In the United States District Court for the District of Colorado

Civil Action No. 1:08-cv-01693-MSK-KLM

MUSE JAMA,
JOSE ERNESTO IBARRA, and
DENNIS MICHAEL SMITH,

Plaintiffs,

ANTONIO SANCHEZ,

Plaintiff-Intervenor,

v.

CITY AND COUNTY OF DENVER,

Defendant.

Plaintiffs' and Intervenor's Notice of Submission of Redacted Summary Judgment Response

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Plaintiffs and Intervenor (collectively, "Plaintiffs"), through their attorneys, hereby submit a redacted response (and exhibits) to Denver's summary judgment motion.

1. On December 30, 2011, Plaintiffs filed their response to Denver's motion for summary judgment. Document Nos. 454-461 consist of (a) the response (Doc.454), and (b) seventy exhibits (Docs.455-461). Plaintiffs intended the response to be a Level 1 restricted access filing under U.S. District Court Local Rule 7.2 to which only the Court and the parties would have access.

2. Earlier today, Plaintiffs and Denver in a Local Rule 7.2D motion stipulated to an order restricting access to Document Nos. 455-461. Doc.473. One of the grounds for the motion was that Plaintiffs would be filing a public, redacted version of the response and exhibits. Attached hereto is the public, redacted version of the response and exhibits.

3. At Denver's request, Plaintiffs are not filing publicly eleven exhibits to the response: 4-6, 10-11, 14, 25, 28-29, 35, 56. Denver made the request because it believes those exhibits may contain documents that should be subject to Level 1 access restrictions. Plaintiffs understand Denver intends to move within 14 days under Local Rule 7.2D to restrict access to some of the documents in these eleven exhibits.

Dated: January 13, 2012.

Respectfully submitted,

/s/ Ty Gee
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Attorneys for Plaintiffs and Plaintiff-Intervenor

Certificate of Service: I certify that on January 13, 2012, I electronically filed the foregoing *Plaintiffs' and Intervenor's Submission of Redacted Summary Judgment Response* with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

Stuart L. Shapiro: stuart.shapiro@ci.denver.co.us

s/ Joyce A. Rumsey

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Plaintiffs and Intervenor's Response to Denver's Motion for Summary Judgment

—Filed As Restricted Document—

Plaintiffs and Intervenor (collectively, "Plaintiffs"), through their attorneys, submit this Response to Defendant Denver's Motion for Summary Judgment (Doc.439).

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Part I: Introduction and Summary of Response

For law enforcement officers, the identification of a person is an age-old problem known to all law enforcement agencies. The problems of identification are obvious. Many first and last names are common among a subset of a city's residents (e.g., Jose, Dennis, Antonio, and Smith, Ibarra, Sanchez). Common names and physical descriptors may not be useful for distinguishing between members of a subset of a city's residents. For example, it would not be uncommon to find that two Hispanics with the common Hispanic name of Ibarra and a given age range, say, 20 to 30 years old, are 5'6 to 5'8, weigh between 120 and 150 pounds, and have brown skin, brown eyes, and black hair.

The problem is elevated to constitutional status where arrest warrants are concerned. Police officers have the authority and duty to execute arrest warrants, even though they did not request the warrants and, at least initially, have no knowledge about the facts underlying the warrants or the suspect identified in the warrant beyond what exists on the face of the warrant. This case concerns such "cold warrant" arrests.

Every lawful arrest of an individual is premised upon information that would lead a reasonable person to believe (i) a crime has been committed, and (ii) the individual committed the crime. Underlying each such cold warrant typically is a judicial finding of probable cause that the person identified in the warrant has

committed an offense. But there is *no* judicial finding of probable cause that the person whom a law enforcement officer encounters and believes may be the suspect identified in the warrant is, in fact, the suspect.

Here, Plaintiffs have no position about whether a crime has been committed, but they assert, and Denver concedes, that each was the victim of a mistaken identity arrest and detention, that is, an arrest in which a police officer had probable cause to arrest a suspect identified in the warrant but arrests an innocent person in the mistaken belief the innocent person is the suspect.

Such mistaken identity arrests and detentions are far from uncommon. On December 25, 2011, the *Los Angeles Times* reported that the Los Angeles County Sheriff's Department wrongfully incarcerated innocent persons 1,480 times in the last five years, according to the L.A. Sheriff's Department's own statistics produced in response to the *Times*' open records request. EXHIBIT 1.

Denver may actually commit more mistaken identity arrests and detentions. Denver does not track mistaken identity arrests and detentions; so it produced no statistics. Instead, it produced a hodgepodge of documents and information that required Plaintiffs to piece together the scattered clues of a faded paper trail. Nonetheless, Plaintiffs through analysis of these documents and discovery have established that over a period of 7½ years Denver carried out more than 500 mistaken identity arrests and detentions. For a number of reasons, this number

likely substantially undercounts the total number of mistaken identity arrests and detentions during that period. Denver's approach to this pervasive problem is to put its head in the sand. As the City Auditor stated in 2010 when evaluating the effectiveness of Denver's then-newly-promulgated procedures for identifying arrestees, "Because the Department of Safety does not track data related to arrest identity issues, it cannot effectively measure nor assess the impact of the practices it has implemented. We cannot improve what we do not measure."

Denver has in place six customs and three policies relating to mistaken identity arrests and detentions of innocent persons. These customs and policies were the moving force behind Plaintiffs' actual and are the moving force behind threatened constitutional violations. These customs and policies are as follows:

- Custom 1: Denver has ignored its law enforcement officers' repeated mistaken identity arrests and/or detentions.
- Custom 2: Denver failed to promulgate policies requiring its law enforcement personnel executing cold warrants, in situations involving an obvious risk of mistaken identity arrest and detention, to use all Denver's readily available resources and information prior to arrest to determine whether the person to be arrested is the person identified in the warrant; Denver's custom in that circumstance is not to use such resources and information.
- Custom 3: Denver failed to promulgate policies requiring—in any cold-warrant arrest involving obvious potential for a mistake about an arrestee's identity—a post-arrest, definitive determination that the arrestee is the person identified in the warrant.
- Custom 4: Denver has a custom of incarcerating cold-warrant arrestees after they have been denied a post-arrest, judicial determination of probable cause within 48 hours of their arrest.

- Custom 5: Denver failed to promulgate policies requiring the correction and disentanglement of an arrestee's criminal justice records after its law enforcement officers subjected the arrestee to a mistaken identity arrest and detention.
- Custom 6: Denver inadequately trained its law enforcement agents in the execution of cold warrants to avoid mistaken identity arrests and detentions.
- Policy 1: Denver has a policy of incarcerating arrestees indefinitely while awaiting the Denver District Court to schedule the arrestee for a judicial appearance.
- Policy 2: Denver has a policy of incarcerating indefinitely without a judicial appearance persons arrested on an arrest warrant issued from a jurisdiction outside the City and County of Denver.
- Policy 3: Denver has a policy of finding probable cause for a seizure when a person's name matches, and other identification information is similar to, information in an arrest warrant, even though the person has an official CBI letter stating that the person is not the suspect identified in the warrant.

The length of this Response is driven by a number of factors. Federal Rule of Civil Procedure 56(a) & (c)(1)(B) permits a movant to request summary judgment by asserting, e.g., that the nonmoving party cannot produce evidence to support a material fact important to a claim. Plaintiffs have asserted numerous theories for relief under 42 U.S.C. § 1983 (2006). Denver moved for summary judgment on each § 1983 theory of relief, asserting that Plaintiffs cannot produce evidence to support "any of the required [§ 1983] elements," Doc.439 at 5; *accord id.* at 32, 35, 45. The assertion shifts to Plaintiffs the burden of producing evidence to support each element of their § 1983 theories for relief, on pain of suffering summary judgment against them. Setting aside the factual complexity of this case

in general, carrying the burden is a substantial undertaking because of the nature of proof needed to establish municipal liability under § 1983 and because of the form much of the evidence takes, namely, the need to establish mistaken identity arrests and detentions through multiple documents because Denver does not track such arrests and detentions.

Part II: Standard of Review

To state a claim for relief, a complaint must include a short and plain statement of the claim showing the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). This requires the plaintiff to "set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." *Kirzhner v. Silverstein,* 2011 WL 4382560, at *4 (D. Colo. Sept. 20, 2011); *accord, e.g., Internet Archive v. Shell,* 505 F. Supp. 2d 755, 762 (D. Colo. 2007); *see Smith v. United States,* 561 F.3d 1090, 1104 (10th Cir. 2009) (statement in complaint "need only give the defendant fair notice of what the claim is and the grounds upon which it rests") (internal quotations omitted). These general standards of pleading apply to § 1983 complaints. *See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 167-68 (1993).

On a motion for summary judgment, the court must grant summary judgment if there is no genuine dispute as to any material fact and the movant is

entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A dispute over a material fact that would bar summary judgment is one that "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Substantive law identifies which facts are material. *Anderson*, 477 U.S. at 248.

To avoid summary judgment, the nonmovant need only show there is sufficient evidence on the factual dispute that "may reasonably be resolved in favor of either party." *Id.* at 249, 250; *see Simpson v. University of Colorado–Boulder*, 500 F.3d 1170, 1179 (10th Cir. 2007) ("Summary judgment will not lie if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.") (brackets omitted; internal quotations omitted). In deciding whether such a dispute exists, the trial court must view the evidence "in the light most favorable to the nonmoving party," *Johnson v. Jones*, 515 U.S. 304, 319 (1995). *Anderson*, 477 U.S. at 255; *McDonald-Cuba v. Santa Fe Prot. Servs.*, 644 F.3d 1096, 1100 (10th Cir. 2011).

Part III: Analysis of Plaintiffs' *Monell* Theories for Relief

Each plaintiff at bar has joined in a complaint alleging he suffered constitutional injury from a mistaken-identity arrest and detention by Denver. In each case, Denver caused the injury through unconstitutional policies, customs, and failures to create policies and to train its employees.

Plaintiffs have alleged:

- Denver's unconstitutional policies,[1] customs and failures to act[2] caused their mistaken-identity seizures. *See, e.g.,* Doc.221 ¶¶ 1-6; *id.* ¶¶ 90-95, 109, 262-263 (Jama), ¶¶ 121-122, 143, 287, 295 (Ibarra), ¶¶ 146, 301 (Smith); Doc.117-2 ¶¶ 5, 7, 10-11, 14, 17, 26-27 (Sanchez); *see generally id.* ¶¶ 235-250.

- Pursuant to its policies, customs and failures to act, Denver deprived Plaintiffs of a prompt judicial hearing. *See, e.g.,* Doc.221 ¶¶ 4, 6; *id.* ¶ 111 (Jama), ¶ 129 (Ibarra); *see generally id.* ¶¶ 248.d. & 250.

- After they were jailed, they protested to Denver employees that they were the victims of mistaken-identity arrests; pursuant to Denver's policies, customs and failures to act, the employees took no action to determine whether the Plaintiffs were the persons for whom there was probable cause to arrest and subjected them to extended incarceration. *See, e.g.,* Doc.221 ¶¶ 5-6; *id.* ¶¶ 105-107 (Jama), 124-127 (Ibarra); Doc.117-2 ¶ 25 (Sanchez); *see generally id.* ¶¶ 248.b.-c. & e., 249.g.

- In accordance with its customs and failures to act, following a mistaken-identity seizure, Denver links the arrestee's identification information in criminal-justice records with the identification information of the suspect for whom Denver had probable cause to arrest and whom Denver mistakenly believed it was arresting; after learning that the arrest was based on mistaken identity, Denver does not uncouple this linkage or correct the innocently arrested person's criminal-justice data; this linkage presents a substantial risk that the mistakenly arrested Plaintiffs will be mistakenly arrested again. *See, e.g.,* Doc.221 ¶¶ 6, 234-B to 234-M, 248.e. & g.; Doc.117-2 ¶¶ 17, 20-21.

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[1]"Policies," as used in the Second Amended Complaint, was defined to include policies, procedures, practices and customs. Doc.221 ¶ 6.

[2]The failures to act were the failures to establish policies, and the failure to supervise and train employees and to take other actions that would have prevented the constitutional injuries. *See, e.g.,* Doc.221 ¶¶ 6, 107, 115; Doc.117-2 ¶¶ 21, 24.

For each plaintiff, we will set forth below the burden of proof, the elements, facts pertaining to the plaintiff, the theories of relief, and the facts in dispute as relevant to the theories.

A. Burden of proof.

The summary judgment movant has the burden to show that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If the movant meets its Rule 56(a) burden, the nonmovant has the burden of establishing that there is a dispute on a material fact and that it "may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 249, 250.

On the merits, Plaintiffs bear the burden of proof. *See, e.g., Anaya v. Crossroads Managed Care Sys.*, 195 F.3d 584, 593 (10th Cir. 1999). The standard is preponderance of the evidence. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 389-90 (1983).

B. Elements.

A municipality is liable for a municipal policy or custom that caused a plaintiff's injury. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978). A policy is a decision of a municipality's legislative body or official whose acts may fairly be said to be those of the municipality. *County Comm'rs of Bryan County v. Brown,* 520 U.S. 397, 403-04 (1997). A custom is a municipal action not

formally approved by the municipal decisionmaker but is so widespread as to have the force of law; liability for the action follows if it was taken with deliberate indifference as to its known or obvious consequences. *Id.* at 404, 407.

i. Existence of a policy or custom.

The United States Supreme Court has recognized *Monell* liability in three circumstances. *Brown*, 520 U.S. at 404-05. The elements for each are related, but different.

A municipality is subject to liability when a particular action itself violates federal law, e.g., by intentionally depriving a plaintiff of a federally protected right. *Brown,* 520 U.S. at 404-05. An example of this type of municipal action, the *Brown* Court noted, was found in *Owen v. Independence*,[3] in which a city council caused plaintiff to be censured and discharged without a hearing.

A municipality also is subject to liability when a municipal decisionmaker adopts a course of action tailored to a particular situation that directs an employee to violate federal law. *Brown*, 520 U.S. at 406. Liability may ensue even though the course of action was not intended to control later situations. *Id.* An example of this type of municipal action was found in *Pembaur v. Cincinnati*,[4] in which a

[3]452 U.S 622 (1980).

[4]475 U.S. 469 (1986).

county attorney directed deputies to forcibly enter a place of business to serve arrest warrants on third parties. *See Brown,* 475 U.S. at 406.

A third type of municipal liability follows from a facially lawful municipal action or inaction that leads an employee to violate a plaintiff's rights and that "was taken with 'deliberate indifference' as to its known or obvious consequences." *Brown,* 520 U.S. at 407. The courts have recognized a broad range of municipal action and inaction that, coupled with deliberate indifference and proof the action or inaction was the moving force behind the plaintiff's injury, subjects a municipality to § 1983 liability. For example: Liability may be predicated on the "existence of a 'program'" for limiting the discretion of employees, e.g., via training, that fails to prevent constitutional violations:

> [M]unicipal decisionmakers may eventually be put on notice that a new program is called for. Their continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action—the "deliberate indifference"—necessary to trigger municipal liability.

Brown, 520 U.S. at 407 (citing and quoting *City of Canton, Ohio v. Harris,* 489 U.S. 378, 407 (1989)). Liability may be predicated on "a custom or practice of not investigating allegations of sexual harassment." *J.M. ex rel. Morris v. Hilldale Indep. School Dist. No. 1-29*, 379 Fed. Appx. 445, 456-57 (10th Cir. 2010). And liability may be predicated on a custom of placing together intoxicated arrestees

with unclassified, non-intoxicated arrestees. *Bass v. Pottawatomie County Public Safety Center*, 425 Fed. Appx. 713, 715-16 (10th Cir. 2011).

ii. Deliberate indifference.

Unless the municipality's action (or inaction) itself violates federal law, the plaintiff is required to prove it "amounts to deliberate indifference to the rights of persons with whom the police come into contact," *City of Canton*, 489 U.S. at 388 (footnote omitted). *Carr v. Castle*, 337 F.3d 1221, 1228 (10th Cir. 2003).

Deliberate indifference may be demonstrated in two ways. First, "[t]he deliberate indifference standard may be satisfied when the municipality has actual or constructive notice that its action or failure to act is substantially certain to result in a constitutional violation, and it consciously or deliberately chooses to disregard the risk of harm." *Barney v. Pulsipher*, 143 F.3d 1299, 1307 (10th Cir. 1998) (citing *Brown*, 520 U.S. at 407).

Deliberate indifference also may be established "if a violation of federal rights is a 'highly predictable' or 'plainly obvious' consequence of a municipality's action or inaction, such as when a municipality fails to train an employee in specific skills needed to handle recurring situations, thus presenting an obvious potential for constitutional violations." *Id.* at 1307-08 (citing *Brown*, 520 U.S. at 409); *see City of Canton,* 489 U.S. at 390 n.10 (noting that municipality may be liable if its decisionmakers "know to a moral certainty" that their police officers

will be required to engage in certain activities which, without adequate limitation on the officers' discretion, e.g., through training or directives, likely will result in violation of constitutional rights).

"With regard to any attempted showing of 'deliberate indifference' by a municipality, the existence of material issues of material fact preclude[s] summary judgment." *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1318 (10th Cir. 2002) (internal quotations omitted).

iii. Moving force.

The plaintiff must demonstrate that the municipality's action or inaction was "the moving force behind the injury of which the plaintiff complains." *Brown,* 520 U.S. at 405; *accord Monell*, 436 U.S. at 694. "The existence of a pattern of tortious conduct by inadequately trained employees may tend to show that the lack of proper training, rather than a one-time negligent administration of [a training] program or factors peculiar to the officer involved in a particular incident, is the 'moving force' behind the plaintiff's injury." *Brown*, 520 U.S. at 407-08. A "high degree of predictability" or obviousness that a federal right will be violated as a result of a municipality's action or inaction "may also support an inference of causation—that the municipality's indifference led directly to the very consequence that was so predictable." *Id.* at 409-10.

Subpart 1: Analysis of Plaintiff Jama's *Monell* Theories for Relief

A. Facts.

In responding to Dets. Peterson and Bishop's summary judgment motion, Plaintiff Jama presented extensive facts—30 pages of facts in the response and 229 pages of exhibits—relating to the violation of his Fourth Amendment rights. *See* Doc.320. The Fourth Amendment violation is relevant to this Response as well. Rather than repeat the voluminous factual presentation, Plaintiff Jama incorporates by reference Doc.320, and in this Response highlights certain facts and presents additional facts pertinent to other constitutional violations.

On September 21, 2007, DPD Dets. Kurt Peterson and John Bishop arrested Plaintiff Jama on a warrant for Ahmed Alia. The warrant was issued because Mr. Alia failed to appear for court in his criminal case for felony auto theft, for which Denver police officers had arrested him 6 months earlier.

On the morning of Plaintiff Jama's arrest, Det. Peterson received a computer-generated letter from the federal government stating that a wanted or missing person named Ahmed Alia with numerous alias names, including Muse Mohamed Jama, was in Denver residing at [redacted] South Bellaire Street. The letter said, in effect, "You may want to investigate. It's a tip." EXHIBIT 39, at 28-29.

Det. Peterson conducted an investigation. His investigation consisted of a 67-second search for Mr. Alia DOB [redacted]/81 using the National Crime Information

Center database ("NCIC") and the Colorado Crime Information Center computer databases ("CCIC"). Doc.320, ex.N. Based on this search, Det. Peterson concluded that Mr. Alia "made up a fake name" and was living at the address listed on the computer-generated letter.

The Alia warrant listed a DPD number, six alias names (including Muse Mohamed Jama, DOB [redacted]/84), and multiple alias birthdates. Det. Peterson did not use any of this information in his searches.

Det. Peterson's search did not find any of following information about Mr. Alia that was readily available in Denver's databases and records: DPD number,[5] photographs of Mr. Alia, last known address, fingerprint classification codes, driver license information, and prior arrest and court records. This information could have been obtained easily from these sources: NCIC/CCIC; OSI, a Denver arrest database; WebMug, a Denver mugshot database; DMV database, accessible via NCIC/CCIC.

As the warrant showed, Mr. Alia had committed a felony being prosecuted in Denver, indicating that a DPD detective had been assigned to investigate the case. In fact, Det. Peterson's colleague, Det. Michael Greer, had been assigned to investigate the March 2007 auto theft after Mr. Alia's arrest. As part of his

[5]The DPD number is a unique identification number correlated to an arrestee's fingerprints. It denotes that the arrestee was arrested and booked in Denver.

investigation, Det. Greer interrogated Mr. Ali in person and obtained extensive information about Mr. Alia's identity using NCIC/CCIC, WebMug and other Denver resources. He obtained Mr. Alia's official Social Security card, Minnesota driver license, and mugshots from Mr. Alia's prior Denver arrests. Det. Peterson made no attempt to contact Det. Greer and did not avail himself of any of Det. Greer's work product. *See* Doc.320, exs.D&G.

By 11:30 a.m. on Friday, September 21, 2007, Det. Peterson had made the decision he would arrest Mr. Jama at [redacted] South Bellaire Street. When he made this decision, Det. Peterson had no information from his investigation that Ahmed Alia was Plaintiff Jama residing at [redacted] South Bellaire Street. That is, although the computer-generated letter said Ahmed Alia with numerous alias names, including Muse Mohamed Jama, may be residing at [redacted] South Bellaire Street, Det. Peterson was unable to confirm this in his investigation. *See* Doc. 320, ex.N.

Nonetheless, that afternoon, Dets. Peterson and Bishop descended on Plaintiff Jama's residence at [redacted] South Bellaire Street, holding the Alia warrant but no other document. At Mr. Jama's apartment, the detectives demanded identification, and Plaintiff Jama provided his official Colorado driver license, official Social Security card, and official Metro State student photo ID card. Dets. Peterson and Bishop then announced they had a warrant for his arrest, and handcuffed him. They asked no questions and conducted no further investigation.

Dets. Peterson and Bishop did not question the validity of any of the ID cards. None of the ID cards contained Ahmed Alia's name or any of the other aliases listed in the warrant. Plaintiff Jama's Colorado driver license number was different from Mr. Alia's driver license number listed on the warrant. *See* EXHIBIT 28, at MJ0032. Although NCIC/CCIC was readily available to them *via* the mobile data terminals in their cars or *via* radio, Dets. Peterson and Bishop did not search NCIC/CCIC or DMV for the number on Plaintiff Jama's Colorado driver license or the number on his Social Security card.

Det. Bishop took Plaintiff Jama to jail. During the trip, Det. Bishop during a phone call told someone, presumably Det. Peterson, that he did not believe Plaintiff Jama was Mr. Alia because Mr. Jama did not have a scar, and the warrant said Mr. Alia had a scar on his upper lip. Overhearing this, Mr. Alia protested his arrest, to no avail.

Before Plaintiff Jama was jailed, Det. Bishop took him to the ID Bureau to collect paperwork to give the jailers. Doc.320, Ex. S ¶ 6. The ID Bureau had the ability to use fingerprints or Mr. Alia's mugshots to determine definitively if Mr. Jama was Mr. Alia.[6] No such effort was made.

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[6]http://www.denvergov.org/ID_Bureau/IdentificationSection/tabid/388417/Default.aspx; Doc.320, Ex. T, at 8-10, 14-18, 21-26, 36-39, 56-66.

After obtaining the Alia warrant, Det. Bishop deposited Plaintiff Jama at the city jail, where he was booked and placed in a cell; this is when he first learned that he had been arrested on a warrant for Ahmed Alia. Plaintiff Jama repeatedly complained to jailers that he was not Ahmed Alia and said they had jailed the wrong person. The jailers did nothing.

Plaintiff Jama was jailed for 8 days. During these 8 days, Plaintiff Jama was never afforded a court hearing. Plaintiff Jama was finally released September 28, 2007, when he posted the bond that had been set for Mr. Alia.

B. Plaintiff Jama suffered constitutional violations.

1. Fourth Amendment violations.

Unconstitutional arrest. In his response to former defendants Peterson and Bishop's motion for summary judgment, Plaintiff Jama presented extensive arguments on the violation of his Fourth Amendment rights in connection with his arrest and detention by Dets. Peterson and Bishop. To avoid repetition, his response is incorporated here by reference. *See* Doc.320. We supplement as follows.

In this case, each Denver law enforcement officer executing a warrant against the Plaintiffs was faced with the same circumstance: they held a warrant that contained a finding of probable cause to seize a suspect, but the warrant contained *no* finding that the person before the officer was the named suspect. To

arrest the person before him, e.g., Plaintiff Jama, each officer was required to conduct a good faith and reasonable investigation so that he could acquire enough information to meet the Fourth Amendment standard of probable cause. *See, e.g., Lundstrom v. Romero*, 616 F.3d 1108, 1125-26 (10th Cir. 2010).

It cannot be, as Denver interprets this Court's opinions conferring qualified immunity on the defendant officers in this case, that *any* investigation will do. The Tenth Circuit has made that clear: "[I]n making our probable cause determination, we must look at the facts through the scope of a *reasonable* officer." *United States v. Valenzuela,* 365 F.3d 892, 902 (10th Cir. 2004) (emphasis in original); *see Lundstrom*, 616 F.3d at 1125-26 (holding that by 1995 it was clearly established law that Fourth Amendment's probable cause standard requires officers to "reasonably interview witnesses readily available at the scene, investigate basic evidence, or otherwise inquire if a crime has been committed at all before invoking the power of warrantless[7] arrest and detention"); *United States v. Chavez*, 660 F.3d 1215, 1224 (10th Cir. 2011) ("In determining whether probable cause to arrest exists, we evaluate the circumstances as they would have appeared to prudent,

[7]For the purposes of this lawsuit, Plaintiffs' arrests were effectively warrantless arrests. While Plaintiffs were arrested by officers executing warrants, none of the warrants established probable cause to arrest any of the Plaintiffs. Afterward, no judicial officer evaluated the arresting officers' conclusion that Plaintiffs were the persons identified in the warrant.

cautious and trained police officers.") (internal quotations, brackets and ellipsis omitted).

Denver suggests the Fourth Amendment analysis begins and ends solely with the information held by the law enforcement officer at the time of the arrest. So, Denver argues, Dets. Peterson and Bishop had probable cause to arrest because of the similar physical descriptors between Mr. Alia and Mr. Jama. *See* Doc.439 at 21. That kind of analysis, however, ignores the train and rests on the caboose. It does not address how Det. Peterson came to find Plaintiff Jama in the first instance.

The criminal justice records readily available to Det. Peterson showed that Mr. Alia used nineteen aliases and six dates of birth, suggesting to any reasonable law enforcement officer that he had a history of trying to conceal his true identity. When the FBI computer-generated letter reached Det. Peterson's desk in the DPD Fugitive Unit, the obvious questions were how to identify Ahmed Alia and where was he located. At this time, Det. Peterson of course had no idea whether Plaintiff Muse Jama—about whom he had no information—was Mr. Alia.

Det. Peterson's investigation was remarkable, but it was not reasonable. The computer-generated letter did not say anyone should be arrested; it informed the reader that the person named in the letter "may have a warrant for his arrest" and "[y]ou may want to investigate. It's a tip." EXHIBIT 39, at 29 (12/17/08 depo).

Upon receiving the FBI letter, Det. Peterson said he noted that the letter said Mr. Alia had an alias, Muse Jama.[8] EXHIBIT 51, at 48. He then accessed NCIC/CCIC to determine whether the warrant was still active. EXHIBIT 51, at 48. He conducted a Query History search first for: Alia, Ahmed DOB [redacted]/81. That search immediately produced a response showing that Mr. Alia was wanted for an aggravated auto theft charge pending in Denver. *See* EXHIBIT 6, at CBI.PLF000683.[9] The NCIC/CCIC record showed the following information:

> Black male, 5'11", 130 lbs, brown eyes, black hair
> DOB [redacted]/81
> FBI No. [redacted]PB4
> DPD No. [redacted]716
> Colorado Driver License No. [redacted]0345
> Colorado Driver License, year issued: 2012
> Date of warrant: 8/6/07

Exhibit 6, at CBI.PLF000683. The QH query listed six of the nineteen aliases,[10] including Muse Mohamed Jama, and five additional birthdates: [redacted]/80, [redacted]/80,

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[8]Det. Peterson's testimony conflicts with the FBI's account of the computer-generated letter, which no longer exists. *See* EXHIBIT 46, at Jama Muse 000934. The FBI states only that the computer-generated letter mentioned Ahmed Alia's name. *See id.*

[9]Documents Bates-numbered with a prefix "CBI.PLF" or "CBI" were produced by the CBI in response to a subpoena *duces tecum* requesting QQ and iFind reports. A QQ report (*e.g.*, CBI 000061) identifies all CCIC queries on a name, e.g., "Doe, John," and provides the name of the CCIC user and the date and time of the query. An iFind report (*e.g.,* CBI.PLF000395-96) reproduces a CCIC user's experience, showing retrospectively the query conducted, the responses, the mask used, and the date and time of the query. *See generally* Doc.308 at 8 n.5; EXHIBIT 55, at 102-03, 160-61.

[10]Mr. Alia's other aliases were listed in other Denver documents, such as an OSI record from Mr. Alia's March 21, 2007, arrest for aggravated auto theft. *See* EXHIBIT 46, at Jama Muse 000031.

[redacted]/80, [redacted]/84 and [redacted]/87. EXHIBIT 6, at CBI.PLF000684. It also produced a response showing a summary of the warrant for Mr. Alia's arrest. EXHIBIT 6, at CBI.PLF000688. After Det. Peterson clicked on the hyperlinked response correlating to the warrant, NCIC/CCIC produced the teletype warrant.[11] EXHIBIT 6, at CBI.PLF000691-92. The warrant repeated the QH information and supplied Mr. Alia's address: [redacted] East Florida Avenue, Denver. *See* EXHIBIT 5, at CBI.PLF000691-92. The computer-generated letter listed an address on South Bellaire Street, Denver. EXHIBIT 51, AT 47.

Det. Peterson's investigation of Mr. Alia on NCIC/CCIC lasted 67 seconds. It began at 8:08 a.m. and concluded at 8:09 a.m. EXHIBIT 6, at CBI.PLF000683, CBI.PLF000691. He contacted Det. Bishop three hours later to coordinate the arrest of Plaintiff Jama. EXHIBIT 37, at 2. During those three hours, Det. Peterson conducted no further NCIC/CCIC queries on Ahmed Alia.[12] *See* EXHIBIT 6, at CBI.PLF000532.

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[11]A teletype warrant is a computer entry containing information about a person wanted on a warrant. It is not the actual warrant, but is used by police officers as authority to arrest the person identified. *See* EXHIBIT 48, at 87-88. In this Response, references to "warrants" typically are references to teletype warrants.

[12]Det. Peterson said he contacted an NCIC/CCIC operator later that morning before arresting Plaintiff Jama, but he did so only to confirm that the Alia warrant was still active. *See* Exhibit 37, at 2.

After his initial NCIC/CCIC query, Det. Peterson locked in on one name and address: Muse Jama and South Bellaire Street. But it was irrational and illogical—inexplicable. The computer-generated letter itself did not say Ahmed Alia was a wanted person residing on South Bellaire Street under the alias Muse Jama. As Det. Bishop testified, the letter said the person named in the letter "*may* have a warrant for his arrest" and "[y]ou *may want to investigate*." EXHIBIT 39, at 29 (12/17/08 depo) (emphasis supplied). The letter did not qualify as "reasonably trustworthy information," *Cortez v. McCauley,* 478 F.3d 1108, 1116 (10th Cir. 2007), for probable cause purposes. The warrant itself listed *Ahmed Alia* as the wanted person. It said he had used six aliases and five birthdates. It said he lived at [redacted] *East Florida Avenue* in Denver. *Nothing* in the NCIC/CCIC search/investigation conducted by Det. Peterson linked Ahmed Alia to Plaintiff Jama.

The conclusion is inescapable that, notwithstanding the lack of any information from his NCIC/CCIC investigation linking Mr. Alia to Mr. Jama, Det. Peterson chose to arrest based *solely* on the computer-generated letter. Basing an arrest on what Det. Peterson himself characterized as an "informational tip sheet/investigative lead," Doc.277-4 ¶ 1, without any corroborative information, is not the act of a "reasonable officer," *Valenzuela*, 365 F.3d at 902. *Lundstrom*, 616 F.3d at 1125-26.

Denver all but argues that an officer may constitutionally execute a warrant against any person on the street whose physical descriptors are "similar" to those of the person identified in the warrant. *See* Doc.439 at 21. The argument is necessary, however, because that is not functionally different from what Dets. Peterson and Bishop did. After all, they had *no information* that Plaintiff Jama was the person identified in the warrant except for a computer-generated "tip sheet." Denver itself suggests this does not constitute probable cause. In August 2007, Chief of Police Gerald Whitman issued a training bulletin relating to law enforcement officers' requests for issuance of arrest warrants. The bulletin stated, "Officers are reminded that merely locating a name in a computer database that is the same or similar to a suspect's name does not, by itself, provide probable cause to believe that the person in the database is the same person as the suspect. Other corroborating information must also be present to establish probable cause." EXHIBIT 11, at Fourhorn General 000820. Det. Peterson had no corroborating information that Plaintiff Jama was Mr. Alia. To the contrary, Plaintiff Jama had produced valid government-issued ID cards.

The Fourth Amendment requires a good faith and reasonable investigation. As the Tenth Circuit has held, such an investigation requires the consideration of information "readily available" to the arresting officer. *See, e.g., Lundstrom*, 616 F.3d at 1125-26; *Romero v. Fay*, 45 F.3d 1472, 1476-77 & n.2 (10th Cir 1995); *see*

also Panetta v. Crowley, 460 F.3d 388, 395 (2d Cir. 2006) ("When determining whether probable cause exists courts must consider those facts available to the officer at the time of the arrest and immediately before it."). As the Tenth Circuit held in *Baptiste v. J.C. Penney Co.,* 147 F.3d 1252, 1259 (10th Cir. 1998), a "police officer may not close her or his eyes to facts," and "reasonable avenues of investigation must be pursued." (Internal quotations omitted; quoting *BeVier v. Hucal,* 806 F.2d 123, 128 (7th Cir 1986)); *accord Cortez,* 478 F.3d at 1117; *see Moore v. Marketplace Restaurant*, 754 F.2d 1336, 1345-47 (7th Cir. 1985) (officers' failure to interview plaintiffs to determine if offense had been committed at all before arresting them for theft presented jury question whether facts supplied probable cause to arrest).

The foregoing cases establish an important principle that undermines Denver's caboose analysis. The Fourth Amendment's probable-cause requirement is not so superficial and ineffectual that a police officer may establish probable cause by chance. That is how Plaintiff Jama came to be arrested. He applied for some type of public assistance in which he was required to provide his name and address; a government computer system automatically runs this information in NCIC for hits on warrants; the system matched *one item*—Plaintiff Jama's name to Ahmed Alia's alias on the Alia warrant—and sent the fateful "tip sheet" to Det. Peterson. *See* EXHIBIT 51, at 45. Since Det. Peterson's investigation failed to obtain

any information about Plaintiff Jama's identifying information, e.g., Social Security number, height, weight and so on, it was pure chance that when Dets. Peterson and Bishop arrived at Mr. Jama's home, they encountered a person with "similar" physical characteristics. They were as likely to have encountered a person with completely different physical characteristics. Or it might have been equally likely that if they found any person whose name matches one of the six aliases in the warrant, that person would have "similar" physical characteristics. But Fourth Amendment probable cause cannot be established in this kind of roving "gotcha" way. This is why the cases require an officer to conduct a reasonable pre-arrest investigation using the information readily available to her. Here, Det. Peterson needed trustworthy facts linking the Ahmed Alia identified in the warrant to the Muse Jama residing on Bellaire Street.

Det. Peterson never found those facts in his investigation. His NCIC/CCIC investigation lasted 67 seconds. He knew the warrant itself showed that Mr. Alia had six aliases and five other dates of birth, yet he assumed without any investigation or factual basis that Mr. Alia was living on South Bellaire Street and using one of the six aliases (Muse Jama) and one of the six birthdates ([redacted]/80). He did not consider "readily available" information and did not pursue "reasonable avenues of investigation." The warrant said Mr. Alia was living on East Florida Avenue in Denver, but Det. Peterson made no attempt to find Mr. Alia or any of

his aliases on East Florida Avenue. The warrant provided a Colorado driver license number (issued in 2012) for Mr. Alia, but Det. Peterson did not search that.

The warrant provided Mr. Alia's DPD number, establishing that (i) he had been arrested, booked and photographed in Denver; (ii) he had received an SID number; (iii) Denver had his identification information in OSI, WebMug and Versadex. Det. Peterson failed to look at any of this information, all of which was readily available to him. *See* EXHIBIT 34, at WebMug 000001, 000004-09.[13]The warrant stated that Mr. Alia was wanted on a bench warrant after he failed to appear in a felony aggravated theft case pending in Denver District Court, indicating that DPD investigated and presented the case to the Denver District Attorney's Office. In fact, Det. Peterson's colleague Det. Greer—located in the same DPD detective division—investigated the case, including Mr. Alia's identity. Yet, Det. Peterson did not consider any information relating to the theft case, including Det. Greer's investigation. In fact, Det. Peterson knew nothing about the theft case. *See* EXHIBIT 51, at 39-40.

[13]Like the NCIC/CCIC system (*see* This Resp., at 81), WebMug—also known as PictureLink—captures all searches conducted on the system. *See* EXHIBIT 34, at WebMug 000001; *see generally* EXHIBIT 34, at WebMug 000002-43. Denver produced WebMug searches from 2006 through 2008 conducted relating to Plaintiffs. *See, e.g.,* EXHIBIT 34, at WebMug 000002, 31-35. These documents establish that Det. Peterson performed no WebMug searches for Mr. Alia or any of the nineteen aliases.

Det. Peterson's investigation puts into the correct Fourth Amendment perspective the "similar physical characteristics" between Mr. Alia and Plaintiff Jama. Denver wants to view in isolation the warrant listing "Muse Jama" as Mr. Alia's alias and describing Mr. Alia's physical characteristics—divorced from any obligation Det. Peterson had to conduct a reasonable pre-arrest investigation. But the reasonableness of the investigation is part of the "totality of the circumstances," *Cortez,* 478 F.3d at 1116, because it directly affects whether the information from the investigation is "reasonably trustworthy," *id.* A five-minute investigation that consists, for example, of browbeating a teenager with a motive to pin the crime on her high school rival necessarily impacts whether the information from that investigation rises to the level of probable cause. *See id.* at 1116-17 ("Plainly, whether we view it as a need for more pre-arrest investigation because of insufficient information, or inadequate corroboration, what the officers had fell short of reasonably trustworthy information indicating that a crime had been committed by Rick Cortez.") (citation omitted).

The police officer's Fourth Amendment duty is not discharged simply by acquiring information through an investigation. Before an arrest, the officer must ensure that the information rises to the level of probable cause. Ambiguous information—capable of being construed as either supporting or undercutting probable cause—may be sufficient to warrant an investigatory detention. *Illinois v.*

Wardlow, 528 U.S. 119, 125 (2000). But it is insufficient to support probable cause. *United States v. Fisher*, 702 F.2d 372, 378 (2d Cir. 1983) (citing *Wong Sun v. United States*, 371 U.S. 471, 483 (1963)); *see Wu v. City of N.Y.*, 934 F. Supp. 581, 587 (S.D.N.Y. 1996) ("Facts relied upon must not be susceptible to innocent or ambiguous explanation.").

Here, Det. Peterson's investigation failed to rise even to the level of ambiguous information. He had a computer-generated "tip sheet" and an alias linking Ahmed Alia to Plaintiff Jama. But neither the "tip sheet" nor the alias amounted to probable cause. An alias by definition suggests that a person is trying to pass himself off as someone else. The question is whether a person whose name matches the alias is the suspect identified in the warrant. The question is made significantly more complex when the suspect uses six or nineteen aliases. Dets. Peterson and Bishop never came close to answering the question before they arrested Plaintiff Jama.

Unconstitutional detention. After Plaintiff Jama was booked into the City Jail, he learned he was being arrested on a warrant for Ahmed Alia and began protesting that he was the victim of mistaken identity. At that time, Denver law enforcement officers had readily available to them all the information needed to determine definitively that he was not Mr. Alia: Plaintiff Jama's and Mr. Alia's respective fingerprints, their respective and different DPD, SID and FBI numbers;

and their respective, distinguishing photographs. *See, e.g.,* EXHIBIT 46, at Jama Muse 000031, 000077.1, 000101, 000866-67, 000871-72, 000994, 001052, 001091-95, 001159-60; EXHIBIT 6, at CBI.PLF000683-92. No Denver officer evaluated these documents to determine whether Plaintiff Jama was the person identified in the warrant—whether there was probable cause and whether it was reasonable to detain him.

Denver does not address this Fourth Amendment violation in its summary judgment motion.

Deprivation of judicial probable-cause determination. A cornerstone of the Fourth Amendment is the principle that extended deprivations of liberty must be based on a judicial determination that adequate grounds exist. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Under *Gerstein*, warrantless arrests are permitted but persons arrested without a warrant must promptly be brought before a neutral magistrate for a judicial determination of probable cause." *County of Riverside v. McLaughlin*, 500 U.S. 44, 53 (1991). In *McLaughlin*, the Supreme Court held that such probable cause determinations must be made within 48 hours of the warrantless arrest. *Id.* at 56.

As *Gerstein* explained, the Fourth Amendment requires that judges, not police officers, make the decision that results in extended deprivations of liberty:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of

> the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate, instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

420 U.S. at 112-13 (quoting *Johnson v. United States*, 333 U.S. 10, 13-14 (1948)).

In a later case, Justice Rehnquist summarized the holding of *Gerstein*:

> [T]he Fourth Amendment requires the States to provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty. The probable-cause determination "must be made by a judicial officer either before or promptly after arrest."

Baker v. McCollan, 443 U.S. 137, 144 (1979) (internal citation omitted; quoting *Gerstein*, 420 U.S. at 125).

When an arrest warrant issues for a suspect, the issuing court has found probable cause to believe that the suspect has committed an offense. *See, e.g.,* Colo. R. Crim. P. 4.2. Denver recognizes that notwithstanding the issuance of an arrest warrant, a law enforcement officer's execution of the warrant also implicates the Fourth Amendment's probable-cause requirement: the officer must have probable cause to believe that "the person about to be arrested is the person described therein," EXHIBIT 11, at Fourhorn General 001554. *See* EXHIBIT 35, at 12.

The Denver District Court issued an arrest warrant for Ahmed Alia, finding implicitly that there was probable cause he committed an offense. Of course, the

court made no finding on whether a person arrested under the Alia warrant was, in fact, Mr. Alia.

Denver law enforcement officers—not a judge—concluded (erroneously) that Mr. Jama was Mr. Alia. The reasoning of *Gerstein* and *McLaughlin* applies to these officers' erroneous conclusion that they had arrested the correct person. The Fourth Amendment required a judge's review of the officers' decision to arrest Mr. Jama. The principle of *Gerstein* and *McLaughlin* is especially persuasive in a case like this one, where Mr. Jama, once he was finally told the warrant was for someone named Ahmed Alia, strongly protested that police had the wrong man.

Mr. Jama received no judicial determination of probable cause that he was Mr. Alia. Instead, Denver incarcerated Jama for 7 days. During that time, no judicial officer evaluated or reviewed the officers' (erroneous) conclusion that Mr. Jama was the person described in the warrant. By incarcerating Mr. Jama for more than 48 hours under those circumstances, Denver violated his Fourth Amendment rights.

As Judge Hamilton recently observed, "*Gerstein* and *McLaughlin* tell us that persons in the United States cannot be held in custody for more than 48 hours without requiring executive branch officials—like police or parole officers—to convince a judicial officer that there is good reason to hold the person." *Atkins v. City of Chicago*, 631 F.3d 823, 837 (7th Cir. 2011) (Hamilton, J., concurring).

Denver held Jama well past *McLaughlin's* 48-hour limit, without making any effort to convince a judicial officer that there were adequate grounds to hold him. Jama's Fourth Amendment rights were violated.

2. Due process violations.

Colorado law requires that a person who is arrested, with or without a warrant, whether for a felony or a misdemeanor, must be brought before a judicial officer "without unnecessary delay." Colo. R. Crim. P. 5(a)(1), 5(c)(1). The Colorado rule mirrors Federal Rule of Criminal Procedure 4(b)(c), which also requires a post-arrest appearance "without unnecessary delay." This "first appearance" in court plays a critical role in protecting and implementing fundamental procedural protections guaranteed by the Bill of Rights and Supreme Court precedent. *See Coleman v. Frantz*, 754 F.2d 719, 724 (7th Cir. 1985) (holding that an extended detention without a first appearance violates due process). As the Seventh Circuit explained, "The first appearance has such great value in protecting numerous rights that its denial presumptively disrupts those rights. Therefore, as a matter of constitutional prophylaxis, the denial of a first appearance offends the Due Process Clause." *Armstrong v. Squadrito*, 152 F.3d 564, 573 (7th Cir. 1998).

A prompt first appearance is especially important for a prisoner who protests he is not the person described in the warrant. The first item normally on a judge's

agenda at a first appearance is "ensuring that the person before him is the person named in the complaint." *Coleman*, 754 F.2d at 722.

In a concurring opinion in *Atkins v. City of Chicago*, 631 F.3d 823 (7th Cir. 2011), Judge Hamilton reasoned that the Due Process Clause guarantees a prompt judicial appearance to an accused parole violator who asserts that he is not on parole and that he is not the person described in a parole-violation warrant. His reasoning aptly explains why Mr. Jama (and Plaintiffs Ibarra and Sanchez) had a constitutional right to the prompt judicial appearance Denver failed to provide. *Id.* at 833-39.

In *Matthews v. Eldridge*, 424 U.S. 319 (1976), the Supreme Court provided the framework for analyzing a claim that due process requires a particular procedural protection, in this case a prompt judicial appearance. The Court considered (i) the private interest at stake; (ii) the risk of an erroneous deprivation with the existing procedures and the probable value of different procedures; and (iii) the government's interest, including the cost of different procedures.

The private interest at stake when an innocent person claims he is incarcerated erroneously—liberty—is clearly significant. In requiring a timely post-arrest determination of probable cause, the Supreme Court explained that the adverse consequences of extended detention are far more serious than the consequences of a mere arrest. "Pretrial confinement may imperil the suspect's job,

interrupt his source of income, and impair his family relationships." *Gerstein*, 420 U.S. at 114.

The risks of error are obviously substantial. Denver has carried out hundreds of mistaken identity arrests. *See* This Resp., Pt.III, Subpt.1.C.1., at 41-95. "The risk of misidentification based on coincidental similarity of names, birthdays, and descriptions is unquestionably substantial." *Baker v. McCollan*, 443 U.S. 137, 155-56 (1979) (Stevens, J., dissenting). A prompt appearance in court provides a high probability of promptly correcting a mistaken identity arrest. Indeed, Plaintiffs have documented hundreds of minute orders from the Denver County Court that memorialize occasions in which a court appearance resolved an arrestee's claim that he or she was not the person described in the warrant. *See, e.g.,* EXHIBIT 20.

Finally, Denver's interests align with the interests of the arrestees. It has a powerful interest in speedy, accurate resolutions of alleged misidentifications. If the wrong person has been arrested on the warrant, it means the right person remains at large, possibly endangering others. Moreover, Denver cannot argue that providing a prompt court appearance would unreasonably burden its resources. Nor can Denver argue that the cost of providing a prompt court appearance would outweigh the benefit of reducing misidentifications. Colorado law already requires that all arrestees, whether they claim mistaken identity or not, must be brought to

court "without unreasonable delay." Colo. R. Crim. P. 5(a)(1) & 5(c)(1).[14] Thus, when an arrested person claims he is not the person described in the warrant, the *Mathews* analysis demonstrates that an extended deprivation of liberty without a timely judicial appearance violates the procedural component of the Due Process Clause. *See Fairley v. Luman*, 281 F.3d 913, 917-18 & n.6 (9th Cir. 2002) (applying *Eldridge* factors to hold that plaintiff's 12-day incarceration without investigation of his claim of mistaken identity violated due process).

Courts have also applied a substantive due process analysis, even when there is no claim of mistaken identity, to conclude that an extended deprivation of liberty without a timely judicial appearance violates the Due Process Clause. *See Coleman v. Frantz*, 754 F.2d 719 (7th Cir. 1985) (18-day incarceration without a court appearance violated substantive due process); *see also Armstrong v. Squadrito*, 152 F.3d 564, 576 (7th Cir. 1998) (detaining plaintiff on body attachment warrant "for anything more than a brief time preceding his appearance in court represents an affront to substantive due process"); *Jackson v. Hamm,* 78 F. Supp. 2d 1233 (M.D. Ala. 1999) ("a pre-trial detainee has a substantive-due-process right to an initial appearance within a reasonable time after arrest upon a valid warrant").

[14]Moreover, the information necessary to validate or refute the claim of mistaken identity is readily available to Denver. In most cases, Denver will already have the fingerprints and mug shots of the wanted person, or they can be obtained quickly from another law enforcement agency. Denver also has ready access to photos in the database of the Division of Motor Vehicles. *See, e.g,* EXHIBIT 39, at 20; EXHIBIT 53, at 74.

Whether the analysis is based on substantive or procedural due process, the constitutional imperative of a prompt appearance is particularly strong when the arrested person says "that's not my warrant." *See Patton v. Przybylski*, 822 F.2d 697, 700-01 (7th Cir. 1987) ("to arrest a person over his vigorous protest that he is the wrong man . . . and keep him in jail [for almost a week] without either investigating the case or bringing him before a magistrate raises serious constitutional questions . . . under the due process clause"); *Brown v. Patterson*, 823 F.2d 167, 169 (7th Cir. 1987) ("[A] prolonged confinement of an arrested person without a hearing to determine whether he is the person identified in the warrant would be a deprivation of liberty without due process of law . . . .");

Dets. Peterson and Bishop told Plaintiff Jama they had a warrant for his arrest. They did not tell him they had a warrant for the arrest of "Ahmed Alia." Doc.320, at 21-22 & Ex.S ¶ 3. Nonetheless, when he overheard Det. Bishop suggesting they had arrested the wrong person, Plaintiff Jama protested his arrest. *Id.* at 22 & Ex.S ¶ 5. Mr. Jama did not learn he had been arrested on a warrant for Ahmed Alia until the booking process. He immediately protested to jail officials that he was not Ahmed Alia and was the victim of mistaken identity. *Id.* Ex.S ¶ 7. Mr. Jama was not brought before a judicial officer during his 8-day incarceration. *See* Doc.237 ¶ 88. This violated Mr. Jama's right to due process.

Denver had an independent duty under the due process clause to investigate Plaintiff Jama's mistaken identity protests as a condition of prolonged detention. More than 30 years ago, in *Baker*, the Supreme Court considered a claim that a sheriff violated the Due Process Clause by failing to investigate promptly a prisoner's claim that the warrant for his arrest was intended for another. The plaintiff, Linnie McCollan, spent three days in the sheriff's custody before the mistake was resolved and he was released.

The mistake originated some time earlier with the arrest of Linnie's brother, Leonard McCollan. Leonard had procured a duplicate of Linnie's driver's license, and substituted his own photograph. Leonard was arrested, and he produced that driver's license with Linnie's name and identifiers. Consequently, Leonard was arrested under Linnie's name. When Leonard did not appear in court, a warrant issued for the arrest of Linnie McCollam, and the warrant contained the identifying information that appeared on Linnie's driver's license. Thus, Linnie was arrested on a facially valid warrant that authorized his arrest.

The Supreme Court rejected Linnie's due process claim, stating, "we do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence." 443 U.S. at 145-46. The Court left open the possibility, however, that failure to investigate repeated claims of innocence, after a longer detention, may violate the Due Process Clause:

> We may even assume, *arguendo*, that, depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of "liberty . . . without due process of law." But we are quite certain that a detention of three days over a New Year's weekend does not and could not amount to such a deprivation.

Id. at 145.

The *Baker* opinion notes that the due process inquiry may turn on "[w]hat procedures the State affords defendants following arrest and prior to actual trial." *Id.* The due process claim is especially clear when, as in this case, plaintiffs have been denied the probable cause determination required by *Gerstein* and *McLaughlin* and have also been denied a prompt post-arrest appearance in court.

Since *Baker*, courts have held that plaintiffs do indeed state a due process claim when they have endured extended detention of up to a week or more in the face of repeated protests of innocence. *See Patton v. Przybylski*, 822 F.2d 697 (7th Cir. 1987) ("to arrest a person over his vigorous protest that he is the wrong man . . . and keep him in jail [for almost a week] without either investigating the case or bringing him before a magistrate raises serious constitutional questions . . . under the due process clause"); *Johnson v. City of Chicago*, 711 F. Supp. 1465, 1470 (N.D. Ill. 1989) (6 days); *Fairley v. Luman*, 281 F.3d 913, 917-18 (9th Cir. 2002) (12 days); *Andujar v. City of Boston*, 760 F. Supp. 238, 241 (D. Mass. 1991) (12

days); *Rodriguez v. Roth*, 516 F. Supp. 410 (E.D. Pa. 1981) (30 days); *Gray v. Cuyahoga County Sheriff's Dep't*, 150 F.3d 579 (6th Cir. 1998) (41 days).

In *Baker*, the plaintiff acknowledged he was the person described in the warrant. When he protested his innocence, he was asking the sheriff to go behind the warrant to investigate whether the person described in the warrant was the person authorities intended to arrest—something the sheriff was unable to do. *See Coleman v. Frantz*, 754 F.2d 719, 724 (7th Cir. 1985) ("the detention in *Baker* . . . could only have been prevented by the institution of significant and burdensome investigative procedures by the defendant sheriff"). Indeed, a law enforcement officer may justifiably question whether he has the authority to second-guess the factual investigation that underlies a facially valid court order to arrest the very person he has arrested. *See Archuleta v. Wagner*, 2007 U.S. Dist. Lexis 14261, at *15 (D. Colo. Feb. 27, 2007) (in a case where mistaken identification resulted in a warrant issuing for the wrong Mercedes Archuleta, court opined that deputy's realization that Ms. Archuleta was innocent "would have constituted an insufficient ground to release [her] without a judicial determination that probable cause was lacking").

It is different when the arrested person says he is not the person identified in the warrant. If the prisoner is correct, then the sheriff has not carried out the court's order, and the warrant provides no legal authority to hold the prisoner. Indeed, if

the prisoner is correct, then the person the court sought to apprehend remains at large. In addition, in most cases, the sheriff can easily determine whether the prisoner is the person identified in the warrant. When the wanted person has previously been arrested, Denver already has the fingerprints and mugshots of the wanted person, or they can be obtained quickly from another law enforcement agency. In cases where the wanted person has never been arrested and fingerprinted (such as when a driver gets a traffic ticket and fails to appear, resulting in a bench warrant), Denver also has access to photos in the DMV database.

"*Baker* indicates that the duration of the detention and the burden placed on state officials in providing procedural safeguards are highly relevant to a constitutional examination of post-arrest detentions." *Coleman,* 754 F.2d at 724. Plaintiff Jama was arrested on a warrant for Ahmed Alia, whom Denver had previously arrested. Denver had fingerprints and mugshots of Ahmed Alia on file. When Mr. Jama protested he was not Alia, Denver could easily have resolved his claim. Instead, Denver failed to investigate and, as a consequence, locked an innocent man in jail for 8 days. That 8-day incarceration, in the face of Mr. Jama's easily-resolved protest of innocence, violated his right to due process of law. *See Johnson*, 711 F. Supp. at 1470 (concluding that "plaintiff's six days of mistaken incarceration a sufficient lapse of time to implicate the Fourteenth Amendment"

where "a simple check of [plaintiff's] fingerprints, a comparison of photographs or even a phone call . . . would have confirmed his story").

C. Denver's policies and customs.

1. Custom 1: Denver has ignored its law enforcement officers' repeated mistaken identity arrests and/or detentions.

For many years, Denver law enforcement has maintained a widespread, persistent pattern and practice of carrying out mistaken identity arrests and detentions. Because Denver has declined to track or keep records of mistaken identity arrests, Plaintiffs have been unable to document precisely how frequently these mistakes occur. Despite Denver's lack of tracking, however, Plaintiffs have nevertheless been able to uncover documents in Denver's possession that evidence over 500 mistaken identity arrests. The numbers Plaintiffs can document here are undeniably an undercount, precisely because Denver has declined to institute a system of tracking or record keeping that would document the scope and frequency of the problem.

Section 1.a. discusses Denver's failure to track mistaken identity arrests. In Section 1.b., Plaintiffs document 325 minute orders in which judges of the Denver County Court have memorialized an occasion where Denver arrested and/or jailed the wrong person. In Section 1.c., Plaintiffs explain that these minute orders, when analyzed in the context of additional facts obtained in discovery, show a pattern of mistaken arrests/detentions that were unreasonable at their inception as well as in

their duration. Section 1.d. discusses another category of documents from the Denver District Court—warrant verification logs—that provide further documentation of many additional mistaken arrests.

The mistaken arrests discussed in Sections b, c, and dare all based on warrants issued by the Denver County Court. Section e explains that Denver has likely carried out a similar number of mistaken identity arrests and detentions based on warrants from non-Denver jurisdictions as well as the Denver District Court.

Section f explains that Denver's custom of carrying out mistaken identity arrests continued in the first months of 2009, when a limited policy reform resulted in at least some investigation and recordkeeping when prisoners protest that they are held on a different person's warrant. Section g documents an additional 22 mistaken identity arrests and detentions. Section h discusses (limited) additional information about mistaken identity arrests documented in Denver's internal affairs investigations. As Exhibit 24 explains, these sections document a total of 503 cases—other than the Plaintiffs' cases—in which Denver has mistakenly arrested or detained the wrong person.

a. Denver does not systematically identify, report or track mistaken identity arrests and detentions.

Denver has never systematically identified, reported or tracked mistaken identity arrests or detentions. *See, e.g.,* EXHIBIT 36, at 6 (Denver's admission that

"Denver has no policy requiring the collection of data relating to each mistaken arrest and mistaken detention caused by Denver law enforcement agents"); EXHIBIT 35, at 9 (admitting that Denver has no specific policy addressing steps to be taken when an arrestee or detainee claimed to be a victim of mistaken identity arrest or detention), EXHIBIT 35, at 15; EXHIBIT 48, at 170-171 (admitting that DSD has undertaken no efforts to identify individuals who have claimed mistaken identity arrests or detentions).

As late as March 2010, 18 months after this lawsuit was filed, Denver still had chosen not to implement a system to track data related to the mistaken identity arrests or detentions it caused. *See* EXHIBIT 11, at Fourhorn General 011592, 011594. This failure made it impossible for Denver Auditor Dennis J. Gallagher to evaluate the effectiveness of Denver's procedures for reliably and accurately identifying arrestees, even though he was charged to do so. *See* EXHIBIT 11, at Fourhorn General 011594.[15]

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[15]Denver's City Charter and ordinances gives the City Auditor authority to access all Denver records. Section 5.2.1.C of the Charter provides, "The Auditor shall have access at all times to all of the books, accounts, reports . . . or other records or information maintained . . . by any . . . department or agency of the City and County [of Denver]." However, in preparing a 2010 audit of Denver's policies and procedures for correctly identifying arrestees, the Auditor complained that Denver did not comply with these access laws: "[A]uditors were not allowed to independently access records needed to conduct audit work. . . . [A]ll documentation provided to auditors was reviewed by the City Attorney's Office before being turned over to auditors." EXHIBIT 11, Fourhorn General 011594; *see* EXHIBIT 11, at Fourhorn General 011592.

Denver did not require its personnel to record information related to mistaken identity arrests or detentions in any of its databases, and therefore has never been able to generate a report to Plaintiffs accurately reflecting the number or identity of mistaken identity victims arrested or detained by Denver. *See, e.g.*, EXHIBIT 48, at 171-73; EXHIBIT 43, at 47-49, 52; *see also* EXHIBIT 35, at 15. When responding to the first set of interrogatories in this case, Denver was able to list only ten cases that it said "may" represent a mistaken identity arrest; seven of those cases were described in Plaintiffs' original complaint. EXHIBIT 35, at 13.[16]

In fact, even when the Denver County Court or Denver assistant city attorney-prosecutors learned that Denver had mistakenly arrested or detained the wrong person, there were no policies or procedures requiring the tracking of that information. Nor were there any policies requiring the error to be reported to Denver law enforcement to prevent such arrests or detentions in the future. *See* EXHIBIT 60, at 77, 84; EXHIBIT 36, at 7.

Similarly, when Denver law enforcement personnel learned Denver had caused a mistaken identity arrest or detention, there were no policies requiring any personnel to: (a) record that the mistaken identity arrest or detention had occurred;

[16]In addition to the five original plaintiffs, Denver listed the cases of Valerie Rodriguez and Bradley Braxton, whose mistaken identity arrests and detentions were discussed in the initial Complaint. Doc.1 ¶¶ 187-190.

(b) correct any errors that may have caused the wrongful arrest or detention, or (c) inform the court system or any other law enforcement agency of the wrongful arrest or detention. *See, e.g.*, EXHIBIT 43, at 49-50; EXHIBIT 60, at 49 (stating that even when law enforcement identifies a case of mistaken identity arrest or detention, it does not request that additional information be placed into the warrant database to prevent the mistaken identity victim from being erroneously re-arrested in the future); EXHIBIT 35, at 14 (admitting that Denver has no policy requiring information sharing between criminal justice officials when a mistaken identity arrest and/or detention was discovered); *see also* This Resp., Pt.III, Subpt.1.5, at 127-136 (discussing Denver's custom of failing to correct criminal-justice records following mistaken identity arrest and detention).

Denver law enforcement "may or may not" indicate in Change of Charge forms that one or more charges were dropped because of a mistaken identity arrest and/or detention. *See* EXHIBIT 35, at 15; EXHIBIT 41, at 46-47 (DSD did not require that its personnel indicate the reason for dropping the charge, even if Denver had confirmed that detainee was a mistaken identity victim). Even though some Change of Charge forms indicated that Denver had caused a mistaken identity arrest and/or detention, Denver has never used these forms to track such errors. *See* EXHIBIT 41, at 48-49.

Denver has chosen to store its information in a manner that makes it impractical to undertake a comprehensive review of Change of Charge Forms that may indicate mistaken identity arrests and/or detentions. The forms are handwritten, are not searchable electronically, and are stored in only one location: the file related to a particular detainee. Locating all Change of Charge forms in a particular time period would require examining the individual file of each of the thousands of pre-trial detainees who pass through the jail every year. *See* EXHIBIT 35, at 15; EXHIBIT 48, at 170-75.

Despite the fact that Denver did not systematically identify, record information about, or track mistaken identity arrests or detentions, certain categories of County Court documents in Denver's possession nevertheless reveal that on hundreds of occasions, Denver arrested or detained the wrong person. These documents--minute orders and warrant verification logs—are discussed in below in sections b, c, and d.

b. Denver County Court minute orders evidence 325 mistaken identity arrests.

Denver County Court judges may, at their discretion, enter a minute order memorializing information about a case before them, including information indicating that the detainee brought to their court was the victim of a mistaken identity arrest and/or detention. *See* EXHIBIT 44, at 11. Plaintiffs learned that these minute orders are stored electronically and are searchable by keyword. *See* EXHIBIT

44, at 11-12. Yet, Denver refused to perform a comprehensive search of its minute orders for words or phrases that may reflect mistaken identity arrests and/or detentions until this Court ordered it to do so. *See* Doc.281, at 3.

Subparagraph (i), below, discusses 291 minute orders uncovered in Denver's electronic keyword search that evidence mistaken identity arrests for which Denver is responsible. Subsection (ii) discusses a sampling of minute orders that reveal obviously unreasonable mistaken arrests; repeated mistaken arrests on the same warrant; frustrated County Court judges; and victims of mistaken identity arrests posting bail on charges that are not theirs and even pleading guilty to charges for which they are not the defendant. Subsection (iii) explains that the 291 minute orders are only the tip of the iceberg, and it documents thirty-four additional minute orders evidencing mistaken identity arrests that Denver's keyword search failed to uncover.

i. Denver's keyword search produced 291 minute orders that clearly reference a mistaken identity arrest or detention for which Denver is responsible.

Pursuant to this Court's order, Denver searched the minute order field in Denver's database for keywords provided by Plaintiffs' counsel, such as "wrong defendant," "wrong person," or "not the criminal suspect." This search yielded over 700 "hits." *See* EXHIBIT 11, at Fourhorn General 004481-504 (keyword search of minute orders from 2001 through September 1, 2009). Plaintiffs' further

investigation of those clues revealed 291 minute orders that clearly reference a mistaken identity arrest and/or detention by Denver between January 1, 2001, and September 1, 2009.

Exhibit 20 is a Federal Rule of Evidence 1006 summary of these 291 minute orders. The summary reproduces: (i) the case number associated with the minute order; (ii) the date the minute order was entered by the Denver County Court; (iii) the text of the minute order; and (iv) the Bates number of the minute order produced by Denver; and (v) the Bates number of the corresponding Denver County Court docket sheet, when it was available. EXHIBIT 19 ¶¶ 3-4, 7-8; EXHIBIT 20 (Fed. R. Evid. 1006 Summary of Minute Orders (hereafter "Minute Order Summary")). The vast majority of these minute orders explicitly states that the "wrong defendant" or "wrong person" was arrested or jailed.

Denver law enforcement was the arresting or detaining agency for each of the 291 entries in the Minute Order Summary. For 276 of the entries, the text of the minute order and additional information on the corresponding docket sheet demonstrate that (i) the minute order resulted from an "in custody" hearing in Denver County Court; and/or (ii) the docket sheet contains one or more entries

indicating that on the date the minute order was issued, the mistaken identity victim was in jail in Denver's custody. EXHIBIT 22.[17]

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[17]In nine additional cases, a Denver law enforcement record and/or information from the Denver County Court records indicates that Denver had arrested or detained the mistaken identity victim shortly before the County Court issued the minute order. See EXHIBIT 20:

Line 234: Case No. A005023, EXHIBIT 11, at Fourhorn General 006258.

Line 85: Case No. 03M0421, EXHIBIT 11, at Fourhorn General 006265.

Line 98: Case No. 04GS124376, EXHIBIT 11, at Fourhorn General 007589.

Line 45: Case No. 02GS114586, EXHIBIT 11, at Fourhorn General 006112.

Line 101: Case No. 04GS764829, EXHIBIT 11, at Fourhorn General 011974 (defendant's name is Valentino Racata); EXHIBIT 11, at Fourhorn General 007308 (listing aliases as Valendino Racata and Juan Gonzalez); EXHIBIT 11, at Fourhorn General 007309 (arrest of "Juan Gonzalez" Sept. 1, 2005).

Line 70: Case No. 03GS130727, EXHIBIT 11, at Fourhorn General 006283.

Line 233: Case No. 99M13680, EXHIBIT 11, at Fourhorn General 011855 (defendant's name is Oscar Estrada-Garcia); EXHIBIT 11, at Fourhorn General 011207 (suspect booked as "Oscar Estrada-Garcia").

Line 92: Case No. 03M10348, EXHIBIT 11, at Fourhorn General 012022-24 (defendant's name is Angel Portillo); EXHIBIT 11, at Fourhorn General 010914 (suspect booked as "Angel Portillo").

Line 200: Case No. 08GS034035, EXHIBIT 11, at Fourhorn General 009820 .

In four cases, the text of the "wrong defendant" minute order shows that the mistaken identity victim had been booked by DSD or had posted bond in Denver County Court and thus had been in Denver custody. *See* EXHIBIT 20 l.209 (Case No. 08OC00318: posted bond); *id.* l.81 (Case No. 03GS849332: posted bond); *Id.* l.53 (Case No. 02GS622805: posted bond); *id.* l.121 (Case No. 04M10719: booked by DSD).

Finally, in two additional cases, the text of the minute order alone establishes a strong inference that the mistaken identity victim was in Denver custody when the order issued. *See* EXHIBIT 20 l.8 (Case No. 00M06787); *id.* l.138 (Case No. 05JV750204).

ii. The minute orders reveal obviously unreasonable mistakes, repeated mistaken arrests on the same warrant, and frustrated County Court judges.

Many minute orders make clear that the arrest or detention was unreasonable given the obvious and easily discernible differences between the mistaken identity victim and the criminal defendant. For instance:

- In Case No. 00GS917130, the court issued the following minute order:

  Wrong defendant brought into court. J[redacted] M[redacted] is a female. The defendant Jamie Sandoval is male. TJH.[18]

  EXHIBIT 20 l.4.

- In Case No. 07GS082876, the court issued the following minute order:

  Court release C[redacted] A[redacted] DOB [redacted]/64 wrong person held. B/W re'iss'd for Enid A. Richardson DOB [redacted]/1972. VB

  Id. l.186.

- In Case No. 98M10166, the court issued the following minute order:

  Wrong def brought in; different name; DOB; and DPD – LIB 12.20.02.

  Id. l.221.

- In Case No. 06M14634, the court issued the following minute order:

  Wrong def in custody, J[redacted] M[redacted] in custody, that def released from this case and warrant reissued for def Jasmine Diaz/HMA 9-14-07

  Id. l.183.

[18]Throughout this Response, when Plaintiffs quote text that appears as all-uppercase text in the source, for ease of reading the text has been modified so that it is upper- and lowercase text.

- In Case No. 05M03488 , the court issued the following minute order:

  1-4-06 wrong def in custody J[redacted] J[redacted] V[redacted] DPD # [redacted]192 DOB [redacted]-1967 is not named def Paul Vigil DOB [redacted]-1972 def to be released and warrant reissued as to Paul Vigil……..SR

  Id. l.142.

In some cases, the county court explicitly noted that the mistaken identity victim had posted bond or had pleaded guilty to secure release from the wrongful detention.[19] An alarming number of the minute orders plainly reflect repeated mistaken identity arrests on the same warrant, and often of the same victim.[20]

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[19]See EXHIBIT 20:

Case No. 98M11817, l.222:	"Person who was arrested and posted bond is not the defendant in this case, he has a different D.O.B. and middle initial");
Case No. 02M03265, l.60:	"Wrong def arrested; wrong person entered guilty plea: T[redacted] M U[redacted], DOB[redacted]-59 is not the def in this case. Pleas vacated. B/W issues. B/W issues as to Thomas Paul Urban, DOB [redacted]-59")
Case No. 080C00318, l.209:	"Wrong defendant—released per ID Bureau fingerprints were not a match. Bond vacated and monies returned to surety LM 1-19-08."
Case No. 04M10719, l.121:	Mistaken identity victim posted bond
Case No. 03GS849332, l.81:	Court orders return of bond fee
Case No. 02GS622805, l.53:	Court orders return of bond fee
Case No. 00M12710, l.12:	Bond released as wrong person not defendant posted it. Re-issue $750 bond

[20]*See, e.g.*, EXHIBIT 20: Case Nos. 99M10830, ll.228-229; 00M11652, l.11; 01M03941, ll.37-38; 05M03169, ll.140-141; 05M06894, ll.147-148; 06M06491, l.170; B530514, l.280; 99M12014, ll.231-232; X309344, l.283; 04M07532, ll.116-117; 06M09185, ll.174-175; 05M12806, ll.152-153; 06M09486, ll.176-177; Z473792, l.288; 05M03488, ll.142-143; 02M06373, l.63-64; 03M11982, ll.94-96; 06GS944351, ll.160-161; 05GS815210, l.129; 07JV824362, l.191; 01GS940660, ll.31-33; 01GS487000, l.26; 01GV028575, l.34; 01GS100749, l.14.

Some minute orders reflect evident frustration of Denver County Court judges who encountered repeated mistaken identity arrest and detentions. For example:

- In Case No. 99M13680, the court issued the following minute order:

  10-22-03 def brought in was wrong defendant…go figure! BW to reissue as to DPD Number [redacted]004…Pedro Mauro-Ojeda [redacted]-77…Sr aka Estrada-Garcia, Oscar

  EXHIBIT 20 l.233.

- In Case No. X309344, the court issued the following minute order:

  ID Bureau was informed that the wrong person had been arrested in the past and were advised to check fingerprints, etc. 06-13-07 LIP again this is the wrong person arrested so warrant reissued

  Id. l.283.

See also id. l.94 (Case No. 03M11982: "Warrant clerk to caution police to avoid arresting wrong defendant"); *id.* l.37 (Case No. 01M03941: "Wrong defendant. Please note physical characteristics and DOB").

iii. The 291 minute orders uncovered by keyword search are the tip of the iceberg

The 291 minute orders that Plaintiffs reproduced in the Minute Order Summary fall far short of reflecting the total number of mistaken identity arrests and/or detentions discovered by Denver County Court judges (much less the total number of mistaken identity arrests and/or detentions caused by Denver law enforcement). First, Denver does not require or even ask its judges to issue a minute order each time they discover a mistaken identity arrest or detention. *See* EXHIBIT 36, at 7.

Second, Plaintiffs focused conservatively on the narrow set of minute orders for which there is clear evidence that Denver law enforcement was responsible for the mistake. Denver was surely the arresting or detaining agency in at least some portion of the numerous cases where the available documents did not clearly identify which law enforcement agency arrested or jailed the wrong person.

Third, Denver's electronic search of the text of Denver County Court minute orders was limited to a set of keywords Plaintiffs' counsel could imagine a judge might include in an order memorializing a mistaken identity arrest or detention. *See* EXHIBIT 11, at Fourhorn General 004481 (listing keywords Denver used in search of minute order field). To the extent a judge did not use one of the specific keywords or phrases, Denver would not have located the minute order and would not have provided it to Plaintiffs. Indeed, as explained below, Plaintiffs have discovered thirty-four additional minute orders that clearly reference mistaken identity arrests but were not found in Denver's electronic keyword search.

Four additional minute orders evidence mistaken identity arrests. Plaintiffs' counsel have uncovered, through other investigative avenues, additional Denver County Court minute orders that memorialize mistaken identity arrests and that contain none of the keywords or phrases used in Denver's electronic search. For example, the following minute orders were not captured by Denver's keyword search:

- Incorrect defendant. The one in front of me is M[redacted] J[redacted], DOB: [redacted]/54. Release on this case only. TT TQT.

  Case No. Z473792. EXHIBIT 11, at Fourhorn General 012179-180.

- Is not the Def. correct Def's name is Juan Antonio Anner Paz-Barajas, DOB[redacted]-78.

  Case No. 06M06491. *Id.* at Fourhorn General 012113-14.

- Checked finger print on ticket- belongs to Marquez Jones (name on ticket) DPD Number is: [redacted]696. Might be in Texas D[redacted] M[redacted] is here again DPD Number is [redacted]872 before arresting on this warrant check DPD Number. Release D[redacted] ERF.

  Case No. B530514. *Id.* at Fourhorn General 012139-41.

- 6-14-06 person I/C was E[redacted] H[redacted]-F[redacted], DOB [redacted]-1984. Warrant shall remain active as to Martin Hernandez, DOB [redacted]-83.—PS.

Case No. 06GS944351. *Id.* at Fourhorn General 012037-38.

Thirty additional minute orders reflect mistaken identity arrests.

Further dramatic confirmation that the keyword search was under-inclusive is provided by the docket sheets that correspond to twenty-five of the minute orders produced as a result of Denver's keyword search. These docket sheets, which reproduce the court's orders throughout the life of a case, reveal a total of thirty additional minute orders documenting repeated mistaken identity arrests on the same warrant in the same case. These minute orders either do not use any of the keywords or phrases, or the "wrong defendant" notation appeared in a field that Denver did not search. Thus, these thirty additional minute orders were not found

in the electronic search Denver conducted, and they are not included in the 291 minute orders in the Minute Order Summary. These twenty-five docket sheets reveal thirty additional instances in which Denver arrested or detained the wrong person.

For example, in Case No. 03GS128412, the same mistaken identity victim was erroneously brought into court on the same warrant five times over a period of two years. Only one of the following minute orders was produced as a result of the keyword search:

- Minute Order 1, 10/24/03 (produced by Denver): "Wrong defendant—release M[redacted] S[redacted] R[redacted] re-issue BW for defendant Rebecca Rosenfeldt.NP"
- Minute Order 2, 12/13/04 (not produced): "Def M[redacted] R[redacted] being held in County Jail-she is not right person please do not bring in on this case per Judge Patterson.NP"
- Minute Order 3, 12/20/04 (not produced by Denver): "M[redacted] brought in-released as to this case-BW to re-issue for Rebecca.NP"
- Minute Order 4, 1/27/05, (not produced by Denver): "The party being held in custody is M[redacted] R[redacted] DOB [redacted]/82 not Rebecca Rosenfeldt [redacted]/81 Lee G Courtroom 151P"
- Minute Order 5, 8/15/05 (not produced by Denver): "Please be careful when verifying this warrant. M[redacted] R[redacted] has been jailed incorrectly on this case under this case number. Please verify the SID # [state ID number] [redacted]166 on your verification. RT 8/15/05."

EXHIBIT 11, at Fourhorn General 011858-59.

A similar review of the docket sheets corresponding to 24 additional minute orders in the Minute Order Summary reveals 26 additional minute orders (i) that

were not found in the keyword search, and that (ii) clearly evidence a Denver District Court finding of an additional mistaken identity arrest.[21]

The foregoing demonstrates that the 291 minute orders reflected in the Minute Order Summary are the proverbial tip of the iceberg of mistaken identity arrests and detentions known to Denver County Court judges and the Denver assistant city attorneys who represent Denver in many of these prosecutions. Indeed, Plaintiffs have documented 34 additional minute orders that that were not

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[21] *See* EXHIBIT 11, at Fourhorn General 11924-25 (minute order dated 8/29/03, Case No. 02M11866); *id.* at at Fourhorn General 011825-26 (minute order dated 5/21/03, Case No. 99M12014); *id.* at Fourhorn General 011765-66 (minute order dated4/2/03, Case No. 01GS318267); *id.* at Fourhorn General 011818-20 (minute order dated12/26/02, Case No. 00M13288); *id.* at Fourhorn General 011884-86 (minute order dated 1/8/04, Case No. 03M07799); *id.* at Fourhorn General 011978-79 (minute order dated 10/9/05, Case No. A393815); *id.* at Fourhorn General 012002 (minute order dated 3/10/06, Case No. 06GS928839); *id.* at Fourhorn General 011700 (minute order dated 12/05/01, Case No. A073559); *id.* at Fourhorn General 11701 (minute order dated 12/05/01, Case No. A295213); *id.* at Fourhorn General 011719 (minute orders dated 4/12/02 and 7/12/02, Case No. A098951); *id.* at Fourhorn General 011722 (minute orders dated 4/12/02 and 7/12/02, Case No. A226134); *id.* at Fourhorn General 011748 (minute order dated 12/18/01, Case No. 01GS319315); *id.* at Fourhorn General 011749 (minute order dated 12/18/01, Case No. 01GS437287); *id.* at Fourhorn General 011750 (minute order dated 12/18/01, Case No. 01GS443996); *id.* at Fourhorn General 011753 (minute order dated 12/18/01, Case No. 01GS341690); *id.* at Fourhorn General 011754 (minute order dated 12/18/01, Case No. 01GS438029); *id.* at Fourhorn General 011755 (minute order dated 12/18/01, Case No. 01GS5450594); *id.* at Fourhorn General 011756 (minute order dated 12/18/01, Case No. 01GS506592); *id.* at Fourhorn General 012088 (minute order dated 3/15/04, Case No. X309344); *id.* at Fourhorn General 012097 (minute order dated 7/17/06, Case No. 05GS898027); *id.* at Fourhorn General 012099 (minute order dated 7/17/06, Case No. 05GS859641); *id.* at Fourhorn General 12106 (minute order dated 7/2/07, Case No. 06GS940197); *id.* at Fourhorn General 012107 (minute order dated 7/2/07 Case No. 06GS946799); *id.* at Fourhorn General 012109 (minute order dated 7/2/07, Case N0. 06GS161676.

uncovered by Denver's keyword search that memorialize additional mistaken identity arrests, bringing the total to 325. In light of Denver's failure to track mistaken identity arrests and the imperfect reliability of collecting minute orders by searching for keywords, there surely are even more Denver County Court minute orders documenting mistaken identity arrests or detentions for which Denver law enforcement is responsible.

c. County Court minute orders document mistaken identity arrests and detentions that were unreasonable at their inception and in their duration.

The text of the 291 minute orders in the Minute Order Summary provides only a limited peek into the circumstances surrounding the mistaken arrests and detentions that Denver carried out on the basis of County Court warrants. Denver's lack of tracking and record-keeping significantly impeded Plaintiffs' efforts to investigate those surrounding circumstances. For over 250 of the cases, Denver was not able to produce the warrant teletype that provided the name, date of birth, AKAs, and other information about the real criminal suspect. For 99 of the 291 minute orders, Denver was unable to produce any documents that revealed *who* was mistakenly arrested or detained.

Nevertheless, Plaintiffs were able to obtain and piece together sufficient information to document a pattern of mistaken identity arrests that were unreasonable from the get-go and clearly unreasonable in the duration of the

subsequent detention. Plaintiffs present fourteen examples below, each of which provides additional details beyond the limited text that appears in the Minute Order Summary.

In each of these examples, Plaintiffs demonstrate that Denver had previously arrested the individual described in the warrant. Indeed, in more than 200 of the 291 cases, the warrants named individuals whom Denver had previously arrested. Thus, in those 200 cases, Denver had the fingerprints and mug shots of the person identified in the warrant and could have quickly determined that it had arrested or detained the wrong person. *See* EXHIBIT 23.[22]

i. Black man arrested on warrant for white man.

Although the text of the 291 orders in the Minute Order Summary establish that Denver arrested or detained the "wrong defendant," many fail to reveal the additional facts that show that the arrest or detention was clearly an *unreasonable* mistake. For example, while a minute order in Case No. 01M6974 reveals that the mistaken identity victim was four years older than the wanted man, *see* EXHIBIT 20

[22]EXHIBIT 23 is a chart that reproduces the 6-column Minute Order Summary (EXHIBIT 20) and adds two additional columns: G and H. In Column G, a "Yes" indicates that Denver had previously arrested the person described in the warrant. A notation of "Yes–MO" indicates that the text of the minute order confirms that Denver already had fingerprints and/or mugshots. A notation of "Yes–DS" indicates that the docket sheet referenced in Column F shows that the case began with the original defendant in Denver's custody. Finally, a notation of "Yes–PD" indicates that a police document confirms that the target of the warrant had previously been arrested by Denver. The Bates number of the police document appears in Column H.

l.41, it does not mention an even more glaring difference: The mistaken identity victim is a black man, while the Denver warrant clearly describes a white man. EXHIBIT 29, PLF000013-16 ¶ 2; EXHIBIT 11, at Fourhorn General 006709 (warrant teletype); at 010674 (Mugshot of mistaken identity victim); at 010675 (mugshot of criminal suspect).[23] Denver had the prints and mugshot of the criminal suspect. EXHIBIT 11, at Fourhorn General 6724-25.

While in the Denver jail, Mr. Jackson wrote multiple kites explaining that he is a black man and could not be the white man described in the warrant. No one responded to his written grievances. EXHIBIT 29, at PLF000013-16 ¶ 5.

ii. Eighteen-year-old arrested on warrant for man 30 years older.

In 2003, in Case No. 01GS102495, Denver arrested and detained 18-year-old J[redacted] J[redacted] B[redacted] on a warrant for a man 30 years older, James Edward Bynum, DOB [redacted]/55. EXHIBIT 11, at Fourhorn General 006314-16. The court's minute order, which includes the DOB and DPD number of the true defendant, made clear that Denver police had previously arrested the wanted man and already had his fingerprints and mugshot. EXHIBIT 20 l.15.

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[23]Mr. Jackson's declaration refers to a document that provides the physical description of the Caucasian criminal suspect, and it mistakenly refers to this document at the warrant teletype. EXHIBIT 29 at PLF000015 ¶ 9. The referenced document, EXHIBIT 11, at Fourhorn General 006724, is actually the DPD arrest record for the Caucasian criminal suspect. The warrant teletype is EXHIBIT 11, at Fourhorn General 006709.

iii. Six-foot, 240-pound man jailed on a warrant for a 5'6" 165-pound suspect.

On March 24, 2004, Denver unlawfully arrested and detained F[redacted] M[redacted], DOB [redacted]/80, on a warrant for a different person, Richard A. Rodriguez, DOB [redacted]/80. The warrant for Rodriguez describes a 5'6" man weighing 165 pounds. EXHIBIT 11, at Fourhorn General 006663. Denver's booking record shows that the mistaken identity victim was six feet tall and weighed 240 pounds. *Id.* at Fourhorn General 006659. Denver had the fingerprints and mug shots of the wanted man, *id.* at Fourhorn General 006432-33, but did not compare them to M[redacted]. M[redacted] was forced to post bail on the erroneous charge. *Id.* at Fourhorn General 006664. The Denver County Court recognized Denver's mistake, released M[redacted], and re-issued the warrant for Rodriguez. EXHIBIT 20, l.19.

iv. Vernon Scott wrongfully jailed for 6 weeks on mistaken identity detention.

In 2006, Denver wrongfully incarcerated V[redacted] J[redacted] S[redacted] for almost six weeks by mistaking him for a different person, Gerald A. Scott. Gerald Scott had been sentenced to work release and 270 days in jail in Case No. 06M00104. EXHIBIT 8, at DCC 00168-69 (docket entry for 4/24/06). When he failed to appear, a warrant issued. *Id.* (docket entries for 5/17/06); EXHIBIT 11, at Fourhorn General 003477 (warrant for Gerald A. Scott, dated 5/17/06).

On May 30, 2006, V[redacted] S[redacted] was arrested for traffic offenses in case 06M07213 and booked into the city jail. On May 31, the court ordered his release on those charges. EXHIBIT 11, at Fourhorn General 003466 (booking record, booking number 1491950; *id.* at 003473 (Mittimus for case 06M07213).

Instead of releasing V[redacted], however, on May 31 Denver wrongfully added the "execution warrant" in case 06M00104 for Gerald Scott, an order that mandated serving 270 days in jail. EXHIBIT 11, at Fourhorn General 003475 (mittimus); *id.* at Fourhorn General 003474 (same mittimus with V[redacted] S[redacted]'s DPD number erroneously filled in). The Denver County Court recognized the mistake, issuing a minute order in Gerald Scott's case: "Wrong def. brought into court. V[redacted] S[redacted](brother of Gerald Scott) was brought into court and sentenced in error." EXHIBIT 20, l.165.

The Denver jail, however, did not correct the mistake. Denver incarcerated V[redacted] S[redacted] on the erroneously-imposed jail sentence. The Denver jail calculated that it would hold V[redacted] S[redacted] until December, 2006. EXHIBIT 11, at Fourhorn General 003478 (sentence calculation spreadsheet for V[redacted] S[redacted]).

V[redacted] S[redacted] was not able to get the mess straightened out until July 11, 2006, when the county court issued a mittimus in Case No. 06M00104 stating, "Don't hold V[redacted] S[redacted] on this case." EXHIBIT 11, at Fourhorn General 003472, 003468.

v. Jailed almost 3 months on a different person's sentence.

Documents show that in 2007, Denver mistakenly jailed B[redacted] H[redacted] on a warrant for a different person, Tyrone S. Hanes. Even after the Denver County Court caught the mistake, Denver nevertheless forced H[redacted] to begin serving the other man's 180-day jail sentence. During part of that time, H[redacted] was also detained on his own warrants. After H[redacted] cleared up his own warrants, however, Denver continued to detain him for almost three additional months, as he was forced, erroneously, to serve the jail sentenced imposed on Tyrone S. Hanes, a different person.

On May 30, 2007, a Denver police officer arrested B[redacted] H[redacted], the mistaken identity victim, on his own "failure to appear" warrant in Denver District Court Case No. 2005-CR-4900. *See* EXHIBIT 11, at Fourhorn General 008307 (booking #1542867). The next morning, Denver mistakenly added an additional charge based on a warrant for failing to appear in case 2007-GS-985903, where the criminal defendant was Tyrone S. Hanes, DOB [redacted]/60, not B[redacted] H[redacted], DOB [redacted]/58. EXHIBIT 11, at Fourhorn General 005289, 008307, 008323-24. On May 31, 2007, the Denver County Court recognized the mistake and entered a minute

order, stating, "05/31/07 wrong defendant DOB [redacted]/58 we need [redacted]/60."[24] EXHIBIT 20 l.190. The court reissued the warrant for Tyrone S. Hanes. EXHIBIT 11, at Fourhorn General 012085-86.

On June 1, in Case No. 2007GS985903, Denver County Court issued a mittimus sentencing the criminal defendant, Tyrone Hayes, to 180 days in jail. EXHIBIT 11, at Fourhorn General 008322. The Denver jail then erroneously attached that 180-day sentence to the mistaken identity victim, B[redacted] H[redacted]. *Id.* at Fourhorn General 008325. The jail's sentence calculation sheet shows that H[redacted] would be incarcerated on the other man's sentence until October 3, 2007. *Id.* at Fourhorn General 008325.

On June 20, 2007, in B[redacted] H[redacted]'s own case, 2005-CR-4900, the one for which he was originally arrested on May 30, he was sentenced to 30 days to run "concurrent to other sentence." *Id.* at Fourhorn General 008317. The jail's sentence calculation sheet shows H[redacted] would complete that sentence on July 11, 2007. *Id.* at Fourhorn General 008329.

The mistaken identity victim was finally released from the Denver jail on October 3, 2007. *Id.* at Fourhorn General 008308-10 (booking #1542867). From July 11, when he completed his sentence on his own charge, until October 3, when

[24]It appears the court accidentally omitted a digit. The birthdate for the mistaken identity victim is [redacted]/58. EXHIBIT 11, at Fourhorn General 008307.

he was finally released, he was jailed only on the sentence imposed on a different person. Denver's mistaken identification caused H[redacted] to be jailed erroneously for almost three months.

Denver could have easily avoided the mistake. The initial entry in case 07GS985903 show that the defendant, Tyrone S. Hanes, was in custody in the Denver jail. *Id.* at Fourhorn General 005289-90. Denver had his fingerprints. Denver could easily have determined that B[redacted] H[redacted] was not Tyrone S. Hanes.

vi. R[redacted] F[redacted] mistakenly jailed for 4 days on another person's warrant.

R[redacted] F[redacted], DOB [redacted]/49, was wrongly jailed for four days because Denver confused her with a different person who was seven years younger. On April 17, 2004, R[redacted] was arrested on two failure-to-appear warrants that were hers. Denver erroneously added a third case, a five-year-old failure-to-appear warrant for a different person, Grace Y. Florez, DOB [redacted]/56. EXHIBIT 11, at Fourhorn General 006517. The court ordered R[redacted] released on her two cases on April 18 and 19. EXHIBIT 11, at Fourhorn General 006525 (Case No. 04GS788439, April 18); EXHIBIT 11, at Fourhorn General 006526 (Case No. 03GS788676). She remained in jail for the next four days, detained erroneously on the warrant for Grace Y. Florez. On April 23, 2004, the Denver County Court entered a minute order recognizing Denver's mistake: "I/C is R[redacted] F[redacted] wrong defendant for this case. Grace Florez is the def for this case warr remains." EXHIBIT 20, l.226. Denver

could easily have prevented this mistake. Because Denver had arrested the criminal suspect, Grace Y. Florez, multiple times in the past, fingerprints and mug shots were available. EXHIBIT 11, at Fourhorn General 006505-06.

vii. Court requests that Denver fingerprint mistaken ID victim held in jail.

On July 27, 2007, the Denver County Court issued a minute order in case 07M09388 saying "E[redacted] R[redacted] released on this case, wrong def." EXHIBIT 20 l.196; *see* EXHIBIT 11, at Fourhorn General at 003554, 003565. That order ended a week during which Ms. R[redacted] had been jailed in Denver on a failure-to-appear warrant for a different person, Julia A. Cosby. EXHIBIT 11, at Fourhorn General 001377-79. One day before concluding that the wrong defendant had been arrested, the court issued a mittimus stating "please fingerprint def before tomorrow court date." *Id.* at Fourhorn General 3560. Of course, Denver had *already* fingerprinted the defendant when she was booked on July 20. At that time Denver also had the fingerprints and mug shot of the real defendant, Julia A. Cosby, the person named in the failure-to-appear warrant. *See* EXHIBIT 11, at Fourhorn General 003555 (listing Cosby's DPD number). Because Denver routinely fails to compare fingerprints when it arrests or detains persons on warrants, Ms. R[redacted] spent a week erroneously detained on the warrant for Julia Cosby.

viii. Denver wrongly jails mistaken identity victim for 3 weeks.

F[redacted] G[redacted]-R[redacted] spent three weeks in the Denver jail in 2004 because he was mistakenly held on a warrant for a different person, Felipe Romero-Hernandez. On March 23, 2007, Denver police arrested the mistaken identity victim for failing to appear in a Denver traffic case and an Arapahoe County traffic case. EXHIBIT 11, at Fourhorn General 008219. On March 28, he cleared up his Denver traffic case. *Id.* at Fourhorn General 008228. At that time, he would have been transported to Arapahoe County to clear up his traffic case there, but Denver was also erroneously detaining him on the warrant for the Romero-Hernandez. *Id.* at Fourhorn General 008219. Denver wrongfully jailed G[redacted]-R[redacted] on that warrant until the Denver County Court recognized the mistake on April 18, 2007. *See* EXHIBIT 20 l.109. The court issued a mittimus order releasing G[redacted]-R[redacted], with a notation saying "This case doesn't belong to this defendant." *Id.* at Fourhorn General 008226. Denver could easily have avoided the wrongful three-week incarceration, as Denver had the fingerprints and mug shots from the wanted suspect's earlier arrest. *Id.* at Fourhorn General 011313.

ix. Mistaken identity victim erroneously jailed 4 days over Christmas holiday.

On the morning of December 24, 2006, Denver police erroneously arrested an unidentified mistaken identity victim on two failure-to-appear warrants for a

different person, Duwayne Davis, DOB [redacted]/56. EXHIBIT 22, at Fourhorn General 005239-41, 005243-44. After spending over four full days in jail, including Christmas Eve and Christmas, the mistaken identity victim was able to post bond on December 28, 2006. EXHIBIT 11, at Fourhorn General 005239, 005243. When he returned to court, the judge recognized Denver's mistake. EXHIBIT 20 ll.157 & 163. The innocent arrestee's ordeal could easily have been prevented: Denver had previously arrested the wanted man dozens of times and had his fingerprints and years of mug shots. EXHIBIT 11, at Fourhorn General 008089-106.

x. Another 4-day incarceration because Denver didn't check fingerprints.

On February 8, 2006, the Denver County Court issued a minute order releasing a victim of a mistaken identity arrest and detention: "Ticket re-issued under the correct def name, person that was I/C was fingerprinted and they did not match the prints on file." EXHIBIT 20 l.149. The docket sheet shows that the mistaken identity victim had been arrested on a failure-to-appear warrant and had spent four days in jail waiting for this ruling. As the minute order confirms, Denver had the fingerprints of the wanted suspect all along. Indeed, Denver had multiple mug shots of the wanted suspect from his many arrests over the years. EXHIBIT 11, at Fourhorn General 007460-64.

xi. Four-day detention without comparing fingerprints.

On December 16, 2002, a failure-to-appear warrant for Darrell B. Horton in case 98M10166 was cancelled, and the Denver jail claimed to have the defendant in custody. EXHIBIT 11, at Fourhorn General 004831-32. After the arrestee spent four days in jail, the Denver County Court re-issued the warrant after recognizing that Denver had jailed the wrong person: "Wrong def brought in; different name; DOB; and DPD." EXHIBIT 20 1.221; EXHIBIT 11, at Fourhorn General 011788. Denver could have easily made that determination four days earlier. Denver had arrested the real defendant numerous times in the past. EXHIBIT 11, at Fourhorn General 011077-79.

xii. Five days in jail because Denver did not compare fingerprints.

In 2002, D[redacted]A[redacted] M[redacted], DOB[redacted]/62, spent five days wrongfully locked up in Denver's jail because Denver law enforcement officers erroneously held her on three failure-to-appear warrants for a different person, Fayetta Brown. EXHIBIT 11, at Fourhorn General 004709-10, 004712-13, 004715-16. On February 25, 2002, the court granted a personal recognizance bond in the case in which Ms. M[redacted] was the correct defendant. EXHIBIT 68, at M[redacted], D.00001. She would have been released on that date, but Denver continued to incarcerate her erroneously for five additional days on the warrants for Fayetta Brown. Finally, on Mrch 2, 2002, she was able to post bond in the three cases in which Fayetta Brown was the

defendant. EXHIBIT 11, at Fourhorn General 004709-10, 004712-13, 004715-16, 010167. When she appeared in court on March 13, 2002, the judge recognized that Denver had arrested the wrong person: "Wrong person held on this case. D[redacted] A[redacted] M[redacted] wrong person." *Id.* at Fourhorn General 004709-10, 004712-13, 004715-16. Denver could easily have avoided subjecting Ms. M[redacted] to five days of wrongful incarceration, as it had previously arrested Fayetta Brown and therefore had her mug shots and fingerprints. *Id.* at Fourhorn General 005519-23.

xiii. Two and a half days in jail because Denver failed to compare fingerprints.

In three cases heard on July 17, 2006, the Denver County Court issued minute orders recognizing that Denver had arrested the wrong person. The defendant in the three cases was Oterian Scott. EXHIBIT 11, at Fourhorn General 012098-100 (No. 05GS859641); *id.* at Fourhorn General 012096-97 (No. 05GS898027); *id.* at Fourhorn General 005314-15 (No. 06M09486). The victim of the mistaken identity arrest had spent 2½ days in jail, detained only on the three charges that belonged to Oterian Scott. EXHIBIT 11, at Fourhorn General 008403. Denver could easily have avoided the wrongful incarceration, because it had previously arrested Oterian Scott and therefore had his mug shot and fingerprints. EXHIBIT 11, at Fourhorn General 008425-27.

xiv. Another wrongful 2-day incarceration; another failure to check fingerprints.

On September 24, 2004, E[redacted] A[redacted]-E[redacted] was arrested on his own warrant for failing to appear in a traffic case. EXHIBIT 11, at Fourhorn General 006756. Denver mistakenly added an additional failure-to-appear charge based on a warrant for a different person, Antonio Aloaco. *Id.* at Fourhorn General 006756. On September 25, Mr. A[redacted]-E[redacted] was fined for his traffic case, and the court ordered his release. *Id.* at Fourhorn General 006758. He was not released, however, because Denver was erroneously detaining him on the warrant for Antonio Aloaco. He spent two additional days in jail, until the Denver County Court recognized Denver's mistake in a minute order, stating that Denver had arrested the wrong person. *Id.* at Fourhorn General 005011-13. Denver could easily have avoided the wrongful two-day incarceration: Denver had previously arrested Antonio Aloaco and therefore had his fingerprints and mug shot. *Id.* at Fourhorn General 006764-65. If Denver law enforcement officers had consulted their own records, they would have quickly realized they were jailing the wrong man. In addition to mug shots and fingerprints, Antonio Aloaco has a distinctive tattoo: "Antonio" on his right arm and "Aloaco" on his left. *Id.* at Fourhorn General 006764.

d. Warrant Verification Log Sheets provide additional evidence of mistaken identity arrests for which Denver is responsible.

Warrant Verification Log Sheets represent another category of documents in Denver's possession that provide evidence—and notice to Denver—of hundreds of mistaken identity arrests or detentions for which Denver law enforcement is responsible.

These log sheets contain handwritten notes made by employees of the Warrants Division of the Denver County Court. The employees make an entry when a law enforcement agency notifies them that someone was arrested on a warrant issued by the Denver County Court. EXHIBIT 35, at 15. When the Warrants Division employees learn that a person has been arrested on a Denver warrant, they immediately cancel the warrant. *See* EXHIBIT 60, at 38.

The Warrants Division fills out a separate Warrant Verification Log Sheet for each of its three daily shifts. The log sheets contain the following information: (i) time of communication from a law enforcement agency reporting that an individual had been detained or arrested on a Denver warrant; (ii) defendant's name; (ii) defendant's date of birth; (iv) case number related to the warrant; (v) time of call back from law enforcement agency updating on status of arrest; (vi) bond/mittimus information; and (vii) agency that communicated with the Warrants Division. *See* EXHIBIT 16, attach.1; EXHIBIT 60, at 81-90. These log

sheets are not searchable, or even archived, in any Denver database. *See* EXHIBIT 60, at 92-93.

Warrant Verification Log Sheets contain two categories of notations that memorialize hundreds of occasions where Denver law enforcement mistakenly arrested or detained the wrong person. These categories are described below as "wrong person clears" and "not helds."

i. "Wrong Person Clears."

It is not uncommon that the Warrants Division will receive notice that a person has been arrested, which requires cancelling the warrant, and later receive notice that the wrong person was arrested, which requires re-issuing the warrant. In those cases, the Warrants Division makes handwritten notations that it refers to as "wrong person clears." *See* EXHIBIT 35, at 15 & 16. These "wrong person clears" reflect mistaken identity arrests and/or detentions. *See* EXHIBIT 60, at 85.

According to Denver, these notations are made when "the arresting law enforcement agency determines that the person arrested is not the person named in the warrant." EXHIBIT 35, at 16; *see also id.*, at 15. The Warrants Division employee puts a handwritten asterisk next to the original log entry, and/or makes a handwritten notation in the side margin or at the bottom of the page explaining the reason for the asterisk. *See* EXHIBIT 60, at 81-94; EXHIBIT 16, attach.1.

Attachment 1 to EXHIBIT 16 contains 111 Warrant Verification Log Sheets, from the years 2004 through 2009. Plaintiffs marked entries that reflect "wrong person clears" where Denver was the arresting or detaining agency.[25] EXHIBIT 17 is a summary, pursuant to Federal Rule of Evidence 1006, of these designated entries that reflect "wrong person clears." *See* EXHIBIT 16. The summary reproduces: (i) the defendant's name; (ii) the date the Warrants Division was notified of the arrest; (iii) the notation in the margin that corresponds to the entry (*e.g.* "wrong def." or "wrong person"); (iv) the name of the arresting or detaining agency; and (v) the Bates number of the corresponding Warrant Verification Log Sheet. *See* EXHIBIT 16 ¶ 5.

The documents show that on 111 occasions the Warrants Division explicitly noted that Denver had mistakenly arrested or detained the wrong person on a Denver warrant. EXHIBIT 17.

ii. "Not Helds."

In addition to the "wrong person clears," the notation "not held"—in most, if not all, cases—also indicates a mistaken identity arrest and/or detention. EXHIBIT

[25]The vast majority of entries designates the City and County of Denver—signified by references to Denver, DPD ID Bureau, or the DSD—as the arresting or detaining agency. *See* EXHIBIT 61, at 81-90. When the column for the law enforcement agency is blank, Denver was the responsible agency. *Id.* at 87.

60, at 90-91 (confirming that a log sheet entry of "not held" may indicate a mistaken identity arrest or detention).

Plaintiffs have determined that the "not held" entries on 55 additional Warrant Verification Log Sheets from 2004 through 2009 reflect mistaken identity arrests for which Denver is responsible.[26] These 55 additional log sheets, with the "not held" entries designated, are Attachment 2 to EXHIBIT 16. Attachment 3 to EXHIBIT 16 contains Denver County Court docket sheets corresponding to the case numbers of most of the designated "not held" entries.

EXHIBIT 18 is a Federal Rule of Evidence 1006 summary of the designated entries of the Warrant Verification Logs that reflect "not helds." The summary reproduces the same information as the Summary of Wrong Person Clears, with two additional columns that provide: the case number and, when available, the Bates number of the corresponding docket sheet.[27] *See* EXHIBIT 16 ¶¶ 5-6; EXHIBIT 18.

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[26]Denver's responsibility was determined in the same manner as it was for EXHIBIT 17. *See* This Brief, at 73 n.25.

[27]The docket sheets that correspond to the "not helds" appear in Attachment 3 to EXHIBIT 16. Plaintiffs obtained most of the docket sheets in this exhibit by printing them from the Denver County Court website. These downloaded docket sheets bear a Bates number beginning with "DDS." They do not contain all the information that can be found in the docket sheets Denver produced in discovery, which bear a Bates number beginning with "Fourhorn General." For example, the minute orders that appear in the Minute Order Summary (EXHIBIT 20) do not appear in the docket sheets accessible to the public from the county court's website.

Plaintiffs determined that each of the 55 "not held" entries in Exhibit 18 reflects a mistaken identity arrest. As explained below, Plaintiffs made this determination because the available information reflects any one of three situations: (A) the Warrant Verification Log Sheet indicates the warrant was refiled or reissued; (B) the docket sheet, when available, shows the warrant was cancelled on the corresponding date and then reissued on that date or the following day; or (C) the log sheet indicates the "not held" information came from Denver's ID Bureau.[28] These three situations are discussed below:

(A) The telltale pattern: warrant cancelled, then reissued.

Several of these entries reflect a telltale pattern that creates a strong inference that Denver arrested and/or detained the wrong person. This pattern is that Denver law enforcement officers arrest or detain a suspect they believe is named in a Denver County warrant; the warrant then is cancelled; and shortly

[28]Six of the 55 entries in the Summary of Not Helds (EXHIBIT 18) correspond to cases in the Minute Order Summary (EXHIBIT 20). In these six cases, the text of a minute order produced in discovery confirms that the wrong person was arrested:

Defendant's Name	Case No.	Line No., Ex.18	Line No., Ex.20
Anthony Pacheco	A122200	2	245
Justin Vigil	03JV715802	18	83
Mario Zamora	05943358	20	137
Michelle Sztuczko	07GS962031	42	189
Steve Riofrio	05M06894	45	147
Alfredo Lopez-Torres	04M07804	51	119

thereafter the warrant is reissued. As Ralph Taylor explained in his deposition, when an entry appears on the Warrant Verification Log Sheet, it means the Warrants Division has received a communication that the defendant is in custody and the warrant should therefore be cancelled. *See* EXHIBIT 60, at 37, 42. In numerous cases, the entries further explain that the warrant was either reissued or refiled. *See, e.g.*, EXHIBIT 18 ll.1-7, 9-12, 14,16.

(B) Docket sheets confirm that "not helds" reflect the telltale pattern.

Similarly, even when a "not held" entry does not expressly state that the warrant was re-issued, the corresponding docket sheets, when they are available, confirm the telltale pattern that indicates a mistaken identity arrest. For example, the entry on January 17, 2005, for Case No. 98GS050935, contains the notation "Def Not held." EXHIBIT 18 l.8. The corresponding docket sheet shows three entries for that date: one saying the defendant is in custody, another stating that the warrant is cancelled, and a third reissuing the failure-to-appear warrant. EXHIBIT 16, attach.3, at DDS001.

An examination of the "not held" entries on the Warrant Verification Log Sheets and/or the Denver County Court docket sheets for the corresponding case shows the same telltale pattern that strongly suggests a mistaken identity arrest or detention: an arrest or detention, cancellation of the warrant, and reissuance of the warrant soon afterward.

(C) Reports of "not held" from the ID Bureau also indicate a mistaken identity arrest and detention.

In two of the entries, there is no explicit indication the warrant was refiled or reissued, and there is no available docket sheet corresponding to these entries. However, these two "not held" entries also reflect a mistaken identity arrest, because they indicate the ID Bureau told the Warrants Division that the person detained on the warrant was either "released" or "not held." *See* EXHIBIT 18 l.13 ("ID called Δ released"); *id.* l.35 ("as per ID Bureau, Δ not held"). Because the ID Bureau serves as the authoritative arbiter of identity questions within Denver law enforcement, these entries establish a strong inference that they represent additional cases of mistaken identity arrests where Denver later determined it had the wrong person.

iii. These 166 examples significantly understate the total number of "wrong person clears" and "not helds."

The Warrant Verification Log Sheets described above represent 166 cases (111 "wrong person clears" and 55 "not helds") where Denver law enforcement realized it had arrested or detained the wrong person and notified the Warrants Division. These 166 cases are merely the tip of the iceberg.

The log sheets record a "wrong person clear" or a "not held" only when Warrants Division receives notice of the arrest and notice of the mistake within a single 8-hour shift. EXHIBIT 60, at 88-90, 110-111. Thus, if the arrest occurs during

one shift and Denver law enforcement does not realize the arrest was a mistake until that shift is over, the Warrant Verification Log Sheets will not reflect a "wrong person clear" or a "not held." And the Warrant Verification Log Sheets are the only documents that reflect when the Warrants Division is "informed by either the DPD or another agency that a wrong person was held." EXHIBIT 60, at 76-77. Accordingly, the Warrant Verification logs do not comprehensively reflect each instance, and likely do not even reflect most instances, in which Denver law enforcement discovered that it arrested or detained the wrong person on a warrant.

e. Denver has mistakenly arrested and detained numerous persons on warrants issued by other jurisdictions.

The documents discussed above—Denver County Court minute orders and warrant verification logs—provide information about erroneous arrests made under the authority of a warrant issued by the Denver County Court. Denver's lack of tracking has left far fewer clues and a sparser paper trail regarding mistaken identity arrests and detentions carried out on the basis of warrants issued by the Denver District Court as well as jurisdictions outside the City and County of Denver.

Nonetheless, there is evidence that Denver repeatedly has carried out numerous mistaken identity arrests and detentions on the authority of warrants issued by the Denver District Court or out-of-Denver jurisdictions. In addition to

Plaintiffs Jama (Denver District Court), Ibarra (District Court and Adams County), and Sanchez (Denver District Court), they include the following:

i. Denver District Court.

Stephen Tendell. In February, 2007, Denver mistakenly arrested and jailed an innocent man, Stephen Tendell on a warrant from the Denver District Court . EXHIBIT 11, at Fourhorn General 001330-33. Earlier in the year, Tendell had reported that he was the victim of identity theft, and Denver police arrested the suspect, Alonzo Muniz-Mota, who was then booked under the name "Stephen Tendell." When the suspect posted bond and subsequently missed a court appearance, the District Court issued a failure-to-appear warrant for Stephen Tendell, with all of the innocent man's identification information. Denver police then arrested the innocent Stephen Tendell, who had never been arrested and had no criminal record. EXHIBIT 11, at Fourhorn General 001493. Although Denver could have compared the arrestee's prints with the prints of the suspect, it did not do so, and Tendell spent an unnecessary night in jail. EXHIBIT 11, at Fourhorn General 001498.

Bradley Braxton. In 2007, Denver mistakenly arrested and jailed Bradley Braxton, an African American, on a Denver District Court warrant for a white man. *See* This Resp., at 93.

Christina FourHorn. Denver law enforcement caused former plaintiff Christina Ann FourHorn to be mistakenly arrested and jailed for several days in 2007. Denver had probable cause to believe that Christin Fourhorn, DOB [redacted]/80, was responsible for an assault and robbery. A police officer found the innocent Christina FourHorn, DOB [redacted]/73, in the DMV database and plugged her identification information into the application for arrest warrant. EXHIBIT 3, at CFourhorn 000008, 000017, 000020, 000028, 000049, 000062.1, 000097-98, 000107-08, 000125, 000150-53, 000161, 000165, 000171-72, 000249, 000269-70, 000274; EXHIBIT 7, at CF0005-7, CF0042, CF0045.

R[redacted] M[redacted]. Plaintiffs issued a subpoena to the Denver District Court for information about cases in which issues of mistaken identity arrests may have come up. *See* EXHIBIT 8, at DDC0025-27. The Denver District Court did not keep records of such cases. Some judicial officers responded by recounting memories of such cases, but generally without specifics. One judicial officer, however, remembered a specific case. In Case No. 05CR4020, "Mr. R[redacted] M[redacted] kept getting arrested on Mr. Ricardo Castro-Moreno's warrants. The D.A. investigated the circumstances including finger-prints and booking photos and agreed that the 2 persons were in fact different people." EXHIBIT 8, at DDC0029. The district court complaint filed against the real defendant, Ricardo Castro-Moreno, provides his DPD number, signifying that Denver had his prints and mugshot and therefore

could have quickly detected and remedied its mistaken arrest of R[redacted] M[redacted], who had a different name and birthdate. EXHIBIT 30, at M[redacted], R.000010. The mistaken identity victim filed a motion for a finding of factual innocence, which the District Court granted. *Id.* at M[redacted], R.00002-03. Documents obtained from Denver confirm that R[redacted] M[redacted] was mistakenly arrested not only on a warrant for Ricardo Castro-Moreno, a different person, but also on a warrant for Ricardo Moreno-Morales, *another* different person. EXHIBIT 11, at Fourhorn General 003523, 3519, 3522, 3523, 3525, 3526.

ii. Outside Denver.

Samuel Powell Moore. Denver arrested former plaintiff Moore four times on the same failure-to-appear warrant issued by the Aurora Municipal Court for Samuel Earl Moore: December 21, 2002; April 28, 2003; June 12, 2004; and November 13, 2007. The last two times he was arrested by the same Denver officer. Before the fourth arrest, the Aurora court tried to prevent another mistaken arrest by ordering the insertion of a cautionary note on the NCIC/CCIC warrant teletype . The note warned that Samuel Powell Moore was not the same person as Samuel Earl Moore. It said Samuel Earl Moore has a heart tattoo on one of his arms while Samuel Powell Moore did not. It said, "[I]f contact is made please verify prints/FBI#/SID#." Despite this, Denver arrested Samuel Powell Moore the fourth time, and Denver incarcerated him for 8 days. EXHIBIT 31, at Samuel Moore

000026, 000059, 000512; EXHIBIT 5, at CBI000077; EXHIBIT 6, at CBI.PLF000395-413.

Carlos A. Hernandez. On two different occasions, August 15, 2008, and October 6, 2008, Denver police mistakenly arrested Carlos A. Hernandez on the same Arapahoe County warrant for Ray Alfonso Martinez-Hernandez. EXHIBIT 11, at Fourhorn General 003651-52, 003655, 3700, 3705, EXHIBIT 29, at PLF005-12 ¶¶ 2 &10; EXHIBIT 63 ¶¶1-3; EXHIBIT 4, at Hernandez. C.000003-09. Within hours of Carlos Hernandez's arrival at the jail, Denver officers had printed NCIC documents that showed they had jailed the wrong person, such as differing fingerprint codes, EXHIBIT 4, at Hernandez, C. 0047-48, 0052-53, but they ignored that information, as well as the vigorous protests of both Carlos Hernandez and his attorney. *Id.*, EXHIBIT 63 ¶¶ 1-3. When Carlos was transferred to Arapahoe County a week later, he was released. EXHIBIT 29, at PLF005-12 ¶¶ 7-8. After Denver mistakenly arrested him the second time, Carlos Hernandez spent another unnecessary night in the Denver jail. EXHIBIT 11, at Fourhorn General 003700, 003703; EXHIBIT 29, at PLF005-12 ¶¶ 10-14.

Joseph Ronald Walker. In 2005, Denver mistakenly arrested Joseph Ronald Walker on an Adams County warrant. He spent a total of 27 days in jail before it was determined that police were looking for a different person also named Joseph Walker but with a different DOB. EXHIBIT 11, at Fourhorn General

001318-19, 003419; EXHIBIT 29, at PLF0017-20 ¶¶1-2, 4; EXHIBIT 13, at J.Walker 0004-6.

De De Davis. In June 2007, Denver confused former plaintiff De De Davis, a black woman, with Brandi Hair, a white woman. Ms. Davis was erroneously arrested/detained on Ms. Hair's warrant. *See* EXHIBIT 9, at DeDe Davis 000098, 000208, 000429.

K[redacted] R[redacted] D[redacted]. In 2005, Denver mistakenly arrested K[redacted] D[redacted] on a warrant from El Paso County for a different person, Kevin Gerard Delaney. In addition to reflecting a difference in height and a 35-pound difference in weight, the mistaken identity victim's booking record shows a different middle name, different date of birth, and a different social security number from the person described in the warrant. EXHIBIT 11, at Fourhorn General 003412, 003418. The mistaken identity victim had to post bond, hire an attorney, and arrange for the fingerprint comparison that Denver failed to undertake. The El Paso District Court eventually confirmed "wrong person arrested" and reissued the warrant. EXHIBIT 26, at D[redacted], K. 0001-04.

As Plaintiffs explain in the following section, in early 2009 Denver began keeping better records when jail prisoners assert that they are being held on someone else's warrant. Of 24 cases in which Denver acknowledged arresting or detaining the wrong person in the first months of 2009, more than half were jailed

in Denver on warrants from other jurisdictions. Thus, it is likely that the Denver County Court's documented 325 minute orders memorializing a mistaken identity arrest may well be matched by an equal or greater number of mistaken identity arrests during the same time period that relied on warrants from non-Denver jurisdictions.

f. Denver's post-litigation tracking confirms its custom of making mistaken arrests and detentions.[29]

In early 2009, in response to this litigation, Denver initiated a new procedure relating to mistaken identity arrests and detentions. The new procedure was designed to detect and track mistaken-identity arrests after the arrest has been completed and the arrestee is incarcerated at the City Jail. EXHIBIT 48, at 186-87. It is called a "Prisoner Identity In Question," or PIIQ, procedure. The procedure is initiated when a prisoner tells a jailer that he is being held on a warrant that "does not belong to [him]." After it is initiated, the procedure requires that the prisoner's

[29]Plaintiff Jama was arrested in September 2007. Plaintiff Ibarra was arrested in July 2007. Plaintiff Sanchez was arrested multiple times during the 11 months from March 2008 through January 2009. Nonetheless, post-incident conduct may be relevant to a showing of an unconstitutional policy, custom or practice under *Monell*. *See, e.g., Lindquist v. Arapahoe County,* 2011 WL 3163095 (D. Colo July 26, 2011); *Estate of Rice ex rel. Garber v. City & County of Denver*, 2008 WL 2228702, at *6 (D. Colo. May 27, 2008). Here, the post-incident conduct is evidence of a continuing pattern of making mistaken identity arrests and detentions and of ignoring such arrests and detentions. As discussed in this portion of the Response, Denver created a procedure for the purpose of tracking mistaken identity arrests and detentions, but it was not intended to serve—and does not serve—as a means of preventing constitutional injury. For example, as discussed below, the procedure tracks only a subset of the mistaken identity arrests and detentions.

claim be forwarded to the ID Bureau for resolution. *See* EXHIBIT 11, at Fourhorn General 004506; *see generally* EXHIBIT 48, at 187-93; EXHIBIT 11, at Fourhorn General 004505-10. The procedure thus has the potential to reduce the amount of time a prisoner who is a victim of a mistaken arrest or detention is wrongfully incarcerated.

The tracking of mistaken identity arrests and detentions that the PIIQ procedure is intended to effect, however, is limited. It does not address the mistaken arrest and pre-jail detention before the prisoner enters the City Jail. It does not apply to the County Jail. EXHIBIT 48, at 28. If a prisoner does not inform a jailer of her mistaken identity arrest and detention, the jailer may never know of it. If the prisoner is not informed about the contents of the warrant, e.g., information in the warrant that the wanted person has a similar but different name or a different Social Security number, the prisoner may not know to make a mistaken-identity protest. If a prisoner fails to use the right words, the jailer may not interpret the communication as a mistaken-identity protest and may decide the PIIQ procedure is inapplicable. For example, a prisoner may protest her mistaken arrest and detention by stating ambiguously but accurately, "I didn't commit the crime," "I didn't do anything wrong" or "I have no idea what all this is about." Such mistaken-identity protests would not trigger the PIIQ procedure. *See* EXHIBIT 48, at 28-29.

The limited ability of the PIIQ procedure to detect mistaken identity arrests is evident from examining the mistaken arrests detected by the Denver County Court that escaped detection through the sheriff's PIIQ procedure. The Minute Order Summary, EXHIBIT 20, reveals 17 minute orders memorializing a mistaken identity arrest or detention in the first 8 months of 2009.[30] The corresponding docket sheets (or the minute order itself) show that the mistaken identity victim was in Denver's custody when the order issued. Only two of those cases, corresponding to minute orders dated 1/30/09 and 4/8/09, were caught by Denver's PIIQ procedure.

Even with its circumscribed ability to detect mistaken identity arrests and detentions and Denver's limited production of PIIQ data,[31] however, the data confirm Denver's custom of arresting the wrong people and incarcerating them on warrants meant for others:

1. On January 24, 2009, Denver law enforcement authorities mistakenly detained C[redacted] L[redacted] on a warrant from Clear Creek County for a different person. Denver later acknowledged its mistake and released Mr. L[redacted] on February 3, 2009. EXHIBIT 11, at EXHIBIT 11, at Fourhorn General 011676.

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[30] *See* EXHIBIT 20 ll.105, 119, 182, 198, 199, 201, 203, 204, 208, 210, 211, 268, 274, 275, 278, 282 and 288.

[31] Denver produced no PIIQ data after August 2009.

2. On January 29, 2009, Denver admitted that for the third time, it had mistakenly detained M[redacted] J[redacted] on a warrant for a different person in Denver County Court Case No. Z473792. He had been mistakenly arrested twice before on the same warrant and released as the "wrong defendant" by order of the Denver County Court.[32] EXHIBIT 11, at Fourhorn General 0002868, 002870, 012179-80.

3. On February 6, 2009, Denver law enforcement authorities mistakenly jailed J[redacted] V[redacted]-R[redacted] on a warrant for a different person. He was released three days later after a fingerprint comparison confirmed he was the victim of a mistaken identity arrest. EXHIBIT 11, at Fourhorn General 11675.

4. On February 9, 2009, Denver admitted it was mistakenly holding A[redacted] S[redacted] in jail on a warrant for a different person. EXHIBIT 11, at Fourhorn General 002964.

5. On February 13, 2009, Denver law enforcement mistakenly arrested and jailed J[redacted] C[redacted] M[redacted] on two warrants from Grand County. Three days later, Denver acknowledged Mr. M[redacted] was not the person identified in the warrants. EXHIBIT 11, at Fourhorn General 011676.

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[32] A Denver County Court docket for Case No. Z473792 indicates "wrong defendant arrested" in notations dated 12/12/2002 and 4/25/2003. EXHIBIT 11, at Fourhorn General 0012179-80. References to these two earlier mistaken identity arrests do not appear in the Minute Order Summary (EXHIBIT 20), apparently because these "wrong defendant" notations in 2002 and 2003 did not appear in the field that Denver searched electronically. *See* This Resp., at 79.

6. On February 21, 2009, Denver admitted it had mistakenly arrested and jailed Luiz Manuel Carlos on a failure-to-appear warrant from Aurora for Alberto Xolapa Balanzario. Denver released Mr. Carlos after holding him in jail for a day. EXHIBIT 11, at Fourhorn General 11675; *see* EXHIBIT 29, at PLF000001-04.

7. On March 2, 2009, Denver acknowledged that it was mistakenly jailing A[redacted] D[redacted], DOB [redacted]/64, on a case, No. 08GS162438, that belonged to her daughter. EXHIBIT 11, at Fourhorn General 009102.

8. Denver admitted that on March 17, 2009, it mistakenly arrested K[redacted] W[redacted] on a Boulder County warrant. EXHIBIT 11, at Fourhorn General 006618.

9. On April 2, 2009, Denver mistakenly detained K[redacted] M[redacted], a 6'0", 200-pound black male, on a 2004 failure-to-appear warrant for Kelley I. Mitchell, a 5'5", 160-pound white female. EXHIBIT 11, at Fourhorn General 011676, 001829, 001842 (indicating that suspect was white female); M[redacted], K.00001, 000014.

10. On April 8, 2009, Denver admitted it mistakenly detained S[redacted] M[redacted] on three warrants issued for a different person. EXHIBIT 11, at Fourhorn General 002891, 002892.

11. On May 6, 2009, Denver it was holding J[redacted] D[redacted] on a warrant for a different person. EXHIBIT 11, at Fourhorn General 003132-34.

12. On May 15, 2009, Denver admitted it was mistakenly detaining T[redacted] J[redacted] on an Adams County warrant issued for a different person. EXHIBIT 11, at Fourhorn General 003132.

13. On May 18, 2009, Denver admitted it had mistakenly arrested and detained A[redacted] M[redacted] on two Morgan County warrants issued for a different person. She was released. EXHIBIT 11, at Fourhorn General 002793.

14. On May 19, 2009, Denver admitted it had mistakenly arrested and jailed V[redacted] L[redacted] on a City of Westminster warrant for a different person. EXHIBIT 11, at Fourhorn General 002800.

15. On June 1, 2009, Denver admitted it had wrongly detained W[redacted] L[redacted] on a warrant for his brother. EXHIBIT 11, at Fourhorn General 004409.

16. On June 30, 2009, Denver admitted it was mistakenly holding D[redacted] M[redacted] on an Adams County warrant for Furmen Leyba. EXHIBIT 11, at Fourhorn General 002847.

17. On July 2, 2009, Denver admitted it was mistakenly detaining V[redacted] R[redacted] on a City of Edgewater warrant for a different person. EXHIBIT 11, at Fourhorn General 002828.

18. On July 7, 2009, Denver admitted it had mistakenly arrested or detained D[redacted] L[redacted] M[redacted] on an Arapahoe County warrant for a different person. EXHIBIT 11, at Fourhorn General 002818-19.

19. In July 2009, Denver admitted it had mistakenly detained J[redacted] A[redacted]-D[redacted] on a warrant for a different person. EXHIBIT 11, at Fourhorn General 003118. The criminal defendant described in the warrant has blue eyes and blond hair. *Id.* at Fourhorn General 003117, 003118. The mistaken identity victim pointed out his own dark hair, brown eyes, dark skin, and Hispanic appearance. *Id.* at Fourhorn General 003113-14.

20. On July 17, 2009, Denver admitted it had mistakenly detained D[redacted] L[redacted] on a warrant for a different person. *Id.* at Fourhorn General 003103.

21. In July, 2009, Denver admitted it had mistakenly arrested and detained D[redacted] C[redacted] on a warrant for Daiz McClain. *Id.* at Fourhorn General 003070-3072.

22. On July 26, 2009, Denver admitted it was mistakenly detaining E[redacted] F[redacted]-V[redacted] on a Kansas charge of violating probation. *Id.* at Fourhorn General 003069, 003062-64.

23. On August 12, 2009, Denver admitted it had mistakenly detained T[redacted] E. J[redacted] on an Adams County warrant for Curtis Flowers. *Id.* at Fourhorn General 003022-24.

24. On August 20, 2009, Denver admitted it was mistakenly holding I[redacted] C[redacted] on a warrant for a different person. *Id.* at Fourhorn General 003134.

25. On August 20, 2009, Denver mistakenly detained N[redacted] A[redacted] J[redacted], a black man, on a failure-to-appear warrant from El Paso County for Nathaniel Charles Johnson, a white man. On August 21, 2009, Denver admitted the mistake. *Id.* at Fourhorn General 003109-11 (identifying arrestee as black and criminal defendant as white).

g. Denver's Internal Affairs investigations provide (limited) information about additional mistaken identity arrests.

The files of Denver law enforcement's internal affairs units provide additional insight into Denver's custom of ignoring repeated mistaken identity arrests and/or detentions. Denver produced documents relating to only four investigations conducted by the DPD Internal Affairs Bureau (IAB) in the years before Plaintiff Dennis Smith was mistakenly arrested in January 2008.

L[redacted] F[redacted], 1996. The issue of mistaken ID arrests came to the attention of the DPD's highest-ranking officials in 1996, when 58-year-old L[redacted] F[redacted] complained that Denver police arrested and jailed him on a warrant for his 29-year-old nephew, Leo Folks III. Exhibit 11, at Fourhorn General 003160-61, 003165. The warrant clearly showed that suspect was born on [redacted], 1967. Nevertheless, Denver police arrested and jailed Mr. F[redacted], who was born on [redacted], 1938. EXHIBIT 11, at Fourhorn General 004162-64.

Shareef Aleem, 2006. Shareef Aleem, an activist with Denver Copwatch, filed a citizen complaint alleging a mistaken identity detention in 2006. He

complained that the brief mistaken detention took placed as he completed a press interview. EXHIBIT 11, at Fourhorn General 000953. After an investigation, Denver acknowledged that Mr. Aleem was detained on the basis of warrants that had his name and date of birth, but that Mr. Aleem "may not have been the person described in the warrants," EXHIBIT 11, at Fourhorn General 000 228, and that the warrants were "therefore invalid." EXHIBIT 11, at Fourhorn General 000227 (letter from OIM).

Valerie Rodriguez. In 2006, Denver conducted an internal affairs investigation into the 2005 mistaken identity arrest of Valerie Rodriguez. The investigation revealed that a Denver police officer had probable cause to obtain a warrant for Valerie Irene Rodriguez, who had ten aliases, a lengthy criminal history with multiple arrests; had been fingerprinted, and had FBI, SID and DPD numbers. The officer caused a warrant to be issued erroneously for the arrest of an innocent Valerie Rodriguez, a different person, who had never been arrested before and had no connection to the crime. When she learned there was a warrant for her, the innocent Valerie Rodriguez went to the Denver police department to get the mistake straightened out. She was arrested and jailed. *See generally* EXHIBIT 33, at VR0005-06, VR0009, VR0029, VR0041-48. She later filed a lawsuit over her mistaken identity arrest. EXHIBIT 33, at VR000052-VR000067.

Bradley Braxton. In July 2007, Bradley Braxton, a black man, was arrested on a Denver District Court warrant for a white man. When Braxton tried to post bond, Denver told him he was on a no-bond hold. He spent 9 days in jail without appearing in court on bogus charge. In the Internal Affairs investigation, a DSD "scout car" deputy, responsible for transporting arrestees from an arrest on the street to the City Jail, said that in his experience, misidentification of arrestees by name and/or race "happen[s] every day." The DSD deputy further said, "[T]he physical description is sometimes off because of errors in the system. . . . [A]t times, males are delineated as females on the warrants because of the errors in the system." EXHIBIT 11, at Fourhorn General 000070, 000097-98, 000833-34, 000836, 000872; EXHIBIT 12, at Fourhorn Monitor 000236-38; EXHIBIT 2, at BB0026-30, BB0040-41; EXHIBIT 62, at 132.

Denver produced no documents indicating that Denver conducted internal affairs investigations of any of the mistaken identity arrests or detentions that are documented in the 291 minutes orders in the Minute Order Summary (EXHIBIT 20). Indeed, the evidence shows that Denver maintained a custom of rebuffing complaints made by victims of mistaken identity arrests and failing to investigate or act on them when they were made. When Denver eventually did launch Internal Affairs investigations, it was usually in response to an inquiry or complaint from

an attorney, a reporter, or, in the case of Shareef Aleem, a person perceived to have access to the news media.

In 2004, Scott Jackson, a black man held on a warrant for a white man, see Section C.1.c.i, above, filed a complaint with DPD about his mistaken identity arrest. No one from Denver ever followed up with him. No one from Denver ever contacted him to investigate or to offer an apology. EXHIBIT 29, at PLF0015 ¶¶ 7-8.

When Valerie Rodriguez learned she had mistakenly been named in an arrest warrant, she wrote to Denver in September, 2005, attempting to initiate an investigation. EXHIBIT 33, at VR0029. She received no response. In a letter to Mayor Hickenlooper, dated December 9, 2005, she explained her unsuccessful efforts to file a complaint about her mistaken identity arrest. "I have contacted the police to see if I can file a complaint but I keep getting told to call this person or that person which I do but nobody seems able to help. EXHIBIT 33, at VR000070.

After Christina FourHorn's mistaken identity arrest, she wrote to Denver to complain. In 2007, she wrote to the police department and wrote a separate letter to the Office of the Independent Monitor. EXHIBIT 64, at ¶¶ 3-4. No investigation was initiated and she received no response.

After Denver mistakenly arrested Sam Moore for the fourth time in 2007, he went to the Denver police station to file a complaint. Sergeant Richmond declined to accept the complaint. EXHIBIT 70, at 80-82; EXHIBIT 59, at 35-36.In September,

2007, after Muse Jama was mistakenly arrested, he attempted to file a complaint with the Internal Affairs Bureau. His complaint was not accepted. EXHIBIT 46, at 140-45. When Dennis Smith was mistakenly arrested in January, 2008, he wrote a letter of complaint to various Denver officials. EXHIBIT 10, at Dennis Smith 00004. Director Lovingier did not open an internal affairs investigation.

An attorney complaint prompted the IAB investigation of the mistaken identity arrest of Bradley Braxton, EXHIBIT 12, at Fourhorn Monitor 000240-41, as well as a later investigation of what happened to Jose Ibarra. EXHIBIT 12, at Fourhorn Monitor 000002-06. In 2008, months after Jama and Moore were unable to file their own complaints, IAB opened investigations of their cases when Denver Post columnist Susan Greene asked the Mayor's office for comment on the mistaken identity arrests. EXHIBIT 14, at Jama Muse 1043 (4/3/08 email from Mayor's office); *id.* at Jama Muse 1050 (internal investigation begins 4/7/08); EXHIBIT 31, at Samuel Moore 624. Similarly, the inquiry into Valerie Rodriguez's mistaken arrest began, belatedly, when a channel seven reporter asked DPD for a comment. EXHIBIT 33, at VR0017.

2. Custom 2: Denver failed to promulgate policies requiring its law enforcement personnel executing cold warrants, in situations involving an obvious risk of mistaken identity arrest and detention, to use all Denver's readily available resources and information prior to arrest to determine whether the person to be arrested is the person identified in the warrant; Denver's custom in that circumstance is not to use such resources and information.

a. Denver's resources for identifying persons.

All Denver law enforcement officers have direct or indirect access to all Denver and jurisdictions' criminal justice information that could aid in the identification of a person. *See* EXHIBIT 53, at 17:16-19; *see generally* EXHIBIT 35, at 6-8; EXHIBIT 11, at Fourhorn General 000821. Denver's identification resources are significant. *See* EXHIBIT 35, at 6-8.

Denver's identification-related databases and records readily available to Denver law enforcement officers contain the following information about arrestees: names; alias names; current and former addresses; birthdates; alias birthdates; birthplace; "physical descriptors," including gender, race, height, weight, scars/marks/tattoos, and hair and eye color; photographs/mugshots; current and prior criminal case numbers; criminal history, including prior charges and convictions; active arrest warrants; Social Security numbers; driver license number; fingerprints; unique fingerprint classification codes based on each unique set of fingerprints; unique identification numbers correlated to each unique set of

fingerprints, i.e., FBI number, Colorado state identification number ("SID number"), and Denver Police Department identification number ("DPD number").

NCIC/CCIC. Denver officers have direct or indirect (e.g., via radio) access to the National Crime Information Center computer databases ("NCIC") and the Colorado Crime Information Center computer databases ("CCIC"). *See* EXHIBIT 53, at 12:15-20, 14:11-13;[33] EXHIBIT 43, at 37-40; EXHIBIT 50, at 17.[34] NCIC and CCIC are interlinked. EXHIBIT 55, at 11-12.

Together, the NCIC and CCIC databases contain a significant amount of criminal-justice information on arrestees and others available to Denver law enforcement officers. Because these databases link to other databases, such as the Colorado Division of Motor Vehicles ("DMV") database and a mugshot database, an NCIC/CCIC operator can access a wide range of information. EXHIBIT 55, at 19; EXHIBIT 49, at 72; EXHIBIT 40, at 25-26; *see* EXHIBIT 47, at 14 (testimony of Denver NCIC/CCIC operator: "I can get any information.").

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[33]Lt. Jonathyn Priest is a DPD command-level officer who has been with DPD for 30 years. For 10 years he has commanded the DPD's Major Crime Section, and run the homicide unit, cold case unit and night shift unit. Before becoming a lieutenant, Lt. Priest was a sergeant in homicide and Internal Affairs Bureau, and a detective. EXHIBIT 53, at 6-8. He has experience in a broad range of Denver law enforcement policies, customs and procedures. *See* EXHIBIT 53, at 9-11.

[34]Sgt. Sonya Gillespie is a 19-year DSD veteran with a broad range of experience in Denver law enforcement policies, customs and procedures. *See* EXHIBIT 43, at 17-18, 127-36.

The information available to an NCIC/CCIC operator includes a person's name, alias names, current and prior addresses, birthdates, alias birthdates, DMV information, Social Security number, FBI/SID/DPD numbers, active warrants, criminal history, and fingerprint classification codes. *See generally* EXHIBIT 55, at 14-22; EXHIBIT 53, at 12-13; EXHIBIT 6, at CBI.PLF000691-92.

Provided with any of this information, e.g., FBI or SID number, or Social Security or driver license number, NCIC/CCIC can locate individuals matching the information. *See* EXHIBIT 49, at 63-65; EXHIBIT 40, at 25-26; EXHIBIT 42, at 130-31.

The databases are searched using "masks," which is a form into which the NCIC/CCIC operator inputs information, such as name and date of birth. *See* EXHIBIT 49, at 56. There are several hundred masks available, but NCIC/CCIC operators typically use the following:

- "QH," or "query history" mask, which accesses a person's criminal history, which would include name, date of birth, Social Security number, SID, FBI number, physical characteristics, and prior convictions.
- "QW," or "query warrant" mask, which accesses a person's active warrants.
- "DQ," or "driver query" mask, which accesses driver license information.

EXHIBIT 49, at 63-65. Another mask is "QDA," which is "an overall list of people," including all persons holding Colorado driver licenses and Colorado ID cards.

EXHIBIT 51, at 51-52, 55-56. It is "like the master name index . . . for the [Colorado] DMV database." EXHIBIT 51, at 55. QDA also provides addresses for individuals. EXHIBIT 51, at 53. The NCIC/CCIC systems respond to mask queries in "seconds." EXHIBIT 49, at 64.

NCIC/CCIC produces "responses" to queries; these responses are "hits," and identify information that may be linked to the name being queried. EXHIBIT 55, at 129-31. All information in NCIC/CCIC is assigned what is called a "CIC number." EXHIBIT 55, at 131. For example, a QW search in January 2008 for "Smith, Dennis" with a DOB of [redacted]/1959 produced 100 hits, including the following two, each of which has a corresponding CIC number:

```
NAM/SMITH, DENNIS                          DOB/1959[redacted] SEX/  RAC/
RETURNED ALL  100 HITS
QW   CIC/[redacted]275.CAR/VISIT.QRM/ .  SMITH, DENNIS                  1959[redacted]
    W M 600 190 BRO GRN RTY/VIC ORI/COCBI[redacted]000 SID/4191              100
QW   CIC/[redacted]784.CAR/VISIT.QRM/ .  SMITH, DENNIS ALLEN            1959[redacted]
    W M 601 173 BLN HAZ RTY/LWO ORI/CO[redacted]000 SID/[redacted]841         099
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Each CIC number is followed by a summary of an NCIC/CCIC record; the CIC number is hyperlinked to the NCIC/CCIC record. EXHIBIT 55, at 124, 131-32. In the above NCIC/CCIC excerpt, for example, clicking the cursor on "CIC/[redacted]275" would take the operator to another page containing a more detailed NCIC/CCIC record about Plaintiff Smith. *See* EXHIBIT 55, at 131. If a CIC

number corresponds to a warrant, clicking the cursor on the CIC number would take the operator to a teletype warrant. *See* EXHIBIT 55, at 131.

Photo databases. Denver officers have at least five sources for photos of arrestees: WebMug, ID Bureau, the Colorado Division of Motor Vehicles ("DMV"), DPD case files, and other law enforcement agencies.

WebMug, also known as PictureLink, is a mugshot database. EXHIBIT 43, at 131-32; EXHIBIT 52, at 15. WebMug contains color mugshots of all arrestees booked into the City Jail. EXHIBIT 42, at 35. The information available through WebMug is an arrestee's mugshots, full name, birthdate, birthplace, physical descriptors, addresses, prior arrests, current and prior charges, FBI/SID/DPD numbers, Social Security number, driver license number. EXHIBIT 53, at 61-62; EXHIBIT 14, at Jama Muse 001095. WebMug also integrates arrestees' photos with their fingerprints. *See* EXHIBIT 38, at 17; EXHIBIT 31, at Samuel Moore 000525-27.

The ID Bureau retains photos of all arrestees. These photos are available to all law enforcement officers. The ID Bureau also has access to all DMV photos. EXHIBIT 40, at 8.

DMV photos, and DMV driver license information, e.g., physical descriptors, are accessible to all Denver law enforcement officers. *See* EXHIBIT 40, at 8, 46-47; EXHIBIT 39, at 16, 56.

Photos may be gathered during the course of an investigation and placed into investigative case files. The files may contain or reference photographs of suspects and arrestees. *See, e.g.,* Doc.320, at 6.

Photos in the possession of law enforcement agencies outside Denver are accessible to Denver law enforcement officers. *See* EXHIBIT 53, at 73-74.

OSI database. This is a long-used searchable database of individuals arrested or contacted by Denver law enforcement officers. EXHIBIT 49, at 59, 61; EXHIBIT 39, at 21; EXHIBIT 57, at 27, 63-64; EXHIBIT 43, at 36-37; EXHIBIT 35, at 7-8. All Denver law enforcement officers access to it; it is used to "track[] wanted people through the jail system" and "for prior arrests," EXHIBIT 51, at 52. *See* EXHIBIT 57, at 73; EXHIBIT 35, at 8. OSI holds a broad range of information about an arrestee's identity, including name, address, next of kin, alias names, birthdate, alias birthdates, physical descriptors, Social Security number, FBI/SID/DPD numbers, fingerprint information, criminal cases on which the arrestee is being held, and disposition of criminal cases. EXHIBIT 49, at 59-61; EXHIBIT 40, at 22; EXHIBIT 41, at 48; EXHIBIT 43, at 42; EXHIBIT 42, at 32-34. OSI collects arrest information, any report made by citizens to police, police reports, an arrestee's failure to appear in court, and an inmate's status. EXHIBIT 42, at 32-34, 36-37. OSI also has a Master Name Index, which contains the names of all Denver arrestees. EXHIBIT 40, at 56-57; *see* EXHIBIT 14, at Jama Muse 000077.1, 000077-U ,

000078-U, 000078.1. Since 2003, DPD has been transitioning from OSI to Versadex, a more robust information system that not only contains OSI information but also is linked to NCIC/CCIC and other Denver databases and information systems. EXHIBIT 52, at 15, 17-18, 21; EXHIBIT 38, at 16; EXHIBIT 40, at 17-18, 21-25, 44; EXHIBIT 53, at 71.

Fingerprints. For Denver, fingerprints are the ultimate arbiter of whether a person is the person who was previously arrested and fingerprinted and is named in an arrest warrant. *See, e.g.,* EXHIBIT 43, at 40; EXHIBIT 11, at Fourhorn General 011590-94, 011598; EXHIBIT 48, at 98-100; EXHIBIT 45, at 29.

After an arrestee leaves the ID Bureau and enters the City Jail, he goes to pre-booking, where he surrenders an electronic image of his right index finger, which is transmitted to the ID Bureau. EXHIBIT 48, at 98-99; EXHIBIT 40, at 60; EXHIBIT 32, at Sanchez 000056. Later in the booking process, the arrestee surrenders a full set of prints onto what is known as a fingerprint master card, which also is transmitted to the ID Bureau. *See* EXHIBIT 48, at 98-100; EXHIBIT 45, at 29; EXHIBIT 11, at Fourhorn General 000804; *see generally* EXHIBIT 11, at Fourhorn General 000803-05.

DPD numbers. Each time Denver's ID Bureau receives a set of fingerprints that it cannot match to its fingerprint master cards, it creates a new DPD number associated with that set of fingerprints. EXHIBIT 40, at 36-37. Denver law

enforcement agencies and the courts use DPD numbers as a definitive means of identifying a person or distinguishing between the identities of two persons. *See, e.g.,* EXHIBIT 32, at Sanchez 000001.

SID and FBI numbers. CBI's AFIS system is the central and official repository for all fingerprints taken in Colorado and for the criminal histories of the arrestees to which the fingerprints belong. The FBI does not retain a separate digital repository; instead, the FBI relies on the CBI's digital repository, which is available to all law enforcement officers nationwide through NCIC. EXHIBIT 55, at 23-24. Denver can search its own fingerprint repository as well as CBI's. EXHIBIT 40, at 34.

Each time a person is arrested by Colorado law enforcement, the arresting agency is required to transmit a 10-print card to the CBI. EXHIBIT 55, at 19. The 10-print card eventually is sent to the FBI. EXHIBIT 55, at 24. *See generally* EXHIBIT 11, at Fourhorn General 011621. If the arrestee has not previously been arrested in Colorado, CBI generates a unique Colorado SID number assigned to the arrestee's fingerprints. EXHIBIT 55, at 14-17. Each arrestee has one SID number, no matter how many times he has been arrested. EXHIBIT 55, at 18.

The federal government similarly assigns FBI numbers for unique sets of fingerprints. *See* EXHIBIT 55, at 15; EXHIBIT 53, at 92. An arrestee will not have

more than one FBI number no matter how many times she has been arrested. *See* EXHIBIT 53, at 92-93.

An FBI or SID number provides a definitive link to an individual previously arrested and identified in NCIC/CCIC. *See* EXHIBIT 55, at 9, 16-17, 19, 22.

DPD ID Bureau. The Identification Bureau is the gatekeeper for arrestees entering Denver's jail system, the nerve center of identification activity in Denver, and the oracle of an arrestee's identity.

All Denver's identification resources are available to Denver law enforcement personnel through the ID Bureau, including fingerprinting, fingerprint cards, fingerprint analysis, NCIC, CCIC, OSI, WebMug, and DMV records. *See generally* EXHIBIT 35, at 6-8; EXHIBIT 40, at 6-18. The ID Bureau is the only unit of any Denver law enforcement agency that conducts fingerprint comparisons, analysis and identifications. *See* EXHIBIT 35, at 6.

It is well known to Denver law enforcement officers that questions about a person's identity can be definitively determined through the ID Bureau. *See, e.g.,* EXHIBIT 42, at 14-15; EXHIBIT 40, at 6-8, 26-34; EXHIBIT 43, at 40, 137; EXHIBIT 48, at 21-22, 32-37, 40-41, 44-46, 51-57; EXHIBIT 35, at 6-8. When an arrestee disputes whether he is the person named in an arrest warrant, police officers can be "100 percent sure [of the arrestee's identity] by taking them to the ID Bureau for fingerprints." EXHIBIT 43, at 39-40.

If the ID Bureau is asked to resolve a dispute about an arrestee's identity, e.g., whether he was the person named in a warrant previously arrested in Denver, the ID Bureau would be able to confirm quickly and definitively whether he was the named person. *See, e.g.,* EXHIBIT 32, at Sanchez 000056. It would be able to do so because of the ID Bureau's identification records, e.g., fingerprint cards, of the named person from his previous Denver arrest. *See* EXHIBIT 48, at 100; EXHIBIT 43, at 39-40; EXHIBIT 42, at 14-15.

An Automated Fingerprint Identification System, or AFIS, unit is located at the ID Bureau. AFIS is a computer system that analyzes fingerprints to determine whether one set of fingerprints is identical to another set. *See* EXHIBIT 38, at 17; EXHIBIT 55, at 9, 22-23. If an identification number, e.g., FBI or SID number, is provided to it, AFIS can locate the fingerprints associated with that number. EXHIBIT 55, at 22. Independently of the CBI, Denver uses AFIS to manage fingerprints of Denver arrestees. EXHIBIT 55, at 24.

b. Absence of policy requiring use of readily available resources and information.

Denver has no policy requiring the use of all readily available resources and records/databases to dispositively resolve arrestee-identification concerns. There is overwhelming evidence that Denver law enforcement personnel do not use such resources and records/databases to resolve arrestee-identification concerns.

1. Det. Peterson did not use readily available resources and records/databases. For example: In his investigation of Mr. Alia's whereabouts and identity, Det. Peterson spent 67 seconds using NCIC/CCIC. He did not use NCIC/CCIC or other available Denver databases to search for unique identification numbers for Mr. Alia, all of which were listed on the Alia warrant: FBI No. [redacted]PB4; Colorado SID No. [redacted]948; DPD No. [redacted]716; Colorado Driver License No. [redacted]-0345. *See generally* Doc.320 at 6-12, 14-20.

2. Mr. Alia previously had been arrested and fingerprinted in Denver and so he had a unique DPD number generated from his fingerprints: #[redacted]716. This is the DPD number listed on the warrant. *See* Doc.320, ex.H. The presence of the DPD number signified that Mr. Alia previously had been arrested and booked in Denver. Yet, Det. Peterson did not avail himself of any of the readily available Denver databases into which an arrestee's identification information is held: OSI, which contains significant identification information; and WebMug, a mugshot database that also contains identification information. Det. Peterson searched neither. Det. Peterson never searched WebMug for "Ahmed Alia" prior to arresting Mr. Jama. *See* EXHIBIT 34, at WebMug 000001, 000004-09[35]; *see generally* Doc.320 at 14-20.

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[35]Like the NCIC/CCIC system (*see* This Resp., at 81), WebMug—also known as PictureLink—captures all searches conducted on the system. *See* EXHIBIT 34, at

(footnote cont'd on next page)

3. Mr. Alia's FBI number was listed in the warrant. *See* Doc.320, ex.H. It is different from Mr. Jama's FBI number. *See* EXHIBIT 14, at Jama Muse 000871. This was significant, since the existence of two FBI numbers definitively establishes that Mr. Alia and Mr. Jama are different persons. No Denver policy, however, required Det. Peterson to use a readily available resource, NCIC/CCIC, to determine if Mr. Jama had an FBI number, and Det. Peterson did not use that resource.

4. Det. Peterson failed to speak with a detective who offices next door to him,[36] DPD detective Michael Greer. Det. Greer had investigated Mr. Alia's auto theft offense, had interrogated Mr. Alia, and had conducted extensive research into Mr. Alia's identity. Doc.320 at 6-9. Det. Greer and all the foregoing information were readily available to Det. Peterson. No Denver policy required Det. Peterson to avail himself of either Det. Peterson or Det. Peterson's readily available information.

5. In July 2007, NCIC/CCIC operator Catherine McLane and Deputy Alan Sirhal were tasked with "clearing" Jose Ernesto Ibarra for release from the County Jail. She searched NCIC/CCIC for "Ibarra, Jose" and his birthdate. She saw five

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WebMug 000001; *see generally* EXHIBIT 34, at WebMug 000002-43. Denver produced WebMug searches from 2006 through 2008 conducted relating to Plaintiffs. *See, e.g.,* EXHIBIT 34, at WebMug 000002, 31-35.

[36]*See* EXHIBIT 51, at 14.

warrants for a Jose Cayetano Ibarra; she faxed all of them to Deputy Sirhal, and wrote a note expressing her misgivings about whether it was the same Jose Ibarra: "I don't think there is enough to call it him—your call—lemme know." EXHIBIT 25, at Jose Ibarra 000036. Deputy Sirhal did not have enough information to lead him to believe that Plaintiff Ibarra was Cayetano Ibarra. Nonetheless, Deputy Sirhal decided to arrest Plaintiff Ibarra on the five Cayetano Warrants. EXHIBIT 57, at 35.

When he made the decision to arrest, there were four documents in his office—in Plaintiff Ibarra's jail inmate file—establishing that his middle initial was "E." Nothing in Denver's policies required Deputy Sirhal to review Plaintiff Ibarra's inmate file, and Deputy Sirhal did not. *See* EXHIBIT 57, at 48-49; EXHIBIT 25, at Jose Ibarra 000064.

Nor was there any Denver policy requiring that Deputy Sirhal speak with Plaintiff Ibarra, who was readily available, as he was incarcerated in the County Jail.

6. When he made the decision to arrest, Deputy Sirhal did not search OSI for Jose Cayetano Ibarra. EXHIBIT 57, at 72-73. If he had, he would have seen that Denver had arrested, fingerprinted and photographed Cayetano Ibarra on three previous occasions—6/28/04, 7/30/05 and 4/17/08. EXHIBIT 25, at Jose Ibarra 000135-36. No Denver policy required that Deputy Sirhal avail himself of OSI.

7. When he made the decision to arrest, Deputy Sirhal did not search, or direct some other law enforcement personnel to search, Denver's readily available mugshot database, WebMug, or DMV for photographs of Cayetano Ibarra. If he had, he would have obtained multiple photographs of Cayetano Ibarra. *See* EXHIBIT 25, at Jose Ibarra 000135-37. If he had obtained a copy of the mugshots for Plaintiff Ibarra, he would have seen that Plaintiff Ibarra and Cayetano Ibarra are not the same persons. *Compare* EXHIBIT 11, at Fourhorn General 004674 *with* EXHIBIT 25, at Jose Ibarra 000135-36. No Denver policy required that Deputy Sirhal avail himself of WebMug.

8. When he made the decision to arrest, Deputy Sirhal made no attempt to locate the DPD numbers for Plaintiff Ibarra and Cayetano Ibarra that were readily available to him. Deputy Sirhal knew that Plaintiff Ibarra would have a DPD number, since he had been booked at the City Jail. He knew or should have known that Cayetano Ibarra had a DPD number, which appears on all Cayetano Ibarra's WebMug photo documents. He knew or should have known that Denver's records show that the DPD numbers are different, and that therefore Plaintiff Ibarra was not Cayetano Ibarra. No Denver policy required that Deputy Sirhal avail himself of readily available databases containing DPD numbers.

9. Denver determined that neither Ms. McLane nor Deputy Sirhal violated any Denver policy, even though they failed to use a wide range of readily available

Denver resources and information. *See* EXHIBIT 48, at 101-03; EXHIBIT 43, at 90, 93-94, 126-27.

10. When Plaintiff Dennis Smith signed up to visit a County Jail prisoner in January 2008, he provided his name and driver license number. NCIC/CCIC operator Liza Longoria was tasked with clearing him for warrants. Using NCIC/CCIC, she located Plaintiff Smith's driver license information, including his physical descriptors. When she searched NCIC/CCIC for active warrants for "Smith, Dennis" DOB [redacted]/59, she received numerous hyperlinked responses, two of which are relevant here.

The first was for "Dennis Smith," the plaintiff at bar, showing that NCIC/CCIC had an entry for him as a victim of misidentification. The summary information for the response displayed physical descriptors that exactly matched Plaintiff Smith's driver license information. If she had clicked on this hyperlinked response, she would have seen a record entered by CBI stating that Plaintiff Smith was not the same person as Dennis Allen Smith. Ms. Longoria ignored this response.

The second response showed a warrant for Dennis Allen Smith; the summary information displayed for this response showed physical descriptors different from those on Plaintiff Smith's driver license. Ms. Longoria did not click

on the first response; she clicked on the second, and faxed the warrant to the jail visitor deputy, who later caused Plaintiff Smith to be executed on the warrant.

Nothing in Denver's policies required Ms. Longoria to click on the first response, even though at the click of a mouse button she would have obtained dispositive information that Plaintiff Smith was not Dennis Allen Smith.

11. When Sgt. Ortega made the decision to arrest Plaintiff Smith on the Dennis Allen Smith warrant, he admitted that he had doubt that Plaintiff Smith was Dennis Allen Smith, that he believed Plaintiff Smith's denials about being Dennis Allen Smith, and that he believed Plaintiff Smith's statement that he had in his car parked outside the jail an official CBI letter stating that he was not Dennis Allen Smith. The existence of an official CBI letter regarding identity is important, since it is CBI policy to enter an NCIC/CCIC record of mistaken identification for any person to whom it issues an official CBI letter relating to misidentification. No Denver policy required Sgt. Ortega to use readily available resources and information to address and resolve his doubts, e.g., NCIC/CCIC or telephoning an NCIC/CCIC operator or CBI.

12. Denver determined that no DSD employee violated any policy or rule in connection with Mr. Smith's arrest and detention. *See* EXHIBIT 48, at 102.

13. On November 13, 2007, at 1:55 p.m., Officer Andrew Richmond stopped a car in which former plaintiff Samuel Powell Moore was a passenger. Officer

Richmond logged into NCIC/CCIC, searched for active warrants for Samuel Powell Moore, and found a response indicating there was a warrant for "Moore, Samuel Earl." EXHIBIT 5, at CBI000061; EXHIBIT 6, at CBI.PLF000395-96. The response was hyperlinked to a teletype warrant for Samuel Earl Moore. If Officer Richmond had clicked on the response, it would have pulled up the teletype warrant. The warrant contained a message stating that Samuel Powell Moore is not the same person as Samuel Earl Moore and that if contact is made, the officer should check for a heart tattoo, which would indicate the suspect is Samuel Earl Moore. Officer Richmond, however, did not click on the response; so he did not see the teletype warrant and did not see the message. Instead, he arrested Samuel Powell Moore, who spent 8 days in jail. *See* EXHIBIT 31, at Samuel Moore 000638. Nothing in Denver's policy required Officer Richmond to click on the hyperlinked response to see the warrant before executing the warrant.

14. DPD Internal Affairs investigated Samuel Powell Moore's complaint. A DPD Lieutenant recommended a finding that Officer Richmond violated a rule regarding how to process arrestees wanted on warrants. His supervisor, a DPD Commander, rejected the recommendation. DPD Division Chief of Patrol Mary Beth Klee agreed with the Commander that the Lieutenant's recommendation should be rejected. Denver found that Officer Richmond had no violation of any Denver policy. *See* EXHIBIT 31, at Samuel Moore 000622-34.

15. In June 2004, Denver law enforcement officers arrested Scott Alan Jackson, a 6'2", 220 lb, black man, with a birthdate of [redacted]/67. EXHIBIT 29, at PLF000013 ¶ 2. The officers were executing a warrant for a "Scott A. Jackson," a 5'10", 190 lb., white man, with a birthdate of [redacted]/63. EXHIBIT 11, at Fourhorn General 006709. Denver had a mugshot of the person identified in the warrant, EXHIBIT 11, at Fourhorn General 010675, and the mistaken identity victim Scott Alan Jackson, EXHIBIT 11, at Fourhorn General 010674. Needless to say, they are not similar in physical appearance. Another photo of the suspect identified in the warrant would have been available through DMV *via* NCIC. *See* EXHIBIT 11, at Fourhorn General 005004 (suspect, 46 years old, was charged with various driving infractions). The arresting officers apparently never obtained a copy of the suspect's mugshot or driver license photo. While in the City Jail, the mistaken identity victim Scott A. Jackson wrote multiple kites explaining that he was a black man and could not be the white man described in the warrant. No jailer ever used Denver's resources and readily available information to determine that he was not the suspect identified in the warrant. *See* EXHIBIT 29, at PLF000013 ¶¶ 5, 7-8.

16. In July 2007, while appearing in court for a traffic offense, Denver officers arrested Bradley Braxton (DOB [redacted]/71), 5'9", 207 lb., black man, on a warrant for David Amos Eddie (DOB [redacted]/81), a 26-year-old, 5'10", 180 lb, white man. *See, e.g.,* EXHIBIT 11, at Fourhorn General 000834-37, 000843-44, 000857.

While in jail, he made numerous requests for relief explaining he was a black man and the warrant on which he was arrested related to a case involving a white man. *See, e.g.,* EXHIBIT 11, at Fourhorn General 000845, 000848, 000857. Denver had an abundance of identifying information about Mr. Eddie, who was charged with four counts of first degree sexual assault and one count of first degree burglary. EXHIBIT 11, at Fourhorn General 000858. In addition to knowing that Mr. Eddie was a white man, Denver knew the following information about Mr. Eddie: DPD number; SID number; FBI number; tattoos; booking number; Social Security number; home address; occupation ; fingerprint classification codes; and eye and hair color. EXHIBIT 11, at Fourhorn General 000858, 000860. From the time of his arrest to his release from jail 9 days later, no Denver law enforcement personnel availed themselves of any of Denver's resources and information to determine that Mr. Braxton was not Mr. Eddie.

3. Custom 3: Denver failed to promulgate policies requiring—in any cold-warrant arrest involving obvious potential for a mistake about an arrestee's identity—a post-arrest, definitive determination that the arrestee is the person identified in the warrant.

Denver law enforcement officers encounter numerous situations in which the execution of a cold-warrant arrest obviously involves a potential for a mistaken identity arrest and detention, e.g., the person before the officer has same first and last name and similar physical descriptors, but the birthdate is different. In the

event the officer decides to execute the warrant against a person in such situations, Denver has no policy requiring that law enforcement personnel—after the arrest—make a definitive determination whether the arrestee is the person identified in the warrant.

Denver has the mugshots and fingerprints of every person who has ever been arrested and booked at the City Jail. *See, e.g.,* EXHIBIT 11, at Fourhorn General 001630.

The case at bar concerns arrests on warrants. When a warrant is issued, it is not uncommon for the person named in the warrant to have been previously arrested in Denver. In such a case, Denver already has the fingerprints and mugshot of the wanted suspect and could easily compare them to the prints and image of the person arrested on the warrant. In such cases, Denver could quickly end the mistaken detention of a victim of a mistaken identity arrest. Denver has no policy, however, requiring such a comparison. And in hundreds of cases, Denver has prolonged the detention of a mistaken identity victim by failing to make the easy comparison that would have quickly detected and remedied the mistaken arrest.

Despite Denver's inability to produce documentation regarding the mistaken identity victims or the circumstances of the 291 "wrong person" minute orders in the Minute Order Summary (EXHIBIT 20), Plaintiffs have shown that in more than

200 of those cases, the warrants named individuals who previously had been arrested by Denver law enforcement agencies. Thus, Denver had the fingerprints and mugshots of the person named in the warrant and could have quickly determined it had arrested or detained the wrong person. *See* EXHIBIT 23; This Resp., at 58 n.22.

Similarly, in the case of Stephen Tendell, Bradley Braxton, DeDe Davis, R[redacted] M[redacted] (*see* This Resp., Pt.III. Subpt.1.C.1.e., at 79-84), and each of the fourteen mistaken identity arrests discussed below at pages 58-70, above, Denver had previously arrested and booked the wanted person. The same is true in the case of Plaintiffs Jama, Ibarra, and Sanchez. In each case, Denver had previously arrested and booked the wanted person.

The ID Bureau's ability to quickly determine whether the correct person has been arrested is not limited to warrants seeking persons Denver previously has arrested. Denver can quickly obtain identification information from other law enforcement agencies. *See, e.g.,* This Resp., at 35 n.14 & 117. For example, Denver mistakenly arrested Carlos Hernandez on an Arapahoe County warrant for Ray Alfonso Martinez-Hernandez, whom Denver had not previously arrested. *See* This Resp., at 82, 132-134. Nevertheless, within hours of the mistaken arrest, Denver had downloaded and printed out numerous NCIC documents that clearly showed that they had arrested the wrong person. The documents included

fingerprint codes that differed from Mr. Hernandez's fingerprint codes, and the NCIC/CCIC documents also advised of the easy availability of photographs and fingerprint images of the wanted man. *See* EXHIBIT 4, at Hernandez, C. 000047-48, 000052-53.

Denver's ability to prevent a lengthy mistaken identity detention is illustrated in Plaintiff Smith's case. Plaintiff Smith was arrested on a warrant for Dennis Allen Smith, who was ticketed in Weld County and had never been arrested in Denver; so Denver did not have Dennis Allen Smith's fingerprints. The deputy who arrested Plaintiff Smith was uncertain whether Plaintiff Smith was Dennis Allen Smith. Despite this, he arrested Plaintiff Smith. However, he notified a law enforcement officer at the City Jail that there was a dispute about whether Plaintiff Smith was Dennis Allen Smith. After Plaintiff Smith was taken to the City Jail, he was photographed, fingerprinted and otherwise booked. After he was fingerprinted, the ID Bureau electronically transmitted his fingerprints to Weld County. Fifteen minutes later, Weld County told the ID Bureau that Plaintiff Smith's prints did not match Dennis Allen Smith's prints. Denver then released Plaintiff Smith. The entire mistaken identity arrest and detention lasted 4½ hours. EXHIBIT 58, at 47-50.

Plaintiff Smith's 4½ detention, however, is the exception to the pervasive custom of *not* comparing an arrestee's and a wanted person's fingerprints and

mugshots. The evidence of mistaken identity arrests and detentions shows lengthy incarcerations well after Denver law enforcement personnel had obtained all the information needed to prevent a mistaken identity detention: (i) the fingerprints and mugshot of the person identified in the warrant; and (ii) the fingerprints and mugshot of the mistakenly arrested person.

Comparison of the mugshots of the arrestee and the wanted person are an obvious basis to assess whether they are the same person. Fingerprints are another obvious basis. As previously discussed, Denver's ID Bureau operates an AFIS device that allows it to compare fingerprints and determine in a matter of minutes whether two sets of fingerprints match, or not. *See* This Resp., at 105; EXHIBIT 55, at 14-18, 21-22, 63; EXHIBIT 38, at 17; EXHIBIT 40, at 33-34; EXHIBIT 43, at 67; EXHIBIT 45, at 29-31; EXHIBIT 59, at 84. Even without AFIS, ID Bureau fingerprint technicians are trained to determine whether a set of fingerprints is the same as another set. *See, e.g.*, EXHIBIT 45, at 22, 49; EXHIBIT 26, at D[redacted], K. 000002; EXHIBIT 38, at 11, 16-17, 69. This is all part of Denver's policy of obtaining "positive identification" of every person incarcerated and booked at the City Jail. EXHIBIT 50, at 126.

If Denver had made that comparison, the arrestees would have been released immediately. Plaintiff Ibarra would not have spent 25 days in jail on Cayetano Ibarra's warrants; Plaintiff Jama would not have spent 8 days in jail on Ahmed

Alia's warrant; Plaintiff Sanchez would not have spent many weeks in jail on Tony Sanchez's warrants. Similarly, most of the 291 minute orders in the Minute Order Summary (EXHIBIT 20) that memorialize a mistaken identity arrest or detention would have been unnecessary, as Denver would have remedied the mistaken identity arrest or detention long before the individual appeared in court.

Denver, however, has no policy requiring law enforcement personnel to make a mugshot comparison or a definitive, fingerprint-based determination—which, as noted, Denver can do in a matter of minutes—of whether an arrestee is the person identified in the warrant. *See generally* EXHIBIT 11, at Fourhorn General 002097-99. The determination could be the fingerprint-based actual identity of the arrestee. For example, Plaintiff Smith's fingerprints are on file with the CBI because of his request that the CBI officially identify him; so, if Plaintiff Smith were arrested, it would be a simple matter of comparing his newly surrendered fingerprints with the fingerprints on file with the CBI and available through Denver's AFIS. Or the determination could be the fingerprint-based *exclusion* of the arrestee, regardless of his identity. That is, a comparison of the arrestee's fingerprints and the wanted person's fingerprints could definitively exclude the arrestee as the wanted person. Denver does neither. Its custom is not to conduct a fingerprint analysis of the arrestee's and the wanted person's fingerprints.

An obvious point in time to conduct a definitive determination of whether the arrestee is the person identified in the warrant would be at the ID Bureau, before incarceration in the City Jail. In every case in which an arrestee is taken to the ID Bureau following an arrest, there is one moment in time when the arrestee, arresting officer, warrant, arrestee's fingerprints, wanted person's fingerprints, AFIS, and fingerprint identification technician are in one place. That moment is when the arresting officer arrives at the ID Bureau with the arrestee before incarceration to retrieve the warrant and other "get into jail" papers. *See* This Resp., at 104-105.

But there is no policy requiring a determination even then. To the contrary, Denver's custom routinely forecloses such a determination. Denver's custom is *not* to fingerprint the arrestee at that time, nor for the arresting officer to request fingerprint analysis, nor for the ID Bureau's fingerprint technicians to use AFIS or to conduct a manual fingerprint comparison between the arrestee and the person identified in the warrant. *See* EXHIBIT 45, at 49-51; EXHIBIT 40, at 30; EXHIBIT 11, at Fourhorn General 002208. In fact, the extent of the communication between the arresting officer and the ID Bureau staff is the officer's statement of the arrestee's name and the reason for the arrest, e.g., arrest based on a warrant. EXHIBIT 40, at 30. Det. Peterson had assumed Denver had promulgated a policy requiring comparison of the arrestee's fingerprints to the fingerprints of the person identified

in the warrant. He learned after his mistaken identity arrest that his assumption was wrong—Denver has promulgated no such policy: "After this arrest I was informed that *the ID Bureau does not compare prints* when you jail a suspect on his alias which was listed on the warrant. I believed that the jail fingerprinted all suspects to compare to the warrant they are wanted on." EXHIBIT 35, at 20 (emphasis supplied).

Similarly, when a Denver law enforcement officer adds one or more warrants to a person already in jail—and thereby effects an arrest on those warrants—Denver has every opportunity to make a dispositive fingerprint or photograph comparison that would avoid a mistaken identity detention. Plaintiff Ibarra's case illustrates. He was already in custody at the County Jail. Deputy Sirhal attached to Plaintiff Ibarra five warrants identifying a different person, Jose Cayetano Ibarra. Plaintiff Ibarra was mistakenly detained on those five warrants for 25 days. During those 25 days, no Denver law enforcement officer compared the respective fingerprints and photographs of Plaintiff Ibarra and Cayetano Ibarra.

Denver's policy failure is especially evident in the multiple cases in which Denver law enforcement personnel refused to make such comparisons even when a prisoner specifically told them that he was being held on a warrant for a different person.

1. Scott Alan Jackson, a black man, was mistakenly arrested and jailed on a warrant for a white man. He was fingerprinted, photographed and otherwise booked into the City Jail despite his protests. While in the City Jail, he filed numerous complaints with jail deputies. He said it was clear he was the wrong person, as he was of a different race than the wanted suspect. No one responded to Mr. Jackson's complaints. Although Denver already had the prints and mugshots of the wanted person, EXHIBIT 11, at Fourhorn General 006724-25, no one performed mugshot or fingerprint comparisons. *See, e.g.,* EXHIBIT 29, at PLF000013-15.

2. Bradley Braxton, a black man, was mistakenly arrested and jailed in Denver for 9 days on a warrant for a white man. He was fingerprinted, photographed and otherwise booked into the City Jail. He repeatedly told Denver law enforcement personnel, orally and in writing, that he was being held erroneously on another person's warrant. He was ignored. No one performed mugshot or fingerprint comparisons. *See, e.g.,* EXHIBIT 11, at Fourhorn General 00843-47; EXHIBIT 2, at BB0026-27; Doc.1 at 5-6, Verified Compl., *Braxton v. Denver,* No. 1:07-cv-02672-LTB-BNB (U.S. Dist. Ct. Dec. 24, 2007)[37].

3. When Denver police mistakenly arrested Carlos Hernandez, he protested to the booking officers that he was not Ray Alfonso Martinez-Hernandez, the

[37]Plaintiffs request under Fed. R. Evid. 201(d) that the Court take judicial notice of Mr. Braxton's verified complaint.

wanted suspect. Mr. Hernandez was fingerprinted, photographed and otherwise booked into the City Jail. The DSD booking officers said it is not their job to determine whether Denver police officers mistakenly arrested the wrong person. They said it was the judge's job. Mr. Hernandez's attorney made numerous calls to the jail about the mistaken identity arrest. Denver law enforcement officers told her nothing could be done until her client was transferred to Arapahoe County, where the warrant issued. No one bothered to look at the NCIC/CCIC documents that showed they had the wrong man. *See, e.g.,* EXHIBIT 4, at Hernandez, C. 000047-48, 000052-53; EXHIBIT 63 ¶¶ 1-2; EXHIBIT 29, at PLF000005-11 ¶ 5.

4. Muse Jama was arrested based on an alias name in a warrant for Ahmed Alia. He was fingerprinted, photographed and otherwise booked into the City Jail. When he learned during booking that he was arrested on a warrant for Ahmed Alia, he protested to DSD deputies that he was not Ahmed Alia. The deputies did nothing. During his 8 days in the jail, no one performed mugshot or fingerprint comparisons. *See, e.g.,* Doc.320 at 24 & ex.S.

5. Antonio Carlos Sanchez was arrested on two warrants for Tony Sanchez. Plaintiff Sanchez was fingerprinted, photographed and otherwise booked into the City Jail. He told Denver law enforcement officers that he was being incarcerated mistakenly on warrants for Tony Sanchez. It took over a month, from March 22 until April 25, 2008, before any Denver jailer paid attention to Antonio Carlos

Sanchez's repeated protests. During much or all of that time, no one performed mugshot or fingerprint comparisons. *See, e.g.,* EXHIBIT 54, at 27-28; EXHIBIT 32, at Sanchez 0069.

6. Jose Ernesto Ibarra was arrested on five warrants for Jose Cayetano Ibarra. At the time of the arrest, he already had been fingerprinted, photographed and otherwise booked into the City Jail. When he started attending the court hearings of Cayetano Ibarra, he learned he had been arrested on warrants for Cayetano Ibarra. He told Denver law enforcement officers that this was a mistake, as he was not Cayetano Ibarra. The officers were unmoved. The arresting officer, Deputy Sirhal, did not bother questioning Jose Ernesto Ibarra about whether he was Cayetano Ibarra. During the Internal Affairs investigation, Deputy Sirhal told Denver officials that although he lacked enough information to know whether Ernesto Ibarra was Cayetano Ibarra, it was "close enough" to arrest him and "have the courts decide." Before and after deciding the "courts" should decide, no Denver law enforcement officer performed mugshot or fingerprint comparisons during the 25 days Jose Ernesto Ibarra was jailed on the Cayetano Ibarra warrants. *See, e.g.,* EXHIBIT 25, at Jose Ibarra 000057-64.

4. Custom 4: Denver has a custom of incarcerating cold-warrant arrestees after they have been denied a post-arrest, judicial determination of probable cause within 48 hours of their arrest.

After 48 hours, Denver's authority to continue to incarcerate an arrestee terminates under *McLaughlin* and *Gerstein*, unless the arrestee has been afforded a judicial determination of probable cause. *See* This Resp. Pt.III, Subpt.1.B.1., at 29-32. Denver, however, has a custom of ignoring this rule. It continues to incarcerate arrestees after 48 hours have expired without a probable cause determination.

It is not in dispute[38] that Denver incarcerated all of the following arrestees past the 48-hour period, even though none had received a probable-cause determination during that period: Braxton (9 days),[39] Moore (8 days[40]), Jama (8 days[41]), Ibarra (25 days[42]) and Sanchez (114 days[43]).

Denver admits it has a policy of incarcerating indefinitely without any judicial hearing all persons arrested on a warrant issued by the Denver District Court, until that court notifies Denver that the court has set a hearing for the

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[38]In response to Plaintiffs' discovery request (EXHIBIT 69, at 12), Denver has produced no documents of any such determination.

[39]*Braxton v. Denver,* No. 1:07-cv-02672-LTB-BNB (U.S. Dist. Ct. Dec. 24, 2007), Doc. 31 ¶ 33 (verified complaint).

[40]*See, e.g.,* Samuel Moore 000624, 000638.

[41]*See, e.g.,* Jama Muse 001050.

[42]*See, e.g.,* Jose Ibarra 000057.

[43]*See* This Resp., Pt.III, Subpt.4.A., at 199-202.

arrestee. *See* EXHIBIT 11, at Fourhorn General 000837; EXHIBIT 48, at 58-59; EXHIBIT 41, at 38-39, 68-69. It is not common for those arrested on a Denver District Court warrant to be incarcerated for 8-9 days before receiving a court appearance. *See* EXHIBIT 41, at 38, 69; *see also id.* at 39 (DSD Major Deeds: "I've seen [jailed arrestees] go a week [without a court appearance] many, many, many times"). Bradley Braxton was erroneously jailed for 9 days on a Denver District Court warrant without a court appearance.

Denver knows that arrestees awaiting a court appearance at the City Jail are incarcerated in a highly restrictive environment. *See id.* at 39-40 (DSD Major Deeds: if arrestee were incarcerated for 2 weeks without court appearance, he would "call someone and say, Look, we need to get this guy into court . . . . The city jail is a tough place to be for two weeks. . . . The city jail, you know, you're locked up about 22, 23 hours a day. We don't have any rec. We don't have any programs. It's designed to be a short-term facility."); *id.* at 70 (City Jail has been "overcrowded for years").

Denver has the same policy for all persons arrested on a warrant issued by a court located outside the City and County of Denver. *See* EXHIBIT 48, at 79-80. Those arrested on such warrants are incarcerated for 10-14 days and longer while Denver awaits the warrant-issuing jurisdiction to pick up the arrestee. *See* EXHIBIT 41, at 69-70. Denver has no policy limiting the number of days it will hold an

arrestee on such a warrant before it will release him. EXHIBIT 48, at 69. Denver generally does not release arrestees because of tardiness of the warrant-issuing jurisdiction in picking up the arrestee. *See* EXHIBIT 41, at 70-71.

5. Custom 5: Denver failed to promulgate policies requiring the correction and disentanglement of an arrestee's criminal justice records after its law enforcement officers subjected the arrestee to a mistaken identity arrest and detention.

When Denver arrests and detains an individual, it has policies requiring its law enforcement personnel to obtain from the arrestee a broad range of information relating to his identity. *See, e.g.,* EXHIBIT 11, at Fourhorn General 000800-01, 000803-07. For example, Denver's law enforcement personnel obtain the arrestee's fingerprints, birthdate, age, criminal history, driver license information, mugshot, height, weight, eye and hair color, residential address, next of kin, birthplace, aliases, scars/marks/tattoos, Social Security number, religion, pending charges, and other information. Once gathered, this information is inserted into numerous databases and files, and automatically is commingled in those databases and files with identity information from the arrestee's prior arrests. *See, e.g.,* Doc.308, at 7; EXHIBIT 14, at Jama Muse 000866-67, 000981, 000985, 001157-58, 001159-60; EXHIBIT 28, at MJ0060; EXHIBIT 14, at Jama Muse 000077.1; EXHIBIT 25, at Jose Ibarra 000023-24; EXHIBIT 11, at Fourhorn General 000800-01, 000803-07, 003391-92; EXHIBIT 9, at DeDe Davis 000009-69, 000206-07, 000098, 000100. A

principal purpose of gathering this information is to provide law enforcement personnel with access to information about the arrestee's identity.

When Denver mistakenly arrests and detains a person under a warrant for someone else, the mistakenly arrested/detained person's identification information is commingled automatically, pervasively and indiscriminately with the wanted person's identification information. *See, e.g.,* EXHIBIT 14, at Jama Muse 001159-60 (DPD master fingerprint card for "Ahmed Alia" with Mr. Jama's fingerprints[44]); *id.* at Jama Muse 000981 (Mr. Jama's right index fingerprint labeled as "Alia, Ahmed"); *id.* at Jama Muse 000979-001000 (various Denver records commingling Ahmed Alia identification information with Mr. Jama's identification information); EXHIBIT 9, at DeDe Davis 000076 & 000679 (DPD arrest record showing that DeDe Davis has an "alias" of Brandy Nichole Hair, and listing Hair's birthdate ([redacted]/82) as an alternative DOB for Ms. Davis's birthdate of [redacted]/69).[45]

Beginning March 22, 2008, on four separate occasions over the course of less than a year, Denver mistakenly jailed Plaintiff Antonio Carlos Sanchez on the basis of a warrant for a different person, Tony Sanchez. On the first arrest, the

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[44]Plaintiff Jama's arrest was designated Arrest No. 1558822, the same arrest number on the DPD master fingerprint card. *See, e.g.,* EXHIBIT 14, at Jama Muse 000077.1, 000971, 000975, 000985, 000981, 000984-87 & 001158.

[45]In June 2007, Denver confused former plaintiff DeDe Davis, a black woman, with Brandi Hair, a white woman. Denver mistakenly arrested/detained Ms. Davis on Ms. Hair's warrant. *See* EXHIBIT 9, at DeDe Davis 000098, 000208, 00390 & 00391.

jail's booking record for Antonio correctly shows no "AKAs." It contains Antonio's correct date of birth, [redacted], 1987, and his correct height, 5'8". EXHIBIT 32, at Sanchez 000059. With Antonio Sanchez's second erroneous jailing on the Tony Sanchez warrant, the jail's records reflect the intermingling of identities. The booking record of October 16, 2008, substitutes the date of birth for Tony Sanchez, [redacted], 1987. EXHIBIT 32, at Sanchez 000080-81.[46] When Denver mistakenly jailed Antonio for the third time, on December 31, 2008, the booking records reflect further entanglement. This time, Denver erroneously listed "Tony Carlos Sanchez" as an AKA for Antonio. It also changed Antonio's height to the height listed on the Tony Sanchez warrant, 5'11". EXHIBIT 32, at Sanchez 000114-15, 000070. The fourth time Denver mistakenly jailed Antonio, it erroneously listed an AKA of "Tony Sanchez," and it continued substituting Tony Sanchez's DOB and height. EXHIBIT 32, at Sanchez 131-32. Denver also mistakenly entered the SID number of Antonio Sanchez into the records for Tony Sanchez. EXHIBIT 32, at Sanchez 000121 (warrant issued 12/11/08 for arrest of Tony Sanchez, but using SID and Social Security numbers assigned to Plaintiff Antonio Sanchez);[47]

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[46]The booking records for October 16, 2008 also list Antonio's height as five feet, an apparent typographical error. EXHIBIT 32, at Sanchez 0080-81.

[47]Plaintiff Sanchez was arrested March 22, 2008, on one Denver District Court warrant and two Arapahoe County warrants. It was a mistaken identity arrest. Only one of the warrants from Arapahoe County named him; the other Arapahoe County warrant

(footnote cont'd on next page)

id. at Sanchez 000101 (NCIC/CCIC warrant for arrest of Tony Sanchez, but using SID and DPD numbers assigned to Plaintiff Antonio Sanchez).

Denver has no policy to correct the criminal justice records to disentangle the mistaken identity victim from the wanted person. EXHIBIT 48, at 145. As a result, long after Denver has discovered it mistakenly arrested and detained an innocent person on a warrant for someone else, the identification information of the mistaken identity victim and the wanted person remains entangled.

For example, in March 2007, Denver learned it had mistakenly arrested and detained former plaintiff Christina Ann FourHorn on a felony warrant for Christin Fourhorn. Two years later, in April 2009, criminal-justice records available to the public and law enforcement agencies nonetheless showed that former plaintiff FourHorn was Christin Fourhorn, and that former plaintiff FourHorn had been arrested in March 2007 for felony aggravated robbery. Doc.156-3 at 2. The potential consequence, of course, is that if a warrant were to issue for Christin Fourhorn, then former plaintiff FourHorn could be hauled off to jail as a consequence of the inevitable computer check of her name that would accompany even the most minor traffic stop. As another example, Denver learned in January

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and the Denver District Court warrant named one Tony Sanchez. *See* EXHIBIT 32, at Sanchez 000152. Plaintiff Sanchez had different FBI, SID and DPD numbers, birthdate and physical descriptors from Tony Sanchez. *Compare* EXHIBIT 32, at Sanchez 000125 (3/30/07 warrant for Tony Sanchez) *with id.* at Sanchez 000073 (3/11/08 warrant for Plaintiff Antonio Sanchez).

2008 that it had mistakenly arrested and detained Plaintiff Smith on a fugitive warrant for Dennis Allen Smith. Fifteen months later, in April 2009, criminal-justice records available to the public and law enforcement agencies nonetheless showed that Plaintiff Smith was arrested in January 2008 on a "fugitive" warrant. Doc.156-4, at 2.

Denver's failure to correct criminal justice records, and the substantial risk that failure poses to victims of mistaken identity arrests, is evident in the numerous cases in which victims of mistaken identity arrests have been mistakenly arrested again, on the same warrant. When a court discovers that the wrong person has been arrested, it re-issues the warrant for the criminal suspect. In the absence of corrective measures, the reissued warrant poses an obvious risk that the victim of the mistaken identity arrest will be mistakenly arrested once again. That is exactly what happened to M[redacted] S[redacted] R[redacted], DOB [redacted]/82, whom Denver mistakenly arrested five separate times on a warrant for Rebecca Jennifer Rosenfeldt, DOB [redacted]/81. EXHIBIT 11, at Fourhorn General 011858-59. Despite these five mistaken arrests, Denver's computerized database continues to list "Rebecca J. Rosenfeldt" as an alias for M[redacted], along with Rebecca's date of birth. EXHIBIT 11, at Fourhorn General 011210.

Another example is the warrant for Marques Jones in Denver County Court Case No. B530514. In an order dated 4/17/08, the court noted that "the wrong

defendant has been jailed on multiple occasions." EXHIBIT 20 1.280. The docket sheet shows that the suspect's brother had been mistakenly arrested three previous times on the same warrant. EXHIBIT 11, at Fourhorn General 012139-41. The DPD database continues to list the victim's name and DOB as an alias of the suspect, and vice versa. EXHIBIT 11, at Fourhorn General 8674, 8668.[48] Two examples are illustrative.

Carlos A. Hernandez. When a law enforcement computer erroneously lists an innocent person as an "AKA" of a wanted suspect, the innocent person risks a mistaken identity arrest. As explained earlier, on two occasions, Denver mistakenly arrested Carlos A. Hernandez on an Arapahoe County warrant for Ray Alfonso Martinez-Hernandez , because Carlos Hernandez was listed as an "AKA" on the warrant. *See* This Resp., at Pt.III, Subpt.1.C.1.e.ii., at 82. Mr. Hernandez's attorney

[48]In footnote 21, Plaintiffs identity 24 court orders in the Minute Order Summary (EXHIBIT 20) that refer to repeated mistaken identity arrests in the same case on the same warrant. Despite Denver's inability to provide complete documentation regarding the circumstances of these mistaken identity arrests, it is clear that in many cases the available records reflect continued entanglement of the identities of the mistaken identity victim and the criminal suspect described in the warrant. For example, on the arrest record of the victim of the mistaken identity arrest, the criminal suspect's name and DOB frequently appear as an "alias" or alternative identity for the victim. See, e.g., EXHIBIT 11, at Fourhorn General 005538 (Case No. 01M03941); EXHIBIT 11, at Fourhorn General 007143 (Case No. 05M03169); *id.* at Fourhorn General 008668 (Case No. B530514); *id.* at Fourhorn General 007267 (Case No. 99M12014); *id.* at Fourhorn General 007215 (Case No. 04M07532); *id.* at Fourhorn General 007579 (Case No. 05M12806); *id.* at Fourhorn General 008420 (Case No. 06M09486); *id.* at Fourhorn General 007445 (Case No. 05M03488); *id.* at Fourhorn General 005939 (Case No. 01GS940660).

Kate Bouchee filed legal papers attempting to correct the databases and prevent another erroneous arrest of her client. She asked for a ruling that her client was *not* Ray Alfonso Martinez-Hernandez. She also asked the court to order the CBI to note in its database that her client is not Ray Alfonso Martinez-Hernandez. EXHIBIT 4, at Hernandez, C. 0008, 0010-11. The district attorney recognized the problem. At a hearing on November 18, 2008, the court entered the following:

> The District Attorney wants the record to reflect that Carlos Hernandez with the date of birth of [redacted]/77, the SID # of [redacted]188 and the warrant ID # of [redacted]086 is not the person wanted in this case, and further requests that comments on the bench warrant reflect that he, Carlos Hernandez, is not the person wanted in this case. District Attorney Fauver has been in contact with CBI and will continue to follow up with them regarding this issue.

EXHIBIT 4, at Hernandez, C. 0008, 0018. On November 20, 2008, the District Attorney faxed Ms. Bouchee a teletype from CBI reflecting an NCIC "name search" for her client. In the cover sheet, the DA reported that CBI had updated and corrected the criminal history for Carlos Hernandez:

> The arrest on the Ray Martinez case does not show up under either this CCIC report or on the Ray Martinez CCIC. Your client is no longer listed as an AKA for Ray Martinez, so when your client's criminal history is run, it should not bring up the sex assault charges for Ray Martinez.

Id. at Hernandez, C. 0015-17.

Although the District Attorney may have succeeded in correcting the records at the CBI, no one corrected the records at the Denver Police Department. Indeed,

although Denver clearly acknowledged the mistaken identity arrest when it released Mr. Hernandez on October 7, 2008 (EXHIBIT 11, at Fourhorn General 003703, 003706), Denver did not correct its records. The DPD arrest record for Carlos Hernandez continues to list Ray Martinez-Hernandez as an "alias." EXHIBIT 11, at Fourhorn General 001324-25.

That persistent but erroneous reference in Denver's database produced more problems for Carlos Hernandez even after the CBI had corrected its records. During a traffic stop in early 2009, a Denver police officer pushed Carlos up against his car, handcuffed him, and asked him whether he was Ray Alfonso Martinez-Hernandez. Fortunately for Carlos Hernandez, after an hour, he was able to avoid arrest after persuading the officer to review a document he obtained from the CBI, which states that he is *not* Ray Martinez-Hernandez. EXHIBIT 29, at PLF000009-10 ¶¶ 16-19. A different police officer, however, could have made the arrest. Indeed, such an arrest would accord with Denver's policy. *See* This Resp., Pt.III, Subpt.C.2., at 194-198.

Stephen Tendell. Documents in the case of Stephen Tendell explain the necessity, and the difficulty, of thoroughly eradicating from law enforcement databases the persistent (and erroneous) vestiges of a mistaken identity arrest.

As explained earlier, Stephen Tendell, a victim of identity theft who had no criminal record, spent a night in jail on a warrant meant for the real suspect,

Alonzo Muniz-Mota. Even after Denver police recognized the mistake, a warrant remained outstanding for Mr. Muniz-Mota, and the computers listed Stephen Tendell as an alias.

In this particular (and unusual) case, Denver officers made an effort to correct the law enforcement records, and a DPD memo notes the difficulty of the task and also emphasizes the risk of inaction. Multiple law enforcement databases had tangled together the identities of Mr. Tendell and Mr. Muniz-Mota. More than a year after Mr. Tendell's wrongful arrest, DPD continued to struggle with correcting the records and untangling the tangled identity information. DPD persuaded DSD to remove the "AKA" reference to Mr. Tendell on the warrant for Mr. Muniz-Mota. But that was not sufficient, as the identities remained entangled in law enforcement databases such as OSI, PictureLink/WebMug, and Versadex.

As long as the law enforcement computers continued to link the identities of Mr. Muniz-Mota and Mr. Tendell, Mr. Tendell was vulnerable to be arrested again on the warrant for Muniz-Mota. As one DPD tech noted, to prevent another mistaken arrest, it was necessary to quickly untangle the mixed-together identities in *all* the computer databases: "This needs to be done ASAP because the Officers on the street can get this information in the cars and all efforts will be in vain." EXHIBIT 11, at Fourhorn General 001330-33.

Emails obtained from Denver District Court employees also document the considerable difficulty they encountered in attempting to straighten out the records so that the innocent Mr. Tendell would not remain unjustly stigmatized because of the entanglement of identities resulting from his mistaken identity arrest. *See* EXHIBIT 8, at DDC0038-40.[49]

6. Custom 6: Denver inadequately trained its law enforcement agents in the execution of cold warrants to avoid mistaken identity arrests and detentions.

It is obvious that law enforcement officers need training to avoid mistaken identity arrests and detentions. Many individuals share the same or similar first and last names. Many such individuals share the same race or ethnicity and therefore have similar physical characteristics, e.g., height, weight, and skin, hair and eye color. When executing a warrant, the importance of arresting the correct person is equally obvious—arresting the wrong person violates the warrant, deprives the innocent person of liberty, and causes the deactivation of the warrant for the suspect, thereby insulating her from arrest.

Denver inadequately trained its law enforcement personnel on how to avoid mistaken identity arrests and detentions. Denver provides general training on

[49] *E.g.*, EXHIBIT 8, at DDC0039 ("Whenever anyone runs a background check for a job, home, etc., Tendell will come up as having a criminal history with a felony charge . . . . [H]e can say until he is blue in the face that it isn't him and no one will ever believe him."); *id.* at DDC0038 ("Mr. Tendell had never been arrested until he made the huge mistake of reporting this crime.")

arrests, but it admits it does not train its law enforcement officers on using Denver's readily available resources and information to avoid mistaken identity arrests and detentions. EXHIBIT 35, at 12.

DPD. DPD officer-candidates are required to attend 16 weeks of training at the Denver Police Academy, followed by 4 months as a field training officer. *See* EXHIBIT 51, at 7, 9. The Academy does not provide specific training on the identification of suspects for arrest. *See* EXHIBIT 51, at 9; EXHIBIT 42, at 8. As of December 2008, DPD had no training manuals or literature discussing the challenges and problems associated with identifying the correct person for an arrest. EXHIBIT 51, at 37.

Training on identifying individuals and using Denver's resources for identifying arrestees is provided on an *ad hoc* basis during field training. *See* EXHIBIT 51, at 10. For example, no formal training is provided on determining the genuineness of an ID card. EXHIBIT 51, at 11. No specific training is provided on how to read an arrest warrant. EXHIBIT 39, at 15. Nor is there specific training on determining whether a suspect is the person identified in the warrant. EXHIBIT 39, at 15; EXHIBIT 42, at 11. Trainees are "bounced around to several different field training officers" during the 4-month period. EXHIBIT 51, at 13.

Before DPD officers had mobile computers in their patrol cars, DPD officers were trained to identify a person "over the radio, where you called in and asked if

someone had a driver's license, if the information they're giving you would be on that ID when they didn't have an ID, those types of situations." EXHIBIT 51, at 10. In this training, DPD officers were told to take the information supplied by the person before them (e.g., height, weight, address), and compare it to the information supplied over the radio by an operator who had access to an NCIC computer. EXHIBIT 51, at 12-13. "A lot of that has changed now that we have [mobile] computers." EXHIBIT 51, at 10.

Officers receive training on databases accessible through DPD's computer systems, NCIC, CCIC, OSI, Versadex, DMV and Blackstone. EXHIBIT 39, at 16. There is no formal training on how to use the data from these various databases, or which data are required or important for identification purposes. *See, e.g.,* EXHIBIT 42, at 18-24. Nothing in Denver's policies requires training on the importance of a suspect's date of birth or a photograph for identification purposes. EXHIBIT 42, at 23.

Detectives are Denver's identification experts. In the context of swearing out affidavits in support of arrest warrants, when there are identification concerns, Denver's policy requires that DPD officers go to DPD detectives. *See* EXHIBIT 11, at Fourhorn General 000820, 000822.

Training to be a detective is not formal, but on-the-job training. "As you prepared [a] case, if you needed help you asked one of your neighboring

detectives, how do I do this, how do I do this and that, that type of scenario." EXHIBIT 51, at 25. A detective is assigned generally to a detective-trainee; the detective would not sit at the trainee's side but would be available to review and assist as needed; the trainee can ask for assistance from anyone around him. EXHIBIT 51, at 26. Detective trainees learn generally to write warrants, interview witnesses, investigate a case, prepare a case to present to a prosecutor. EXHIBIT 51, at 21-23. The training on identifying individuals for arrest provides no new information to what patrol officers already have. *See* EXHIBIT 51, at 23. No specific training is provided on how to read a teletype arrest warrant, or on determining whether a suspect is the person identified in the warrant. *See* EXHIBIT 39, at 15; EXHIBIT 42, at 25. No formal or on-the-job training is provided to DPD officers or detectives on what they should do if an arrestee makes a mistaken-identity protest. EXHIBIT 42, at 28, 52; *see* EXHIBIT 39, at 15 (detective training on executing arrest warrants is "very general").

DPD has two specialized units used to execute arrest warrants: Fugitive Bomb Unit, and Fugitive Unit. EXHIBIT 51, at 13-14. The members of the units are detectives. *See* EXHIBIT 51, at 20. They do not receive classroom training on locating fugitives; the only training they receive is "on-the-job" training. *See* EXHIBIT 51, at 17. Among DPD detectives, the detectives in the fugitive units are considered Denver's preeminent identification experts, as it is their responsibility

to locate and arrest fugitives. *See* EXHIBIT 11, at Fourhorn General 000691, 000822, 002324.

When he conducted his investigation of the location and identity of Ahmed Alia in September 2007, fugitive unit Det. Peterson had been a law enforcement officer for 23 years. *See* EXHIBIT 51, at 6-7. During his career, he had arrested "hundreds and hundreds of fugitives." EXHIBIT 51, at 17. Yet, the training provided by Denver failed to give him sufficient information to be able to read crucial components of a warrant. For example, because he did not know what "MNU" (miscellaneous number used to signify local ID number) on the Alia warrant was referring to, he did not know the warrant provided Mr. Alia's DPD number, which denoted Mr. Alia's previous arrest in Denver and which is searchable in numerous Denver databases. Had Denver trained Det. Peterson to understand the significance of Mr. Alia's DPD number, Peterson would have been led to information that would have shown categorically that Muse Jama was not the same person.

The FBI, SID and DPD numbers are highly important law enforcement tools for helping to determine a person's identity or to exclude a person as a suspect, since these are unique numbers correlated by the FBI, CBI and ID Bureau to a unique set of fingerprints. Det. Peterson was uncertain of what "SID" in a warrant means. *See* EXHIBIT 51, at 102-03. He did not recognize the DPD number in the Alia warrant. In March 2008, Officer Daniel Walton arrested Plaintiff Sanchez on

one warrant belonging to Plaintiff Sanchez and two warrants belonging to a Tony Sanchez. Each of these warrants listed unique FBI and SID numbers for Plaintiff Sanchez and Tony Sanchez, respectively. *See, e.g.,* EXHIBIT 32, at Sanchez 000068, 000073. Every adequately trained law enforcement officer would know that the different FBI and SID numbers assigned to each of them categorically established that they were different persons. Officer Walton testified he did not know what an FBI or SID number is, and had never been trained on the significance or use of those numbers. *See* EXHIBIT 61, at 30-31. He also did not know what "MNU" in a warrant means.

After receiving the FBI "tip sheet," Det. Peterson used a single Denver resource to obtain Ahmed Alia identification information, namely, NCIC/CCIC. *See* EXHIBIT 51, at 48-56. Although NCIC/CCIC has hundreds of search masks available,[50] Det. Peterson used only two: He used QH to search for Ahmed Alia's criminal history,[51] and he used QW to search a specific CIC number for the Alia warrant shown in the QH search.[52] He did not search *any* database for "Muse Jama." *See* EXHIBIT 51, at 48-56. No policy required him to.

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[50]EXHIBIT 49, at 63-65.

[51]EXHIBIT 6, at CBI.PLF000683.

[52]EXHIBIT 6, at CBI.PLF000688, CBI.PLF000691-92.

Three weeks earlier, DPD Chief Whitman had issued a "Training Bulletin" stating that in the context of requesting arrest warrants, "[i]t is imperative that all officers make *every reasonable effort* to determine a suspect's correct identity and/or obtain *positive identification*." EXHIBIT 11, at Fourhorn General 000820 (emphasis supplied). It further provided, "Information from such sources as witnesses, crime computers, and [ID Bureau] files should be used." *Id.* "[M]erely locating a name in a computer database that is the same or similar to a suspect's name does not, by itself, provide probable cause to believe that the person in the database is the same person as the suspect." *Id.*

Det. Peterson's inadequate training is compellingly illustrated in his post-arrest conduct. On September 24—three days after Plaintiff Jama had been arrested, fingerprinted and otherwise booked—Det. Peterson for the first time searched NCIC/CCIC for "Jama, Muse" and Plaintiff Jama's DOB listed on his Colorado driver license, [redacted]/80. EXHIBIT 6, at CBI.PLF000651-61. The results of the search are notable. The search showed that Plaintiff Jama had a *different* Colorado SID number than the SID number assigned to Ahmed Alia. The Alia warrant said Mr. Alia's SID number was [redacted]948. EXHIBIT 14, at Jama Muse 000866. Det. Peterson's September 24 NCIC/CCIC search showed that after his booking, Plaintiff Jama was assigned SID No. [redacted]509. EXHIBIT 6, at CBI.PLF000658.

For any adequately-trained law enforcement officer, the NCIC/CCIC search was hair-on-fire information that Plaintiff Jama was *not* Ahmed Alia, that he, Det. Peterson, had arrested the wrong person, and that he needed to take action immediately to release a mistakenly arrested and detained person. Det. Peterson did not even understand the significance of the two different SID numbers. He did nothing. Plaintiff Jama stayed in jail another 4 days before bonding out.

When Denver found that Det. Peterson's arrest was faulty, the reason it gave was simply that "he neglected to obtain a photo of the named 'wanted party,'" even though that "is a common investigative tactic." EXHIBIT 14, at Jama Muse 000946. Denver did not determine that any part of Det. Peterson's investigation was deficient or in violation of his training. Nor did Denver determine that Det. Peterson, as a fugitive-unit detective with expertise in identification, (i) should have known from the warrant that Mr. Alia had a DPD number, an active Colorado driver license, and a case pending in Denver District Court, (ii) should have been able to use this information to obtain an abundance of identification information about Mr. Alia, and (iii) should have recognized on September 24 that the same person cannot have more than one SID number and therefore should have known that Plaintiff Jama was not Ahmed Alia.

Denver does not train its officers or detectives on the information needed to identify a person in a cold arrest warrant or to arrest a person on a cold warrant.

For example, Det. Freund has been a DPD law enforcement officer for 18 years, 8 as a DPD detective. EXHIBIT 42, at 8, 11, 15. She said an arrestee's date of birth is "very important" and "establish[es] certainty," and a matching name and date of birth constitutes probable cause to arrest. *See* EXHIBIT 42, at 21-23. Yet, Det. Freund was Det. Dalvit's trainer when he found probable cause to swear out a warrant for former Plaintiff Christina FourHorn's arrest even though Ms. FourHorn's date of birth was [redacted]/73 and the suspect's was 7 years later, [redacted]/80. As Det. Dalvit's trainer, Det. Freund did not state that Det. Dalvit did not have probable cause to swear out the warrant. EXHIBIT 42, at 135. When asked whether she would have sworn out an affidavit in support of an arrest warrant for former Plaintiff Christina FourHorn despite the difference in date of birth, Det. Freund did not say it was contrary to her training to cause the warrant to issue. Nor did she say that because of the importance of matching birthdates, an arrest would be improper. Instead, she said she "would have gone to the district attorney and presented the facts of the case and then had them tell me [to] get an arrest warrant or not." EXHIBIT 42, at 135.

DSD. DSD deputy-candidates attend the DSD Academy, which in 1992 was in a trailer. EXHIBIT 50, at 19. At the academy, the candidates are trained on department orders, policies and procedures, operating the radio, the physical

descriptors in a teletype warrant, supervision of inmates, inmate issues, how to communicate with inmates, and physical fitness. EXHIBIT 50, at 20-21.[53]

Deputies are trained only to be familiar with teletype warrants. EXHIBIT 50, at 19. Deputies in general execute fewer warrants. So it is not uncommon for deputies to see few warrants in their careers. For example, 17-year veteran Sgt. Ortega, who is a supervisor, said he has seen "somewhere between seven and ten"; of those, he saw five or six as a "front-line deputy." EXHIBIT 50, at 44, 46-47, 54-56; *see* EXHIBIT 48, at 46 (sergeant is a supervisor).

The SID number is an important law enforcement tool for determining a person's identity. Major Phil Deeds is a high-level DSD officer and supervisor who has been a Colorado enforcement officer for 30 years. *See* EXHIBIT 41, at 10-12. When he was deposed, Major Deeds was the head of DSD operations at the City Jail, courthouse and hospital. EXHIBIT 41, at 13-14. In 2009, after Plaintiff Sanchez was mistakenly jailed for the fourth time on a warrant for Tony Sanchez, Major Deeds investigated. That's the first time he learned what an SID number was. EXHIBIT 41, at 81.

As another example, 19-year DSD veteran Sgt. Gillespie said that when she was assigned to the County Jail's Receiving Unit as a sergeant and supervisor, she

[53]Sgt. Paul Ortega is a 17-year DSD supervisor with a rank of sergeant. *See* EXHIBIT 50, at 29-30. Sgt. Ortega arrested Plaintiff Dennis Michael Smith.

had received no training in executing an arrest warrant. EXHIBIT 43, at 17-18. Nor did she receive any training after joining the unit. EXHIBIT 43, at 18-19. Nor did she receive any training on the identification of a person for purposes of arresting the person under a warrant. EXHIBIT 43, at 22.

As another example, DSD deputies in the County Jail's Receiving Unit have the ability to execute a warrant against an inmate. They could execute such a warrant, for example, when an NCIC/CCIC check determines that an inmate is wanted on a warrant issued in a case different from the one on which the inmate was incarcerated. These deputies receive inadequate or no training on what to do if they are uncertain whether a warrant is or is not applicable to an inmate because of identification concerns. *See* EXHIBIT 25, at Jose Ibarra 000058, 000060-62. DSD Deputy Richard Saunders said he has "[n]ever seen" a written procedure for that circumstance.

Deputy Sirhal was a senior deputy and/or supervisor in the Receiving Unit; he had worked at the Receiving Unit for 10 years, and at the time he arrested Plaintiff Jose Ernesto Ibarra, Deputy Sirhal was "the most experienced deputy" in the unit. EXHIBIT 25, at Jose Ibarra 000061; EXHIBIT 57, at 77. In the case of uncertainty over whether an inmate was the person named in a warrant, Deputy Sirhal said "a lot of the time [you're] just 'shooting from the hip.'" EXHIBIT 25, at Jose Ibarra 000061. An Internal Affairs report on Plaintiff Jose Ernesto Ibarra's

complaint concerning his mistaken-identity arrest noted that Deputy Sirhal said "he and the other Records [Unit] officers *do not have the proper training or 'tools'* to correctly identify an inmate if needed." EXHIBIT 25, at Jose Ibarra 000061 (emphasis supplied). "[T]here is no written policy on what to do" in cases in which he was not certain he had enough information to attach a warrant to an inmate. EXHIBIT 25, at Jose Ibarra 000064.

The Receiving Unit, run by more experienced DSD deputies, processes inmates arriving at and departing from the County Jail. It is the central repository of all inmate records. Inmate records include an "inmate file," which contains all the paperwork relating to each inmate's current incarceration, including "P-Name" documents,[54] warrants on which an inmate is held, court schedulings and court documents. *See* EXHIBIT 43, at 18, 196-97; EXHIBIT 48, at 26-27, 30-31, 49-50, 54; EXHIBIT 57, at 8; EXHIBIT 62, at 111.

The Receiving Unit can conduct investigations into an inmate's identity. It has access to all inmate records, the NCIC/CCIC unit, and the ID Bureau. EXHIBIT 48, at 53-54. Receiving Unit deputies are free to make calls to law enforcement agencies and court staff. *See* EXHIBIT 57, at 45-47. They also may require inmates

[54]This DSD document is part of the inmate file. It contains an inmate's identity, "physical descriptors," SID number, FBI number, DPD number, current address, next of kin, and a summary of the charges or active warrants on which the inmate is being held. EXHIBIT 57, at 10-14; *see, e.g.*, Jose Ibarra 000037.

to appear before them to answer questions or complete paperwork. *See* EXHIBIT 57, at 10. When he made his decision to arrest Plaintiff Jose Ernesto Ibarra on the five warrants for Jose Cayetano Ibarra, Deputy Sirhal relied solely on a comparison of the information in the five warrants and Plaintiff Ibarra's "P-Name" document. *See* EXHIBIT 25, at Jose Ibarra 000060-62; *see generally* EXHIBIT 57, at 33-50. Deputy Sirhal concluded in no more than 18 minutes "there was not enough comparable information available" to determine whether Plaintiff Ibarra was the person named in the five warrants. EXHIBIT 25, at Jose Ibarra 000062; Doc.428, at 23. Deputy Sirhal's training did not tell him to use any of Denver's identification resources at his disposal, including Plaintiff Ibarra's inmate file, NCIC/CCIC data, and the ID Bureau. *See* Doc.428, at 25-27.

When there are questions about whether an inmate is the same person as a person named in a warrant, law enforcement officers are trained to arrest the inmate on the warrant. *See* EXHIBIT 25, at Jose Ibarra 000061 & 000064. Rather than conducting an investigation to determine whether the inmate is the person identified in the warrant, law enforcement officers make the arrest and "le[ave] it to the courts to decide" the identification issue. *See* EXHIBIT 25, at Jose Ibarra 000064; EXHIBIT 57, at 33 ("the names were so close that I made the decision to hold [Plaintiff Ibarra] and send him to the courts and let the courts decide whether they had the right individual or not"). They are led to believe—erroneously (and

inexplicably)—in their on-the-job training that courts have a duty to answer law enforcement questions about a person's identity, and that courts have the resources to determine definitively an arrested person's identity. *See* EXHIBIT 25, at Jose Ibarra 000060-64; EXHIBIT 57, at 33, 70-72; EXHIBIT 49, at 101-02.

DSD deputies are trained to know that before a suspect can be arrested on a cold warrant, the deputy must "check for validation on the warrant." EXHIBIT 50, at 37. The training by DSD supervisors tells trainees that "validation," "verification" and "confirmation" of a warrant means NCIC/CCIC has confirmed that "all the facts" on the warrant and related paperwork "are true and correct," EXHIBIT 50, at 39. *See* EXHIBIT 50, at 37-41, 54-55. In fact, that training is incorrect. That is not what validation of a warrant means. *See* EXHIBIT 43, at 32-33 (to confirm validity of warrant is to confirm warrant is active and has not been withdrawn) *and* EXHIBIT 48, at 176 (same) *and* EXHIBIT 40, at 29-30 (same) and EXHIBIT 60, at 39 (same). In fact, as one would expect, it is not uncommon for NCIC data to be incorrect, including in NCIC teletype warrants. *See* EXHIBIT 39, at 57-59; EXHIBIT 32, at Sanchez 000120 (Tony Sanchez warrant with Antonio Sanchez's SID number); *see generally Arizona v. Evans*, 514 U.S. 1, 26-28 (1995) (Ginsburg, J., dissenting, and citing error rates in NCIC).

Training after the academy is on-the-job training. EXHIBIT 50, at 25. The on-the-job training relating to arrests consisted of witnessing 2-3 arrests, asking

questions about the arrests, reading the department procedure relating to arrests, and actually arresting someone. *See* EXHIBIT 50, at 28-29.

Training on the identification of a person in the case of disputed identification is *ad hoc*, and depends upon whether during training the trainee is exposed to disputed-identification arrests. *See* EXHIBIT 50, at 35-37; EXHIBIT 48, at 106-07, 110-11. When the trainee has little or no such exposure, e.g., Deputy Sirhal and Deputy Ortega, Denver provides no training at all on the "recurring situation[]," *Brown*, 520 U.S. at 398, of resolving concerns about mistaken identity prior to arrests and detentions.

NCIC/CCIC. NCIC/CCIC operators have the ability to conduct an extensive NCIC/CCIC investigation into a suspect's identity. For example, they can pull up a suspect's criminal history, fingerprint codes and SID numbers. EXHIBIT 43, at 124.

Nonetheless, when NCIC/CCIC operators know that a law enforcement officer without direct access to NCIC/CCIC is considering arresting a suspect, NCIC/CCIC operators are not trained to conduct an NCIC/CCIC investigation into a suspect's identity. *See generally* EXHIBIT 43, at 110-24; *see also* EXHIBIT 11, at Fourhorn General 002324 (DSD's new, post-Ibarra-arrest policy establishing NCIC/CCIC operator's responsibilities when clearing County Jail inmate for release).

For example, on January 15, 2008, NCIC/CCIC operator Liza Longoria was assigned to "clear" Plaintiff Dennis Michael Smith for a visit to the County Jail. EXHIBIT 10, at Dennis Smith 000540. She was provided with Plaintiff Smith's name ("Dennis Smith"), his birthdate ([redacted]/59) and his Colorado driver license number. EXHIBIT 10, at Dennis Smith 000540. She used the driver license number to obtain from NCIC/CCIC his driver license information. EXHIBIT 10, at Dennis Smith 000541. That information showed that Plaintiff Smith was 6'00" in height, 190 lbs, with brown hair and green eyes, and a Social Security number ending in 6351. EXHIBIT 10, at Dennis Smith 000541.

When she performed a "QW" search in NCIC/CCIC, Ms. Longoria used "Smith, Dennis" and the birthdate [redacted]/59. EXHIBIT 6, at CBI.PLF000295. The search returned 100 hyperlinked responses, each providing a brief summary of the document to which the response was hyperlinked. EXHIBIT 6, at CBI.PLF000295. Among the first five responses were these two:

	Name	DOB	Race/Sex	Hgt	Wgt	Hair	Eyes	SID	Record Type
1	Dennis Smith	[redacted]/59	White Male	6'00"	190 lbs	Brown	Green	[redacted]191	Victim
2	Dennis Allen Smith	[redacted]/59	White Male	6'01"	173 lbs	Blond	Hazel	[redacted]841	Local Warrant

Of these two responses, only the first matched all the driver license information Ms. Longoria had obtained from the prospective jail visitor. It listed "Dennis Smith" as a victim. If Ms. Longoria had clicked on the hyperlink, NCIC would have produced a record stating in part: "Do not arrest based on this information . . .

Victim of misidentification . . . Not the same person as SID/[redacted]841 FBI/[redacted]0W2 Nam/Smith, Dennis Allen DOB/[redacted]59." EXHIBIT 56.

Ms. Longoria's training did not tell her to click on all the hyperlinked responses matching the name of the prospective visitor.

Instead, Ms. Longoria clicked on the hyperlink for the second response. That response showed a warrant for "Dennis Allen Smith," with an SID number *different* from the SID number for "Dennis Smith" in the first response. EXHIBIT 6, at CBI.PLF000295 & CBI.PLF000298-99. Ms. Longoria then informed the County Jail Visit Officer that there was a "possible warrant" for Plaintiff Dennis Smith, and faxed over the Dennis Allen Smith warrant.

On January 19, 2008, after Plaintiff Smith appeared in the County Jail for his visit, the Visit Officer requested that Ms. Longoria confirm the Dennis Allen Smith warrant. Ms. Longoria performed the same NCIC search, which produced the same response. Again, Ms. Longoria's training did not cause her to click on the response for "Dennis Smith." Instead, she confirmed the warrant for Dennis Allen Smith was still active. Her training also did not require her to inform the Visit Officer that (a) there was more than one response for a first name of Dennis and a last name of Smith, (b) there were two responses showing different SID numbers for a "Dennis Smith" versus "Dennis Allen Smith," (c) the first response showed a "Dennis Smith" that matched all the physical descriptors for the driver license information

she had received, and (d) she did not click on the hyperlink for the first response "Dennis Smith" to learn anything more about him or to reconcile the different SID numbers.

7. Policy 1: Denver has a policy of incarcerating arrestees indefinitely while awaiting the Denver District Court to schedule the arrestee for a judicial appearance.

Denver's policy is that any person seized and detained under a Denver District Court warrant must remain incarcerated without a hearing until the Denver District Court "schedules the individual for court," EXHIBIT 11, at Fourhorn General 000837; EXHIBIT 48, at 58-59; EXHIBIT 41, at 68-69. Denver knows that the result of its policy is that an arrestee may be incarcerated indefinitely before she receives a hearing before a judicial officer.[55] *See* EXHIBIT 48, at 59; EXHIBIT 41, at 68-69. Denver's policy is also discussed at pages 125-127 of this Response.

D. Denver was deliberately indifferent to the rights of persons with whom its police come into contact.

Deliberate indifference is satisfied upon proof that Denver had actual or constructive notice that its action or failure to act was substantially certain to result in a constitutional violation, and it consciously or deliberately chose to disregard the risk of harm. *See Barney*, 143 F.3d at 1307; *Olsen v. Layton Hills Mall*, 312

[55]Director Lovingier testified that an arrestee's wait to appear before the Denver District Court "depends on the court and their docket. It could be the next day, it could be a week, 10 days. It just varies." EXHIBIT 48, at 59.

F.3d 1304, 1318 (10th Cir. 2002). A plaintiff may satisfy the notice requirement "by offering circumstantial evidence of the [municipality's] knowledge," *Tafoya v. Salazar*, 516 F.3d 912, 922 (10th Cir. 2008), of its employees' pattern of conduct leading to violation of the plaintiff's federal rights. *See Barney*, 143 F.3d at 1307-08. Deliberate indifference also can be found without a pattern of conduct if the violation of federal rights is a "'highly predictable' or 'plainly obvious' consequence of a municipality's action or inaction, such as when a municipality fails to train an employee in specific skills needed to handle recurring situations, thus presenting an obvious potential for constitutional violations." *Barney*, 143 F.3d at 1307 (quoting *Brown*, 520 U.S. at 409, 411).

Custom 1 (ignoring mistaken identity arrests/detentions). Plaintiffs have documented hundreds of occasions where Denver mistakenly arrested and/or detained the wrong person over a 7½-year period. It is highly likely this substantially understates the number of persons Denver has mistakenly arrested and/or detained during that time period. This is because, as Denver admits, it made no attempt (until after this lawsuit was filed) to track mistaken identity arrests and detentions and therefore has no data. As a result, Plaintiffs were reduced to requesting in discovery—over Denver's objection—*ad hoc* computer searches of data in certain County Court records and manually reviewing thousands of pages of related law enforcement criminal records. The PIIQ procedure Denver instituted

in 2009 began detecting at least some portion of Denver's mistaken identity arrests and detentions. In doing so, it confirms the existence of Denver's custom by establishing that Denver had mistakenly arrested and detained at least two dozen additional prisoners over the span of 8 months in 2009.

Denver had actual and/or constructive notice of the hundreds of mistaken identity arrests and detentions carried out by its law enforcement officers. Plaintiffs propounded an interrogatory on Denver requiring it to state what kind of policy it has relating to collection of data on mistaken identity arrests and detentions. While admitting it had no policy imposing such a requirement, Denver stated that it "constantly review[s] and revise[s] policies based on *information from throughout [DPD and DSD].*" EXHIBIT 35, at 15 (emphasis supplied).

In 2006, a local news station, 7News, conducted a highly-publicized investigation which showed that 750 individuals statewide had been mistakenly arrested and/or detained, were improperly named in arrest warrants, or their criminal-justice records showed they committed a crime when in fact they did not. EXHIBIT 33, at VR0008-10. The 7News investigation identified by name two innocent persons who had been mistakenly arrested and detained, including Valerie Rodriguez.

Long before Plaintiffs in this case were mistakenly arrested, Denver policymakers were well aware of what had happened to Ms. Rodriguez. Prompted

by the inquiry of the 7News reporter, Denver initiated an Internal Affairs investigation into her mistaken identity arrest. EXHIBIT 33, at VR0004, VR0011, VR0029-30. DPD Chief Whitman knew of her mistaken identity arrest and detention. EXHIBIT 33, at VR0030. Deputy Chief of DPD Operations Michael Battista, acting under the authority of Chief Whitman, reviewed Ms. Rodriguez's entire arrest/detention case as part of Denver's standard operating procedure. EXHIBIT 12, at Fourhorn Monitor 000229-30; EXHIBIT 33, at VR0003. Denver had defended and settled a lawsuit filed on her behalf (*see* EXHIBIT 33, at VR000052-67), and DPD policymakers had warned officers that a name match in a computer database was not sufficient grounds to believe that the two records corresponded to the same person (EXHIBIT 11, at Fourhorn General 000820).

Denver's own assistant city attorneys were present when many dozens of mistaken identity victims appeared in Denver County Court and were ordered released because of judicial findings that they had been mistakenly arrested and detained. This is demonstrated in EXHIBIT 20, which lists many dozens of Denver municipal prosecutions. In November 2007, a DSD officer told Internal Affairs that mistaken identity arrests and detentions "happen *every day*," in part because of "errors in the system" relating to physical descriptions, so that "at times, males are delineated as females on the warrants because of the errors in the system." EXHIBIT 11, at Fourhorn General 000834.

In 1996, more than a decade ago, high-level Denver law enforcement officers knew of the mistaken identity arrest and detention of L[redacted]F[redacted]. EXHIBIT 11, at Fourhorn General 003159, 003160-61, 003165, 003138-40, 003162-64. Denver had notice in 2005, 2006 and 2007 of Valerie Rodriguez's mistaken identity arrest and detention. *See* EXHIBIT 33, at VR0003-05, VR0008-10, VR0029, VR000052-67. It knew in August 2007 that in the case of Bradley Braxton, a number of its law enforcement personnel had failed to use Denver's readily available resources and information to acquire knowledge that Mr. Braxton, a black man, had been mistakenly arrested and detained on the warrant for a white man. *See* EXHIBIT 11, at Fourhorn General 000835-37, 000843-44, 000857-61. Shortly after her release from jail in March 2007, Christina FourHorn wrote to DPD, DPD Sgt. Wheaton, and Denver's Office of the Independent Monitor to complain about her mistaken identity arrest and detention. *See* EXHIBIT 64; CFourhorn 000096-97, 000102, 000105, 000115, 000130; EXHIBIT 7, at CF0119, CF0121.

The notice Denver received of the sheer number of mistaken identity arrests and detentions its law enforcement personnel carried out over a period of 7½ years would have led any reasonable and responsible municipality to undertake actions to track, investigate, stop and remedy such arrests and detentions. Denver did nothing. It did not take the crucial first step of tracking its employees' mistaken

identity arrests and detentions. *See* This Resp., at 42-42. As its own Auditor succinctly put it, "Because the Department of Safety does not track data related to arrest identity issues, it cannot effectively measure nor assess the impact of the practices it has implemented. We cannot improve what we do not measure." EXHIBIT 11, at Fourhorn General 011592.

After the presentation of circumstantial evidence from which the municipality's actual or constructive notice may be inferred, "a jury is permitted to infer deliberate indifference based solely on the obviousness of the threat posed to [the plaintiff]," *Tafoya,* 516 F.3d at 922.

Here, Plaintiff Jama has presented more than sufficient evidence—particularly when viewed in the light most favorable to him—of notice to Denver and of the obviousness of the threat posed to him from Denver's customs.

Over a period of 7½ years, Denver ignored the fact that it had subjected hundreds of innocent persons to mistaken identity arrests and detentions. It did not track such mistaken identity arrests and detentions; it did not investigate any of the hundreds of mistaken identity arrests and detentions identified in minute orders and "wrong person clears" documents; insofar as the discovery shows, it did not discipline any law enforcement personnel in connection with these "minute order" and "wrong person clears" arrests. A violation of federal rights was a highly predictable and plainly obvious consequence of this conduct.

A Fourth Amendment rights violation, namely, an unconstitutional seizure of a person based on mistaken identity, was substantially certain to result from Denver's custom of ignoring its hundreds of mistaken identity arrests and detentions. Yet, it consciously or deliberately chose to disregard the risk of harm.

Custom 2 (use of readily available resources/information). Denver failed to promulgate policies requiring its law enforcement personnel, in situations when there is an obvious risk of mistaken identity arrest and detention, to use all Denver's readily available resources and information—both prior to arrest and after detention begins—to determine whether a person arrested or detained is the person identified in the warrant on which he was arrested.

Denver had actual and constructive notice that its law enforcement officers systematically were failing to use its robust identification-information resources to investigate the identity of a suspect and to determine whether they had probable cause to arrest or detain. *See* This Resp., Pt.III, Subpt.1.C.2, at 96-114. Additionally, in August 2007 DPD Chief Whitman issued a "Training Bulletin," in which he admitted the need for certain officers to use its identification-information resources:

> It is imperative that all officers *make every reasonable effort* to determine a suspect's correct identity and/or obtain positive identification before requesting the issuance of an arrest warrant. Information from *such sources as witnesses, crime computers, and Identification Section files should be used.* Additional strategies that should be used to assist in determining a suspect's identity include

> photo lineups, determining the exact address of a suspect's residence, and show-up identifications if the suspect is located.
>
> Officers are reminded that merely locating a name in a computer database that is the same or similar to a suspect's name does not, by itself, provide probable cause to believe that the person in the database is the same person as the suspect.

EXHIBIT 11, at Fourhorn General 000820 (emphasis supplied). But the bulletin was limited to training on what a DPD patrol officer should do "before requesting the issuance of an arrest warrant." It was *not* directed to DPD detectives, DSD law enforcement officers, or other law enforcement personnel who have actual or *de facto* authority to cause an arrest (e.g., a DSD deputy or NCIC/CCIC operator[56] in the Plaintiff Jose Ibarra situation who determines during a warrant check that there is a warrant which should be attached to a prisoner). Regardless, Denver has promulgated no policy requiring arresting officers to use all readily available resources and information before executing cold warrants.

Although Denver does not track its mistaken identity arrests and detentions, and was unable to provide complete documentation, Plaintiffs have provided documentation showing that more than 200 of the "wrong person" orders in the Minute Order Summary (EXHIBIT 20) were handed down in cases where the mistaken identity victims were arrested or jailed on warrants for individuals previously arrested and fingerprinted, photographed and otherwise booked into the

[56] *See* This Resp., at 172.

City Jail. *See* EXHIBIT 23 and This Resp., at 58 n.22. Denver had the ability, before erroneously detaining any of these mistaken identity victims, to determine definitively that these victims were not the persons named in the warrants. Denver thus had actual or constructive knowledge that in at least 200 of the 291 cases in EXHIBIT 20 where the Denver County Court acknowledged a mistaken identity arrest or detention, its law enforcement personnel had ready access to Denver resources and information that would have prevented the arrest or cut short the detention, yet failed to access the resources and information.

A Fourth Amendment rights violation, namely, an unconstitutional seizure of a person based on mistaken identity, was substantially certain to result from Denver's custom. Yet, Denver consciously or deliberately chose to disregard the risk of harm.

Custom 3 (definitive determination of identity *via* mugshots and fingerprints). Denver failed to promulgate policies requiring—in a cold-warrant arrest involving obvious potential for a mistake about an arrestee's identity—a post-arrest, definitive determination that the arrestee is the person identified in the warrant.

Over the span of 7½ years, Denver has arrested and detained hundreds of innocent individuals based on mistaken identity. Many of these mistaken identity arrests and detentions were the subject of media inquiries, citizen complaints and

cases in which Denver's own lawyers were present and agreed or acquiesced to a judicial finding of mistaken identity arrest and detention and a judicial order releasing the mistakenly arrested/detained person. Despite Denver's failure to track these mistaken identity arrests and detentions, the evidence Plaintiffs have secured to date establishes that most of the mistaken identity victims were arrested on warrants for individuals previously arrested and fingerprinted, photographed and otherwise booked into the City Jail. Denver had the ability before any of these mistaken identity victims were jailed to determine definitively, e.g., through fingerprint identification and comparison, that these victims were not the persons identified in the warrants pursuant to which they were arrested. A Fourth Amendment rights violation, namely, an unconstitutional seizure of a person based on mistaken identity, was substantially certain to result from this custom. Yet, Denver consciously or deliberately chose to disregard the risk of harm.

Custom 4 (incarceration beyond 48 hours without probable-cause determination). As discussed above, Denver had actual knowledge that it incarcerates large numbers arrestees beyond 48 hours even though such arrestees have not been afforded a post-arrest, judicial determination of probable cause. *See* This Resp., at 125-127. Indeed, Denver candidly acknowledged that many arrestees received no judicial appearance at all for 7 days and longer. Discussing the unfairness to arrestees held on fugitive warrants, Denver's 30(b)(6) designee,

Director Lovingier, stated, "It's unreasonable for us to hold [arrestees held on fugitive warrants] day after day after day after day"). EXHIBIT 48, at 65-66. A Fourth Amendment rights violation was substantially certain to result from this custom, yet, Denver consciously or deliberately chose to disregard the risk of harm. This constitutes *Monell* deliberate indifference. *See Barney*, 143 F.3d at 1307.

Custom 5 (no correction/disentanglement of mistaken-identity information). Denver has actual knowledge that it has no policy requiring the correction and disentanglement of an arrestee's criminal justice records after its law enforcement officers subjected the arrestee to a mistaken identity arrest and detention. *See* EXHIBIT 48, at 145. The uncorrected and entangled criminal justice records include those, such as NCIC/CCIC, OSI and WebMug, that are used to help a Denver or other law enforcement officer determine whether the person before him is the suspect named in a warrant. *See, e.g.,* EXHIBIT 35, at 6-8; EXHIBIT 40, at 6-18; EXHIBIT 39, at 16-21; EXHIBIT 55, at 139; EXHIBIT 51, at 48-53, 61-64.

Denver also has constructive knowledge of the well-known substantial risks to liberty presented by the failure to correct and disentangle the records of individuals it mistakenly arrests and detains. The harm from errors in computerized criminal justice records is well known. In *Arizona v. Evans*, 514 U.S. 1 (1995), a police officer arrested the defendant Evans because NCIC reported that Evans was

wanted on a warrant. In fact, the warrant had been quashed 17 days before the arrest but court employees had not caused it to be removed from NCIC. The Supreme Court held that the exclusionary rule should not apply to evidence seized from the arrest, because it would not deter court employees' clerical errors. Justice Ginsburg's dissenting opinion, citing publicly available records, expressed grave concern over errors in NCIC and other computerized criminal justice records:

> Widespread reliance on computers to store and convey information generates . . . new possibilities of error . . . . Most germane to this case, computerization greatly amplifies an error's effect, and correspondingly intensifies the need for prompt correction; for inaccurate data can infect not only one agency, but the many agencies that share access to the database. . . .

514 U.S. at 27. In *United States v. Mackey*, 387 F. Supp. 1121 (D. Nev. 1975), the district judge suppressed evidence seized as a result of an arrest on a teletype warrant that should have been withdrawn 5 months earlier. The judge ruled that law enforcement had a responsibility to ensure that computerized criminal justice records are accurate:

> The "passive recipient" theory advanced by the government for FBI record keeping has been rejected. [W]hile not a guarantor of the absolute accuracy of all its records, the FBI has some duty to insure that the information which it disseminates is accurate, and it must remove from its criminal files 'arrest records' which the *contributing agency* has advised it were not reflective of legal arrests.

387 F. Supp. at 1123-24 (citations and footnote omitted; emphasis added). Incorrect criminal-justice records can have significant consequences for the liberty

of the mistakenly arrested person, the court noted: "An arrest record may be used by the police in determining whether . . . to arrest the individual concerned, or whether to exercise their discretion to bring formal charges against an individual already arrested." *Id.* at 1124 (internal quotations omitted).

Denver's failure to require correction and disentanglement of criminal justice records following a mistaken identity arrest and detention necessarily means that hundreds of mistaken identity victims over the last 8 years are at risk of additional, future mistaken identity arrests and detentions. A mistaken identity arrest and detention based on uncorrected and entangled criminal justice records is easy to foresee. Take, for example, Plaintiff Smith. Director Lovingier testified that because Plaintiff Smith does not have his SID imprinted on his driver license, Mr. Smith's CBI letter (confirming that Plaintiff Smith is not Dennis Allen Smith, the target of the warrant) would not prevent an arrest. Yet, this CBI letter might give pause to a police officer who has stopped Plaintiff Smith on, say, a traffic infraction and then learns that NCIC reports an outstanding warrant for the other Dennis Smith. For the police officer, however, the decisive fact in favor of arrest well could be the NCIC/CCIC entry (available via a police cruiser's mobile data terminal or radio[57])—which Denver failed to correct as of April 2009—stating that

[57]*See, e.g.,* EXHIBIT 53, at 15-18.

Plaintiff Smith was arrested in January 2008 on a "fugitive" warrant but *not* stating that it was a mistaken identity arrest. Doc.156-4, at 2. *See generally* This Resp., at Pt.III, Subpt.1.C.5, at 127-136.

Although Denver does not track mistaken identity arrests and detentions or the consequence of failing to have a policy of correcting and disentangling criminal justice records, the risk is in no way hypothetical. There is substantial evidence that mistaken identity arrests and detentions based on entanglement of criminal justice records have occurred on numerous occasions. *See* This Resp., at Pt.III, Subpt.1.C.5, at 127-136. A federal rights violation is substantially certain to result from Denver's custom. Additionally, a federal rights violation is a highly predictable or plainly obvious consequence of Denver's custom.

Custom 6 (inadequate training). Denver had actual and constructive knowledge that its custom of inadequate training in executing cold warrants was substantially certain to result in a constitutional violation.

Denver admits it does not train its law enforcement officers executing cold warrants on using Denver's readily available resources and information to avoid mistaken identity arrests and detentions. EXHIBIT 35, at 12. Chief Whitman's August 2007 Training Bulletin is an implicit acknowledgment that DPD officers lacked training on using Denver's readily available resources and information to avoid mistaken identity arrests and detentions. *See* EXHIBIT 11, at Fourhorn

General 000820. Indeed, the purpose of the Training Bulletin was to inform DPD officers to use such resources and information to avoid mistaken identity arrests and detentions. Inexplicably, however, the Training Bulletin was limited to officers and not detectives, and to requests for arrest warrants and not to the execution of cold warrants. Nor did Denver issue such a Training Bulletin for DSD deputies. Denver also had constructive notice, as evidenced by the hundreds of mistaken identity arrests and detentions documented above. *See* This Resp., Pt.III, Subpt.1.C.1., at 41-95.

Denver law enforcement officers routinely execute cold warrants. Some law enforcement officers, such as Dets. Peterson and Bishop, are tasked specifically with executing such warrants. These officers are thus called upon to identify correctly the suspects identified in the warrants even though in the vast majority of cases the officers do not know and have never met the suspects. The entire point of Denver's systematic collection of identification information from its arrestees is to be able to identify them in the future. In trying to execute cold warrants, such as a bench warrant on a failure to appear, officers limited to the information on the face of a warrant encounter a range of difficult challenges that Denver's readily available identification information can overcome. That the failure to train law enforcement agents to use Denver's readily available resources and information to avoid arresting the wrong—an innocent—person will result in constitutional

violation is "highly predictable" and "plainly obvious," *See City of Canton*, 489 U.S. at 390 ("[I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.") (footnote omitted).

Policy 1 (no court appearance). Denver's policy poses a substantial risk that arrestees in Jama's position will be deprived of a prompt court appearance, as Jama was in this case. Indeed, when Jama was arrested on September 21, 2007, his first court appearance was initially scheduled for October 2, 2007.[58] If Jama had not managed to post bail after a week in jail, an event that rescheduled his court appearance, he would have waited 11 days to see a judge after his mistaken arrest. As Denver's policymakers know of these long delays in bringing arrestees to court, deliberate indifference is easily established.

E. Denver was the moving force behind the violation of Plaintiff Jama's rights.

The likelihood of a constitutional injury from a municipality's action or inaction may support "an inference of causation—that the City's indifference led directly to the very consequence that was so predictable." *Allen v. Muskogee,*

[58] *See* Doc.439 at 3.

Okla., 119 F.3d 837, 845 (10th Cir. 1997); *see Olsen*, 312 F.3d at 1320 (reversing summary judgment, and holding that there were disputes facts about "whether any deliberate indifference could operate as a causal link to [plaintiff's] alleged injuries").

Custom 1. The custom of ignoring the hundreds of mistaken identity arrests and detentions was the moving force behind the violation of Plaintiff Jama's Fourth Amendment rights. Like those hundreds of mistaken identity victims, Mr. Jama was arrested based on a Denver officer's misidentification of him as the wanted person. Denver's failure to make any systemic changes to its policies or to even investigate the hundreds of mistaken identity arrests and detentions led directly to another mistaken identity arrest and detention, namely, Mr. Jama's.

Custom 2. Denver failed to promulgate policies requiring its law enforcement personnel, in situations involving an obvious risk of mistaken identity arrest and detention, to use all Denver's readily available resources and information—both prior to arrest and after detention begins—to determine whether a person arrested or detained is the person identified in the warrant on which he was arrested. Denver's officers do not use such resources and information in those situations.

The custom was the moving force behind Plaintiff Jama's mistaken identity arrest and detention. As discussed above, Denver had readily available resources

and information that dispositively established that Plaintiff Jama was not Mr. Alia. For example, Det. Greer could have known this; his investigative case file established who Mr. Alia was; Denver's OSI identified Mr. Alia through his DPD number; WebMug held multiple photographs of Mr. Alia, including his mugshot from his March 2007 arrest. Mr. Jama never would have been arrested had Det. Peterson been required to access these resources and information. Denver, however, had no policy requiring the use of any of these resources and information.

Custom 3. Denver failed to promulgate policies requiring—in any cold-warrant arrest involving obvious potential for a mistake about an arrestee's identity—a post-arrest, definitive determination that the arrestee is the person identified in the warrant. The custom was the moving force behind the violation of Plaintiff Jama's Fourth Amendment rights.

As discussed in Doc.320, at 6-12, 19-20, Det. Peterson had readily available to him an abundance of information establishing that Plaintiff Jama was not Mr. Alia. Even if that information did not exist, however, Denver had dispositive, definitive information that, following his arrest, Mr. Jama was not Mr. Alia. Mr. Jama was arrested because one of Mr. Alia's sixteen aliases was "Muse Mohamed Jama." At the time of his arrest, Mr. Jama had three forms of valid identification; Det. Peterson had conducted minimal investigation, and failed to

obtain the readily available photographs of Mr. Alia. It was an arrest that had an obvious potential for a mistake based on misidentification. Following his arrest, Mr. Jama surrendered his fingerprints. When he did so, Denver had the ability to compare his fingerprints with those of Mr. Alia's. But Denver has no policy requiring such a comparison that affirmatively links the arrestee to the person identified in the warrant under which the arrestee was arrested and jailed. The failure to promulgate such a policy was the moving force behind the violation of his constitutional rights.

Custom 4. Denver's custom of incarcerating arrestees beyond 48 hours after their arrest, even though they have received no post-arrest, judicial determination of probable cause, was the moving force behind the violation of Plaintiff Jama's Fourth Amendment rights. The custom led directly to the deprivation of his right to release when a judicial probable-cause determination is not made within 48 hours of arrest.

Denver argues it cannot be held responsible for the district court's scheduling. That argument misses the point. The Fourth Amendment requires a post-arrest probable cause determination as a prerequisite for any detention beyond 48 hours. When 48 hours passed without a probable cause determination, *McLaughlin* holds, continued detention violates the Fourth Amendment. If the requirements of *Gerstein* and *McLaughlin* are not met, the custodian is

constitutionally dutybound to release the prisoner. *See Luck v. Rovenstine*, 168 F.3d 323, 326 (7th Cir. 1999). It was for this reason the district court in *Lingenfelter v. Board of County Commissioners*, 359 F. Supp. 2d 1163, 1170 (D. Kan. 2005), rejected the same "not my problem" argument Denver advances:

> Defendants contend the Sheriff fulfilled his constitutional duty by presenting plaintiff to a court [for a bond hearing], because the law "does not impose . . . an obligation upon law enforcement to ensure [that] the judicial officer makes a sufficiently clear finding of probable cause." Insofar as defendants are relying upon the scope of the Fourth Amendment to avoid liability, their argument misses the mark. "[T]he Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Gerstein*, 420 U.S. at 114. It is the continued restraint of liberty without a probable cause finding that is objectively unreasonable and contrary to the Fourth Amendment. A law enforcement officer may thus violate the Fourth Amendment by continuing to detain an arrestee as to whom no probable cause has been found.

(Citation omitted.)

Custom 5. To obtain injunctive relief under § 1983, a plaintiff must demonstrate "a good chance of being likewise injured in the future." *Barney,* 143 F.3d at 1306 n.3. All Plaintiffs have requested equitable relief relating to Custom 5. *See, e.g.,* Doc.221 at 58-63, 86. Denver's motion for summary judgment does not address Plaintiffs' request for equitable relief except with respect to Plaintiff Sanchez. Accordingly, Plaintiffs Jama, Ibarra and Smith are entitled to a trial on the question whether Denver's Custom 5 constitutes a threat to their constitutional rights.

Denver failed to promulgate a policy requiring the correction and disentanglement of an arrestee's criminal justice records after its law enforcement officers subjected the arrestee to a mistaken identity arrest and detention. Without such a policy, Plaintiff Jama faces a substantial risk he will suffer similar constitutional injuries. Mr. Alia has a lengthy criminal record. The criminal justice records in Denver make it highly likely that Mr. Jama will be confused with Mr. Alia and that a warrant issued for Mr. Alia will result in the arrest of Mr. Jama. The uncorrected criminal justice records show that "Muse Jama" is Mr. Alia's alias; that Mr. Jama previously was arrested on a warrant for Mr. Alia; that although Mr. Jama was assigned a unique DPD number, his own alias is "Ahmed Alia"; that his fingerprints are identified as the fingerprints of "Alia, Ahmed" and correlated with Mr. Alia's Social Security number; and that his photograph is identified as the photograph of Mr. Alia. *See, e.g.,* EXHIBIT 14, at Jama Muse 000077.1, 000875, 111157, 001159, 001091.

As late as June 15, 2011, a criminal-justice records search performed through CBI's website shows that following its mistaken identity arrest and detention of Plaintiff Jama, Denver failed to disentangle his records from that of Ahmed Alia. The CBI record shows (erroneously) that Mr. Jama uses two names, "Ahmed Alia" and "Muse Jama." It states that Mr. Jama was arrested on September 21, 2007, that the arresting agency was "Denver [Police Department]–

Identification Bureau," and that he was arrested for failure to appear on a felony motor vehicle theft charge. EXHIBIT 28, at MJ000201.

Custom 6. There is a direct causal link between (i) Denver's custom of failing to train its law enforcement agents to use readily available resources and information to avoid mistaken identity arrests and detentions, and (ii) the violation of Plaintiff Jama's rights under the Fourth Amendment. Det. Peterson described in significant detail his training relating to arrests. Although it assigned Det. Peterson to a police unit that routinely would encounter those trying to conceal their activities by, e.g., using aliases, Denver failed to provide him with the most basic training needed to avoid mistaken identity arrests and detentions in executing cold warrants. Det. Peterson never would have arrested Plaintiff Jama had he received training on how to read an arrest warrant. If he had known how to read a warrant, he would have used Mr. Alia's DPD and Colorado driver license numbers—located on the face the warrant—to locate a plethora of information in Denver's databases and records, including multiple photographs of Mr. Alia. Nor would he have arrested Plaintiff Jama if he had been trained to avail himself of other readily available Denver resources and information, such as Det. Greer, Denver's investigative files on the criminal case that was being prosecuted in Denver, OSI and WebMug.

Policy 1. Denver's policy of incarcerating persons arrested on a Denver District Court warrant indefinitely, without providing them with a hearing, was the moving force behind the violation of Plaintiff Jama's right to due process.

As explained above, Denver's policy is that any person seized and detained under a Denver District Court warrant must remain incarcerated without a hearing until the Denver District Court "schedules the individual for court," EXHIBIT 11, at Fourhorn General 000837. EXHIBIT 48, at 58-59; EXHIBIT 41, at 68-69. Denver knows that the result of its policy is that an arrestee may be incarcerated indefinitely—until some unknown time when the Denver District Court acts—before she receives a hearing before a judicial officer. *See* EXHIBIT 48, at 59; EXHIBIT 41, at 68-69.

The policy was the direct cause of Plaintiff Jama's 8-day detention. When Mr. Jama was arrested on September 21, 2007, his first court appearance was initially scheduled for October 2, 2007.[59] If Mr. Jama had not managed after a week in jail to post bail—an event that caused his first court appearance to be moved to a different date—he would have waited a total of 11 days to see a judge after his mistaken arrest.

[59] *See* Doc.429 at 3.

Denver argues that it cannot be held responsible for the district court's scheduling. Courts have flatly rejected Denver's argument. As the Seventh Circuit explained:

> The jail . . . knew that the detainees needed to appear before the court. Despite this knowledge, the jail promulgated a policy under which it abdicated responsibility. The jail acts at its own peril if it passes responsibility off on another party-- whether the courts or the prosecutor. While the Constitution does not impose an affirmative duty on jail officials, it does hold them responsible when their failure to devise adequate policies results in an injury.

Armstrong v. Squadrito, 152 F.3d 564, 579 (7th Cir. 1998). Denver's argument was also rejected in *Hayes v. Faulkner County*, 388 F.3d 669, 674-75 (8th Cir. 2004). In that case, the plaintiff was arrested on a warrant and held in the county jail for 38 days without a court appearance. The plaintiff sued Faulkner County, its sheriff, and its jail administrator, asserting that he was denied his constitutional right to a prompt judicial appearance. The county's policy, like Denver's, was to submit the names of prisoners to the court and then wait for the court to schedule a hearing. The court rejected the county's attempt to evade responsibility. "Because the County's policy here attempts to delegate the responsibility of bring detainees to court for a first appearance and ignores the jail's authority for long-term confinement, the policy is deliberately indifferent to detainees' due process rights." *Id.* at 674.

Denver's argument was also rejected in *McDonald v. Dunning*, 760 F. Supp. 1156 (E.D. Va. 1991), where the sheriff had a policy of deferring to the Commonwealth Attorney's opinion whether it was necessary to bring a prisoner for a judicial appearance. "Such a policy ignores the sheriff's independent duty . . . to protect the due process rights of arrested persons in his control." *Id.* at 1171; *see Coleman,* 754 F.2d at 731 (Cudahy, J., concurring) (sheriff must secure first appearance for prisoner, or must release prisoner).

Subpart 2: Analysis of Plaintiff Ibarra's *Monell* Theories for Relief

A. Facts.

In responding to Deputy Sirhal's summary judgment motion, Plaintiff Ibarra presented extensive facts—30 pages of facts in the response and 114 pages of exhibits—relating to the violation of his Fourth Amendment rights. *See* Doc.428. The Fourth Amendment violation is relevant to this Response as well. Rather than repeat the voluminous factual presentation, Plaintiff Ibarra incorporates by reference Doc.428, and in this Response highlights certain facts and presents additional facts pertinent to other constitutional violations.

On June 23, 2007, Plaintiff Ibarra was arrested on his own four traffic-related warrants, booked, and later incarcerated in the County Jail. The warrants listed him as Jose E. Ibarra. All the paperwork relating to the warrants, including

the warrants themselves, were located in the Receiving Unit of the jail. By July 2, 2007, he had resolved all issues relating to the warrants and was due to be released.

On July 2, Deputy Sirhal asked NCIC/CCIC operator Catherine McLane to "clear" Mr. Ibarra for release, i.e., to determine if there were any outstanding warrants for him. He provided her with a DSD-created "P-Name" document showing Mr. Ibarra's name, but excluding the middle initial "E." Ms. McLane ran an NCIC/CCIC search for "Ibarra, Jose" with his correct birthdate, [redacted]/88. The search produced no hit for a Jose Ibarra with that birthdate. It did, however, show five warrants for Jose Cayetano Ibarra with a different birthdate, [redacted]/88.

Ms. McLane has the authority to cause the arrest of a County Jail inmate, because she can decide in the inmate-release process that a warrant should be applied to an inmate seeking release. In this case, Ms. McLane did not believe Plaintiff Ibarra was Jose Cayetano Ibarra because of dissimilarities and lack of information. For example, Ms. McLane testified, the five warrants showed a middle name, "Cayetano," that was not present for Plaintiff Ibarra on the P-Name document; the physical descriptors were similar, but different; and the birthdates were off by 6 weeks. While she could not conclude that the five warrants applied to Plaintiff Ibarra, she "also couldn't reach a conclusion that they didn't." She simply was not confident that Cayetano Ibarra and Plaintiff "were different or the same." Doc.428 at 19.

Ms. McLane decided to refer the question to Deputy Sirhal. Denver determined that this was "standard operating procedure." EXHIBIT 12, at Fourhorn Monitor 000024. When she referred the question, she told Deputy Sirhal she did not believe there was enough information to believe Plaintiff Ibarra was Cayetano Ibarra. After comparing the Cayetano Ibarra warrants to the P-Name document, Deputy Sirhal agreed. Nonetheless, he decided to arrest Plaintiff Ibarra on the five warrants and "allow the courts to decide the identity." Doc.428 at 20-21.

Neither Ms. McLane nor Deputy Sirhal conducted any investigation. Neither compared the five Cayetano Ibarra warrants to the four Jose Ernesto Ibarra warrants. Neither checked Denver's OSI database for Cayetano Ibarra. If they had, they would have found that DPD had arrested and booked him on three previous occasions. Neither tried to obtain the multiple mugshots of Cayetano Ibarra in Denver's WebMug database. Neither spoke with Plaintiff Ibarra or told him they had attached the five Cayetano Ibarra warrants to him.

In his Internal Affairs interview, Deputy Sirhal said when there are questions of a prisoner's identity, he has to "shoot[] from the hip" because he and the other Receiving Unit deputies lack the "proper training or tools" to correctly identify a prisoner. Doc.428 at 24 (internal quotations omitted). Denver determined that Deputy Sirhal and Ms. McLane fully complied with Denver's policies. *See* EXHIBIT 48, at 101-03; EXHIBIT 43, at 90, 93-94, 126-27.

Plaintiff Ibarra learned by going to court hearings on some of the Cayetano Ibarra cases that he had been arrested on those warrants and was appearing in those cases because Denver believed he was Cayetano Ibarra. He repeatedly protested his arrest and incarceration, informing jailers and the courts that he was not Cayetano Ibarra. The jailers did nothing.

After going to multiple hearings and paying Cayetano Ibarra's fine in one of the cases, Plaintiff Ibarra finally was released from jail on July 27. He had been wrongfully incarcerated for 25 days on the Cayetano Ibarra warrants.

During this time, he waited 14 days to appear before a judicial officer on a Cayetano Ibarra warrant issued by Denver District Court, and never appeared before a judicial officer on a Cayetano Ibarra warrant issued from Adams County.

B. Plaintiff Ibarra suffered constitutional violations.

1. Fourth Amendment violations.

In his response to former defendant Alan Sirhal's motion for summary judgment, Plaintiff Ibarra presented extensive facts and arguments on the violation of his Fourth Amendment rights in connection with his arrest and detention. To avoid repetition, his response is incorporated here by reference. See Doc.428.

The analysis showing Plaintiff Jama suffered three types of Fourth Amendment injury applies with equal force to Plaintiff Ibarra. *See* This Resp., at 17-32. The relevant facts are similar: Without probable cause, and unreasonably,

Deputy Sirhal arrested Mr. Ibarra by attaching to him the five Cayetano Warrants. Denver continued to incarcerate Mr. Ibarra beyond 48 hours after his arrest, even though there had been no judicial determination of probable cause. This conduct violated the Fourth Amendment.

2. Due process violations.

The analysis showing Plaintiff Jama suffered procedural and substantive due process violations applies with equal force to Plaintiff Ibarra. *See* This Resp., at 32-41.

Denver argues that Mr. Ibarra "did receive due process in the form of appropriate judicial proceedings." Doc.439 at 36. However, Denver fails to address Colorado Rule of Criminal Procedure 5(a)(1) & (c)(1)'s requirement that an arrestee be brought before a judicial officer "without unnecessary delay." As Plaintiffs explained earlier, the failure to provide that prompt judicial appearance also violates the Due Process Clause.

Additionally, Denver refers to court appearances relating to only three of the five warrants. *See id.* That fails to address the due process problem. In Case No. 06JD696, Denver did not afford Mr. Ibarra a judicial appearance for 2 weeks, until July 16, 2007. EXHIBIT 15, at JI0126. In Case No. 04T7590 (Adams County Ct.), Denver never afforded him a court appearance during his 25-day incarceration, yet would not release him from the warrant issued in that case for Cayetano Ibarra.

Mr. Ibarra's family had to travel to Adams County to pay Cayetano Ibarra's fine before Denver would release him on that warrant. *See* EXHIBIT 25, at Jose Ibarra 000061, 000085.

Plaintiff Ibarra suffered a substantive due process injury. Despite his repeated protests that he was not Cayetano Ibarra, Denver law enforcement personnel did nothing to address his protests while he languished in jail for 25 days. Denver and its law enforcement personnel had in their possession readily available information, e.g., fingerprints and mugshots, that would have established quickly and definitively that Plaintiff Ibarra was not Cayetano Ibarra. No officer lifted a finger.

C. Denver's policies and customs.

1. Customs 1-6.

Customs 1-6, as articulated previously, are applicable to Plaintiff Ibarra's *Monell* theories for relief. *See* This Resp., at 41-126.

2. Policy 1.

Policy 1, as articulated previously, is applicable to Plaintiff Ibarra's *Monell* theories for relief. *See* This Resp., at 153.

3. Policy 2. Denver has a policy of incarcerating indefinitely without a judicial appearance persons arrested on an arrest warrant issued from a jurisdiction outside the City and County of Denver.

Denver has a policy of incarcerating indefinitely persons whom Denver law enforcement officers arrest on "fugitive warrants," i.e., arrest warrants issued by another Colorado jurisdiction. EXHIBIT 48, at 62-65. These arrestees are held until the "demanding jurisdiction," i.e., the jurisdiction that issued the warrant, arrives in Denver to pick up the arrestee. *Id.* at 63. Director Lovingier testified he does not know the longest period of time a fugitive warrant arrestee has been incarcerated, *id.* at 66, but is aware that one arrestee was incarcerated for 10 days before being picked up by the demanding jurisdiction, *id.* at 65. Nonetheless, even though some fugitive warrant arrestees are held without bond, Denver has no policy that imposes an upper limit on how long Denver will incarcerate fugitive warrant arrestees while awaiting pick-up by the demanding jurisdiction. *Id.* at 69.

While Director Lovingier testified that Denver "wouldn't exceed 10 days" of incarceration before unilaterally releasing a fugitive warrant arrestee, *see id.* at 69, Plaintiff Ibarra's case establishes that is not true. On July 2, 2007, Deputy Sirhal subjected Mr. Ibarra to a mistaken identity arrest and detention by attaching to him the five Cayetano warrants. One of those warrants was a fugitive warrant for Cayetano Ibarra from Adams County. *See* EXHIBIT 25, at Jose Ibarra 000091. Denver did not release Plaintiff Ibarra on the Adams County warrant until July 27,

2007, after his family had paid Cayetano Ibarra's traffic fines and the Denver County Court entered an order to release Plaintiff Ibarra. EXHIBIT 25, at Jose Ibarra 000061, 000085. Between July 2 and 27, 2007, Mr. Ibarra did not appear before a judge on the Adams County case.

This policy also is discussed at pages 125-127 of this Response.

D. Denver was deliberately indifferent.

Customs 1-6 & Policy 1. Plaintiff Jama's arguments establishing Denver's deliberate indifference are equally applicable to Plaintiff Ibarra. *See* This Resp., at 153-168.

Policy 2. This policy of indefinite incarceration without a judicial appearance creates a substantial risk that an arrestee's federal rights will be violated.

E. Denver's customs and policies were the moving force behind the violations of Plaintiff Ibarra's federal rights.

Custom 1. Denver's act of ignoring the hundreds of mistaken identity arrests and detentions led directly to Plaintiff Ibarra's mistaken identity arrest and detention, in the same way it led to Plaintiff Jama's mistaken identity arrest and detention. *See* This Resp., at 169. Additionally, there is evidence that many of the hundreds of mistaken identity arrests and detentions Denver ignored occurred in the context of attaching warrants to individuals already in custody.

Custom 2. Like Plaintiff Jama, *see* This Resp., at 169, Mr. Ibarra's arresting officer had readily available significant identification resources and information that would have conclusively established that Mr. Ibarra was not Mr. Alia. For example, in Deputy Sirhal's own office were warrants for Mr. Ibarra that were deactivated upon his appropriate arrest in June 2007 and that showed his middle name was not Cayetano. As another example, Denver's OSI database, which Deputy Sirhal had direct access to, provided an abundance of information about Cayetano Ibarra, including his DPD number, which would have conclusively established that he was not Mr. Ibarra. As a direct result of Denver's failure to have any policy requiring arresting officers to use readily available Denver resources and information, Deputy Sirhal subjected Mr. Ibarra to a mistaken identity arrest and detention.

Custom 3. Like Plaintiff Jama, *see* This Resp., at 170, even after Denver had possession of Plaintiff Ibarra's fingerprints and those of Cayetano Ibarra's, Denver law enforcement officers failed to release Mr. Ibarra. Unlike Mr. Jama, Denver had already booked, fingerprinted and photographed Mr. Ibarra at the time Deputy Sirhal attached Cayetano Ibarra's warrants. Deputy Sirhal had the opportunity before arresting Mr. Ibarra to cause the two sets of fingerprints—Plaintiff Ibarra and Cayetano Ibarra—to be analyzed by the ID Bureau. He did not take the opportunity. After Deputy Sirhal attached the warrants, there was over

three weeks of time for Denver law enforcement officers to analyze the fingerprints, which would have definitively established that Plaintiff Ibarra was not Cayetano Ibarra. No officer did this. There is a direct causal link between (i) Denver's failure to promulgate policies requiring a post-arrest, definitive determination that the arrestee is the person identified in the warrant, and (ii) Mr. Ibarra's mistaken identity arrest and detention.

Custom 4. Like Plaintiff Jama, *see* This Resp., at 171, Plaintiff Ibarra was incarcerated beyond 48 hours, even though he was not afforded within that time a post-arrest, judicial determination of probable cause. This resulted directly from Denver's custom of ignoring the *McLaughlin* and *Gerstein* rule.

Custom 5. Denver's failure to promulgate policies requiring the correction and disentanglement of Mr. Ibarra's criminal justice records after a mistaken identity arrest and detention creates a substantial risk that he will be subject to a future arrest and detention based on the same mistake of identity by law enforcement officers. Like the other Plaintiffs, following his mistaken identity arrest and detention, Mr. Ibarra's criminal justice records contain information relating to Cayetano Ibarra. *See* EXHIBIT 25, at Jose Ibarra 000023-24.

Custom 6. Denver's failure to adequately train its law enforcement officers executing cold warrants to avoid mistaken identity arrests and detentions led directly to Plaintiff Ibarra's mistaken identity arrest and detention. As Deputy

Sirhal freely admitted, even though he did not have enough information to conclude that Plaintiff Ibarra was Cayetano Ibarra, EXHIBIT 25, at Jose Ibarra 000062, he made the decision to arrest Plaintiff Ibarra because he was "just 'shooting from the hip' when it comes to these situations," and "he and the other Records officers do not have the proper training or 'tools' to correctly identify an inmate," EXHIBIT 25, at Jose Ibarra 000061.

Policy 1. Like Plaintiff Jama, *see* This Resp., at 175, Plaintiff Ibarra was incarcerated for a lengthy period of time—14 days—awaiting a Denver District Court judicial appearance. This resulted directly from Denver's policy of incarcerating indefinitely arrestees who are arrested on a Denver District Court warrant.

Policy 2. Denver's policy of indefinite incarceration without a judicial hearing for those arrested on a fugitive warrant was the direct cause of Plaintiff Ibarra's 25-day detention without a hearing in the Adams County case.

Subpart 3: Analysis of Plaintiff Smith's *Monell* Theories for Relief

A. Facts.

In responding to Sgt. Ortega's summary judgment motion, Plaintiff Smith presented extensive facts—26 pages of facts in the response and 275 pages of exhibits—relating to the violation of his Fourth Amendment rights. *See* Doc.308. The Fourth Amendment violation is relevant to this Response as well. Rather than

repeat the voluminous factual presentation, Plaintiff Smith incorporates by reference Doc.308, and in this Response highlights certain facts and presents additional facts pertinent to other constitutional violations.

In January 2008, Plaintiff Smith and his friend Gabe Kadell notified the County Jail they wanted to visit with a former student of Mr. Smith. As required, they supplied in advance of the jail their driver license information.

Days before the visit, NCIC/CCIC operator Liza Longoria used the driver license information to check if he was wanted on a warrant. The NCIC/CCIC search resulted in numerous responses, or "hits," only two of which are relevant here. The first response showed an NCIC/CCIC entry for a "Dennis Smith," DOB [redacted]/59. He was listed as a "victim" ("VIC") of mistaken identity. The physical descriptors on the second line matched exactly with the physical descriptors in the driver license information Plaintiff Smith provided before his visit. Clicking on the hyperlinked response would have taken Ms. Longoria to a CBI entry. The entry stated that Mr. Smith was the victim of misidentification, and that he was the not the same person as Dennis Allen Smith. This entry was posted in 1999, when Mr. Smith went to CBI, informed it of confusion between him and Dennis Allen Smith, submitted his fingerprints, and was determined not to be Dennis Allen Smith. In addition to posting the NCIC/CCIC entry, CBI issued him a formal letter stating that he was not Dennis Allen Smith, and suggesting he carry the letter with him to

prevent law enforcement officers from confusing him with Dennis Allen Smith. Ms. Longoria did not click on the hyperlink.

The second response showed an NCIC/CCIC entry for a "Dennis Allen Smith," DOB [redacted]/59, that referenced an active warrant for the arrest of Dennis Allen Smith. Ms. Longoria clicked on this hyperlink and pulled up the warrant. Although she did not believe Dennis Allen Smith was Plaintiff Smith, because of discrepancies in physical descriptors in the warrant and Plaintiff Smith's driver license, she transmitted the warrant to the visiting room deputy, noting it was a "possible warrant" for Plaintiff Smith. Doc.308 at 11-12, 15.

On January 19, 2008, Plaintiff Smith and Mr. Kadell arrived at the jail for the visit. They were seated in the visiting area. A deputy notified Sgt. Ortega that Mr. Smith had arrived. Sgt. Ortega then compared the Allen Smith warrant to Plaintiff Smith's driver license.

After Sgt. Ortega had completed his initial comparison of the warrant and license, a deputy called Mr. Smith's name on a loudspeaker, as though it was his turn for a prisoner visit. *See* EXHIBIT 58, at 28. Mr. Smith and Mr. Kadell proceeded through the waiting area toward a sally port. EXHIBIT 58, at 28. Sgt. Ortega motioned Mr. Smith through a threshold into the sally port. *Id.* at 28-29. Mr. Smith he did not know when he arrived at the jail where the visit would be occurring, and he followed Sgt. Ortega's directions into the sally port. EXHIBIT 58,

at 29. After Mr. Smith entered, Mr. Kadell was directed to wait outside the sally port.

Sgt. Ortega said he had a warrant for Mr. Smith for a failure to appear on a traffic offense in Weld County. EXHIBIT 50, at 105-06. Sgt. Ortega then showed Mr. Smith the warrant. *Id.* at 107. Plaintiff Smith responded that "[t]here's another Dennis Smith, and we share the same birthday." EXHIBIT 58, at 30. He then said repeatedly that he had in his car parked outside the jail an official letter from the CBI stating that he was not the same person as Dennis Allen Smith.

Sgt. Ortega said he had significant doubt about whether Plaintiff Smith was Dennis Allen Smith. The doubt was caused by the discrepancies in their respective physical descriptors. Additionally, he believed Mr. Smith when he said he was not the Dennis Allen Smith on the warrant. Sgt. Ortega also believed Plaintiff Smith's statement that he had in his car an official CBI letter distinguishing him from Dennis Allen Smith. Nonetheless, Sgt. Ortega decided to arrest Mr. Smith.

Sgt. Ortega said he was apathetic about the CBI letter, because it would not have affected his ultimate decision to arrest Mr. Smith, even if the letter had said what Mr. Smith reported it said. EXHIBIT 50, at 136-37. Pressed on this, Sgt. Ortega said he would "consider" the CBI letter, "but my decision would have still been the same." *Id.* at 137. Asked if there was anything CBI could put in a letter that would

have convinced him not to arrest Mr. Smith, Sgt. Ortega responded, "No." *Id.* at 138.

Sgt. Ortega declined Mr. Smith's requests to obtain the CBI letter from Mr. Smith's car. Sgt. Ortega did not send either of the two deputies who were present because of concern over his "officers' safety." EXHIBIT 50, at 118. Asked what concerned him, Sgt. Ortega said there are "a lot of what-ifs," including that his deputies "could get hit by a car crossing the street." *Id.* at 119. He testified he did not have Mr. Kabell retrieve the CBI letter because "[t]hat's not in my procedure," and if there is no procedure for doing something, "then I'm not going to do that." EXHIBIT 50, at 158.

After his arrest, Mr. Smith was taken to the City Jail. He was released 4½ hours later.

B. Plaintiff Smith suffered constitutional violations.

In his response to former defendant Paul Ortega's motion for summary judgment, Plaintiff Smith presented extensive facts and arguments on the violation of his Fourth Amendment rights in connection with his arrest and detention. To avoid repetition, his response is incorporated here by reference. *See* Doc.308.

In granting Sgt. Ortega's motion for summary judgment on qualified immunity grounds, the Court noted that the facts regarding when Mr. Smith was

arrested "are not clear." Doc.388 at 6. When he was arrested, the Court said, bears on whether Mr. Smith suffered a Fourth Amendment violation. *See id.* at 6-9.

Denver argues conclusorily that Plaintiff Smith cannot prove he suffered a constitutional injury. This Court has already held, however, that if Mr. Smith's arrest occurred when Mr. Smith was handcuffed, "sufficient evidence has been shown to establish a *prima facie* Fourth Amendment violation." *Id.* at 8-9. As the movant, Denver has the initial burden of establishing the absence of a genuine issue of material fact. *See* Fed. R. Civ. P. 56(a). When the arrest occurred is such a genuine issue of material fact, which is for the jury to determine. *See Olson,* 312 F.3d at 1313; *see also Rios v. United States*, 364 U.S. 253, 262 (1960) (stating that validity of search depended upon when arrest occurred, noting that government argued that police officers' initial encounter was only an investigatory detention, and holding that answer to when arrest occurred "depends upon an evaluation of the conflicting testimony of those who were there that night").

Denver has failed to carry its burden that Plaintiff Smith did not suffer a constitutional injury, as it offered no additional evidence to establish the absence of a factual issue on when the arrest occurred. *See* Doc.439 at 37-41.

There is substantial evidence, viewed "in the light most favorable to the nonmoving party," *Johnson*, 515 U.S. at 319, that the arrest occurred when Mr. Smith was handcuffed. "There can be no arrest without either touching or

submission" to an assertion of authority. *California v. Hodari D.*, 499 U.S. 621, 626-27 (1991) (internal quotations omitted). Mr. Smith testified that while waiting for his visit, his name was called; Sgt. Ortega motioned him to come into a sally port; he believed he would be entering into a visitation area; after Mr. Smith entered the sally port, Sgt. Ortega said he had a warrant for Mr. Smith's arrest; Mr. Smith then began a "polite" conversation about confusion between him and Dennis Allen Smith and said he had a CBI letter stating that he was not Dennis Allen Smith; shortly afterward, Sgt. Ortega said he had a "good warrant," and Plaintiff Smith was handcuffed. EXHIBIT 58, at 28-32. Prior to being handcuffed, he was not touched and he did not submit to an assertion of authority. *See id.* To the contrary, when Mr. Smith entered the sally port, he had been led to believe—and he did believe—he was entering the sally port as a portal to a visiting room, not because he was submitted to authority demanding his arrest. *See id.*

C. Denver's policies and customs.

1. Customs 1-2, 5-6.

Customs 1-2 and 5-6, as articulated previously, are applicable to Plaintiff Smith's *Monell* theories for relief. *See* This Resp., at 41-126.

2. Policy 3: Denver has a policy of finding probable cause for a seizure when a person's name matches, and other identification information is similar to, information in an arrest warrant, even though the person has an official CBI letter stating that the person is not the suspect identified in the warrant.

Since the early 1990s, the CBI's Identification Unit on behalf of the Colorado Department of Public Safety[60] has been issuing "identification letters," EXHIBIT 55, at 138. Identification letters are part of a formal process by which a person may dispute or challenge NCIC/CCIC information or otherwise obtain a State of Colorado-sanctioned affirmative statement of his identity. *See* EXHIBIT 55, at 8-10.

As the agency responsible for maintaining and updating CCIC, CBI has a procedure allowing a person who believes she has been misidentified as someone else in CCIC to lodge a "record challenge" asserting she has been misidentified as someone else in criminal-justice records. *See* EXHIBIT 55, at 8-10, 23-24. The person must appear personally at the CBI and submit fingerprints to CBI's Identification Unit; using AFIS, the unit then compares the fingerprints to the fingerprints of the individual who properly should be listed in CCIC ("CCIC suspect"). EXHIBIT 55, at 9. If the challenger is listed correctly in the CCIC record,

[60] *See* EXHIBIT 10, at Dennis Smith 000500, 000502. The CBI's Identification Unit "maintain[s] and update[s] all information stored in [AFIS] . . . and the [CCIC], which houses all fingerprint[-]based Colorado criminal history record information . . . records." http://www.cbi.state.co.us/id/.

CBI informs the challenger that the records are correct and there is no misidentification. If the CCIC record has incorrectly listed the challenger as the CCIC suspect, the unit "will go through a process to identify [the challenger as] a victim of mistaken-identity seizure-identification on that criminal history [record]." EXHIBIT 55, at 9-10.

If CBI determines that the challenger was misidentified, it will issue to her a letter stating that she went through "the record challenge process," EXHIBIT 55, at 135, and was found to be a victim of misidentification. Prior to 2008, the CBI letter would identify the challenger and the CCIC suspect, and for each would provide the date of birth, SID number, and FBI number. EXHIBIT 55, at 135; EXHIBIT 10, at Dennis Smith 000500. The letter, signed by a CBI fingerprint examiner, states that the examiner has "made a fingerprint comparison and posted a record in [CCIC] that the challenger is "not the same person" as the CCIC suspect. The letter concludes: "Because CCIC information is not readily available to law enforcement officers outside Colorado, you may wish to carry a copy of this letter with you to minimize the chance of an avoidable inconvenience." Plaintiff Dennis Smith obtained such a letter. EXHIBIT 10, at Dennis Smith 000500. CBI's Rule 30(b)(6) deponent said the purpose of the letter:

> is to show that if . . . [the challenger is] stopped, that they can show the officer or wherever they happen to be . . .[,] they can say, I have done a record challenge and I have been proven to be mistaken-

> identity seizure-identified with this other person and I'm not that other person.

EXHIBIT 55, at 136. Denver knows the significance and purpose of the CBI challenge letters. *See* EXHIBIT 48, at 123 (stating that purpose of CBI letter sent to Plaintiff Smith is "to arm [a person] with some information that might be helpful to prevent him from being arrested").

In addition to issuing the letter, CBI will enter a record into CCIC relating to the challenger's criminal-justice information; the CCIC record is accessible only to law enforcement officers. *See* EXHIBIT 55, at 139. For example, a law enforcement officer considering arresting the challenger on a warrant for the CCIC suspect, if unmoved by the CBI letter, could conduct a QW search in CCIC of the challenger to confirm the contents of the letter. EXHIBIT 55, at 139. Such a search of the challenger (name + DOB) might produce more than one hit, but one of those hits would show a hyperlinked response for the challenger as a victim of mistaken identity. *See* EXHIBIT 55, at 139; EXHIBIT 5, at CBI000054 (showing response for Dennis Smith, DOB [redacted]/59, as a victim ("VIC") of mistaken identity). Clicking on the hyperlinked response would take the officer to the CCIC record created by CBI in response. The CCIC record would (a) state that the challenger is the "victim of misidentification," (b) list the challenger's physical descriptors and current address, (c) provide the challenger's physical descriptors and FBI, SID and Social Security numbers, and NCIC fingerprint classification, (d) repeat the statement in

the CBI letter that the challenger is "not the same person" as the CCIC suspect, and (e) note that the CBI had provided a letter to the challenger. *See* EXHIBIT 56, at Simkins Depo Ex. 4. When law enforcement officers see the CCIC entry for a person holding a CBI letter, they "will see this person is telling the truth. It's in our law enforcement system. It's not just a letter that this person is carrying around. . . . The only way, . . . the only true way to identify one person from another is based off of the fingerprint in SID," EXHIBIT 55, at 139, which is contained in the CCIC record entry for the challenger, *see, e.g.,* EXHIBIT 5, at CBI000054. CBI intends that a challenge letter and the corresponding CCIC record will prevent misidentification of the challenger. *See generally* EXHIBIT 55, at 135-39.

Denver law enforcement officers know the CBI record challenge process, including CBI's issuance of letters to challengers who prevail. *See* EXHIBIT 55, at 33, 139. Even if Denver officers do not know how to read the letters, "the backup is the electronic entry in the [CCIC] system," EXHIBIT 55, at 139, that is entered into the CCIC system contemporaneous with the issuance of the CBI letter.

Despite the identification expertise of the CBI, Denver has a policy of disregarding CBI challenge letters and giving its law enforcement officers authority to disregard the information in the letters and arrest a person holding the challenge letter. DSD Director Lovingier testified as Denver's Rule 30(b)(6) representative that a person who is being mistakenly arrested by a Denver officer

cannot save himself from the arrest by producing his driver license and CBI letter distinguishing himself from the suspect named in a warrant. EXHIBIT 48, at 124.

In the context of Plaintiff Dennis Smith's arrest, Director Lovingier testified, "[T]here's nothing on his driver's license that says this is my SID number, my FBI number . . . ." EXHIBIT 48, at 124. If he were placed in Sgt. Ortega's shoes and were provided with the Dennis Allen Smith warrant, Plaintiff Smith's driver license[61] and EXHIBIT 10, at Dennis Smith 000500 (the letter CBI provided to Plaintiff Smith), Director Lovingier testified, he also would have arrested Plaintiff Smith. EXHIBIT 48, at 125, 129-30. The only way to prevent Plaintiff Smith's arrest would be for the State of Colorado to "add[] the SID number" to Plaintiff Smith's driver license. EXHIBIT 48, at 129-30. Otherwise, Director Lovingier testified, "if he shows up anyplace with [the CBI letter] and that driver's license, then I think a law enforcement officer is going to have probable cause, reasonable certainty . . . ." EXHIBIT 48, at 130.

D. Denver was deliberately indifferent to the rights of persons with whom its police come into contact.

Customs 1-2, 5-6. Plaintiff Jama's arguments establishing Denver's deliberate indifference are equally applicable to Plaintiff Smith. *See* This Resp., at 153-168.

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[61]Plaintiff Smith's driver license information (from CCIC) at the time of his arrest is shown in EXHIBIT 10, at Dennis Smith 000541.

Policy 3. As CBI's 30(b)(6) representative made clear, the principal purpose of the CBI letter and the corresponding NCIC/CCIC entry is to prevent the letter holder from being arrested and jailed because of confusion with a second person who shares similar identifying information or characteristics. It is facially unreasonable to maintain a policy that the letter holder—despite an official state letter from the foremost law enforcement identification agency in the state and NCIC/CCIC entry—always will be subject to arrest because his identifying information or characteristics are similar to the wanted second person. Such a policy is substantially likely to cause a federal rights violation. Alternatively, a federal rights violation is a highly predictable and plainly obvious consequence of such a policy.

E. Denver was the moving force behind the violation of Plaintiff Smith's constitutional rights.

Custom 1. The custom of ignoring the hundreds of mistaken identity arrests and detentions was the moving force behind the violation of Plaintiff Smith's Fourth Amendment rights. Like those hundreds of mistaken identity victims, Mr. Smith was arrested based on a Denver officer's misidentification of him as the wanted person. Denver's failure to make any systemic changes to its policies or to even investigate the hundreds of mistaken identity arrests and detentions led directly to another mistaken identity arrest and detention, namely, Mr. Smith's.

Custom 2. Denver failed to promulgate policies requiring its law enforcement personnel, in situations involving an obvious risk of mistaken identity arrest and detention, to use all Denver's readily available resources and information—both prior to arrest and after detention begins—to determine whether a person arrested or detained is the person identified in the warrant on which he was arrested. Denver's officers do not use such resources and information in those situations.

The custom was the moving force behind Plaintiff Smith's mistaken identity arrest and detention. As discussed above, Denver had readily available resources and information which dispositively established that Plaintiff Smith was not Dennis Allen Smith. The NCIC/CCIC entry inserted by CBI in 1999 conclusively established that Plaintiff Smith was not Dennis Allen Smith. It was readily available to Denver's law enforcement agents, including Ms. Longoria and Sgt. Ortega. Also readily available to them was the CBI's Identification Unit, which would have informed them that Mr. Smith had gone through the record challenge procedure and demonstrated he was not Dennis Allen Smith.

Custom 5. Denver's failure to have a policy requiring correction and disentanglement of an arrestee's criminal justice records after a mistaken identity arrest and detention creates "a good chance of being likewise injured in the future." *Barney,* 143 F.3d at 1306 n.3.

Denver learned in January 2008 that it had mistakenly arrested and detained Plaintiff Smith on a fugitive warrant for Dennis Allen Smith. Fifteen months later, in April 2009, criminal-justice records available to the public and law enforcement agencies nonetheless showed that Plaintiff Smith was arrested in January 2008 on a "fugitive" warrant issued from Weld County. Doc.156-4, at 2. For any law enforcement officer who stops Plaintiff Smith in the future, e.g., for a traffic offense, such an entry would suggest Plaintiff Smith was in fact Dennis Allen Smith.

Custom 6. There is a direct causal link between (i) Denver's custom of failing to train its law enforcement agents to use readily available resources and information to avoid mistaken identity arrests and detentions, and (ii) the violation of Plaintiff Smith's rights under the Fourth Amendment.

Among an NCIC/CCIC operator's principal functions are to search for and find identification information about a person in NCIC/CCIC. Ms. Longoria plugged in "Smith, Dennis" and his birthdate. As CBI had planned when it entered the results of Plaintiff Smith's record challenge into NCIC/CCIC, one of the entries that appeared on Ms. Longoria's computer screen was Plaintiff Smith's NCIC/CCIC entry. That entry exactly matched Plaintiff Smith's driver license information, which Ms. Longoria also found on NCIC/CCIC. Yet, she never

clicked on Plaintiff Smith's NCIC/CCIC entry, which contained CBI's entry that he was not Dennis Allen Smith.

Even though she failed to click on the entry, Ms. Longoria still had sufficient misgivings about whether Plaintiff Smith was Dennis Allen Smith that she wrote "warrant possible" on the Visitor Log to communicate her doubt. Sgt. Ortega had his own doubt after comparing Plaintiff Smith's driver license information with the Dennis Allen Smith warrant. Sgt. Ortega found credible Plaintiff Smith's denials and statement of the location of the CBI letter in his car. Yet, Sgt. Ortega did nothing to determine whether Plaintiff Smith was Dennis Allen Smith using Denver resources and information readily available to him. He did not ask for more information from Ms. Longoria; he did not ask her to conduct additional research; he spoke with neither Ms. Longoria nor the CBI Identification Unit.

The existence of the CBI letter should have been an important fact in determining whether Plaintiff Smith was the person identified in the warrant. Sgt. Ortega believed Plaintiff Smith that he had a CBI letter in his car distinguishing between him and Dennis Allen Smith. Sgt. Ortega's post-incident rationalization for failing to send a deputy—with or without one or more other persons—because of "officer safety" (if sent outside to retrieve the letter, the deputy when crossing the street "could get hit by a car," EXHIBIT 50, at 119) was lame. Regardless, Sgt. Ortega did not even mention to Mr. Kadell that the letter was in issue, nor did he

ask Mr. Kadell to retrieve the letter. The reason? There is "no procedure" that instructed him whether or how to have Mr. Kadell retrieve the letter, and without a procedure Sgt. Ortega will not act. *See* EXHIBIT 50, at 158. Regardless of the physical retrieval of the letter, however, Sgt. Ortega believed Plaintiff Smith was telling the truth when he said the letter existed. That would be enough to an adequately-trained officer to prompt an investigation into whether CBI in fact had issued the letter as part of a record challenge and had input an NCIC/CCIC entry distinguishing between Plaintiff Smith and Dennis Allen Smith. Because of his inadequate training, Sgt. Ortega did nothing and subjected Mr. Smith to a full-blown custodial arrest.

The inadequacy of the training is also illustrated in Sgt. Ortega's knowledge and response to the existence of a CBI letter. He testified that an official CBI Identification Unit letter issued to Plaintiff Smith distinguishing him from Dennis Allen Smith would have no effect on his decision to subject Mr. Smith to an arrest. He also testified that he could think of nothing in a CBI letter that would have prevented his arrest of Mr. Smith. To the extent this testimony was not driven by Policy 3, discussed above, the training was constitutionally inadequate and caused Mr. Smith's mistaken identity arrest and detention.

Policy 3. Denver's policy of finding probable cause for a seizure of a person despite that person's possession of an official CBI letter stating that she is not the

wanted person was the moving force behind Plaintiff Smith's mistaken identity arrest and detention. Sgt. Ortega believed Mr. Smith's sincere statements that he was issued a CBI letter distinguishing him from Dennis Allen Smith, and that the CBI letter was in his car. That belief alone—and particularly when combined with his own admitted doubt about whether Mr. Smith was Dennis Allen Smith—should have given Sgt. Ortega pause in arresting Mr. Smith. After all, he knew or should have known that the existence of a CBI letter would establish that Plaintiff Smith had been definitively identified by CBI and CBI had made an NCIC/CCIC entry about his identification. The letter and NCIC/CCIC entry was "readily available exculpatory evidence," *Baptiste,* 147 F.3d at 1259, to which Sgt. Ortega could not close his eyes.

Subpart 4: Analysis of Plaintiff Sanchez's *Monell* Theories for Relief

A. Facts.

Arrest No. 1. On March 22, 2008, Denver arrested Plaintiff Sanchez Carlos Sanchez and jailed him on three warrants. EXHIBIT 32, at Sanchez 0059. One was for Plaintiff Sanchez, from Arapahoe County. EXHIBIT 32, at Sanchez 0073. The other two were for Tony Sanchez, a different person. EXHIBIT 32, at Sanchez 0070, 0071. One of Tony Sanchez's warrants was for a Denver District Court case, No. 06CR497. The other was also from Arapahoe County.

Both individuals had prior arrests and had been fingerprinted. The warrant for Plaintiff Sanchez included his FBI and SID numbers. The warrant for Tony Sanchez included his FBI and SID numbers. Plaintiff Sanchez's FBI number was different from Tony Sanchez's FBI number; the same was true of their SID numbers. The differences established that they were different people. Nevertheless, Denver jailed Plaintiff Sanchez erroneously on Tony Sanchez's warrants, which began a long saga of intermingled identities, repeated erroneous jailings of Plaintiff Sanchez in Denver on Tony Sanchez's warrants, and repeated orders issued by the Denver District Court finding that Plaintiff Sanchez was the "wrong person."

After the arrest on March 22, 2008, Plaintiff Sanchez was locked in the Denver jails for more than 5 weeks without going to court. No judicial officer reviewed Denver's (erroneous) determination that Plaintiff Sanchez was Tony Sanchez. Plaintiff Sanchez made repeated protests and filed multiple grievances. EXHIBIT 54, at 27-28. Finally, on April 25, a Denver officer in the ID Bureau acknowledged that Denver had made a mistake. He issued a Change of Charge form, saying "wrong person by prints," so that Plaintiff Sanchez was no longer held on the Denver case against Tony Sanchez. EXHIBIT 32, at Sanchez 0069. Five days later, Plaintiff Sanchez was transferred to the Arapahoe County Jail. EXHIBIT 32, at Sanchez 0079. Denver failed, however, to correct its records. EXHIBIT 41, at

49-50. As a result, Denver mistakenly jailed Plaintiff Sanchez again, and again, and again, on the warrant for Tony Sanchez.

Arrest No. 2. On October 16, 2008, Denver mistakenly jailed Plaintiff Sanchez a second time on the same Denver District Court warrant for Tony Sanchez. EXHIBIT 41, at 52; Sanchez 0081. This time, the *only* reason Plaintiff Sanchez was in Denver's jail was the warrant for Tony Sanchez. EXHIBIT 41, at 56-57.

Denver again jailed Plaintiff Sanchez for an extended period of time without taking him to court. This time, Plaintiff Sanchez spent 2 months jailed in Denver without any court appearance. He finally went to court on December 18, 2008. EXHIBIT 41, at 57-58. The court issued an order finding that Plaintiff Sanchez was not the defendant Tony Sanchez. The court noted that Plaintiff Sanchez's DPD number was [redacted]361, while the defendant Tony Sanchez had a DPD number of [redacted]779. The court ordered Plaintiff Sanchez's release "in this case." The warrant remained in force for Tony Sanchez, DOB[redacted]-87 and DPD #[redacted]779. EXHIBIT 32, at Sanchez 0001. Plaintiff Sanchez was sent back to Arapahoe County on December 19. EXHIBIT 41, at 13-18. Once again, Denver did nothing to correct its records. EXHIBIT 41, at 64.

Arrest No. 3. Denver mistakenly jailed Plaintiff Sanchez on the Tony Sanchez warrant a third time on December 31. EXHIBIT 41, at 66-67. After more

than a week in Denver's jail, Plaintiff Sanchez went to court on January 8, 2009, and the court issued an order stating that he was the wrong defendant. Sanchez 0011. On January 13, 2009, Denver returned Plaintiff Sanchez to the Arapahoe County Jail. EXHIBIT 41, at 68.

Arrest No. 4. Denver mistakenly jailed Plaintiff Sanchez on the Tony Sanchez warrant a fourth time on January 20, 2009. EXHIBIT 41, at 76-77. On January 21, 2009, the ACLU sent a letter to the Denver City Attorney and the Manager of Safety asking them to resolve the problem of Plaintiff Sanchez's repeated mistaken identity arrests and detentions on one or more warrants for Tony Sanchez. EXHIBIT 67. DSD Major Deeds then received a call from the Manager of Safety's office. Major Deeds intervened, caused the erroneous charge to be dropped, and Plaintiff Sanchez was again returned to the Arapahoe County Jail. EXHIBIT 41, at 77-79; Sanchez 0144.

B. Plaintiff Sanchez suffered constitutional violations.

Denver argues, erroneously, that jailing Plaintiff Sanchez in Denver on Tony Sanchez's warrants caused Plaintiff Sanchez no harm. On the contrary, Denver's mistaken jailing of Plaintiff Sanchez prevented him, on repeated occasions, from being released from the Arapahoe County Jail to a less restrictive environment, community corrections. *See* EXHIBIT 41, at 53, 56-57, 66-67, 76-77. The multiple erroneous incarcerations, without judicial review, without prompt court

appearances, violated Plaintiff Sanchez's rights under the Fourth Amendment and the Due Process Clause. *See generally* This Resp., Pt.III, Subpt.1.B., at 17-40.

C. Denver's policies/customs.

Customs 1-6 and Policies 1-2, as articulated previously, are equally applicable to Plaintiff Sanchez's *Monell* theories for relief. *See* This Resp., at 41-153, 183.

D. Denver was deliberately indifferent.

The arguments asserting Denver's deliberate indifference to the rights of its citizens, as relevant to Customs 1-6 and Policies 1-2, are incorporated here by reference.

E. Denver was the moving force behind the threat to Plaintiff Sanchez's constitutional rights.

As explained earlier, as a result of the erroneous arrests, Denver intermingled the identities of Carlos Antonio Sanchez and Tony Sanchez. *See* This Resp., at Pt.III, Subpt.1.C.5, at 128-130.

Contrary to Denver's erroneous assertion, Doc. 439 at 49, the records of Plaintiff Sanchez and Tony Sanchez have *not* been corrected and disentangled. On the contrary, the exhibits on which Denver relies demonstrate that the identities of these two individuals remain entangled. That continuing entanglement poses a substantial risk Plaintiff Sanchez will again be confused with Tony Sanchez.

Denver relies on its Exhibit 62, the DPD arrest record for Plaintiff Antonio Carlos Sanchez. Denver fails to notice that this record continues to list "Tony Sanchez" and "Tony Carlos Sanchez" as aliases. Doc. 439, ex.62, at Fourhorn General 003343. Plaintiff Sanchez's DOB is [redacted], 1987. *See* Doc.439, ex.52; EXHIBIT 32, at Sanchez 0059. The DPD arrest record lists two DOBs for Plaintiff Sanchez: in addition to the correct one, it also lists the DOB of Tony Sanchez, [redacted], 1987 (and it lists this wrong DOB first). In addition, the DPD record lists Plaintiff Sanchez's height as 5'11", which is the Tony Sanchez's height; Plaintiff Sanchez's height is 5"8". *See* Doc.439, ex.52; EXHIBIT 32, at Sanchez 0059. Thus, the DPD database continues to link the identity of Plaintiff Sanchez, erroneously, to that of Tony Sanchez.

Denver also relies on Doc.439, ex.63, which Denver characterizes as "the [Plaintiff Sanchez's] NCIC record." Doc. 439 at 49. While this printout no longer links Plaintiff Sanchez directly to Tony Sanchez, it does so indirectly, by erroneously listing "Angel Adrian Rodriguez" and "Alberto Gutierrez" as "names used" by Plaintiff Sanchez. The warrant for Tony Sanchez, Doc.439, ex. 61, lists these two names as AKAs of Tony Sanchez. Thus, a law enforcement officer searching for Plaintiff Antonio Carlos Sanchez will inevitably be led to believe he may be the same person as the criminal suspect Tony Sanchez.

Denver relies on a notation in the miscellaneous field of the NCIC/CCIC warrant teletype for Tony Sanchez that says, "Not the same person as Antonio Carlos Sanchez." In light of the continuing entanglement of identities, that notation is not sufficient to protect Plaintiff Sanchez from future detentions and arrests on warrants meant for Tony Sanchez. Denver has not trained its officers to credit or even to review such information in warrant teletypes.[62] For example, the CBI inserted such a "not the same as" warning in an NCIC/CCIC entry for Plaintiff Smith, distinguishing him from Dennis Allen Smith. Denver's NCIC/CCIC officer who confirmed the warrant for Dennis Allen Smith failed even to look at the entry, and the arresting officer did not request to look at the entry. A similar "not the same as" notation failed to protect Samuel Powell Moore from his fourth mistaken arrest on an Aurora warrant for Samuel Earl Moore. *See* EXHIBIT 6, at CBI.PLF000399; This Resp., Pt.III, Subpt.1.C.2.b., at 111-112. When the DPD higher-ups reviewed that arrest, they found no problem with the arrest. *See* EXHIBIT 31, at Samuel Moore 000622-34. They concluded not only that the fourth mistaken arrest was unobjectionable, but also, in a letter addressed to Moore, that "without a court order from an Aurora Municipal judge, the officers could not have

[62]Indeed, a related problem is the subject of Policy 3, above, in which Denver freely permits its law enforcement officers to find probable cause to arrest a person on a warrant even though he holds a CBI letter stating he is not the person named on the warrant.

released you based upon any minor discrepancies." EXHIBIT 31, at Samuel Moore 633-34.

Part IV: Analysis of Plaintiffs' State-Law Theories for Relief

Subpart 1: Plaintiff Jama

A. Denver's officers and jailers lacked probable cause to imprison Plaintiff Jama.

The elements of false imprisonment are: (i) the defendant intended to restrict plaintiff's freedom of movement; (ii) the defendant, directly or indirectly, restricted the plaintiff's freedom of movement for a period of time, no matter how short; and (iii) plaintiff was aware his freedom of movement was restricted. COLO. JURY INSTR.–CIVIL 4th § 21:1 (2011). A defendant's claim that the false imprisonment was legally justified is "a matter of affirmative defense." *Id.* Source & Auth'y; *see Goodboe v. Gabriella*, 663 P.2d 1051, 1056-57 (Colo. Ct. App. 1983) (holding that plaintiff is not required to prove unlawfulness of imprisonment as part of case in chief, and that legal justification is affirmative defense).

Denver does not assert it is entitled to summary judgment on any of the three false-imprisonment elements. Instead, it argues it is entitled to summary judgment based on its affirmative defense of legal justification. Doc.439 at 29. The Court should reject the argument.

The first legal justification Denver asserts is that Dets. Peterson and Bishop "acted pursuant to a warrant." Doc.439 at 29. To establish the affirmative defense

of legal justification based on arrest under a warrant, Denver must prove, among other things, that

> (i) "[t]he plaintiff was the person for whose arrest the warrant was issued, or the plaintiff knew that his conduct would cause [Dets. Peterson and Bishop] to assume he was," and
>
> (ii) Dets. Peterson and Bishop "had possession of the warrant at the time of the arrest and [they] showed it to the plaintiff immediately upon plaintiff's request, if any" or "if [they] did not have possession of the warrant, [they] informed plaintiff of the alleged offense and that a warrant had been issued and that upon the plaintiff's request [they] would show him the warrant as soon as possible."

COLO. JURY INSTR.–CIVIL 4th § 21:15 (brackets altered).

Denver has the burden of proving this affirmative defense by a preponderance of the evidence. *See, e.g., Western Distrib. Co. v. Diodosio,* 841 P.2d 1053, 1057, 1059 (Colo. 1992). Denver cannot prove these facts. For example, it is not in dispute that Mr. Jama was *not* "the person for whose arrest the [Ahmed Alia] warrant was issued," and he did nothing that would have caused Dets. Peterson and Bishop to assume he was the wanted person. In its summary judgment motion, Denver does not assert these facts, let alone carry its burden of proving this affirmative defense.

Denver's second asserted legal justification is that Dets. Peterson and Bishop had "probable cause to arrest" Mr. Jama. Doc.439 at 29. This justification appears to be based loosely on COLO. JURY INSTR.–CIVIL 4th § 21:11, which sets out the elements for the affirmative defense of "privilege of peace officer to arrest without

a warrant." (There is no recognized affirmative defense for a peace officer's arrest based on execution of a warrant based on mistaken identity.) An element of § 21.11 is that the defendant "believed and had probable cause to believe the plaintiff had committed" a criminal offense. § 21.11(3)(c).

There are material facts in dispute over whether Denver can prove by a preponderance of the evidence that Dets. Peterson and Bishop had probable cause to arrest Mr. Jama under the Alia warrant: Whether Det. Peterson's investigation into whether Mr. Alia was Plaintiff Jama was reasonable; whether the computer-generated, so-called "tip sheet" supplied probable cause to arrest Plaintiff Jama and, if not, whether any product of Det. Peterson's investigation supplied such probable cause. *See generally* This Resp., at 13-28, and Doc.320 at 1-46.

To whatever extent probable cause existed that Plaintiff Jama was Mr. Alia, it was vitiated when Denver obtained from Mr. Jama his fingerprints. At that time, Denver had actual and/or constructive knowledge that Mr. Jama was not Mr. Alia, whose fingerprints and other identification information already were in Denver's possession. *See* This Resp., at 28-29. It certainly was vitiated when on September 24, 2007—three days after the arrest—Det. Peterson obtained NCIC/CCIC information establishing that Plaintiff Jama was not Ahmed Alia. *See* This Resp., at 142-143

B. The negligence of Denver's officers and jailers caused harm to Plaintiff Jama.

Plaintiff Jama stated a claim for negligence. *See, e.g.,* Doc.221 ¶ 280. Denver appears to concede that there is a factual dispute over whether its law enforcement personnel were negligent. *See* Doc.439 at 26 (quoting with approval district court opinion stating that § 1983 defendants "at most negligently failed to discover that Plaintiff was not the fugitive identified in the warrant") (internal quotations omitted). Regardless, Denver does not request summary judgment on Plaintiff Jama's negligence theory for relief. *See id.* at 28-30.

Subpart 2: Plaintiff Smith

A. Denver's officers and jailers lacked probable cause to imprison Plaintiff Smith.

The false-imprisonment arguments advanced by Plaintiff Jama are equally applicable to Plaintiff Smith and are incorporated herein by reference.

There are material facts in dispute over whether Denver can prove by a preponderance of the evidence that there was probable cause to arrest Plaintiff Smith: Whether Sgt. Ortega effected a Fourth Amendment seizure when Mr. Smith was in the waiting area or when he was handcuffed in the sally port; whether Sgt. Ortega acted unreasonably by arresting Plaintiff Smith when Mr. Smith told him—and Sgt. Ortega believed he was sincere in stating—that he was not Dennis Allen Smith and reported that CBI had issued him a letter specifically stating that he was

not Dennis Allen Smith; whether Ms. Longoria acted unreasonably in failing to click on the first NCIC/CCIC response showing an exact match with Plaintiff Smith's driver license information in her possession; whether it was unreasonable for Sgt. Ortega to ignore the CBI letter and to fail to obtain the letter from Mr. Smith's car, either by requesting a deputy or Mr. Kadell to obtain the letter; whether it was unreasonable for Sgt. Ortega to fail to ask that an NCIC/CCIC operator conduct research to determine if CBI had issued a letter to Plaintiff Smith distinguishing him from Dennis Allen Smith. *See generally* This Resp., Pt.III, Subpt.3.A., at 187-191; Doc.308 at 1-50.

B. Denver law enforcement personnel's negligence caused harm to Plaintiff Smith.

The negligence arguments advanced by Plaintiff Jama are equally applicable to Plaintiff Smith and are incorporated herein by reference.

Denver does not request summary judgment on Plaintiff Smith's negligence theory for relief. *See* Doc.439 at 41.

Conclusion

For the foregoing reasons, the Court should deny Denver's motion for summary judgment.

Dated: December 30, 2011.

Respectfully submitted,

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Certificate of Service: I certify that on November 29, 2011, I electronically filed the foregoing *Plaintiffs and Intervenor's Response to Denver's Motion for Summary Judgment* with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

Stuart L. Shapiro: stuart.shapiro@ci.denver.co.us

s/ Joyce A. Rumsey

FourHorn v. City & County of Denver
No. 08-cv-01693 (D. Colo.)

Table of Exhibits

	Documents	Collection of Documents by Bates-numbered Prefix[63]	Depositions and Declarations
1	*Los Angeles Times* article		
2		BB	
3		C.Fourhorn	
4		Hernandez, C.	
5		CBI	
6		CBI.PLF	
7		CF	
8		DCC	
9		DeDe Davis	
10		Dennis Smith	
11		Fourhorn General	
12		Fourhorn Monitor	
13		Walker, J.	
14		Jama Muse	
15		JI	
16			Woods Declaration
17	Summary of Wrong Person Clears		
18	1006 Summary of Not Helds		
19			Anderson Declaration
20	Minute Order Summary		
21	Keyword Chart		
22	Docket Sheets–Minute Order		

[63]This column lists exhibits grouped by Bates-number prefix. For example, EXHIBIT 2 consists of documents Bates-numbered BB0026, BB0027, BB0028, and so on, that are cited in Plaintiffs' Response to Denver's motion for summary judgment.

	Documents	Collection of Documents by Bates-numbered Prefix[63]	Depositions and Declarations
	Summary		
23	Expanded Minute Order Summary		
24			Silverstein Declaration
25		Jose Ibarra	
26		Delaney, K.	
27		Mitchell, K.	
28		MJ	
29		PLF	
30		Moreno, R.	
31		Samuel Moore	
32		Sanchez	
33		VR	
34		WebMug	
35	Defendants' 1st Supplemental Responses to Amended 1st Set of Discovery Requests		
36	Defendants' Responses to 8th Set of Discovery Requests		
37	Defendants' Responses to 8th Set of Discovery Requests (Bishop & Peterson)		
38			Basefsky Deposition
39			Bishop Deposition
40			Clark Deposition
41			Deeds Deposition
42			Freund Deposition
43			Gillespie Deposition
44			Griffin Deposition
45			Hanson Deposition
46			Jama Deposition
47			Longoria Deposition
48			Lovinger Deposition
49			McLane Deposition

	Documents	Collection of Documents by Bates-numbered Prefix[63]	Depositions and Declarations
50			Ortega Deposition
51			Peterson Deposition
52			Pettinger Deposition
53			Priest Deposition
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55			Simkins Deposition
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58			Smith Deposition
59			Stern Deposition
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61			Walton Deposition
62			Wood Deposition
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67	Sanchez letter from ACLU to Fine		
68		Mayes, D.	
69	Plaintiffs' Amended 1st Set of Discovery Requests		
70			Moore Deposition