldberg, J., concurring) (quoting *Olmstead*, 277 U.S. at 478 (Brandis, J., dissenting)); see *Stanley*, 394 U.S. at 564; see also *Katz*, 389 U.S. at 350-351.

ACTUAL DAMAGES

64. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

65. As the direct and proximate cause of each and every *Defendants'* wrongdoings, Mr. Posyton was harmed, and either suffered, or continues to suffer from, *inter alia*, injuries of the mind; loss of liberty; adverse reputation; humiliation; annoyance; anxiety; frustration; irreparable harm; indignity; extreme constitutional trauma; privacy interest infringement; emotional distress, depression, and loss of enjoyment of life.

GENERAL DAMAGES

66. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein.

67. If Congress intended § 1983 to deter deprivations of constitutional rights through awards of monetary damages, there is no evidence that Congress ““meant to establish a deterrent more formidable than that inherent in the award of compensatory damages.”” *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 310 (1986) (quoting *Carey v. Piphus*, 435 U.S. 247, 256-257 (1978)). One might think that the fearless men who gave their lives in the defense of liberty at the battle of Bunker Hill, or on the beaches of Normandy, gave their lives for something that was worth more than nothing. Nonetheless, *Carey* and *Stachura* held that the abstract value of procedural due process and First Amendment rights are generally worth nothing; “compensatory damages under § 1983 are [generally] governed by general tort-law compensation theory.” *Allah v. Al-Hafeez*, 226 F.3d 247, 250 (3d Cir. 2000) (citing *Carey*, 435 U.S. at 255); see *Basista v. Weir*, 340 F.2d 74, 88 (3d Cir. 1965). However, Mr. Posyton can recover presumed damages on his privacy, excessive force, unlawful frisk, tarnished reputation, illegal dentation, false arrest, false imprisonment, and unreasonable search claims because, *inter alia*, the “law recognizes that



1 law-abiding citizens can sue and recover general (or presumed) damages for a Fourth Amendment
2 violation, even without proof of injury.” *Siebert v. Severino*, 256 F.3d 648, 655 (7th Cir. 2001)
3 (citing *Hessel v. O’Hearn*, 977 F.2d 299, 301 (7th Cir. 1992)). While citing *Stachura*, the Seventh
4 Circuit in *Hassel* held that “compensatory damages ... may be recoverable when substantive con-
5 stitutional rights, such as ... the right to be free from unreasonable searches and seizures, are
6 infringed.” *Hessel*, 977 F.2d at 301 (citing *Stachura*, 477 U.S. at 310-311). Accordingly, Seventh
7 Circuit interprets *Stachura* how the Supreme Court intended the circuits to interpret it. With that
8 being said, a plaintiff may be awarded presumed damages for privacy violations. The first type
9 of recovery for a privacy violation is on a direct privacy claim, as “damages are available for
10 privacy torts ‘in the same way in which general damages are given for defamation,’ without proof
11 of ‘pecuniary loss or physical harm,’” *Doe v. Chao*, 540 U.S. 614, 622, n.3 (2004) (quoting 4
12 Restatement of Torts § 867, Comment d (1939)); see Restatement (Second) of Torts § 652H
13 (1977); see also *Birnbaum v. U.S.* 436 F. Supp. 967, 987 (E.D.N.Y. 1977) (“The law generally
14 recognizes that where a person suffers an invasion of the right to privacy, awards are appropriate
15 for general damages covering the injury of invasion itself, as well as for the resulting mental
16 distress.”) The second type of recovery for a violation of privacy is indirectly on an unreasonable
17 search or seizure claim; “[v]ictims of unreasonable searches or seizures may recover damages
18 directly related to the invasion of their privacy.” *Hector v. Watt*, 235 F.3d 154, 157 (3d Cir. 2000)
19 (citing *Townes v. City of New York*, 176 F.3d 138, 148 (2d Cir. 1999)). This is especially true
20 since *Stachura* “permits an award of ‘presumed damages’ when a constitutional injury is ‘likely
21 to have occurred but is difficult to establish.’” *Preferred Comm. v. City of Los Angeles*, 13 F.3d
22 1327, 1334 (9th Cir. 1994) (brackets omitted) (quoting *Stachura*, 477 U.S. at 310-311); see
23 *Brooks v. Andolina*, 826 F.2d 1266, 1269 (3d Cir. 1987) (“[C]ompensatory damages may be
24 awarded once the plaintiff shows actual injury despite the fact the monetary value of the injury is



difficult to ascertain,” and “not all elements of damages under the principles of the common law of torts need be proved by specific dollar amounts, *e.g.*, pain and suffering.”) Surely, such principles furthermore back an award of presumed damages for the government tarnishing a citizen’s reputation. Now, *Kerman v. City of New York*, 374 F.3d 93, 130 (2d Cir. 2004) is the leading case on damages for unreasonable seizure claims; *Kerman* held that a plaintiff may recover presumed damages for the loss of liberty for an unreasonable seizure claim. *Id.* This is because when a citizen is detained by the police, their “loss of liberty is not just ‘virtually certain’ to occur; it is inseparable from the detention itself.” *Id.* “The present case does not involve either procedural due process or an attempt to vindicate an abstract societal interest. Rather, it involves an anything-but-abstract physical detention.” *Id.* When a plaintiff is “indisputably deprived of his liberty, and the conduct of the defendant responsible for the deprivation was found to be unlawful, [the Second Circuit] ha[s] held that the plaintiff is entitled to compensatory, not merely nominal, damages.” *Id.*, at 124 (citing *Raysor v. Port Authority of New York and New Jersey*, 768 F.2d 34, 38-39 (2d Cir. 1985)). In short, “[t]he damages recoverable for loss of liberty for the period spent in a wrongful confinement are separable from damages recoverable for such injuries as physical harm, embarrassment, or emotional suffering; even absent such other injuries, an award of several thousand dollars may be appropriate simply for several hours’ loss of liberty.” *Kerman*, 374 F.3d at 125-126; see *Gardner v. Federated Department Stores, Inc.*, 907 F.2d 1348 (2d Cir. 1990) (Reducing a \$150,000 jury award of loss of liberty for false imprisonment to exceed \$50,000 on remand to the district court). Lastly, in *Mayard v. Hopwood*, 105 F.3d 1226, 1228 (8th Cir. 1997), the court held that a plaintiff may recover presumed damages for being subjected to force excessive force because those “actions are of such a nature that [the Eighth Circuit] find[s] that a constitutional injury is presumed to flow from the wrong itself.” *Id.* Mr. Posyton will go into damages more extensively at a later date.



PRAYER FOR RELIEF

68. Mr. Posyton re-alleges each of the foregoing paragraphs as fully set forth herein, and incorporates each of the foregoing paragraphs as fully set forth from the beginning.

WHEREFORE, *Plaintiff*, Ronald H. Posyton, III, prays for this Honorable Court to enter judgment in his favor against the above-named *Defendants*, jointly and severally, as follows:

- (1) For nominal damages;
- (2) For compensatory damages;
- (3) For general damages;
- (4) For punitive damages;
- (5) For relief declaring that Mr. Posyton's rights were violated;
- (6) For relief declaring that Westfield's policy, custom, and practice of frisking its citizens without due process of law unconstitutional;
- (7) For an injunction prohibiting Westfield's officers from frisking its citizens without due process of law;
- (8) For a temporary restraining order and permanent injunction prohibiting *Defendants* and the entire WPD from communicating with, or traveling within 25 feet of, *Plaintiff*;
- (9) For expenses, attorney fees, and opportunity costs;⁹
- (10) For such other and further relief as this Honorable Court may deem just and proper;

Respectfully Submitted,

Dated this ____ day of July, 2017

DEMAND FOR JURY TRIAL

Ronald H. Posyton, III
868 Carleton Road,
Westfield, New Jersey 07090
(908) 477-1238
ronposytoncollege@gmail.com

⁹ A "pro se litigant might be entitled to some fee award if he could show that he had forgone an opportunity to earn 'regular income for a day or more in order to prepare and pursue a pro se suit.'" *Kuzma v. United States Postal Service*, 725 F.2d 16, 17 (2d Cir. 1984) (quoting *Crooker v. U.S. Dept. of the Treasury*, 634 F.2d 48, 49 (2d Cir. 1980)). In addition, surely, a pro se litigant can recover attorney fees for exposing and abrogating a municipality's unconstitutional custom, policy, and practice because the municipality's community has undoubtedly benefited from the litigant's work.