Fw: OPEN RECORDS REQUEST: Michael Guerra

SPD Records <spdrecords@seguintexas.gov>
Mon 4/1/2024 10:13 AM
To:Mike McCann <mmccann@seguintexas.gov>

Good morning sunshine, Do you want to release this or withhold? Please let me know. Thanx, Stay safe and have a magnificent day. MC 🙂

From: Kristin Mueller <kmueller@seguintexas.gov>
Sent: Monday, April 1, 2024 8:22 AM
To: SPD Records <spdrecords@seguintexas.gov>
Subject: OPEN RECORDS REQUEST: Michael Guerra

From: John Ferrara <jferrara@thehawkseyecn.com>
Sent: Saturday, March 30, 2024 9:43 AM
To: Kristin Mueller <kmueller@seguintexas.gov>
Subject: OPEN RECORDS REQUEST: Michael Guerra

I am requesting any internal investigation related to Michael Guerra (whether completed or not), and his separation paperwork from the Seguin Police Department.

I agree to usual and customary PII redactions.

Respectfully,

John D Ferrara
The Hawk's Eye - Consulting & News, LLC
~ A RELIABLE SOURCE OF INFORMATION ~

FOLLOW US ON SOCIAL MEDIA:
WEBSITE: www.thehawkseyecn.com
FACEBOOK: www.Facebook.com/thehawkseyenews
INSTAGRAM: www.Instagram.com/hawk_s_eye_c_and_n
TWITTER: www.Twitter.com/thehawkseyenews
REDDIT: https://www.reddit.com/u/TheHawksEyeNews/

AUDREY G. LOUIS

DISTRICT ATTORNEY
81st/218th JUDICIAL DISTRICT
ATASCOSA, FRIO, KARNES, ATASCOSA AND WILSON COUNTIES

FACSIMILE TRANSMISSION
COVER PAGE

DATE: 07-30-2021

TO: Seguin Police Department
350 N. Guadalupe St.
Seguin, Texas 78155
P: 830-379-2123

FROM: **D.A. Investigator Roland Trevino**

RE Grand Jury Subpoena for personnel records

Number of Pages Sent (Including this Page): 04

Message Please send me a Confirmation Reply that you received the Subpoena.

Transmitted by. Roland Trevino

NOTICE

If you do not receive legible copies of all pages, please call (830)393-2200 as soon as possible and ask for the person who transmitted the communication.

This Facsimile message is a privileged and confidential communication and is transmitted for the exclusive information and use of the addressee. Persons responsible for delivering the communication to the intended recipient are admonished that this communication not be copied or disseminated except as directed by the addressee If you receive this communication in error, please notify the sender or the person who transmitted the communication immediately by telephone and mail the communication to the letterhead address.

1105 A Street, Floresville, Texas 78114

STATE OF TEXAS | **IN THE MATTER OF A**

COUNTY OF ATASCOSA | **GRAND JURY INVESTIGATION**

JULY TERM 2021

GRAND JURY SUMMONS

TO: THE SHERIFF, HIS DEPUTIES, CONSTABLES, THEIR DEPUTIES, GRAND JURY BAILIFFS, 81ST JUDICIAL DISTRICT ATTORNEY INVESTIGATOR, ANY OTHER PEACE OFFICER OF ATASCOSA COUNTY, TEXAS, ANY PEACE OFFICER WITH THE TEXAS DEPARTMENT OF PUBLIC SAFETY, TEXAS RANGER, OR ANY OTHER TEXAS PEACE OFFICER:

ARTICLE 20 09 TEXAS CODE OF CRIMINAL PROCEDURE:
"Duties of Grand Jury"

The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person

ARTICLE 20.10 TEXAS CODE OF CRIMINAL PROCEDURE:
"Attorney or Foreman May Issue Process"

The attorney representing the State, or the foreman, in term time or vacation, may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation.

PURSUANT TO THE PROVISIONS OF ARTICLES 20.09, TEXAS CODE OF CRIMINAL PROCEDURE, YOU ARE HEREBY COMMANDED TO SUMMON:

SEGUIN POLICE DEPARTMENT
350 N. GUADALUPE ST.
SEGUIN, TEXAS 78155

FURTHER SAID WITNESS IS INSTRUCTED TO BRING WITH HIM OR HER THE FOLLOWING DESCRIBED MATERIALS: "DUCES TECUM"

Any and all personnel records, employment records to include but not limited to any disciplinary actions or write up, and LA investigation for former Seguin Police Officer Carlos Contreras DOB: [redacted] PID: [redacted] The information sought in the summons is relevant and material to a legitimate law enforcement inquiry.

The signed and completed BUSINESS RECORD AFFIDAVIT provided herewith regarding the subpoenaed items listed above;

(NOTE: IN LIEU OF APPEARANCE, THE DOCUMENTS SUBPOENAED MAY BE TURNED OVER TO **Roland Trevino, 81st District Attorney's Office Investigators, 1105 A Street, Floresville, TX 78114**, NO LATER THAN ONE REGULAR WORKING DAY PRIOR TO THE APPEARANCE DATED LISTED BELOW.)

NOTICE: ALL DELIBERATIONS OF THE GRAND JURY SHALL BE SECRET. ARTICLE 20.16 OF THE TEXAS CODE OF CRIMINAL PROCEDURE ENTITLED "OATHS" TO WITNESSES" PROVIDES:

The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated.
"You solemnly swear that you will not reveal, either by your words or conduct, and will keep secret any matter about which you may be interrogated or that you have observed during the proceedings of the grand jury, and that you will answer truthfully the questions asked of you by the grand jury, or under its direction, so help you God." A witness who reveals any matter about which he is interrogated, or that the witness has observed during the proceedings of the grand jury other than when required to give evidence thereof in due course, shall be liable to a fine as for contempt of court, not exceeding $500, and to imprisonment not exceeding six months

BECAUSE THERE IS AN ONGOING INVESTIGATION, YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS SUMMONS NOR ANY MATERIAL REQUESTED PURSUANT TO THIS SUMMONS OTHER THAN UNDER THE DIRECTION OF A COURT OF COMPETENT JURISDICTION.

THEREFORE, YOU ARE TO HONOR SUCH REQUEST AND TO APPEAR OR FURNISH BEFORE THE ATASCOSA COUNTY GRAND JURY NOW IN SESSION, IN JOURDANTON, TEXAS 78026, **INSTANTER** TO THEN AND THERE TESTIFY BEFORE OR PRESENT SAID MATERIAL TO THE GRAND JURY.

HEREIN FAIL NOT, AND DUE RETURN MAKE HEREOF, WITNESS MY SIGNATURE ON THIS THE 30th day of **JULY**, 2021.

Brett F Pattillo BAR: 24075985
ASSISTANT DISTRICT ATTORNEY-ATASCOSA
81ST/218TH JUDICIAL DISTRICT ATTORNEY'S OFFICE

RETURN OF SUMMONS

Served by delivering a copy of this summons to custodian of records in ~~PERSON~~/ VIA FAX/~~CERTIFIED MAIL RETURN RECEIPT REQUESTED~~, on this the 30th day of July 2021.

Roland Trevino #8106
INVESTIGATOR/POLICE OFFICER

June 22, 2018

I, Carlos Contreras, resign from my position as Police Officer, Crime Prevention Specialist and Public Information Officer, for the City of Seguin Police Department, effective June 24, 2018.

Carlos Contreras

SEGUIN
TEXAS

POLICE
DEPARTMENT

June 22, 2018

Carlos Contreras
1635 Sunview Circle
New Braunfels, Texas 78130

Dear Mr. Contreras:

On June 20, I conducted a pre-disciplinary hearing to provide you with the opportunity to provide information that might mitigate the allegations made in my memo dated June 13, 2018. Your attorney, Robert M. McCabe, stated that you did not have mitigating information to offer. You spoke only to apologize for your actions and to ask for leniency. Mr. McCabe then presented a proposed Voluntary Separation, Release & Waiver Agreement for the City's consideration. The City has declined to accept that offer. Therefore, my determination in this matter will be based upon the facts presently available.

Following receipt of the open records request on June 4 in regards to incident #18-18303, it was deduced that based on the facts known to the reporter, that there had been information inappropriately released by a someone from within the department. On June 5, following a meeting regarding responding to the records request, I specifically asked you if you had released any information to the media in regards to this case. You responded: "No Chief, I don't know anything about that". Deputy Chief Ure also asked you, at least twice that day, if you had anything to do with the records request or if you had information on who might have provided the information to News 4. You again denied having any knowledge about how the information got to News 4. On the evening of June 7, following your placement on administrative leave pending investigation, you contacted Chief Ure who was in a vehicle with me. During that conversation, you admitted that you were responsible for writing and sending the open records request to the media. On the following day, when interviewed by Deputy Chief Ure and Lieutenant Wright, you were cooperative in relating your involvement in this incident but you continued to withhold details outlining yours and Corporal Guerra's specific involvement in this incident. It was not until approximately 24 minutes into the interview when you finally divulged all of the facts surrounding your release to the media and Corporal Guerra's involvement.

The internal affairs investigation findings sustained the allegations that you violated SPD GO 03.25-Section 2.03 Media Information Releases, SPD GO 02.16-Section 3.10 Truthfulness, SPD GO 02.16-Section 1.19 Dissemination of Information, and SPD GO 02.16-Section 1.10 Unsatisfactory Performance. Because of the sustained allegations, Deputy Chief Ure recommended your termination from employment. Although the policy violations in themselves would probably not have justified termination, your failure to be immediately and completely be truthful in your responses to our questions, and the deceptive actions you took in using a "fake"

email and in the deletion of text messages, is conduct that I cannot tolerate by a Police Officer. Therefore, it is my decision to uphold Chief Ure's recommendation. Your employment is hereby terminated effective with the date of this letter. Please contact the Human Resource Department to schedule an appointment to complete the necessary exit paperwork in regards to your pay and benefits.

If you desire to grieve this action you must do so in writing within ten (10) business days to Douglas Faseler, City Manager. If you fail to file your grievance within ten business days, you will no longer be eligible to invoke the grievance procedure.

Respectfully,

Kevin K. Kelso
Chief of Police

cc: Robert M. McCabe, PLLC
203 South Austin Avenue
Georgetown, TX 78626

Tammy Garcia, Director of Human Resources

SEGUIN
TEXAS

POLICE
DEPARTMENT

June 13, 2018

TO: Carlos Contreras

FROM: Chief Kevin Kelso

RE: Pre-Disciplinary Hearing

Deputy Chief Ure has recommended that your employment be terminated for conduct unbecoming a Seguin Police Officer. Specifically, it is alleged, that on April 16, 2018 officers responded to a call for suspicious persons on the roof of a residence and that at that call, an officer of this department acted inappropriately. It is further alleged, that you then took it upon yourself to send notifications to outlying media groups informing of this incident in an effort to discredit and defame the Seguin Police Department, and in particular, its administration. When questioned about the allegations, you were not truthful in your responses.

If confirmed, your actions in the above incident could be in violation of the following policies:

SPD GO 03.25-Section 2.03 Media Information Releases- 2.03 No employee shall release any information that would jeopardize an activeinvestigation, prejudice an accused's right to a fair trial, or violate any law.

SPD GO 02.16-Section 3.10 Truthfulness – Reports submitted by officers/employees shall be truthful and complete, and no officer/employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information. Officers/employees shall not knowingly make false or misleading statements concerning the scope of their employment or the operations of the department except when necessary in the performance of their duty. Officers/employees will be truthful in:

A. All official verbal and written communications and reports.

B. Any court related testimony or agency investigation.

SPD GO 02.16-Section 1.19 Dissemination of Information - Officers/employees shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established departmental procedures. Officers/employees may remove or copy official records or reports from a police installation only in accordance with established departmental procedures.

Officers/employees shall not divulge the identity of persons giving confidential information except as authorized by proper authority.

SPD GO 02.16-Section 1.10 Unsatisfactory Performance- Officers/employees shall maintain sufficient competency to properly perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks satisfactorily; the failure to take appropriate action on the occasion of a crime, disorder, or other conduct deserving police attention; or absence without leave. In addition to other indication of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department

Before I decide what, if any, disciplinary action is appropriate to this situation, I will conduct a pre-disciplinary hearing. The hearing is set for Wednesday, June 20 at 10:00 a.m. in the second floor conference room at City Hall. The purpose of this hearing is for you to provide any information which you feel, would mitigate the allegations made by your supervisor. You may be represented at the hearing by an attorney. You may also bring witnesses to testify on your behalf. If you want the City to provide witnesses for testifying or for cross-examination, please give Tammy Garcia, Director of Human Resources, your specific request in advance of the hearing. Additionally, you may provide a written response to the allegations if you so desire. If you wish to waive this hearing for any reason, you may do so provided that you give me a signed, written statement to that effect. If you are considering such a waiver, you may wish to seek legal counsel before making such a decision. If you waive this hearing, my decision will be based upon the facts presently available. Should you have any questions regarding the pre-disciplinary hearing process please contact Tammy Garcia, Director of Human Resources at 401-2471.

I acknowledge receipt of the above notice.

Carlos Contreras

13 June 18

Date (10:25 am B.Ure)

cc: Tammy Garcia, Director of Human Resources

SEGUIN POLICE DEPARTMENT

ADMINISTRATIVE INVESTIGATION

Control No.: 18-004

Complainant Name: Deputy Chief Bruce Ure

Address: [redacted]

Home Phone: Work Phone: [redacted]

Race: W Gender: M ☐ Externally Generated X Internally Generated

Involved Employee(s): Officer Carlos Contreras and Corporal Mike Guerra

X Sworn ☐ Civilian Shift: Admin and

Race: W Gender: M

Allegation(s): It is alleged that Officer Contreras and Corporal Guerra intentionally avoided the chain of command and with malice, notified a television reporter (Ariana Lubelli) of confidential information regarding a recent police incident in an effort to discredit and defame the Seguin Police Department, intentionally concealed and were untruthful when questioned regarding these allegations, thus violating SPD GO's:

1. **03.25-Section 2.03 Media Information Releases**- 2.03 No employee shall release any information that would jeopardize an active investigation, prejudice an accused's right to a fair trial, or violate any law.

2. **02.16-Section 3.10 Truthfulness** – Reports submitted by officers/employees shall be truthful and complete, and no officer/employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information.

   Officers/employees shall not knowingly make false or misleading statements concerning the scope of their employment or the operations of the department except when necessary in the performance of their duty. Officers/employees will be truthful in:

   A. All official verbal and written communications and reports.
   B. Any court related testimony or agency investigation.

   1.19 Dissemination of Information - Officers/employees shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established departmental procedures. Officers/employees may remove or copy official records or reports from a police installation only in accordance with established departmental procedures. Officers/employees shall not divulge the identity of persons giving confidential information except as authorized by proper authority.

4. **02.16-Section 1.10 Unsatisfactory Performance**- Officers/employees shall maintain sufficient competency to properly perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks satisfactorily; the failure to take appropriate action on the occasion of a crime, disorder, or other conduct deserving police attention; or absence without leave. In addition to other indication of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department.

Brief Summary of Complaint:

On June 4, 2018 (at 10:43 p.m.), Records Supervisor M.C. Myers received the following open records request:

To whom it may concern,

I would like to request any and all media/audio recordings from the police response by officer Suzann Gonzalez on April 16, 2018 at [redacted] around 2 p.m. – 3:30 p.m.
Any questions, I can be reached at this email address, alubelli@sbgtv.com or via telephone at [redacted]

Thank you in advance.

Arian Lubelli
News Reporter
[redacted]
Cell: [redacted]
FoxSanAntonio.com – News4SA.com

As normal for an informational request, this request was processed; however, it was very suspicious that the request was so specific and an address was given where a juvenile resided, which would be information that SPD would not disclose due to the Texas Family Code restrictions regarding allowable juvenile information that is disclose able. It was determined that this information was probably provided by an employee(s) of the police department due to the following facts regarding the open records request:

1. Officer Suzann Gonzalez's name was spelled correctly. Her name is spelled very atypical.
2. The exact date and time was requested.
3. The exact location was provided.
4. The audio that was requested would be the most damaging item to Gonzalez.

Based on the above, it was determined that someone from the Seguin Police Department more than likely provided this information. It was believed that this unauthorized information was forwarded to the media in an attempt to discredit the Seguin Police Department in the handling of the separation of Officer Gonzalez. Seguin Police Department General Orders prohibit unauthorized releases of information, as well as various code of conduct violations would also exist if this were found to be sustained.

I. Investigation

A. Complainant's Statement - Deputy Chief Bruce Ure

On Tuesday, June 5, 2018, Deputy Chief Bruce Ure was made aware via email from Records Supervisor M.C. Myers that an open records was submitted overnight by a news reporter from Channel 4. The request submitted was related to incident #18-18303. This particular incident was originally a possible burglary in progress which

transitioned to a disturbance of sorts with juveniles. The juveniles fled the scene on foot from where they were lawfully allowed to be. During the incident, Officer Suzann Gonzalez displayed poor behavior and judgement by berating the juveniles, used copious amounts of profanity, and even taunted the juveniles to come fight her. Ultimately, Officer Gonzalez was disciplined and a separation agreement was agreed upon with her TMPA attorney and the City of Seguin.

On June 5th, Deputy Chief Ure contacted the City of Seguin Public Information Officer Morgan Ash, Chief Kevin Kelso, Captain Victor Pacheco and PIO/Officer Carlos Contreras and requested a meeting to discuss the situation. Officer Contreras was instructed to begin to redact juvenile information from the requested recording and he left Ure's office. Based on the fact that the wording of the open records request was very deliberate and Officer Gonzalez's name was spelled right, and the requestor had a relationship with Officer Contreras, he was immediately suspected of sending out the information in an attempt to discredit the Seguin Police Department.

On Tuesday morning, after meeting on the subject, Chief Kelso immediately went to Officer Contreras's office to ask if he provided the information to the media. While Officer Contreras was sitting at his desk, Chief Kelso asked him if he had anything to do with the open records request from Channel 4. Chief Kelso advised that Contreras immediately leaned back, crossing both arms across his chest, slide down in his seat and told him "No Chief. I don't know anything about that." It is important to note that the sliding down in his seat and crossing his arms are often indicators of deception.

Also on Tuesday, Chief Ure (on two separate occasions) asked Contreras if he had anything to do with the open records request, or if he had any information on any person providing it to News 4, and he stated that he didn't. In fact, Officer Contreras informed Deputy Chief Ure that he still remembered the talk he was given when he was assigned to the position of PIO (by Ure) and stated that he still understood that it was his job to protect the Seguin Police Department, Chief Kelso and Deputy Chief Ure and he would never violate the Chief's trust. While he was stating this to Deputy Chief Ure, he appeared to be nervous and seemed to lack confidence or commitment to his words.

Based on what was known, as well as suspected, Deputy Chief Ure initiated an internal affairs investigation at 3:49 pm on Thursday, June 8, 2018.

On Thursday, June 8, 2018, Deputy Chief Ure requested that Lt. Suarez be present in his office while the Notice of Internal Affairs and Administrative Leave Suspension was delivered to Corporal Mike Guerra. At 4:50 p.m., Corporal Guerra and Lieutenant Suarez entered Deputy Chief Ure's office. Deputy Chief Ure handed a printed copy of the open records request that Channel 4 sent and was asked if he knew anything about it. Guerra advised he only had "heard about it this week." Deputy Chief Ure asked if he knew if any SPD employee who were responsible for it or if he had any "direct or indirect" involvement in it and he stated "no." He was then asked again if he was sure and he confirmed that he had no knowledge of anyone connected with, either writing or sending, the document to the media. At that time, he was officially served his Notice of Internal Affairs and Administrative Leave Suspension.

At approximately 5:50 p.m., Deputy Chief Ure then contacted Officer Contreras via cell phone and directed him to disengage from his current extra duty employment that he

was currently working at Texas State University (graduation ceremony). Ure met Contreras in the Seguin Chili's parking lot at 5:38 p.m. where he was served both the Notice of Internal Affairs Investigation and Administrative Leave Suspension. Deputy Chief Ure asked Officer Contreras if he was interested in changing his story of no involvement and he only responded that he had "TMPA representation."

Later that evening at 7:58 p.m., Officer Contreras called Deputy Chief Ure on the cell phone. Deputy Chief Ure was in a vehicle with Chief of Police Kevin Kelso so Ure put the incoming call on speaker. Officer Contreras was sobbing uncontrollably and began the conversation off by apologizing and stating that he was the person responsible for writing and sending the open records request to the media. He stated that "I did it and I am sorry." He continued to apologize and repeated that he was the person responsible and also added that Corporal Guerra was involved but failed to elaborate on his involvement. Deputy Chief Ure advised that he would be contacted the following day.

B. Interview of Officer Carlos Contreras

On Friday, June 8, Deputy Chief Ure contacted Officer Contreras via text message and instructed him to be at the police station at 11:00 a.m. He responded "Yes sir." At 11:00 a.m. Officer Contreras arrived and came to Ure's office where Lieutenant Wright was also present. The purpose of the meeting was an interview related to this internal affairs investigation. Contreras was provided a Garrity Warning, which he read and signed. Deputy Chief Ure asked him if he understood what he read and he confirmed that he understood the document and signed it, indicating that he understood the Garrity warning.

Deputy Chief B. Ure then asked Officer Contreras to "walk me through the entire incident." Contreras replied that after Officer Gonzalez's departure from SPD, he was a "little upset" of her because of her actions, and making us and the SPD look bad. He came up with a plan to "push out the information to the media." When asked what the purpose of his actions (sending out to the media) was, Contreras responded that he was concerned about Officer Gonzalez hurting others or even herself (as a police officer).

Contreras stated that he didn't understand the magnitude of his actions until the Tuesday morning and he witnessed Deputy Chief Ure's agitated response. Contreras stated it was at that point that he knew that he had "fuc**d up." He stated that he had pushed it out to "all San Antonio news agencies" except for local (i.e. Seguin). He stated that it was a coincidence that the reporter who sent the open records request was Ariana Lubelli (his acquaintance). He stated he established a fake email account and sent it out through it. In outbound email, he called himself a "concerned citizen" who wrote that someone should look into the actions of a Seguin police officer related to this incident. When asked if he realized that releasing the exact residential address of a juvenile was a possible violation of law, he stated that he did not realize that. When asked by Deputy Chief Ure, "Who else was involved?" he replied "No one else. It was only me." Ure replied that "We know Guerra was involved." to which Contreras replied, "The only thing that he (Guerra) had involvement per se, and only because I asked him about it, were the documents that he had written on Officer Gonzalez (this appears to be working supervisory notes relating to her job performance). Contreras stated that his intent was that if there was a media follow up, that those notes could be used to demonstrate how she was a poor performing officer and had a long history of displaying anger. He then

stated that he used that information (Guerra's information) for a draft media email but didn't send it. He also stated that he "didn't remember" his email password and now that the email account was deleted... it was essentially gone. He then stated that "that was my only interaction with Guerra." He was then asked "You guys didn't talk about it after that?... You didn't discuss it after that?" and he responded "No sir." As Deputy Chief Ure believed these to be outright lies, Ure replied to Contreras "Be real careful because I know a lot" to which Contreras stated "Yes sir." When questioned about it again, he stated that after he simply asked Guerra if he had documents on Gonzalez, and Guerra stated yes, he simply said "ok" and hung up. Ure responded that we know he had much more involvement in this and Contreras stated that "This was my only involvement with him (Guerra)." He further stated that he and Guerra, after he called him, only spoke about this "one time" which was untruthful. When asked, he advised that he and Guerra texted each other because they were also friends. Deputy Chief Ure asked to view his texts to Guerra on his phone and he replied "I don't have any more texts or anything like that." Ure asked so "you deleted them all?" to which Contreras replied that "I deleted a lot." He then stated the reason for him to delete Officer Guerra's past messages was because his phone "blew up" after this whole thing about the media request surfaced, making it sound like his phone needed storage space so he selected Guerra's messages to delete (and none others). Chief Ure asked to look at his phone and it showed the latest conversation to Guerra was on Wednesday.. all others (Guerra's) were deleted.

Ure then asked, so what you are telling me is that you had one single conversation with Guerra about his documents related to Suzann Gonazales (Contreras made an agreeing sound of "uh-huh"), and you didn't talk about why (inquire about the records) or anything else such as what you guys were now going to do, to which he responded "no sir" and "I know what I did was wrong.." to which Ure responded to "Don't try and protect him." He further stated that "I'm not trying to protect anyone." Knowing this was another lie, Lieutenant Wright responded to him that "When this man asks you questions, this man generally knows the answers before he asks those questions." Lt. Wright went into great detail on how honesty was very important. He responded that he understood that. After thinking about it, Officer Contreras again lied and stated, "I don't know what else to tell you" and Ure responded that we would be pulling records off their phones, and that he (Contreras) was being given an out and an opportunity to tell the truth which could be considered to be a "life preserver." He was told that he would get himself jammed up by protecting someone else. Lt. Wright again told him the importance of telling the truth and Officer Contreras replied "I get it, I just don't know what else to tell you sir." At this point, the interview had been going on for almost 18 minutes and Officer Contreras continued to lie about both his and Officer Guerra's involvement.

Officer Contreras continued to deny any more involvement of Officer Guerra. Deputy Chief Ure requested his permission to look both at his City and person phone messages. After looking at Contreras's phone, Ure discovered a message from News 4 reporter Ariiana Lubelli which stated "Can I call you back?" Contreras stated that he responded "sure" and that "she never returned his call." This was another outright lie. Ure reiterated that the fact that he claimed that she did not return his call and he also deleted Guerra's messages because his phone memory was full was "bullsh*t." He was told that we knew he was lying. At approximately 21 minutes into the interview, Contreras continued to lie about his and Guerra's involvement.

Lt. Wright continued to try and convince him to start telling the truth. After a long, awkward pause at almost 24 minutes into the interview, Lt. Wright asked him "Straight up, why did you delete the text messages? Be honest!" Contreras responded "Because there were some things on there." When asked about what he meant, he stated 'a conversation between him and Guerra." He further stated that "Chief If I tell the truth, I know my career (and stated something like "it is over"). He then stated that "I don't know what he did on his end, but on mine, I did call him, and he did ask what the hell is going on. I told him that I was going to push something out to the San Antonio news media. He (Guerra) said "Alright." When pressed further, he stated that he and Guerra had a conversation in which Contreras called Guerra, "one night." Contreras stated that he called Guerra and told him the plan (while Guerra was on duty at SPD) on releasing the information after Officer Gonzalez was released. When pressed, Officer Contreras stated that he asked Guerra if he had "the documentation" and that he (Guerra)knew about "the plan." Contreras stated that Guerra had come by his apartment (where two non-SPD "friends" were present) to talk about Officer Suzann Gonzalez and different "incidences, etc." Contreras stated that he told his two friends (with Guerra present) that he would create a fake email account from which to send out the media request. Contreras said that "the friends" typed it up and that he (Contreras) was not present for that. Contreras stated that when he "proofed" the document to be sent to the media, he took a screen shot and sent it to Corporal Guerra, who in turn, proofed it and sent back (via text) wording revisions to include in the document. Guerra responded (texted) "ok" and he revised it "on some stuff here and there" from his house. He stated that Guerra revised "some grammar and that" and sent it back to him. Contreras admitted that the order of sequences was that he wrote the media document, sent it to Corporal Guerra, Corporal Guerra then sent it back to Officer Contreras and then it was sent out to the San Antonio media. Lieutenant Wright asked Officer Contreras what was on the text messages between him and Corporal Guerra. Contreras responded that he had texted "done" as soon as he sent the emails to the media. He also stated that he and Guerra texted each other about what was going on after the internal affairs investigation was launched. Contreras also stated that when discussing the IA with Corporal Guerra, he (Guerra) stated that he had not been questioned at all when he was served the notice of IA on his involvement. As Deputy Chief Ure was present in that meeting, it was clear that either Contreras was now lying or Corporal Guerra had lied to Officer Contreras. It was logical to deduct that Corporal Guerra had lied to Contreras because there was no value in now lying about this on Contreras' behalf.

Contreras stated that when he told Guerra on the phone "he would take the rap and that only he (Contreras) was involved" Guerra replied "I appreciate it." This statement demonstrates collusion between these two officers in formulating a false narrative to thwarting an internal affairs investigation. Additionally, he texted Guerra (Thursday night before the interview) stating that the story would be that he (Contreras) only asked for the documents from him (Guerra). Guerra never responded to the text until they spoke later that night/morning (around 2:00 a.m.) and Guerra stated that he was good with their story.

When asked by Lieutenant Wright why he continued to lie in the Internal Affairs investigation and he stated that he was just trying to protect Corporal Guerra (with Corporal Guerra's knowledge and approval).

Officer Contreras admitted that he spoke on the phone to Ariana Lubelli (Channel 4 reporter) on Thursday (the day before) and told her that he was under internal affairs for leaking the information and she responded "ok.."

Officer Contreras stated that he had no intent on harming the Seguin Police Department, Chief Kelso or Deputy Chief Ure.

C. Interview of Corporal Mike Guerra

On Friday, June 8, 2018, Deputy Chief Ure and Lieutenant Wright interviewed Corporal Guerra in Deputy Chief B. Ure's office. At 1:25 p.m., Corporal Guerra arrived and was issued his Garrity Warning which he read, indicated that he understood it, and signed it at 1:25 p.m.

Deputy Chief B. Ure explained that someone had sent an open records request from Channel 4 and we believed that it came from someone inside the organization and "we'd like to know if you had anything to do with it or a part of it?" Corporal Guerra stated that Contreras had contacted him and asked him if he had information of Suzanne Gonzalez. Guerra then asked Contreras "what kind of information?" to which Contreras responded "Do you have documentation?" and Corporal Guerra stated that he told Contreras "Yes, I do have documentation but you cannot have it and if want that, then you would have to do an open records request for it." He further stated that if another supervisor or someone higher than him (Guerra) told him to release it, he would but he would not just release it. Guerra stated that they talked more and Contreras asked him to go to his apartment where Contreras stated that he "wanted to push this out" because he (Contreras) didn't think what the department did was right. Guerra stated that he told Contreras that "if you push this out, it is on you and that if you push it out then that's a black eye for the department.

Guerra then stated that Contreras asked him if he (Guerra) would be ok if it were released." Guerra stated that he told him "It's not that I'd be ok but if someone chooses to release it, then I can't control that and that if you decide to do that, then you're on your own and I don't want any part of that."

Guerra stated that a few days after this, Contreras told him that "he pushed it out to the media" and Guerra told him that "You're fu*king stupid for pushing it out to the media." He then stated that Contreras told him (after SPD received the Channel 4 request) to "get ready for the shit."

When directly questioned by Lt. Wright, he was asked if he had ANYTHING to do with the media request, Corporal Guerra changed his story and responded that he "didn't send it out but Contreras sent a typed memo or something on paper and asked what do you think about this... and I responded that you're stupid."

Deputy Chief Ure recognized that Corporal Guerra was attempting to lie and deceive everyone in the interview so he stated "Let me stop you here. You're piecemealing me. You're feeding me and I'm not going to drag it out of you. I'm just not going to do it. Don't take me for a fool. This is an internal affairs investigation. This is very serious so if you think you're going to monkey with me and feed me a little... I'm not going to pull it out of you!"

Corporal Guerra then stated that Contreras had sent him a picture of the open records request memo that he had typed (the one that was going to the media) and said "Are you good with this?" Corporal Guerra said "If you want to send it send it but I would change some stuff but if that's what you're going to do.. that's what I would change." When asked if he saw anything wrong with it Corporal Guerra replied "Hindsight 20/20, I do now." When asked why specifically, Guerra replied, "That I am part of leaking it?" When pressed again, and asked if he was ok with it, he replied that "when talking with Contreras, he wanted to leak this information because he disagreed with what the organization did and that's what his angle was with this." He further stated that "No, I am not ok with it." When asked why did he (Guerra) participate in the whole thing, he responded, "I honestly didn't think he'd go through with it." Deputy Chief B. Ure responded that his response was "crap" because Contreras sent him the document and he (Guerra) actually revised it and sent it back. Guerra then stuck to his story that he did not think Contreras would actually send it out.

When pressed about text messaging back and forth with Contreras, he responded that yes, they had been sending messages after the media request because of the "SPDD" public knowledge. Guerra admitted that today (Friday), he texted Contreras and asked if there was a gag order? He stated that Contreras never responded. When asked if Deputy Chief Ure could look at his text messages between him and Contreras he responded, "Do you have a warrant?"

Deputy Chief Ure asked the question again, advising that there was no warrant and he had been issued his Garrity Warning, Guerra agreed to let Ure look at the messages. The only messages present were from the last 24 hours. It was obvious that all of the previous text conversations between Guerra and Contreras had been deleted. When asked about this, Guerra replied, "I delete my messages." When asked why none of the other messages were deleted, and only his and Contreras's messages were deleted, especially since an internal affairs investigation was going on, he replied the messages were deleted before the internal affairs investigation was announced.

It was clear that Corporal Guerra deleted these select messages to keep from incriminating himself.

Corporal Guerra became frustrated and asked Deputy Chief Ure "Is this a criminal investigation now?!" He was advised it was not. Corporal Guerra was adamant that other officers were thinking about "leaking" it out. Guerra stated several times that "He (Contreras) got me. He got me..." He believed that Contreras was responsible for both leaking the information and for pulling him into it.

Near the end of the interview, Guerra stated that "I'll be honest with you Chief, my main thing with Suzann is that she did not need to be working at this department and when she got released, that was my main thing, that was my main thing. Did I screw up with this? Yes - I did Chief. I screwed up. I'll take fault in what I did... I fu*ked up.... I screwed up."

Corporal Guerra was asked about what he had altered/corrections on the document image that Contreras had sent him. He advised that "I think some of the verbiage on how he wrote it... I would just change some of the verbiage on it the way it was written."

When asked how he got his corrections back to Contreras he stated that he texted his suggestions/corrections back to him.

II. Witness Statements

A. Lieutenant Jaime Suarez

On June 7, 2018 I, Lt Jaime A Suarez, was contacted by Deputy Chief Ure who requested to speak with me in his office. Upon arrival I was asked about Cpl Mike Guerra's whereabouts. I advised Deputy Chief that Cpl Guerra was in the parking lot. At that time Deputy Chief advised that he was about to place Cpl Guerra on Administrative Leave for the duration of an Internal Investigation and requested I bring Cpl Guerra into the office.

I went outside to advise Cpl Guerra that Deputy Chief wished to speak with him and escorted him back into the office. Once we sat down Deputy Chief picked up a sheet, unknown to me what it said, and asked Cpl Guerra if he had anything at all do with it. Cpl Guerra reviewed the sheet and stated that he did not. Deputy Chief advised Cpl Guerra that he was being placed on Administration Leave due to an Internal Investigation with finding in relation to a "leak to the press". Deputy Chief stated that the information released was from an employee due to the information and contents the sheet contained and then restated that it was in his best interest to speak the truth due to the Internal Investigation. Cpl Guerra yet again denied having anything to do with the sheet of paper.

Deputy Chief advised Cpl Guerra that he had evidence that proved otherwise that he and Officer Contreras were directly involved with the letter. Cpl Guerra stated that he knew about the letter after the fact that it was released however denied having anything to do with it.

Soon after Cpl Guerra acknowledged that he understood the restrictions of the Internal Investigation and left the office.

IV. Supplemental Documents/Recordings

- Memo from Chief Kelso to Officer Contreras
- Memo from Chief Kelso to Corporal Guerra
- Guerra Police Complaint Form (Control number 18-004)
- Contreras Police Complaint Form (Control number 18-004)
- Guerra Seguin Police Department Internal Investigation Warnings
- Contreras Seguin Police Department Internal Investigation Warnings
- Contreras Interview Recording from June 8, 2018
- Guerra Interview Recording from June 8, 2018

V. Evidence

The evidence in the case is as follows:

- Recorded interview with Corporal Guerra admitting that he was a direct party in writing and revising the document that was disseminated to multiple news desks in San Antonio advising that they should request documents and audio recordings from the Seguin Police Department.

- Recorded interview with Officer Contreras admitting that he was a direct party in writing and revising the document that was disseminated to multiple news desks in San Antonio advising that they should request documents and audio recordings from the Seguin Police Department.

- Admissions from Corporal Guerra that he was deceitful and untruthful immediately after SPD was notified of the open records request, as well as during the internal affairs investigation.

- Admissions from Officer Contreras that he was deceitful and untruthful immediately after SPD was notified of the open records request, as well as during the internal affairs investigation.

- Admission from Corporal Guerra that his official supervisor notes that he had on Officer Suzann Gonzalez were "in play" to an unknown degree. It is clear that withholding of these notes (asserted by Corporal Guerra) after discussing them with Contreras is inconsistent with their abusive and dishonest actions of attempting to totally discredit Officer Gonzalez.

VI. Finding of Fact

a. On or before June 4, 2018 at 10:43 p.m., unauthorized information was sent out to the media hoping that someone would officially inquire on an incident which Suzann Gonzalez used abusive and inflammatory language and was a discredit to herself and to the Seguin Police Department.

b. Based on the wording of the open records request, it was evident that this information would have only been known by someone associated with the Seguin Police Department. Information such as:

1. The exact address where the juvenile resided.

2. The request of "audio" was specifically called out. This was the primary media recording of the entire incident. Normally, specifying "audio" would be unusual.

3. The correct spelling of a very unusually spelled name "Suzann Gonzalez."

4. The exact time was known.

5. The fact that it was classified as a "police response" which would have only been known by someone closely associated with the Seguin Police Department.

c. Officer Contreras and Corporal Guerra conspired as a "team" to expose the police action that Officer Gonzalez became involved in, which ultimately led to her separation with SPD.

d. Officer Contreras authored the initial document to be sent to the media.

e. Officer Contreras deleted text messages between himself and Corporal Guerra so as not to incriminate himself.

f. Corporal Guerra co-conspired in revising the document sent to the media. He also suggested word and grammatical revisions before it was sent.

g. Corporal Guerra deleted text messages between himself and Officer Contreras so as not to incriminate himself.

VII. Summary

On Monday, June 4, 2018 at 10:43 p.m., News 4 reporter Ariana Lubelli sent an open records request to Records Supervisor M.C. Myers. The document requested "any and all media/audio recordings from the police response by officer Suzann Gonzalez on April 18, 2018 at 613 Rosemary Drive around 2 p.m. – 3:30 p.m." Immediately, suspicions arose from the SPD command staff that an employee of the Seguin Police Department provided the information to the news media in an effort to discredit the Seguin Police Department.

The request for information from News 4 was written in such a way that only someone associated with the Seguin Police Department would have access to specific information that was included in the request. On Tuesday morning, Chief Kelso, Deputy Chief Ure, Captain Pacheco, SPD PIO/Officer Contreras and City of Seguin PIO Morgan Ash met on the subject. Contreras was directed to begin to put the media together (which would require significant redaction of juvenile information).

Based on multiple clues, situational factors, and unusual "coincidences," Deputy Chief Ure began to suspect both Contreras and Guerra. An internal affairs investigation was launched (two days later) naming both officers as suspects in the investigation. During the investigations, both officers lied throughout their respective interviews. It was very apparent that their stories were not plausible, met any logical sense, and both displayed characteristics of deception. Eventually, both officers separately, and individually, admitted that they were the two individuals directly behind notifying the media in an attempt to discredit Suzann Gonzalez with the end game of keeping her from working in law enforcement (ever).

VIII. Finding:

Corporal Guerra

a.	Allegation 1-GO 3.25–Section 2.03–Media Information Releases	Sustained
b.	Allegation 2-GO 2.16–Section 3.10–Truthfulness	Sustained
c.	Allegation 2-GO 2.16–Section 1.19–Dissemination of Information	Sustained
d.	Allegation 3- GO 2.16-Section 1.10-Unsatisfactory Performance	Sustained

e. Allegation 4- GO 2.05-Section 2.04-Supervisor Responsibilities — Sustained

Officer Contreras

a. Allegation 1-GO 3.25–Section 2.03–Media Information Releases — Sustained

b. Allegation 2-GO 2.16–Section 3.10–Truthfulness — Sustained

c. Allegation 2-GO 2.16–Section 1.19–Dissemination of Information — Sustained

d. Allegation 3- GO 2.16-Section 1.10-Unsatisfactory Performance — Sustained

IX. Recommendation

Corporal Mike Guerra

Based on the above (five) sustained policy violations, exasperated by the fact that Corporal Mike Guerra continued to be untruthful throughout the majority of the internal affairs interview, his clear desire to subject his own personal justice system, willingness to circumvent any semblance of the chain of command with dissemination of media information, and use his position as a supervisor to have personal access to privileged employee information, it is the recommendation of this investigator that his employment from the Seguin Police Department be terminated.

Officer Carlos Contreras

Based on the above (four) sustained policy violations, exasperated by the fact that Officer Carlos Contreras is the Public Information Officer for the Seguin Police Department and is charged with representing SPD in the media, absolutely violated the very ethical beliefs that are necessary for him to continue as a Public Information Officer. He used his position much like a firefighter who then becomes an arsonist. Officer Contreras also continued to be untruthful and lie throughout the vast majority of the internal affairs interview. He used his position to pursue his personal agenda of vengeance in the media and attempted to discredit the Seguin Police Department. Officer Contreras made it abundantly clear that he possess situational ethics. It is the recommendation of this investigator that his employment from the Seguin Police Department should be terminated.

END OF REPORT

Report Provided By:

Bruce Ure,
Deputy Police Chief
Seguin Police Department

Generated By:	Control Number: 18-004
[ ] Citizen [X] Department	
[ ] Informal [X] Formal	

City of Seguin Police Department
Police Complaint Form

Name and Rank of Employee Complained Against (If Known):

Officer Carlos Contreras

Complainant's Signature: Bruce Ure

Complainant's Name: Bruce Ure	Home Address:	N/A		Business Address:	[redacted]		
	Home Phone:	[redacted]	Business Phone:	[redacted]		Cell Phone:	[redacted]
Witness' Name:	Home Address:	N/A		Business Address:	N/A		
	Home Phone:	N/A	Business Phone:	N/A		Cell Phone:	N/A

Date and Time of Occurrence: On or before Monday, June 4, 2018 at 10:43 p.m.	**Location of Occurrence:** Unknown
Details of Complaint: (add pages if necessary)	**General Nature Of Complaint** Violation of GO 3.25 (2.03), 2.16 (1.10, 1.19, & 1.19),

Allegation(s): It is alleged that Officer Contreras and Corporal Guerra intentionally avoided the chain of command and with malice, notified a television reporter (Ariana Lubelli) of confidential information regarding a recent police incident in an effort to discredit and defame the Seguin Police Department, intentionally concealed and were untruthful when questioned regarding these allegations, thus violating SPD GO's:

1. 03.25-Section 2.03 Media Information Releases- 2.03 No employee shall release any information that would jeopardize an active investigation, prejudice an accused's right to a fair trial, or violate any law.

2. 02.16-Section 3.10 Truthfulness – Reports submitted by officers/employees shall be truthful and complete, and no officer/employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information.
Officers/employees shall not knowingly make false or misleading statements concerning the scope of their employment or the operations of the department except when necessary in the performance of their duty. Officers/employees will be truthful in:
   A. All official verbal and written communications and reports.
   B. Any court related testimony or agency investigation.

1.19 Dissemination of Information - Officers/employees shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established departmental procedures. Officers/employees may remove or copy official records or reports from a police installation only in accordance with established departmental procedures. Officers/employees shall not divulge the identity of persons giving confidential information except as authorized by proper authority.

4. 02.16-Section 1.10 Unsatisfactory Performance- Officers/employees shall maintain sufficient competency to properly perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks satisfactorily; the failure to take appropriate action on the occasion of a crime, disorder, or other conduct deserving police attention; or absence without leave. In addition to other indication of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department.

Departmental Use Only: **Use Additional Pages if Necessary**

Date & Time Complaint Received: 6/7/18 3:49 p.m.	**Name & Rank of Person Recording Complaint:** Bruce Ure, Deputy Chief of Police
Date & Time Forwarded for Investigation: 6/7/18 3:49 p.m.	**Name & Rank of Investigator Assigned:** Bruce Ure, Deputy Chief of Police
Date & Time Investigation Completed:	**This complaint has been:** ☐ Resolved ■ Forwarded for Investigation

Reviewed by Chief of Police:			
Final Disposition:	☐ Unfounded	☐ Not Sustained	☐ Policy Failure
	☐ Exonerated	☐ Sustained	☐ Unrelated Violation
All Complaints Must Have the Back of This Form Completed			

Seguin Police Department

Internal Investigation Warning
(Also Known As Garrity Warning)

Under the authority of the Police Chief of the Seguin Police Department, I wish to advise you that you are being questioned as part of an official investigation of the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

Supervisor Issuing Warning

Police Officer / Employee

6-8-18 11:00 AM
Date/Time

6-8-18 1100am
Date/Time

SEGUIN
TEXAS

POLICE
DEPARTMENT

MEMORANDUM

Control #18-004

To: Officer Carlos Contreras

CC: Victor Pacheco, Captain of Operations
Bruce Ure, Deputy Chief
Tammy Garcia, Director of Human Resources

From: Kevin K. Kelso, Chief of Police

Subject: Administrative Leave

Date: June 7, 2018

On June 4, 2018, an incident was reported in which it is alleged you improperly disseminated information to a television news reporter, which is also a violation of our media information release policy. When questioned about the incident and your part in it, you vehemently denied any involvement in relaying the information to the news reporter as well as having any knowledge who did. It is alleged this denial is inaccurate and therefore a violation of our truthfulness policy.

During this investigation, you are placed on Administrative Leave until its completion or you have been notified by me. While on Administrative Leave you will be paid your normal salary. As a result, you are to remain at your residence during business hours (8:00 am – 5:00 pm), Monday through Friday. You are not to leave your residence during these times except for emergencies or for legal obligations. Should you need to leave your residence for one of these reasons, you are to contact Captain Pacheco to advise him of your whereabouts. During the period of Administrative Leave with pay, you are not to perform any related peace officer duties, including off-duty employment. Also during this period, your TCOLE license is temporarily suspended, thus relieving you of all peace officer duties and responsibilities. You are also not allowed to work any off-duty assignments or to come onto the Police Department property without authorization from me.

Generated By: [ ] Citizen [X] Department	Control Number: 18-004
[ ] Informal [X] Formal	

City of Seguin Police Department
Police Complaint Form

Name and Rank of Employee Complained Against (If Known): Corporal Mike Guerra							
Complainant's Signature: Bruce Ure							
Complainant's Name: Bruce Ure	**Home Address:**	N/A		**Business Address:**	[redacted]		
	Home Phone:	[redacted]	**Business Phone:**	[redacted]		**Cell Phone:**	[redacted]
Witness' Name:	**Home Address:**	N/A		**Business Address:**	N/A		
	Home Phone:	N/A	**Business Phone:**	N/A		**Cell Phone:**	N/A
Date and Time of Occurrence: On or before Monday, June 4, 2018 at 10:43 p.m.			**Location of Occurrence:** Unknown				
Details of Complaint: (add pages if necessary)			**General Nature Of Complaint**	**Violation of GO 3.25 (2.03), 2.16 (1.10, 1.19, & 1.19), 2.05 (2.04)**			

Allegation(s): It is alleged that Officer Contreras and Corporal Guerra intentionally avoided the chain of command and with malice, notified a television reporter (Ariana Lubelli) of confidential information regarding a recent police incident in an effort to discredit and defame the Seguin Police Department, intentionally concealed and were untruthful when questioned regarding these allegations, thus violating SPD GO's:

1. **03.25-Section 2.03** <u>Media Information Releases</u>- 2.03 No employee shall release any information that would jeopardize an active investigation, prejudice an accused's right to a fair trial, or violate any law.

2. **02.16-Section 3.10** <u>Truthfulness</u> – Reports submitted by officers/employees shall be truthful and complete, and no officer/employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information.
Officers/employees shall not knowingly make false or misleading statements concerning the scope of their employment or the operations of the department except when necessary in the performance of their duty. Officers/employees will be truthful in:
   A. All official verbal and written communications and reports.
   B. Any court related testimony or agency investigation.

   1.19 <u>Dissemination of Information</u> - Officers/employees shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established departmental procedures. Officers/employees may remove or copy official records or reports from a police installation only in accordance with established departmental procedures. Officers/employees shall not divulge the identity of persons giving confidential information except as authorized by proper authority.

3. **02.16-Section 1.10** <u>Unsatisfactory Performance</u>- Officers/employees shall maintain sufficient competency to properly perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks satisfactorily; the failure to take appropriate action on the occasion of a crime, disorder, or other conduct deserving police attention; or absence without leave. In addition to other indication of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department.

4. **02.05-Section 2.04** <u>Supervisor Responsibilities</u>- Supervisors shall set an example of professionalism, integrity, respect and pride in service at all times. Supervisors shall actively ensure that subordinate staff understands and follows the vision and mission statements of the Seguin Police Department and adheres to the core values and behavioral expectations as outlined in General Order 2.16, to include providing training and education, taking corrective actions, and reporting issues that might arise regarding this topic.

Departmental Use Only:	Use Additional Pages if Necessary
Date & Time Complaint Received: 6/7/18 3:49 p.m.	Name & Rank of Person Recording Complaint: Bruce Ure, Deputy Chief of Police
Date & Time Forwarded for Investigation: 6/7/18 3:49 p.m.	Name & Rank of Investigator Assigned: Bruce Ure, Deputy Chief of Police
Date & Time Investigation Completed: 06/13/18 0900	This complaint has been: ☐ Resolved ☒ Forwarded for Investigation
Reviewed by Chief of Police:	
Final Disposition: ☐ Unfounded ☐ Exonerated	☐ Not Sustained ☐ Sustained ☐ Policy Failure ☐ Unrelated Violation
All Complaints Must Have the Back of This Form Completed	

Notice To Complainant: Please Read – Must be read aloud to anyone who possibly possesses difficulty reading.

All complaints are considered serious by the Seguin Police Department. The Police Department desires to maintain the confidence of the community with fair and impartial investigations. The officer or employee that you complained about is presumed innocent unless the charges are substantiated in the investigations process. The mere filing of this complaint does not substantiate the allegations.

Sections 614.022 and 614.023 of the State of Texas Government Code read as follows:

§ 614.022 COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT.
To be considered by the head of a state agency or by the head of a fire department or local law enforcement agency, the complaint must be:

(1) in writing; and
(2) signed by the person making the complaint.

§ 614.023 COPY OF COMPLAINT TO BE GIVEN TO OFFICER OR EMPLOYEE.

(a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.
(b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.
(c) In addition to the requirement of Subsection (b), the officer or employee may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless:

(1) the complaint is investigated; and
(2) there is evidence to prove the allegation of misconduct.

The Seguin Police Department will thoroughly investigate this and all complaints and take appropriate actions if the officers or employees failed to perform their duty. If the actions of the officer or employee were inappropriate, disciplinary action up to and including discharge may result.

Because this is a serious allegation, with serious consequences for Police Department employees, all complaints are required to be signed, and sworn to.

I have been advised that the Texas Penal Code in Section 37.02 (Perjury) states as follows:

§ 37.02. PERJURY.

(a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or
(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

(b) An offense under this section is a Class A misdemeanor.

I have been advised that the Texas Penal Code in Section 37.08 (False Report to a Peace Officer) states as follows:

§ 37.08. FALSE REPORT TO PEACE OFFICER OR LAW ENFORCEMENT EMPLOYEE.

(a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to:

(1) a peace officer conducting the investigation; or
(2) any employee of a law enforcement agency that is authorized by the agency to conduct the investigation and that the actor knows is conducting the investigation.

(b) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.
(c) An offense under this section is a Class B misdemeanor.

This statement on the other side of this form and additional pages, if necessary, signed by me is true and accurate.

Drew Ure

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the 4th day of June 2018

at 04:00 o'clock.

LS

M.C. Meyers

Print Name (Peace Officer or Notary Public)

M. C. MEYERS
Notary Public, State of Texas
Comm. Expires 07-18-2021
NOTARY ID#: 12533755-3

Peace Officer in and for the State of Texas Acting in my Official Capacity
or Notary Public in and for Guadalupe County, Texas

Adm-05 (2-16-2009)

THE LAW OFFICE OF
Robert M. McCabe, PLLC
CRIMINAL LAW SPECIALIST

[redacted]
www.defendingtexas.com

[redacted]

BOARD CERTIFIED
Criminal Law

June 8, 2018

Bruce Ure
Deputy Chief, City of Seguin

VIA E-MAIL bure@seguintexas.gov

RE: Officer Carlos Contreras, Control #18-004

Deputy Chief Ure:

I have been retained to represent Officer Carlos Contreras regarding his internal affairs case under Control #18-004. I would appreciate having the opportunity to be present during any interviews of Officer Contrearas by Seguin P.D. or by any other entity or person investigating allegations made in this case.

Please contact me directly with any questions or concerns. Thank you.

Sincerely,

Robert M. McCabe
SBN 24026830

VOLUNTARY SEPARATION, RELEASE & WAIVER AGREEMENT

This Voluntary Separation, Release & Waiver Agreement ("Separation Agreement") is made by Carlos Contreras ("Contreras") and the City of Seguin, Texas (the "City") (collectively referred to as the "Parties"), and constitutes the full and complete terms of their agreement, and supersedes any and all other oral or written agreements which the parties may have made concerning the same subject matter.

WHEREAS, Contreras has elected to resign his employment and has voluntarily offered to execute and deliver this Separation Agreement for the consideration stated herein; and,

WHEREAS, the City has agreed to accept the resignation of Contreras, and the Parties wish to amicably enter into this Separation Agreement to document the consideration exchanged and to compromise and settle all claims and causes of action of any kind whatsoever which Contreras has asserted, may assert, or could assert in the future, regarding any claim, injury, or loss of any nature or kind whatsoever, whether arising out of any existing claims or allegations, or any other facts, events or circumstances arising from or connected with his employment with the City, whether known or unknown.

NOW, THEREFORE, in consideration of the premises and mutual promises contained in this Agreement, the Parties agree as follows:

1. The City agrees:
    a. To allow Contreras to resign his employment from the City, effective June 24, 2018, and to have the City's personnel records reflect that the employment separation was a resignation and not an indefinite suspension or termination. Contreras will be paid for all accrued sick time and vacation time, pursuant to standard City policies, less payroll deductions required by law.
    b. To issue the F-5 Termination report to reflect a "Dishonorable" Discharge. The F-5 report shall be filed with TCOLE, and a copy of the same provided to Contreras.
    c. Not to contest if Contreras files a petition of corrective action or otherwise appeals to the State Office of Administrative Hearings (SOAH) the "Dishonorable" discharge designation on the termination report submitted by the City's Police Chief to TCOLE.
    d. Not to refer documents, recordings or other evidence collected related to Contreras' alleged dissemination of information that forms the basis of his current internal affairs investigation to the Guadalupe County Attorney's Office for potential criminal prosecution of Contreras.
    e. To consider Contreras's written resignation as disposing of the pending disciplinary case without making a finding on the allegations. Other than Contreras's written resignation, no other documentation shall be placed in Contreras's personnel file with the City of Seguin concerning this internal affairs investigation.

2. Contreras agrees that providing the special separation benefits described in Paragraph 1 is contrary to the City's normal policy, and in exchange for such good and valuable consideration, Contreras further agrees:
    a. To submit a letter of resignation of his employment with the City of Seguin effective June 24, 2018;
    b. To release and waive any and all claims Contreras has or which may arise by virtue of Contreras's employment with or separation from the City, and Contreras releases the City and its officers, elected officials and employees from any such claims. Such claims include, but are not limited to, breach of contract, tort, common law, and any and all claims which might arise under local, state, or federal fair employment practices or employment benefit laws including but not limited to the including but not limited to the Age Discrimination in Employment Act, the Family and Medical Leave Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act, workers' compensation retaliation law, and Chapter 21 of the Texas Labor Code, as of the date of this Agreement, and Contreras agrees not to file any lawsuit on account of Contreras's employment with or termination from the City.

3. This Agreement may be revoked by Contreras for a period of seven days following Contreras's execution of this Agreement. This Agreement shall become effective and enforceable seven days after Contreras signs and delivers it to the City. Contreras may revoke this Agreement during this seven-day revocation period by delivering a written notice of revocation to the City, attention: Tammy Garcia, Director of Human Resources. Such revocation will cancel any obligation on the part of the City to pay the benefits provided by this Agreement, but will not revoke Contreras's resignation. The compensation to be paid to Contreras pursuant to Paragraph 1 of this Agreement will be paid on the first regularly scheduled payday following the expiration of the seven-day period, if Contreras does not revoke.

4. This Separation Agreement was reviewed by Contreras and his legal counsel and he acknowledges that he negotiated, read, modified, and understands the provisions of this Separation Agreement, had an adequate time to consult with his private attorney regarding the effect of this Separation Agreement and is advised by his legal counsel that this Separation Agreement is and shall be a fully binding and complete Separation Agreement.

5. Contreras acknowledges and understands that the consideration described in Paragraph 1 is the total consideration to be granted in this Separation Agreement. The Parties agree that the consideration that Contreras receives in this Separation Agreement is to cover all amounts, including any otherwise accrued benefits, compensation or contract rights, benefits and entitlements whatever they may be, provided by the City of Seguin to Contreras upon his resignation.

6. In entering into this Separation Agreement, the Parties represent that the terms of this Separation Agreement are fully understood and voluntarily accepted by the Parties and

that the acceptance of this Separation Agreement is based solely on the representations made herein and not upon any other terms or conditions not specifically recited herein.

7. The Parties promise to abide by the terms and conditions in this Separation Agreement and understand that if they do not, either party may take legal action against the other to enforce the terms of this Separation Agreement for such breach.

8. Contreras has the sole right and exclusive authority to execute this Separation Agreement and receive the sums specified in it; and that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Separation Agreement. It is Contreras's specific intent that the City of Seguin shall not be subjected or exposed to any liability whatsoever in connection with his resignation and separation of employment with the City of Seguin.

9. This Separation Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Venue shall be solely in Guadalupe County.

10. Contreras agrees to cooperate fully and execute any and all supplementary documents and to take all additional action necessary or appropriate to give full force and effect to the terms and intent of this Separation Agreement.

AGREED TO AND ACCEPTED BY:

Carlos Contreras **Date**

By: Douglas G. Faseler **Date**
City Manager

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4. This Separation Agreement was reviewed by Contreras and his legal counsel and he acknowledges that he negotiated, read, modified, and understands the provisions of this Separation Agreement, had an adequate time to consult with his private attorney regarding the effect of this Separation Agreement and is advised by his legal counsel that this Separation Agreement is and shall be a fully binding and complete Separation Agreement.

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AGREED TO AND ACCEPTED BY:

Carlos Contreras **Date**

By: Douglas G. Faseler **Date**
City Manager

AFFIDAVIT OF MICHAEL GUERRA
DESIGNATION OF BEN M. SIFUENTES, JR.,
AUTHORIZED REPRESENTATIVE
TEX. GOV'T CODE SECTION 552.023

COUNTY OF BEXAR §

STATE OF TEXAS §

My name is Michael Guerra. I am capable of giving this affidavit. My date of birth is [redacted] I reside at [redacted] The last three numbers of my SSN are: [redacted] and the last three digits of my TDL are [redacted] I am a current employee of Seguin Police Department.

I hereby appoint Ben M. Sifuentes, Jr., as my authorized representative to collect any and all documents to which I would be entitled by virtue of Texas Government Code Section 552.023, the Special Right of Access, a person has under the Public Information Act.

Without limitation, I specifically give him the authority to seek any employment or medical records contained by Seguin Police Department.

I understand that information that is disclosed or used under this authorization may be disclosed by Ben M. Sifuentes, Jr., and no longer protected by the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Section 164.508(c).

Signed on the 11th day of June 2018.

Michael Guerra

Subscribed and sworn to before me the undersigned authority on this 11th day of June 2018.

Notary Public in and for the State of Texas

CLOTILDE ODILIA LOPEZ
Notary Public, State of Texas
Comm. Expires 02-07-2022
Notary ID 129694482

My Commission expires on:

2/7/22

Should you have any questions, please call or write.

Sincerely,

Ben M. Sifuentes, Jr.

Enclosure: Affidavit

cc: Michael Guerra

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]

TELEPHONE
[redacted]
FAX
[redacted]

July 5, 2018

City Manager Douglas Faseler
[redacted]

Re: Michael Guerra, Appeal of Termination Dated June 28, 2018

Dear Mr. Faseler:

I represent Michael Guerra. He wishes to file this appeal for the Termination Decision issued to him on June 28, 2018.

Chief Kelso's response failed to consider the City's conduct constituted a violation of the First Amendment to the U.S. Constitution.

I am currently set for a jury trial in Bexar County beginning Monday July 9, 2018 through July 13, 2018. I request that any hearing be scheduled at a date and time that does not conflict with my trial dates and vacation schedule.

If you have any questions please call or write.

Sincerely,

Ben M. Sifuentes, Jr.

cc: Kevin K. Kelso, Chief of Police
Tammy Garcia, Director of Human Resources
Michael Guerra

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]

TELEPHONE
[redacted]
FAX
[redacted]

July 5, 2018

City Manager Douglas Faseler
City of Seguin
[redacted]

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If you have any questions please call or write.

Sincerely,

Ben M. Sifuentes, Jr.

cc: Kevin K. Kelso, Chief of Police
Tammy Garcia, Director of Human Resources
Michael Guerra

SEGUIN
TEXAS

POLICE
DEPARTMENT

June 28, 2018

Michael Guerra
[redacted]

Dear Mr. Guerra:

On June 20, I conducted a pre-disciplinary hearing to provide you with the opportunity to present information that might mitigate the allegations made in my memo dated June 13, 2018. Your attorney, Benjamin Sifuentes, provided a statement on your behalf, arguing that the City had no factual basis to prove that you were the person responsible for reporting Gonzalez' violation of the juvenile's civil rights (in relation to the April 16th incident) and that you could not in fact defame the Seguin Police Department if the information released was factual. In addition, your attorney contends that the Texas Public Information Act law would compel the City, to release the same information, as you allegedly were responsible for "leaking". Mr. Sifuentes provided an oral summary of his written rebuttal of the allegations made against you in the Notice of Pre-Disciplinary Hearing.

Following receipt of the open records request on June 4 in regards to incident #18-18303, it was deduced that based on the facts known to the reporter there had been information inappropriately released by a someone from within the department. On June 7, you were asked if you knew anything about an open records request that had been submitted by News 4 San Antonio. You responded that you had only heard of the request this week. Deputy Chief Ure asked you if you had any "direct or indirect" involvement and you answered 'no". You were then advised that an Internal Affairs investigation was being launched, and that you were being placed on Administrative Leave. On the following day, when interviewed by Deputy Chief Ure and Lieutenant Wright, you initially denied knowledge of, or participation in, the release to the media. Later in the interview, you admitted to having knowledge of Contreras' plan to release information regarding the April 16 incident to the media. You stated that although you had advised Contreras that should he proceed with the release that "it was on him." It was determined that you did in fact review the release he had drafted and you even made suggestions for revision, via text message, to Officer Contreras.

The internal affairs investigation findings sustained the allegations that you violated SPD GO 03.25-Section 2.03 Media Information Releases, and SPD GO 02.16-Section 3.10 Truthfulness. Because of the sustained allegations, Deputy Chief Ure recommended your termination from employment.

I have considered this matter and it is my determination that although that you were not responsible for the physical release of information to the media, your involvement in reviewing the document, and your failure to report your knowledge of this matter, is conduct that violates Department Policy. Most especially because of your rank of Corporal, I would have expected that you would have reported this situation to a superior when you first became aware of the actions that Officer Contreras was contemplating.

Although the policy violations in themselves would probably not have justified your termination, your failure to be immediately and completely truthful in your responses to Deputy Chief Ure's questions, along with the deceptive actions you took in deleting text messages between yourself and Officer Contreras, is conduct that I cannot tolerate by any Police Officer. Therefore, it is my decision to uphold Chief Ure's recommendation. Your employment is hereby terminated effective on the date of this letter. Please contact the Human Resource Department to schedule an appointment to complete the necessary exit paperwork in regards to your pay and benefits.

If you desire to grieve this action you must do so in writing within ten (10) business days to Douglas Faseler, City Manager. If you fail to file your grievance within ten business days, you will no longer be eligible to invoke the grievance procedure.

Respectfully,

Kevin K. Kelso
Chief of Police

cc: Ben M. Sifuentes, Jr., P.C.
[redacted]

Tammy Garcia, Director of Human Resources

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]
TELEPHONE
[redacted]
FAX
[redacted]

June 25, 2018

Chief Kevin Kelso
Seguin Police Department
[redacted]

Re: Rebuttal - Pre-Disciplinary Hearing Corporal Michael Guerra
CD Audio Disk

Dear Chief Kelso:

I still have not received a playable copy of Michael Guerra's interview. We would request a copy of same.

However, given the deadline and the failure to respond, I am responding today with the limited information.

This investigation is an exercise in making inquiries not permitted by the Public Information Act:

> (a) The officer for public information and the officer's agent may not make an inquiry of a requestor except to establish proper identification or except as provided by Subsection (b), (c), or (c-1). Tex. Gov't Code Ann. § 552.222 (West)

The Seguin P.D. would have been required to release the address of the juvenile had Channel Four requested the addresses of any juveniles who were the **victims** of official oppression committed at the hands of Suzann Gonzales or any Seguin P.D. officer in the previous two months.

Had the request been so worded, there are Open Record Decisions that would suggest that the City of Seguin would have had to respond to such a request. Thus, the required production would have been the same and the City of Seguin would have no basis to complain that an officer advised he believed a Seguin P.D. officer had committed Official Oppression by victimizing a juvenile.

The City of Seguin cannot legally ask Channel Four News why they made their request. This investigation is an attempt to find out why Channel Four made its request. Thus, the motives for the investigation are illegal.

Regardless, the investigative report is replete with factual inaccuracies that cannot be excused. Moreover, the conclusions are beyond tenuous. The investigator makes assumptions based upon assumptions and makes deductions upon those assumptions. Thus, the investigator makes erroneous conclusions. Moreover, reading the tone and tenor of the investigator's report, one clearly deduces that he has animosity toward Guerra and he has allowed personal feelings to taint his beliefs and conclusions.

The City's main problems is that a charge of untruthfulness cannot be sustained upon a hunch, belief, or intuition. The investigator has relied upon nothing more than hunch or belief. Moreover, when the investigator receives an answer he does not like, he assumes the witness is lying, without corroboration.

There are two evidentiary provisions in Tex. Code Crim. Pro. that are instructive in this case. While those provisions apply to criminal trials, a jury would be amenable to the logic behind such rules, when considering how feeble the City's evidence is in this case and the malice behind the City's actions.

Tex. Code of Crim. Pro. Art. 38.18 recognizes that in prosecutions for perjury or aggravated perjury there must be more proof other than the testimony of one witness. This case is analogous to such a wise rule; Officer Contreras is the only witness to the investigator's belief. There is no independent evidenced to corroborate Contreras' false statements Guerra provided confidential documents or data to him or any outside sources.

The City has no statement, witness, or documentary evidence to show that Channel Four news received direct communication from anyone other than Contreras.

Mr. Guerra makes no admissions to support the investigator's claims. Moreover, under the investigator's theory of the case, Mr. Contreras is a putative accomplice to what has been alleged against Mr. Guerra; likewise, Tex. Code Crim. Pro. Art. 38.14 requires that an accomplice's testimony be corroborated.

The rationale for such rule is that a wrong doer has a motive to throw others under the bus, with false statements. In this case, the City has no corroboration.

A reader of the investigative narrative easily sees the investigator is heavy handed and myopic. When the investigator is questioned during discovery conducted under an F-5 hearing or in a civil suit for a violation of Mr. Guerra's constitutional rights, he will testify poorly and his lack of investigative skill will become patently clear to a jury.

The undisclosed audio interview will also show the investigator's poor interrogation skill.

When one reviews the investigative report, a number of flaws and inaccuracies are revealed.

Nothing on page 2 of the IA report indicates there is any truth to the conclusory statements and deductions that Contreras sent Guerra a document with "Suzann" spelled out with an exact address.

We assert that on page 3, paragraph 3, the City improperly assumed Contreras was untruthful with the Chief without any evidence other than the Chief's opinion; thus, the reason for the rules in the Tex. Code Crim. Pro. concerning perjury and alleged accomplices.

Ironically, on page 4, paragraph 3, Contreras establishes why his communication with Channel Four News rose to the level of a matter of public concern, namely, Gonzalez hurting others including herself.

On page 4, paragraph 4, the reader has difficulty discerning what Contreras is purportedly saying about Guerra's notes. However, any suggestion that Guerra gave any "notes" written by Guerra, about Gonzalez's prior performance is untrue. Moreover, the City has no evidence whatsoever, to back up Contreras' false assertion. Guerra never printed these notes and never provided hard copies to Contreras. Guerra never emailed these notes to Contreras. Guerra never pulled up the notes on his computer monitor and let Contreras read these notes. Thus, any deductions and charges based upon the "notes" is false.

The reason we know the foregoing did not happen is that a competent investigator would have obtained a sworn statement from Contreras which references, as an attached exhibit, the "notes" the City accuses Guerra of improperly releasing. In such a statement, Contreras would have placed his initials on such document. The absence of this documentation tells one that the City failed to establish what is an erroneous assumption.

If the City upholds termination, we will appeal any F-5 issued or file suit for retaliation. We will request production of the recorded statements of Gonzalez, Contreras, Guerra, and Seguin P.D. supervisors. When we transcribe these audio recordings, we are sure we will find additional false assumptions and failures to investigate fairly.

We would urge you to rescind this proposed disciplinary action.

Sincerely,

Ben M. Sifuentes, Jr.

cc: Michael Guerra
TMPA

From: Ariana Lubelli <alubelli@sbgtv.com>
Sent: Monday, June 4, 2018 10:43 PM
To: M.C. Meyers
Subject: Open Records Request

To whom it may concern,

I would like to request any and all media/audio recordings from the police response by officer Suzann Gonzalez on April 16, 2018 at [redacted] around 2 p.m. – 3:30 p.m.

Any questions, I can be reached at this email address, alubelli@sbgtv.com or via telephone at [redacted]

Thank you in advance.

Ariana Lubelli
News Reporter
[redacted]
Cell [redacted]
FOXSanAntonio.com | News4SA.com

SEGUIN
TEXAS

POLICE
DEPARTMENT

June 13, 2018

TO: Michael Guerra

FROM: Chief Kevin Kelso

RE: Pre-Disciplinary Hearing

Deputy Chief Ure has recommended that your employment be terminated for conduct unbecoming a Seguin Police Officer. Specifically, it is alleged, that on April 16, 2018 officers responded to a call for suspicious persons on the roof of a residence and that at that call, an officer of this department acted inappropriately. It is further alleged, that you then took it upon yourself to send notifications to outlying media groups informing of this incident in an effort to discredit and defame the Seguin Police Department, and in particular, its administration. When questioned about the allegations, you were not truthful in your responses.

If confirmed, your actions in the above incident could be in violation of the following policies:

SPD GO 03.25-Section 2.03 Media Information Releases- 2.03 No employee shall release any information that would jeopardize an active investigation, prejudice an accused's right to a fair trial, or violate any law.

SPD GO 02.16-Section 3.10 Truthfulness – Reports submitted by officers/employees shall be truthful and complete, and no officer/employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information. Officers/employees shall not knowingly make false or misleading statements concerning the scope of their employment or the operations of the department except when necessary in the performance of their duty. Officers/employees will be truthful in:

A. All official verbal and written communications and reports.

B. Any court related testimony or agency investigation.

SPD GO 02.16 Section 1.19 Dissemination of Information - Officers/employees shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established departmental procedures. Officers/employees may remove or copy official records or reports from a police installation only in accordance with established departmental procedures.

[redacted]

Officers/employees shall not divulge the identity of persons giving confidential information except as authorized by proper authority.

SPD GO 02.16-Section 1.10 Unsatisfactory Performance- Officers/employees shall maintain sufficient competency to properly perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks satisfactorily; the failure to take appropriate action on the occasion of a crime, disorder, or other conduct deserving police attention; or absence without leave. In addition to other indication of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department.

SPD GO 02.05-Section 2.04 Supervisor Responsibilities- Supervisors shall set an example of professionalism, integrity, respect and pride in service at all times. Supervisors shall actively ensure that subordinate staff understands and follows the vision and mission statements of the Seguin Police Department and adheres to the core values and behavioral expectations as outlined in General Order 2.16, to include providing training and education, taking corrective actions, and reporting issues that might arise regarding this topic

Before I decide what, if any, disciplinary action is appropriate to this situation, I will conduct a pre-disciplinary hearing. The hearing is set for Wednesday, June 20 at 9:00 a.m. in the second floor conference room at City Hall. The purpose of this hearing is for you to provide any information which you feel, would mitigate the allegations made by your supervisor. You may be represented at the hearing by an attorney. You may also bring witnesses to testify on your behalf. If you want the City to provide witnesses for testifying or for cross-examination, please give Tammy Garcia, Director of Human Resources, your specific request in advance of the hearing. Additionally, you may provide a written response to the allegations if you so desire. If you wish to waive this hearing for any reason, you may do so provided that you give me a signed, written statement to that effect. If you are considering such a waiver, you may wish to seek legal counsel before making such a decision. If you waive this hearing, my decision will be based upon the facts presently available. Should you have any questions regarding the pre-disciplinary hearing process please contact Tammy Garcia, Director of Human Resources at 401-2471.

I acknowledge receipt of the above notice.

Michael Guerra

5-13-18
Date

At 10:22 AM (BC)

cc: Tammy Garcia, Director of Human Resources

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]
TELEPHONE
[redacted]
FAX
[redacted]

July 27, 2018

Douglas Faseler
City Manager
[redacted]

Re: Appeal of termination of Seguin Police Corporal Michael Guerra

Dear Mr. Faseler:

I respectfully submit this termination has not been properly analyzed. The City of Seguin has started with the lens that assumes information provided to the news media was unauthorized or illegal. Then it progresses to another lens that because of this unauthorized release, that Corporal Guerra had a duty to stop or report the unauthorized release of information. Consequently, when Corporal Guerra failed to stop another officer from doing so, and failed to report the officer who did so, that he had to have been untruthful when asked if he had anything to do with the release of information.

This analysis is flawed, which will be explained below.

Carlos Contreras was the person responsible for relaying information to the media so they could make a lawful request for information from the City of Seguin, regarding an officer with a history of incompetence, malfeasance, and conduct that created the risk of liability to the City of Seguin under 42 U.S.C. § 1983. Thus, Carlos Contreras had a First Amendment right to speak out on a matter of public concern.

The City of Seguin was well aware Suzann Gonzalez was a liability to the City of Seguin. There were approximately five or more incidents wherein she improperly escalated conflicts on traffic stops, interactions with animal owners, parents of juveniles, and the failure to arrest a pedestrian on the highway who was hit and killed on the highway.

These incidents spanned a period of more than a year.

Corporal Guerra recommended her termination well in advance of this latest incident. Guerra's recommendation was based upon his knowledge of some of Gonzalez' past incidents.

Despite Corporal Guerra advising his chain of command that Gonzalez should be fired, Management deliberately continued concealing Officer Gonzalez' malfeasance and violation of law and exposure of liability to the City of Seguin.

When Deputy Chief Bruce Ure began his investigation, it was not because he believed Corporal Guerra was an unauthorized Whisteblower or the person who exercised his First Amendment Rights. It was because Corporal Guerra failed to remain in league with Management's cover up of Officer Gonzalez' malfeasance and violations of law.

Thus, when Ure asked Gonzalez if he "had anything to do with it," the real issue was: Did Guerra direct, assist, or encourage Contreras to be a Whistleblower? The answer to that question was a resounding, "No." Thus, Guerra was actually truthful at all times.

However, if the question was: Did Guerra fail to thwart, report and deter Contreras from being a Whistleblower? The answer to that question would be, "Yes." However, a "yes" answer does not make him untruthful when he told Ure, he had nothing to do with Contreras release of information. Guerra did not aid, abet, direct, or assist Contreras in the release of information.

No one disputes Guerra failed to report Contreras; however, we assert that in a First Amendment analysis, Guerra had no duty to report Contreras. Indeed, if Guerra has attempted to thwart Contreras in any way, he would have made the City of Seguin liable for violating Contreras' First Amendment rights.

In this case, Management is conflating untruthfulness with failing to assist Management in violating Contreras's First Amendment rights.

Thus, Management is compounding its liability for concealing Officer Gonzalez' violation of citizen's Due Process rights and its liability for retaliating against Contreras for his exercise of Due Process Rights and retaliation against Guerra for failing to crush Contreras' expression of First Amendment concerns about management covering up for Gonzalez.

I will not give a complete, detailed history of the issues with Gonzalez, but some of the issues with her include:

- Management is aware Officer Gonzalez is a bully. Officer Gonzalez coerced a City of Seguin resident to take his horse to the veterinarian and threatened to issue a ticket if the resident did not do so. When the veterinarian examined the horse, it resulted in a complaint that was documented against Officer Gonzalez for making unwarranted threats.

- Officer Gonzalez has a history of initiating conversations with male officers that are sexual in nature.

- Officer Gonzalez has a history in traffic stops of escalating arguments with traffic offenders and engaging in yelling matches and insults with traffic offenders, which creates a risk that the confrontation could turn physical.

- Officer Gonzalez is rude to supervisory officers. She has showed up late to PD on a special assignment. She told the supervisor, that it was raining and he is "fucking stupid" if he thinks she is going to leave her kids in the rain.

- Officer Gonzalez got into an argument with the mother of a juvenile in an incident prior to the one which was addressed in the most recent WOAI broadcast.

- Officer Gonzalez' car cameras recorded her, at night, on the highway, picking up an intoxicated pedestrian and merely relocating him. Later, the pedestrian was struck by four other vehicles and died.

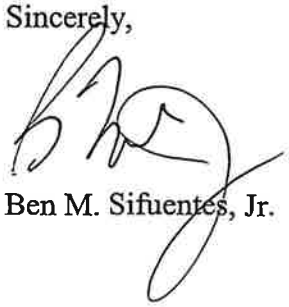
The current issue with Gonzalez shows that she cannot be retrained, that she created and presented liability to the City of Seguin, that Management failed to address her liability, and that Management covered up for her liability.

Given the foregoing, we request resolution in one of the following ways:

1. Full reinstatement with back pay, or

2. A severance package of six months pay and benefits, with a clean F-5, no discipline, a resignation, positive or neutral references, and a release of all claims.

Sincerely,



Ben M. Sifuentes, Jr.

Seguin Police Department

Internal Investigation Warning
(Also Known As Garrity Warning)

Under the authority of the Police Chief of the Seguin Police Department, I wish to advise you that you are being questioned as part of an official investigation of the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

Supervisor Issuing Warning

335
Police Officer / Employee

6/8/18 1325
Date/Time

6.8.18 / 1325
Date/Time

SEGUIN
TEXAS

POLICE
DEPARTMENT

MEMORANDUM

Control #18-004

To: Corporal Michael Guerra

CC: Victor Pacheco, Captain of Operations
Bruce Ure, Deputy Chief
Tammy Garcia, Director of Human Resources

From: Kevin K. Kelso, Chief of Police

Subject: Administrative Leave

Date: June 7, 2018

On June 4, 2018, an incident was reported in which it is alleged you improperly disseminated information to a television news reporter, which is also a violation of our media information release policy. When questioned about the incident and your part in it, you vehemently denied any involvement in relaying the information to the news reporter as well as having any knowledge who did. It is alleged this denial is inaccurate and therefore a violation of our truthfulness policy. Your alleged involvement in this incident is also a violation of the Seguin Police Department policy as it relates to your supervisor responsibilities.

During this investigation, you are placed on Administrative Leave until its completion or you have been notified by me. While on Administrative Leave you will be paid your normal salary. As a result, you are to remain at your residence during business hours (8:00 am – 5:00 pm), Monday through Friday. You are not to leave your residence during these times except for emergencies or for legal obligations. Should you need to leave your residence for one of these reasons, you are to contact Captain Pacheco to advise him of your whereabouts. During the period of Administrative Leave with pay, you are not to perform any related peace officer duties, including off-duty employment. Also during this period, your TCOLE license is temporarily suspended, thus relieving you of all peace officer duties and responsibilities. You are also not allowed to work any off-duty assignments or to come onto the Police Department property without authorization from me.

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]
TELEPHONE
[redacted]
FAX
[redacted]

June 11, 2018

Chief Kevin K. Kelso
Seguin Police Department
[redacted]

Re: Public Information Request
Corporal Michael Guerra, Badge No: 335

Dear Chief Kelso:

I understand you have temporarily suspended Corporal Guerra. Please find enclosed an affidavit from Corporal Guerra which designates me his authorized representative under the Public Information Act, Tex. Gov't. Code Chapter 552. As his representative, I am requesting a complete copy of the Internal Affairs file that serves as the basis to issue Corporal Guerra discipline. If no discipline has been issued, please note that I will be requesting the records periodically and will re-urge my request after discipline is issued.

As part of my request, I am asking for:

1. All witness statements and complaints;
2. All police reports;
3. Incident and offense reports concerning former Officer Suzann Gonzalez's alleged misconduct;
4. Copies of all documents the Seguin P.D. has provided to the news media concerning Officer Suzann Gonzalez;
5. Copies of all emails, text messages, telephone logs, photographs, videos or other items of evidence that forms the basis of the allegations

I have reviewed a document issued by you dated June 7, 2018, wherein you assert that you have suspended Corporal Guerra's TCOLE license. While I may be in error, I understood that only the Commission for TCOLE has the statutory and administrative authority to suspend his TCOLE license. If I am in error, then please provide to me all documentation you relied upon to cause this temporary suspension of Corporal Guerra's TCOLE license.

CITY ATTORNEY'S OFFICE

SEGUIN TEXAS

It's real.

June 12, 2018

Mr. Ben M. Sifuentes, Jr.
[redacted]

Re: Public Information Request dated June 11, 2018

Dear Mr. Sifuentes

The open records request that you sent is overly broad in a number of respects. I am requesting that you rethink your request and place time and subject limits on some of the questions. Responses to your request, as written, would take many hours of work, and a truckload of documents (not to say the cost to you).

Specifically:

1. "All witness statements and complaints" – there is no time or subject/person limitations. The City receives hundreds of such per year.

2. "All police reports" again, depending on how widely one reads "police reports" this could be hundreds to maybe a thousand reports per year.

You are also requesting the complete IA file for Corporal Guerra. This document is not complete, and until completed is not subject to an open records request.

Your more specific requested documents should be ready and available on the date of the pre-disciplinary hearing.

Sincerely

Andrew Quittner

City Attorney

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]
TELEPHONE
[redacted]
FAX
[redacted]

June 11, 2018

Chief Kevin K. Kelso
Seguin Police Department
[redacted]

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Should you have any questions, please call or write.

Sincerely,

Ben M. Sifuentes, Jr.

Enclosure: Affidavit

cc: Michael Guerra

AFFIDAVIT OF MICHAEL GUERRA
DESIGNATION OF BEN M. SIFUENTES, JR.,
AUTHORIZED REPRESENTATIVE
TEX. GOV'T CODE SECTION 552.023

COUNTY OF BEXAR §

STATE OF TEXAS §

My name is Michael Guerra. I am capable of giving this affidavit. My date of birth is [redacted] I reside at [redacted] The last three numbers of my SSN are: [redacted] and the last three digits of my TDL are [redacted] I am a current employee of Seguin Police Department.

I hereby appoint Ben M. Sifuentes, Jr., as my authorized representative to collect any and all documents to which I would be entitled by virtue of Texas Government Code Section 552.023, the Special Right of Access, a person has under the Public Information Act.

Without limitation, I specifically give him the authority to seek any employment or medical records contained by Seguin Police Department.

I understand that information that is disclosed or used under this authorization may be disclosed by Ben M. Sifuentes, Jr., and no longer protected by the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Section 164.508(c).

Signed on the 11th day of June 2018.

Michael Guerra

Subscribed and sworn to before me the undersigned authority on this 11th day of June 2018.

Notary Public in and for the State of Texas

CLOTILDE ODILIA LOPEZ
Notary Public, State of Texas
Comm. Expires 02-07-2022
Notary ID 129694482

My Commission expires on:

2/7/22

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]
TELEPHONE [redacted]
FAX [redacted]

June 11, 2018

Chief Kevin K. Kelso
Seguin Police Department
[redacted]

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Corporal Michael Guerra, Badge No: 335

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Should you have any questions, please call or write.

Sincerely,

Ben M. Sifuentes, Jr.

Enclosure: Affidavit

cc: Michael Guerra

AFFIDAVIT OF MICHAEL GUERRA
DESIGNATION OF BEN M. SIFUENTES, JR.,
AUTHORIZED REPRESENTATIVE
TEX. GOV'T CODE SECTION 552.023

COUNTY OF BEXAR §

STATE OF TEXAS §

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2/7/22

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]
TELEPHONE
[redacted]
FAX
[redacted]

June 20, 2018

Chief Kevin Kelso
Seguin Police Department
[redacted]

Re: Rebuttal - Pre-Disciplinary Hearing Corporal Michael Guerra

Dear Chief Kelso:

The basis for the proposed termination set forth in your letter of June 13, 2018 are fraught with untruthful statements. You allege in part:

> Specifically, it is alleged, that on April 16, 2018 officers responded to a call for suspicious persons on the roof of a residence and that at that call, an officer of this department acted inappropriately. It is further alleged, that you then took it upon yourself to send notifications to outlying media groups informing of this incident in an effort to discredit and defame the Seguin Police Department, and in particular, its administration. [Emphasis added].

The facts are that on April 16, 2018, Officer Suzann Gonzalez responded to a call for a suspicious person on the roof of a residence. Officer Gonzalez did respond to such a call on or near Roosevelt Street on this date.

Corporal Guerra was on vacation on the date Gonzalez responded to this call. Aaron Sidenburger and Devon Douglas were the supervisors on duty when Gonzalez responded to the call.

We understand you contemplated suspending both supervisors for not properly supervising Officer Gonzalez. However, you have chosen not to do so.

If anyone was able to relate to the media Gonzalez's misconduct, it would have been the supervisors on duty when Gonzalez engaged in misconduct.

We assert that if the Seguin Police Department's official reports accurately reflect the conduct the media reported, that legally and factually one cannot defame the Seguin Police Department by telling the truth.

Ironically, I cannot defend Corporal Guerra against your false allegations, without violating the very rules you accuse him of violating. Specifically, I understand you believe a news reporter for the Channel 4 TV station in San Antonio was contacted by members of the Seguin Police Department about Gonzalez misconduct.

If you are punishing Corporal Guerra based upon a belief that he gave information to Channel 4, you are creating legal problems for yourself and the City of Seguin. Although your belief is incorrect, when government has a mistaken belief about an employee, and act upon that belief, the subsequent termination is actionable when it violates a constitutionally protected right.

In the case of *Heffernan v. City of Paterson, N.J.*, 136 S. Ct. 1412, (2016), a police officer was fired, based upon the false belief that he was supporting a particular candidate for mayor. The Court held:

> Even though the employee had not in fact engaged in protected political activity, did his demotion "deprive" him of a "right ... secured by the Constitution"? 42 U.S.C. § 1983. We hold that it did. *Id.* at 1416.

Here, if one were to assume *arguendo*, Guerra had talked to the media, such communication would have been protected First Amendment Speech because it addressed a matter of public concern.

Gonzalez purportedly violated the Fourth, Eighth and Fourteenth Amendments to the United States Constitution. Gonzalez is alleged to have entered the home, without consent, and without probable cause to believe a juvenile was committing a crime. The juvenile was a resident of the home. Gonzalez was aware that the juvenile lived in the home, yet entered the home, without consent, and without any good faith believe the juvenile was committing a felony or breach of the peace that would allow a warrantless entry.

This is a matter of public concern because violations of constitutional rights is a matter of utmost concern to the public. Additionally, the Seguin Police Department was so concerned with the violation of procedures and constitutional rights that it departed ways with Officer Gonzalez. Moreover, the disciplinary action was documented in the following links:

1. http://seguingazette.com/alert/article_a32effe8-7342-11e8-8a53-4b0149d4ad6b.html
2. http://www.seguintoday.com/default.asp?pid=949096&tblog=70108.

Additionally, the Seguin Police Department would have been required by the Texas Public Information Act to turn over the videos and information that it mistakenly believed was "leaked" by Guerra.

Consequently, one cannot be considered to defame the Seguin Police Department if the Seguin Police Department would be compelled to turn over information the same information by law.

Indeed, the case of *Lane v. Franks*, 134 S. Ct. 2369, 2378, (2014), the Supreme Court considered whether a public employee who testified under oath about a matter that came to his attention in the course of employment could be considered constitutionally protected free speech. In holding that it is protected, the Court stated:

> Against this backdrop, we turn to the question presented: whether the First Amendment protects a public employee who provides truthful sworn testimony, compelled by subpoena, outside the scope of his ordinary job responsibilities. We hold that it does.
>
> The first inquiry is whether the speech in question—Lane's testimony at Schmitz' trials—is speech as a citizen on a matter of public concern. It clearly is.

Thus, the Seguin Police Department is violating Officer Guerra's First Amendment rights.

Additionally, you have no factual basis to prove that Corporal Guerra was the person responsible for reporting Gonzalez's violation of the juveniles civil rights.

For the foregoing reasons, the termination must be set aside.

Sincerely,

Ben M. Sifuentes, Jr.

Enclosure: *Heffernan v. City of Paterson*
Lane v. Franks

cc: Client

KeyCite Yellow Flag - Negative Treatment

Declined to Extend by Brickey v. Hall, 4th Cir.(Va.), July 8, 2016

136 S.Ct. 1412
Supreme Court of the United States

Jeffrey J. HEFFERNAN, Petitioner
v.
CITY OF PATERSON, NEW JERSEY, et al.
No. 14–1280.

|
Argued Jan. 19, 2016.
|
Decided April 26, 2016.

Synopsis
Background: City police officer filed § 1983 action against city, mayor, police chief, and police administrator, alleging that he was demoted in retaliation for exercising his First Amendment rights. The United States District Court for the District of New Jersey, Peter G. Sheridan, J., denied cross-motions for summary judgment, but, after jury awarded officer damages for violation of First Amendment free association rights, district judge retroactively recused and action was reassigned and set for retrial. The United States District Court for the District of New Jersey, Dennis M. Cavanaugh, J., 2011 WL 2115664, granted summary judgment to defendants as to First Amendment free speech claim, and officer appealed. The United States Court of Appeals for the Third Circuit, D. Brooks Smith, Circuit Judge, 492 Fed.Appx. 225, reversed and remanded. On remand, the United States District Court for the District of New Jersey, Kevin McNulty, J., 2 F.Supp.3d 563, entered summary judgment in defendants' favor, and officer appealed. The United States Court of Appeals for the Third Circuit, Vanaskie, Circuit Judge, 777 F.3d 147, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Breyer, held that fact that officer's supervisors were mistaken about officer's involvement in mayoral campaign did not bar his suit.

Reversed and remanded.

Justice Thomas filed dissenting opinion in which Justice Alito joined.

West Headnotes (6)

[1] Constitutional Law
Adverse action
Constitutional Law
Discharge

First Amendment generally prohibits government officials from dismissing or demoting an employee because of the employee's engagement in constitutionally protected political activity. U.S.C.A. Const.Amend. 1.

29 Cases that cite this headnote

[2] Constitutional Law
Adverse action
Constitutional Law
Discharge

Exceptions to the general rule that the First Amendment prohibits government officials from dismissing or demoting an employee because of the employee's engagement in constitutionally protected political activity take account of practical realities, such as the need for efficiency and effectiveness in government service. U.S.C.A. Const.Amend. 1.

21 Cases that cite this headnote

[3] Constitutional Law
Demotion
Municipal Corporations
Grades of service
Public Employment
Reduction in grade or rank; demotion

Fact that city police officer's supervisors were mistaken about officer's involvement in challenger's campaign for city mayor did not bar his § 1983 suit alleging First Amendment retaliation related to his demotion from detective to patrol officer, as it was supervisors' allegedly improper motive, based on facts as they perceived them, rather than officer's actual activity, that was relevant in determining liability, officer suffered harm stemming from supervisors allegedly acting pursuant to such motivation, and such motivation created risk of discouraging employees from engaging in protected activities. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

3 Cases that cite this headnote

[4] Constitutional Law
Discharge

On a government employee's First Amendment retaliation claim based on a mistake by the government, the employee's dismissal does not violate the First Amendment if the government (1) reasonably believes that the employee's conversation involved personal matters, not matters of public concern, and (2) dismisses the employee because of that mistaken belief. U.S.C.A. Const.Amend. 1.

19 Cases that cite this headnote

[5] Constitutional Law
Adverse action

When the government demotes an employee out of a desire to prevent the employee from engaging in political activity that the First Amendment protects, the employee is entitled to challenge that unlawful action under the First Amendment and § 1983, even if the government makes a factual mistake about the employee's behavior. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

27 Cases that cite this headnote

[6] Constitutional Law
Adverse action in general

Government employees asserting a claim against the government for First Amendment retaliation based on political affiliation are not required to prove that they, or other employees, have been coerced into changing, either actually or ostensibly, their political allegiance, since the constitutional harm at issue consists in large part of discouraging employees from engaging in protected activities. U.S.C.A. Const.Amend. 1.

6 Cases that cite this headnote

*1414 *Syllabus*

Petitioner Heffernan was a police officer working in the office of Paterson, New Jersey's chief of police. Both the chief of police and Heffernan's supervisor had been appointed by Paterson's incumbent mayor, who was running for re-election against Lawrence Spagnola, a good friend of Heffernan's. Heffernan was not involved in Spagnola's campaign in any capacity. As a favor to his bedridden mother, Heffernan agreed to pick up and deliver to her a Spagnola campaign yard sign. Other police officers observed Heffernan speaking to staff at a Spagnola distribution point while holding the yard sign. Word quickly spread throughout the force. The next day, Heffernan's supervisors demoted him from detective to patrol officer as punishment for his "overt involvement" in

Spagnola's campaign. Heffernan filed suit, claiming that the police chief and the other respondents had demoted him because, in their mistaken view, he had engaged in conduct that constituted protected speech. They had thereby "depriv[ed]" him of a "right ... secured by the Constitution." 42 U.S.C. § 1983. The District Court, however, found that Heffernan had not been deprived of any constitutionally protected right because he had not engaged in any First Amendment conduct. Affirming, the Third Circuit concluded that Heffernan's claim was actionable under § 1983 only if his employer's action was prompted by Heffernan's actual, rather than his perceived, exercise of his free-speech rights.

Held:

1. When an employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment and § 1983 even if, as here, the employer's actions are based on a factual mistake about the employee's behavior. To answer the question whether an official's factual mistake makes a critical legal difference, the Court assumes that the activities that Heffernan's supervisors mistakenly *thought* he had engaged in are of a kind that they cannot constitutionally prohibit or punish. Section 1983 does not say whether the "right" protected primarily focuses on the employee's actual activity or on the supervisor's motive. Neither does precedent directly answer the question. In *Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708, *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689, and *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811, there were no factual mistakes: The only question was whether the undisputed reason for the adverse action was in fact protected by the First Amendment. However, in *Waters v. Churchill*, 511 U.S. 661, 114 S.Ct. 1878, 128 L.Ed.2d 686, a government employer's adverse action was based on a mistaken belief that an employee *had not* engaged in protected speech. There, this Court determined that the employer's motive, *1415 and particularly the facts as the employer reasonably understood them, mattered in determining that the employer had not violated the First Amendment. The government's motive likewise matters here, where respondents demoted Heffernan on the mistaken belief that he *had* engaged in protected speech. A rule of law finding liability in these circumstances tracks the First Amendment's language, which focuses upon the Government's activity. Moreover, the constitutional harm—discouraging employees from engaging in protected speech or association—is the same whether or not the employer's action rests upon a factual mistake. Finally, a rule of law imposing liability despite the employer's factual mistake is not likely to impose significant extra costs upon the employer, for the employee bears the burden of proving an improper employer motive. Pp. 1416 – 1419.

2. For the purposes of this opinion, the Court has assumed that Heffernan's employer demoted him out of an improper motive. However, the lower courts should decide in the first instance whether respondents may have acted under a neutral policy prohibiting police officers from overt involvement in any political campaign and whether such a policy, if it exists, complies with constitutional standards. P. 1419.

777 F.3d 147, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C.J., and KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined.

Attorneys and Law Firms

Mark Frost, Philadelphia, PA, for petitioner.

Ginger D. Anders for the United States, as amicus curiae, by special leave of the Court, supporting the petitioner.

Thomas C. Goldstein, Bethesda, MD, for respondents.

Stuart Banner, Eugene Volokh, UCLA School of Law, Supreme Court Clinic, Los Angeles, CA, Fred A. Rowley, Jr., Grant A. Davis–Denny, Andrew G. Prout, Munger, Tolles & Olson LLP, Los Angeles, CA, Mark B. Frost, Counsel of Record, Ryan M. Lockman, Mark B. Frost & Associates, Philadelphia, PA, for petitioner.

Edward A. Hartnett, Seton Hall University School of Law, Victor A. Afanador, Counsel of Record, Susana Cruz Hodge, Erik E. Sardiña, Lite DePalma Greenberg LLC, Newark, NJ, Albert C. Lisbona, Beth Connell O'Connor, Dwyer, Connell & Lisbona, Gary Potters, Potters & Delia Peitra, Fairfield, NJ, Thomas P. Scrivo, McElroy, Deutsch, Mulvaney & Carpenter, Newark, NJ, Roosevelt Jean, Chasan, Leyner, & Lamparello, Secaucus, NJ, for respondents in Opposition.

Thomas C. Goldstein, Goldstein & Russell, P.C., Bethesda, MD, Gary Potters, Potters & Delia Peitra, Fairfield, NJ, Roosevelt Jean, Chasan Leyner &, Lamparello, Secaucus, NJ, Domenick Stampone, City of Paterson, Paterson, NJ, Victor

A. Afanador, Erik E. Sardiña, Lite DePalma Greenberg, LLC, Edward A. Hartnett, Seton Hall University School of Law, Newark, NJ, Albert C. Lisbona, Beth Connell O'Connor, Dwyer, Connell & Lisbona, Fairfield, NJ, Ryan P. Mulvaney, McElroy, Deutsch, Mulvaney &, Carpenter, LLP, Newark, NJ, for respondents.

Opinion

*1416 Justice BREYER delivered the opinion of the Court.

[1] The First Amendment generally prohibits government officials from dismissing or demoting an employee because of the employee's engagement in constitutionally protected political activity. See *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *Branti v. Finkel*, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980); but cf. *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 564, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973). In this case a government official demoted an employee because the official believed, but *incorrectly* believed, that the employee had supported a particular candidate for mayor. The question is whether the official's factual mistake makes a critical legal difference. Even though the employee had not in fact engaged in protected political activity, did his demotion "deprive" him of a "right ... secured by the Constitution"? 42 U.S.C. § 1983. We hold that it did.

I

To decide the legal question presented, we assume the following, somewhat simplified, version of the facts: In 2005, Jeffrey Heffernan, the petitioner, was a police officer in Paterson, New Jersey. He worked in the office of the Chief of Police, James Wittig. At that time, the mayor of Paterson, Jose Torres, was running for reelection against Lawrence Spagnola. Torres had appointed to their current positions both Chief Wittig and a subordinate who directly supervised Heffernan. Heffernan was a good friend of Spagnola's.

During the campaign, Heffernan's mother, who was bedridden, asked Heffernan to drive downtown and pick up a large Spagnola sign. She wanted to replace a smaller Spagnola sign, which had been stolen from her front yard. Heffernan went to a Spagnola distribution point and picked up the sign. While there, he spoke for a time to Spagnola's campaign manager and staff. Other members of the police force saw him, sign in hand, talking to campaign workers. Word quickly spread throughout the force.

The next day, Heffernan's supervisors demoted Heffernan from detective to patrol officer and assigned him to a "walking post." In this way they punished Heffernan for what they thought was his "overt involvement" in Spagnola's campaign. In fact, Heffernan was not involved in the campaign but had picked up the sign simply to help his mother. Heffernan's supervisors had made a factual mistake.

Heffernan subsequently filed this lawsuit in federal court. He claimed that Chief Wittig and the other respondents had demoted him because he had engaged in conduct that (on their mistaken view of the facts) constituted protected speech. They had thereby "depriv[ed]" him of a "right ... secured by the Constitution." Rev. Stat. § 1979, 42 U.S.C. § 1983.

The District Court found that Heffernan had not engaged in any "First Amendment conduct," 2 F.Supp.3d 563, 580 (D.N.J.2014); and, for that reason, the respondents had not deprived him of any constitutionally protected right. The Court of Appeals for the Third Circuit affirmed. It wrote that "a free-speech retaliation claim is actionable under § 1983 only where the adverse action at issue was prompted by an employee's *actual*, rather than *perceived*, exercise of constitutional rights." 777 F.3d 147, 153 (2015) (citing *Ambrose v. Robinson*, 303 F.3d 488, 496 (C.A.3 2002); emphasis added). Heffernan filed a petition for certiorari. We agreed to decide whether the Third Circuit's legal view was correct. Compare 777 F.3d, at 153 (case below), with *Dye v. Office of Racing Comm'n*, 702 F.3d 286, 300 (C.A.6 2012) *1417 (similar factual mistake does not affect the validity of the government employee's claim).

II

[2] With a few exceptions, the Constitution prohibits a government employer from discharging or demoting an employee because the employee supports a particular political candidate. See *Elrod v. Burns, supra*; *Branti v. Finkel, supra*. The basic constitutional requirement reflects the First Amendment's hostility to government action that "prescribe[s] what shall be orthodox in politics." *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943). The exceptions take account of "practical realities" such as the need for "efficiency" and "effective[ness]" in government service. *Waters v. Churchill*, 511 U.S. 661, 672, 675, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994); see also *Civil Service Comm'n, supra*, at 564, 93 S.Ct. 2880 (neutral and

appropriately limited policy may prohibit government employees from engaging in partisan activity), and *Branti, supra,* at 518, 100 S.Ct. 1287 (political affiliation requirement permissible where affiliation is "an appropriate requirement for effective performance of the public office involved").

[3] In order to answer the question presented, we assume that the exceptions do not apply here. But see *infra,* at 1419. We assume that the activities that Heffernan's supervisors *thought* he had engaged in are of a kind that they cannot constitutionally prohibit or punish, see *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 69, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990) ("joining, working for or contributing to the political party and candidates of their own choice"), but that the supervisors were mistaken about the facts. Heffernan had not engaged in those protected activities. Does Heffernan's constitutional case consequently fail?

The text of the relevant statute does not answer the question. The statute authorizes a lawsuit by a person "depriv[ed]" of a "right ... secured by the Constitution." 42 U.S.C. § 1983. But in this context, what precisely is that "right?" Is it a right that primarily focuses upon (the employee's) actual activity or a right that primarily focuses upon (the supervisor's) motive, insofar as that motive turns on what the supervisor believes that activity to be? The text does not say.

Neither does precedent directly answer the question. In some cases we have used language that suggests the "right" at issue concerns the employee's actual activity. In *Connick v. Myers,* 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983), for example, we said that a court should first determine whether the plaintiff spoke " 'as a citizen' " on a " 'matter[ ] of public concern,' " *id.,* at 143, 103 S.Ct. 1684. We added that, if the employee has not engaged in what can "be fairly characterized as constituting speech on a matter of public concern, it is unnecessary for us to scrutinize the reasons for her discharge." *Id.,* at 146, 103 S.Ct. 1684. We made somewhat similar statements in *Garcetti v. Ceballos,* 547 U.S. 410, 418, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006), and *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968).

These cases, however, did not present the kind of question at issue here. In *Connick,* for example, no factual mistake was at issue. The Court assumed that both the employer and the employee were at every stage in agreement about the underlying facts: that the employer dismissed the employee because of her having circulated within the office a document that criticized how the office was being run *1418 (that she had in fact circulated). The question was whether the circulation of that document amounted to constitutionally protected speech. If not, the Court need go no further.

Neither was any factual mistake at issue in *Pickering.* The Court assumed that both the employer (a school board) and the employee understood the cause for dismissal, namely, a petition that the employee had indeed circulated criticizing his employer's practices. The question concerned whether the petition was protected speech. *Garcetti* is substantially similar. In each of these cases, the only way to show that the employer's motive was unconstitutional was to prove that the controversial statement or activity—in each case the undisputed reason for the firing—was in fact protected by the First Amendment.

Waters v. Churchill, 511 U.S. 661, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994), is more to the point. In that case the Court did consider the consequences of an employer mistake. The employer wrongly, though reasonably, believed that the employee had spoken only on personal matters not of public concern, and the employer dismissed the employee for having engaged in that unprotected speech. The employee, however, had in fact used words that did not amount to personal "gossip" (as the employer believed) but which focused on matters of public concern. The Court asked whether, and how, the employer's factual mistake mattered.

[4] The Court held that, as long as the employer (1) had reasonably believed that the employee's conversation had involved personal matters, not matters of public concern, and (2) had dismissed the employee because of that mistaken belief, the dismissal did not violate the First Amendment. *Id.,* at 679–680, 114 S.Ct. 1878. In a word, it was the employer's motive, and in particular the facts as the employer reasonably understood them, that mattered.

In *Waters,* the employer reasonably but mistakenly thought that the employee *had not* engaged in protected speech. Here the employer mistakenly thought that the employee *had* engaged in protected speech. If the employer's motive (and in particular the facts as the employer reasonably understood them) is what mattered in *Waters,* why is the same not true here? After all, in the law, what is sauce for the goose is normally sauce for the gander.

[5] We conclude that, as in *Waters,* the government's reason

for demoting Heffernan is what counts here. When an employer demotes an employee out of a desire to prevent the employee from engaging in political activity that the First Amendment protects, the employee is entitled to challenge that unlawful action under the First Amendment and 42 U.S.C. § 1983—even if, as here, the employer makes a factual mistake about the employee's behavior.

We note that a rule of law finding liability in these circumstances tracks the language of the First Amendment more closely than would a contrary rule. Unlike, say, the Fourth Amendment, which begins by speaking of the "right of the people to be secure in their persons, houses, papers, and effects ...," the First Amendment begins by focusing upon the activity of the Government. It says that "Congress shall make no law ... abridging the freedom of speech." The Government acted upon a constitutionally harmful policy whether Heffernan did or did not in fact engage in political activity. That which stands for a "law" of "Congress," namely, the police department's reason for taking action, "abridge[s] the freedom of speech" of employees *1419 aware of the policy. And Heffernan was directly harmed, namely, demoted, through application of that policy.

[6] We also consider relevant the constitutional implications of a rule that imposes liability. The constitutional harm at issue in the ordinary case consists in large part of discouraging employees—both the employee discharged (or demoted) and his or her colleagues—from engaging in protected activities. The discharge of one tells the others that they engage in protected activity at their peril. See, *e.g.*, *Elrod*, 427 U.S., at 359, 96 S.Ct. 2673 (retaliatory employment action against one employee "unquestionably inhibits protected belief and association" of all employees). Hence, we do not require plaintiffs in political affiliation cases to "prove that they, or other employees, have been coerced into changing, either actually or ostensibly, their political allegiance." *Branti*, 445 U.S., at 517, 100 S.Ct. 1287. The employer's factual mistake does not diminish the risk of causing precisely that same harm. Neither, for that matter, is that harm diminished where an employer announces a policy of demoting those who, say, help a particular candidate in the mayoral race, and all employees (including Heffernan), fearful of demotion, refrain from providing any such help. Cf. *Gooding v. Wilson*, 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972) (explaining that overbreadth doctrine is necessary "because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions"). The upshot is that a discharge or demotion based upon an employer's belief that the employee has engaged in protected activity can cause the same kind, and degree, of constitutional harm whether that belief does or does not rest upon a factual mistake.

Finally, we note that, contrary to respondents' assertions, a rule of law that imposes liability despite the employer's factual mistake will not normally impose significant extra costs upon the employer. To win, the employee must prove an improper employer motive. In a case like this one, the employee will, if anything, find it more difficult to prove that motive, for the employee will have to point to more than his own conduct to show an employer's intent to discharge or to demote him for engaging in what the employer (mistakenly) believes to have been different (and protected) activities. We concede that, for that very reason, it may be more complicated and costly for the employee to prove his case. But an employee bringing suit will ordinarily shoulder that more complicated burden voluntarily in order to recover the damages he seeks.

III

We now relax an assumption underlying our decision. We have assumed that the policy that Heffernan's employers implemented violated the Constitution. *Supra,* at 1416. There is some evidence in the record, however, suggesting that Heffernan's employers may have dismissed him pursuant to a different and neutral policy prohibiting police officers from overt involvement in any political campaign. See Brief for United States as Amicus Curiae 27–28. Whether that policy existed, whether Heffernan's supervisors were indeed following it, and whether it complies with constitutional standards, see *Civil Service Comm'n*, 413 U.S., at 564, 93 S.Ct. 2880 are all matters for the lower courts to decide in the first instance. Without expressing views on the matter, we reverse the judgment of the Third Circuit and remand the case for such further proceedings consistent with this opinion.

It is so ordered.

*1420 Justice THOMAS, with whom Justice ALITO joins, dissenting.

Today the Court holds that a public employee may bring a federal lawsuit for money damages alleging a violation of a constitutional right that he concedes he did not exercise. *Ante,* at 1416. Because federal law does not provide a cause of action to plaintiffs whose constitutional rights have not been

violated, I respectfully dissent.

I

This lawsuit concerns a decision by the city of Paterson, New Jersey (hereinafter City), to demote one of its police officers, Jeffrey Heffernan. At the time of Heffernan's demotion, Paterson's mayor, Jose Torres, was running for reelection against one of Heffernan's friends, Lawrence Spagnola. The police chief demoted Heffernan after another officer assigned to Mayor Torres' security detail witnessed Heffernan pick up a Spagnola campaign sign when Heffernan was off duty. Heffernan claimed that he picked up the sign solely as an errand for his bedridden mother. Heffernan denied supporting or associating with Spagnola's campaign and disclaimed any intent to communicate support for Spagnola by retrieving the campaign sign. Despite Heffernan's assurances that he was not engaged in protected First Amendment activity, he filed this lawsuit alleging that his employer violated his First Amendment rights by demoting him based on its mistaken belief that Heffernan had communicated support for the Spagnola campaign.

II

Title 42 U.S.C. § 1983 provides a cause of action against "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects ... any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution." For Heffernan to prevail on his § 1983 claim, then, a state actor must have deprived him of a constitutional right. Nothing in the text of § 1983 provides a remedy against public officials who attempt but fail to violate someone's constitutional rights.

There are two ways to frame Heffernan's First Amendment claim, but neither can sustain his suit. As in most § 1983 suits, his claim could be that the City interfered with his freedom to speak and assemble. But because Heffernan has conceded that he was not engaged in protected speech or assembly when he picked up the sign, the majority must resort to a second, more novel framing. It concludes that Heffernan states a § 1983 claim because the City unconstitutionally regulated employees' political speech and Heffernan was injured because that policy resulted in his demotion. See *ante,* at 1418. Under that theory, too, Heffernan's § 1983 claim fails. A city's policy, even if unconstitutional, cannot be the basis of a § 1983 suit when that policy does not result in the infringement of the plaintiff's constitutional rights.

A

To state a claim for retaliation in violation of the First Amendment, public employees like Heffernan must allege that their employer interfered with their right to speak as a citizen on a matter of public concern. Whether the employee engaged in such speech is the threshold inquiry under the Court's precedents governing whether a public employer violated the First Amendment rights of its employees. See *Garcetti v. Ceballos,* 547 U.S. 410, 418, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006). If the employee has not spoken on a matter of public concern, "the employee has no *1421 First Amendment cause of action based on his or her employer's reaction to the speech." *Ibid.* If the employee did, however, speak as a citizen on a matter of public concern, then the Court looks to "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." *Ibid.*

Under this framework, Heffernan's claim fails at the first step. He has denied that, by picking up the yard sign, he "spoke as a citizen on a matter of public concern." *Ibid.* In fact, Heffernan denies speaking in support of or associating with the Spagnola campaign. He has claimed that he picked up the yard sign only as an errand for his bedridden mother. Demoting a dutiful son who aids his elderly, bedridden mother may be callous, but it is not unconstitutional.

To be sure, Heffernan could exercise his First Amendment rights by choosing *not* to assemble with the Spagnola campaign. Cf. *Harper & Row, Publishers, Inc. v. Nation Enterprises,* 471 U.S. 539, 559, 105 S.Ct. 2218, 85 L.Ed.2d 588 (1985) (freedom of expression "includes both the right to speak freely and the right to refrain from speaking at all" (internal quotation marks omitted)). But such an allegation could not save his claim here. A retaliation claim requires proving that Heffernan's protected activity was a cause-in-fact of the retaliation. See *University of Tex. Southwestern Medical Center v. Nassar,* 570 U.S. ——, ——, 133 S.Ct. 2517, 2534, 186 L.Ed.2d 503 (2013). And Heffernan's exercise of his right not to associate with the Spagnola campaign did not cause his demotion. Rather, his *perceived* association with the Spagnola campaign did.

At bottom, Heffernan claims that the City tried to interfere

with his constitutional rights and failed. But it is not enough for the City to have attempted to infringe his First Amendment rights. To prevail on his claim, he must establish that the City *actually* did so. The City's attempt never ripened into an actual violation of Heffernan's constitutional rights because, unbeknownst to the City, Heffernan did not support Spagnola's campaign.

Though, in criminal law, a factually impossible attempt like the City's actions here could constitute an attempt, there is no such doctrine in tort law. A plaintiff may maintain a suit only for a completed tort; "[t]here are no attempted torts." *United States v. Stefonek*, 179 F.3d 1030, 1036 (C.A.7 1999) (internal quotation marks omitted); see also Sebok, Deterrence or Disgorgement? Reading *Ciraolo* After *Campbell*, 64 Md. L. Rev. 541, 565 (2005) (same). And "there can be no doubt that claims brought pursuant to § 1983 sound in tort." *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999). Because Heffernan could claim at most that the City attempted to interfere with his First Amendment rights, he cannot prevail on a claim under the theory that the City infringed his right to speak freely or assemble.

B

To get around this problem of factual impossibility, the majority reframes Heffernan's case as one about the City's lack *1422 of power to act with unconstitutional motives. See *ante*, at 1417. Under the majority's view, the First Amendment prohibits the City from taking an adverse employment action intended to impede an employee's rights to speak and assemble, regardless of whether the City has accurately perceived an employee's political affiliation. The majority surmises that an attempted violation of an employee's First Amendment rights can be just as harmful as a successful deprivation of First Amendment rights. *Ante*, at 1419. And the majority concludes that the City's demotion of Heffernan based on his wrongfully perceived association with a political campaign is no different from the City's demotion of Heffernan based on his actual association with a political campaign. *Ante*, at 1418.

But § 1983 does not provide a cause of action for unauthorized government acts that do not infringe the constitutional rights of the § 1983 plaintiff. See *Blessing v. Freestone*, 520 U.S. 329, 340, 117 S.Ct. 1353, 137 L.Ed.2d 569 (1997) ("In order to seek redress through § 1983, ... a plaintiff must assert the violation of a federal *right*, not merely a violation of federal *law* "). Of course the First Amendment "focus[es] upon the activity of the Government." *Ante*, at 1418. See Amdt. 1 ("Congress shall make no law ..."). And here, the "activity of Government" has caused Heffernan harm, namely, a demotion. But harm alone is not enough; it has to be the right kind of harm. Section 1983 provides a remedy only if the City has violated Heffernan's constitutional *rights*, not if it has merely caused him harm. Restated in the language of tort law, Heffernan's injury must result from activities within the zone of interests that § 1983 protects. Cf. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. ——, ——, n. 5, 134 S.Ct. 1377, 1389, n. 5, 188 L.Ed.2d 392 (2014) (discussing the zone-of-interests test in the context of negligence *per se*).

The mere fact that the government has acted unconstitutionally does not necessarily result in the violation of an individual's constitutional rights, even when that individual has been injured. Consider, for example, a law that authorized police to stop motorists arbitrarily to check their licenses and registration. That law would violate the Fourth Amendment. See *Delaware v. Prouse*, 440 U.S. 648, 661, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). And motorists who were *not* stopped might suffer an injury from the unconstitutional policy; for example, they might face significant traffic delays. But these motorists would not have a § 1983 claim simply because they were injured pursuant to an unconstitutional policy. This is because they have not suffered the right kind of injury. They must allege, instead, that their injury amounted to a violation of their constitutional right against unreasonable seizures—that is, by being unconstitutionally detained.

Here too, Heffernan must allege more than an injury from an unconstitutional policy. He must establish that this policy infringed his constitutional rights to speak freely and peaceably assemble. Even if the majority is correct that demoting Heffernan for a politically motivated reason was beyond the scope of the City's power, the City never invaded *Heffernan*'s right to speak or assemble. Accordingly, he is not entitled to money damages under § 1983 for the nonviolation of his First Amendment rights.

The majority tries to distinguish the Fourth Amendment by emphasizing the textual differences between that Amendment and the First. See *ante*, at 1418 ("Unlike, say the Fourth Amendment ..., the First Amendment begins by focusing *1423 upon the activity of the Government"). But these textual differences are immaterial. All rights enumerated in the Bill of Rights "focu [s] upon the activity of the Government" by "tak[ing] certain policy choices off the table." *District of*

Columbia v. Heller, 554 U.S. 570, 636, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008); see also Hohfeld, Some Fundamental Legal Conceptions As Applied in Judicial Reasoning, 23 Yale L.J. 16, 30, 55–57 (1913) (recognizing that an immunity implies a corresponding lack of power). Fourth Amendment rights could be restated in terms of governmental power with no change in substantive meaning. Thus, the mere fact that the First Amendment begins "Congress shall make no law" does not broaden a citizen's ability to sue to vindicate his freedoms of speech and assembly.

To reach the opposite conclusion, the majority relies only on *Waters v. Churchill*, 511 U.S. 661, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994) (plurality opinion). See *ante*, at 1418 – 1419. But *Waters* does not support the majority's expansion of § 1983 to cases where the employee did not exercise his First Amendment rights. The issue in *Waters* was whether a public employer violated the First Amendment where it reasonably believed that the speech it proscribed was unprotected. The Court concluded that the employer did not violate the First Amendment because it reasonably believed the employee's speech was unprotected: "We have never held that it is a violation of the Constitution for a government employer to discharge an employee based on substantively incorrect information." 511 U.S., at 679, 114 S.Ct. 1878. And the Court reaffirmed that, to state a First Amendment retaliation claim, the public employee must allege that she spoke on a matter of public concern. See *id.*, at 681, 114 S.Ct. 1878.

Unlike the employee in *Waters*, Heffernan admits that he was not engaged in constitutionally protected activity. Accordingly, unlike in *Waters*, he cannot allege that his employer interfered with conduct protected by the First Amendment. "[W]hat is sauce for the goose" is not "sauce for the gander," *ante*, at 1418, when the goose speaks and the gander does not.

* * *

If the facts are as Heffernan has alleged, the City's demotion of him may be misguided or wrong. But, because Heffernan concedes that he did not exercise his First Amendment rights, he has no cause of action under § 1983. I respectfully dissent.

All Citations

136 S.Ct. 1412, 194 L.Ed.2d 508, 100 Empl. Prac. Dec. P 45,538, 84 USLW 4239, 41 IER Cases 393, 16 Cal. Daily Op. Serv. 4370, 2016 Daily Journal D.A.R. 3969, 26 Fla. L. Weekly Fed. S 113

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

* Factual impossibility occurs when "an actor engages in conduct designed to culminate in the commission of an offense that is impossible for him to consummate under the existing circumstances." 1 P. Robinson, Criminal Law Defenses § 85, p. 422 (1984). Canonical examples include an attempt to steal from an empty pocket, *State v. Wilson,* 30 Conn. 500, 505 (1862), or an attempt to commit false pretenses where the victim had no money, *People v. Arberry,* 13 Cal.App. 749, 757, 114 P. 411 (1910).

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Declined to Extend by Anderson v. Valdez, 5th Cir.(Tex.), November 9, 2016

134 S.Ct. 2369
Supreme Court of the United States

Edward R. LANE, Petitioner
v.
Steve FRANKS, in his individual capacity, and Susan Burrow, in her official capacity as Acting President of Central Alabama Community College.
No. 13–483.

|
Argued April 28, 2014.
|
Decided June 19, 2014.

Synopsis
Background: Former director of community college's program for underprivileged youth brought § 1983 action against president of community college for alleged retaliation in violation of First Amendment. The United States District Court for the Northern District of Alabama, Karon Owen Bowdre, J., 2012 WL 5289412, granted president summary judgment. Former director appealed. The United States Court of Appeals for the Eleventh Circuit, 523 Fed.Appx. 709, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice Sotomayor, held that:

[1] director's sworn testimony at former program employee's corruption trials was citizen speech eligible for First Amendment protection, not unprotected employee speech;

[2] director's testimony was speech on matter of public concern;

[3] government lacked any interest justifying allegedly retaliatory termination of director, and thus director's testimony was protected by First Amendment; but

[4] president in his personal capacity was entitled to qualified immunity.

Affirmed in part, reversed in part, and remanded.

Justice Thomas filed concurring opinion in which Justices Scalia and Alito joined.

West Headnotes (19)

[1] Constitutional Law
Efficiency of public services

First Amendment protection of a public employee's speech depends on a careful balance between the interests of the employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. U.S.C.A. Const.Amend. 1.

89 Cases that cite this headnote

[2] Constitutional Law
Freedom of Speech, Expression, and Press
Constitutional Law
Matters of public concern

Speech by citizens on matters of public concern lies at the heart of the First Amendment, which was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. U.S.C.A. Const.Amend. 1.

41 Cases that cite this headnote

[3] Constitutional Law
Matters of public concern
Constitutional Law
Public or private concern; speaking as "citizen"

Speech by citizens on matters of public concern lies at the heart of the First Amendment, and this remains true when the speech concerns information related to or learned through public employment. U.S.C.A. Const.Amend. 1.

49 Cases that cite this headnote

[4] Public Employment
Relinquishment or limitation of rights

Public employees do not renounce their citizenship when they accept employment.

29 Cases that cite this headnote

[5] Constitutional Law
Public or private concern; speaking as "citizen"

First Amendment interest at stake in speech by a public employee on a matter of public concern related to or learned through public employment is as much the public's interest in receiving informed opinion as it is the employee's own right to disseminate it. U.S.C.A. Const.Amend. 1.

60 Cases that cite this headnote

[6] Constitutional Law
Efficiency of public services

Under the *Pickering* framework for analyzing whether a public employee's interest or the government's interest should prevail in cases where the government seeks to curtail the speech of its employees on matters of public concern, court must balance the interests of the public employee, as a citizen, in commenting upon such matters and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. U.S.C.A. Const.Amend. 1.

45 Cases that cite this headnote

[7] Constitutional Law
Testimony in judicial proceedings or before administrative agencies

First Amendment protects speech on a matter of public concern by a public employee who provides truthful sworn testimony, compelled by subpoena, outside the scope of his ordinary job responsibilities. U.S.C.A. Const.Amend. 1.

65 Cases that cite this headnote

[8] Constitutional Law
Testimony in judicial proceedings or before administrative agencies

Truthful testimony under oath by a public employee outside the scope of his ordinary job duties is speech as a citizen that is eligible for First Amendment protection, even when the testimony relates to his public employment or concerns information learned during that employment. U.S.C.A. Const.Amend. 1.

124 Cases that cite this headnote

[9] Constitutional Law
Testimony in judicial proceedings or before administrative agencies

Public employee's sworn testimony in judicial proceedings on a matter of public concern is a quintessential example of First Amendment speech as a citizen for a simple reason: anyone who testifies in court bears an obligation, to the court and society at large, to tell the truth. U.S.C.A. Const.Amend. 1; 18 U.S.C.A. § 1623.

7 Cases that cite this headnote

[10] Constitutional Law
Public or private concern
Education
Retaliation; whistleblowing
Public Employment
Protected activities

Sworn testimony by director of community college's program for underprivileged youth, at criminal corruption trials of former program employee who was also state representative, was "citizen speech" eligible for First Amendment protection, not unprotected employee speech, although director learned of the subject matter of his testimony in the course of his employment with program; providing sworn testimony was not a part of director's ordinary job responsibilities. U.S.C.A. Const.Amend. 1.

6 Cases that cite this headnote

[11] Constitutional Law
Public or private concern; speaking as "citizen"

Mere fact that a citizen's speech concerns information acquired by virtue of his public employment does not transform that speech into employee speech, rather than First Amendment-protected citizen speech, and the critical question is whether the speech at issue is itself ordinarily within the scope of the citizen's duties as a public employee, not whether the speech merely concerns those duties. U.S.C.A. Const.Amend. 1.

247 Cases that cite this headnote

[12] Constitutional Law
Public or private concern; speaking as "citizen"

Speech by public employee involves matters of public concern, as required for First Amendment protection, when the speech can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public. U.S.C.A. Const.Amend. 1.

71 Cases that cite this headnote

[13] Constitutional Law
Public or private concern; speaking as "citizen"

In determining whether speech by public employee involves matters of public concern, as required for First Amendment protection, inquiry turns on the content, form, and context of the speech. U.S.C.A. Const.Amend. 1.

55 Cases that cite this headnote

[14] Constitutional Law
Public or private concern
Education
Retaliation; whistleblowing
Public Employment
Protected activities

Sworn testimony by director of community college's program for underprivileged youth, at criminal corruption trials of former program employee who was also state representative, was speech on matter of public concern, as required for testimony to be eligible for First Amendment protection; director's testimony dealt with corruption in a public program and misuse of state funds, and the form and context of the speech, sworn testimony in a judicial proceeding, imparted the formality and gravity necessary to remind director that his statements would be basis for official governmental action. U.S.C.A. Const.Amend. 1.

6 Cases that cite this headnote

[15] Constitutional Law
Testimony in judicial proceedings or before administrative agencies

Public employee's sworn testimony is not categorically entitled to First Amendment protection simply because it is speech as a citizen on a matter of public concern; rather, if an employee speaks as a citizen on a matter of public concern, the next question is whether the government had an adequate justification for treating the employee differently from any other member of the public based on the government's needs as an employer. U.S.C.A. Const.Amend. 1.

139 Cases that cite this headnote

[16] Constitutional Law
Discharge
Education
Retaliation; whistleblowing
Public Employment
Protected activities

Government lacked any interest justifying allegedly retaliatory termination of director of community college's program for underprivileged youth for his speech as citizen on matter of public concern during his sworn testimony at criminal corruption trials of former program employee who was also state representative, and thus director's speech was entitled to First Amendment protection; there was no evidence that director's testimony at trials was false or erroneous or that director unnecessarily disclosed any sensitive, confidential, or privileged information while testifying. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[17] Civil Rights
Employment practices

Community college president reasonably could have believed, when he fired director of college's program for underprivileged youth, that government employer could fire employee on account of testimony employee gave, under oath and outside the scope of his ordinary job responsibilities, and thus president in his individual capacity was entitled to qualified immunity in director's § 1983 action alleging he was fired, in violation of First Amendment, in retaliation for speech on matter of public concern during his sworn testimony at criminal corruption trials of former program employee who was also state representative; circuit precedent did not preclude president from reasonably believing he could fire director and no decision of Supreme Court was sufficiently clear to cast doubt on circuit precedent. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

9 Cases that cite this headnote

[18] Civil Rights
Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions.

75 Cases that cite this headnote

[19] Civil Rights
Government Agencies and Officers
Civil Rights
Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

Under "qualified immunity doctrine," courts may not award damages against a government official in his personal capacity unless the official violated a statutory or constitutional right, and the right was clearly established at the time of the challenged conduct.

95 Cases that cite this headnote

*2372 *Syllabus*

As Director of Community Intensive Training for Youth (CITY), a program for underprivileged youth operated by Central Alabama Community College (CACC), petitioner Edward Lane conducted an audit of the program's expenses and discovered that Suzanne Schmitz, an Alabama State Representative on CITY's payroll, had not been reporting for work. Lane eventually terminated Schmitz' employment. Shortly thereafter, federal authorities indicted Schmitz on charges of mail fraud and theft concerning a program receiving federal funds. Lane testified, under subpoena, regarding the events that led to his terminating Schmitz. Schmitz was convicted and sentenced to 30 months in prison. Meanwhile, CITY was experiencing significant budget shortfalls. Respondent Franks, then CACC's president, terminated Lane along with 28 other employees in a claimed effort to address the financial difficulties. A few days later, however, Franks rescinded all but 2 of the 29 terminations—those of Lane and one other employee. Lane sued Franks in his individual and official capacities under 42 U.S.C. § 1983, alleging that Franks had violated the First Amendment by firing him in retaliation for testifying against Schmitz.

The District Court granted Franks' motion for summary judgment, holding that the individual-capacity claims were barred by qualified immunity and the official-capacity claims were barred by the Eleventh Amendment. The Eleventh Circuit affirmed, holding that Lane's testimony was not entitled to First Amendment protection. It reasoned that Lane spoke as an employee and not as a citizen because he acted pursuant to his official duties when he investigated and terminated Schmitz' employment.

Held :

*2373 1. Lane's sworn testimony outside the scope of his ordinary job duties is entitled to First Amendment protection. Pp. 2377 – 2381.

(a) *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 20 L.Ed.2d 811, requires balancing "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Under the first step of the *Pickering* analysis, if the speech is made pursuant to the employee's ordinary job duties, then the employee is not speaking as a citizen for First Amendment purposes, and the inquiry ends. *Garcetti v. Ceballos*, 547 U.S. 410, 421, 126 S.Ct. 1951, 164 L.Ed.2d 689. But if the "employee spoke as a citizen on a matter of public concern," the inquiry turns to "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." *Id.*, at 418, 126 S.Ct. 1951. Pp. 2377 – 2378.

(b) Lane's testimony is speech as a citizen on a matter of public concern. Pp. 2378 – 2380.

(1) Sworn testimony in judicial proceedings is a quintessential example of citizen speech for the simple reason that anyone who testifies in court bears an obligation, to the court and society at large, to tell the truth. That obligation is distinct and independent from any separate obligations a testifying public employee might have to his employer. The Eleventh Circuit read *Garcetti* far too broadly in holding that Lane did not speak as a citizen when he testified simply because he learned of the subject matter of that testimony in the course of his employment. *Garcetti* said nothing about speech that relates to public employment or concerns information learned in the course of that employment. The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties. Indeed, speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment. Pp. 2378 – 2380.

(2) Whether speech is a matter of public concern turns on the "content, form, and context" of the speech. *Connick v. Myers*, 461 U.S. 138, 147–148, 103 S.Ct. 1684, 75 L.Ed.2d 708. Here, corruption in a public program and misuse of state funds obviously involve matters of significant public concern. See *Garcetti*, 547 U.S., at 425, 126 S.Ct. 1951. And the form and context of the speech—sworn testimony in a judicial proceeding—fortify that conclusion. See *United States v. Alvarez*, 567 U.S. ——, ——, 132 S.Ct. 2537, 2546, 183 L.Ed.2d 574. P. 2380.

(c) Turning to *Pickering*'s second step, the employer's side of the scale is entirely empty. Respondents do not assert, and cannot demonstrate, any government interest that tips the balance in their favor—for instance, evidence that Lane's testimony was false or erroneous or that Lane unnecessarily disclosed sensitive, confidential, or privileged information while testifying. Pp. 2380 – 2381.

2. Franks is entitled to qualified immunity for the claims against him in his individual capacity. The question here is whether Franks reasonably could have believed that, when he fired Lane, a government employer could fire an employee because of testimony the employee gave, under oath and outside the scope of his ordinary job responsibilities. See *Ashcroft* *2374 *v. al–Kidd*, 563 U.S. ——, ——, 131 S.Ct. 2074, ——, 179 L.Ed.2d 1149. At the relevant time, Eleventh Circuit precedent did not preclude Franks from holding that belief, and no decision of this Court was sufficiently clear to cast doubt on controlling Circuit precedent. Any discrepancies in Eleventh Circuit precedent only serve to highlight the dispositive point that the question was not beyond debate at the time Franks acted. Pp. 2381 – 2383.

3. The Eleventh Circuit declined to consider the District Court's dismissal of the claims against respondent Burrow in her official capacity as CACC's acting president, and the parties have not asked this Court to consider them here. The judgment of the Eleventh Circuit as to those claims is reversed, and the case is remanded for further proceedings. P. 2383.

523 Fed.Appx. 709, affirmed in part, reversed in part, and remanded.

SOTOMAYOR, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, in which SCALIA and ALITO, JJ., joined.

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Opinion

Justice SOTOMAYOR delivered the opinion of the Court.

[1] Almost 50 years ago, this Court declared that citizens do not surrender their First Amendment rights by accepting public employment. Rather, the First Amendment protection of a public employee's speech depends on a careful balance "between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968). In *Pickering*, the Court struck the balance in favor of the public employee, extending First Amendment protection to a teacher who was fired after writing a letter to the editor of a local newspaper criticizing the school board that employed him. Today, we consider whether the First Amendment similarly protects a public employee who provided truthful sworn testimony, compelled by subpoena, outside the course of *2375 his ordinary job responsibilities. We hold that it does.

I

In 2006, Central Alabama Community College (CACC) hired petitioner Edward Lane to be the Director of Community Intensive Training for Youth (CITY), a statewide program for underprivileged youth. CACC hired Lane on a probationary basis. In his capacity as Director, Lane was responsible for overseeing CITY's day-to-day operations, hiring and firing employees, and making decisions with respect to the program's finances.

At the time of Lane's appointment, CITY faced significant financial difficulties. That prompted Lane to conduct a comprehensive audit of the program's expenses. The audit revealed that Suzanne Schmitz, an Alabama State Representative on CITY's payroll, had not been reporting to her CITY office. After unfruitful discussions with Schmitz, Lane shared his finding with CACC's president and its attorney. They warned him that firing Schmitz could have negative repercussions for him and CACC.

Lane nonetheless contacted Schmitz again and instructed her to show up to the Huntsville office to serve as a counselor. Schmitz refused; she responded that she wished to " 'continue to serve the CITY program in the same manner as [she had] in the past.' " *Lane v. Central Ala. Community College*, 523 Fed.Appx. 709, 710 (C.A.11 2013) (*per curiam*). Lane fired her shortly thereafter. Schmitz told another CITY employee, Charles Foley, that she intended to " 'get [Lane] back' " for firing her. 2012 WL 5289412, *1 (N.D.Ala., Oct. 18, 2012). She also said that if Lane ever requested money from the state legislature for the program, she would tell him, " '[y]ou're fired.' " *Ibid.*

Schmitz' termination drew the attention of many, including agents of the Federal Bureau of Investigation, which initiated an investigation into Schmitz' employment with CITY. In November 2006, Lane testified before a federal grand jury about his reasons for firing Schmitz. In January 2008, the grand jury indicted Schmitz on four counts of mail fraud and four counts of theft concerning a program receiving federal funds. See *United States v. Schmitz*, 634 F.3d 1247, 1256–1257 (C.A.11 2011). The indictment alleged that Schmitz had collected $177,251.82 in federal funds even though she performed " 'virtually no services,' " " 'generated virtually no work product,' " and " 'rarely even appeared for work at the CITY Program offices.' " *Id.*, at 1260. It further

alleged that Schmitz had submitted false statements concerning the hours she worked and the nature of the services she performed. *Id.*, at 1257.

Schmitz' trial, which garnered extensive press coverage,[1] commenced in August 2008. Lane testified, under subpoena, regarding the events that led to his terminating Schmitz. The jury failed to reach a verdict. Roughly six months later, federal prosecutors retried Schmitz, and Lane testified once again. This time, the jury convicted Schmitz on three counts of mail fraud and four counts of theft concerning a program receiving federal funds. The District Court sentenced her to 30 months in prison and ordered her to pay $177,251.82 in restitution and forfeiture.

*2376 Meanwhile, CITY continued to experience considerable budget shortfalls. In November 2008, Lane began reporting to respondent Steve Franks, who had become president of CACC in January 2008. Lane recommended that Franks consider layoffs to address the financial difficulties. In January 2009, Franks decided to terminate 29 probationary CITY employees, including Lane. Shortly thereafter, however, Franks rescinded all but 2 of the 29 terminations—those of Lane and one other employee—because of an "ambiguity in [those other employees'] probationary service." Brief for Respondent Franks 11. Franks claims that he "did not rescind Lane's termination ... because he believed that Lane was in a fundamentally different category than the other employees: he was the director of the entire CITY program, and not simply an employee." *Ibid.* In September 2009, CACC eliminated the CITY program and terminated the program's remaining employees. Franks later retired, and respondent Susan Burrow, the current Acting President of CACC, replaced him while this case was pending before the Eleventh Circuit.

In January 2011, Lane sued Franks in his individual and official capacities under Rev. Stat. § 1979, 42 U.S.C. § 1983, alleging that Franks had violated the First Amendment by firing him in retaliation for his testimony against Schmitz.[2] Lane sought damages from Franks in his individual capacity and sought equitable relief, including reinstatement, from Franks in his official capacity.[3]

The District Court granted Franks' motion for summary judgment. Although the court concluded that the record raised "genuine issues of material fact ... concerning [Franks'] true motivation for terminating [Lane's] employment," 2012 WL 5289412, *6, it held that Franks was entitled to qualified immunity as to the damages claims because "a reasonable government official in [Franks'] position would not have had reason to believe that the Constitution protected [Lane's] testimony," *id.*, *12. The District Court relied on *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006), which held that " 'when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes.' " 2012 WL 5289412, *10 (quoting *Garcetti*, 547 U.S., at 421, 126 S.Ct. 1951). The court found no violation of clearly established law because Lane had "learned of the information that he testified about while working as Director at [CITY]," such that his "speech [could] still be considered as part of his official job duties and not made as a citizen on a matter of public concern." 2012 WL 5289412, *10.

The Eleventh Circuit affirmed. 523 Fed.Appx., at 710. Like the District Court, it relied extensively on *Garcetti*. It reasoned that, "[e]ven if an employee was not required to make the speech as part of his official duties, he enjoys no First Amendment protection if his speech 'owes its existence to [the] employee's professional responsibilities' and is 'a product that the "employer himself has commissioned or created." ' " *Id.*, at 711 (quoting *Abdur–Rahman v. Walker*, 567 F.3d 1278, 1283 (C.A.11 2009)). The court concluded that Lane spoke as an employee and not as *2377 a citizen because he was acting pursuant to his official duties when he investigated Schmitz' employment, spoke with Schmitz and CACC officials regarding the issue, and terminated Schmitz. 523 Fed.Appx., at 712. "That Lane testified about his official activities pursuant to a subpoena and in the litigation context," the court continued, "does not bring Lane's speech within the protection of the First Amendment." *Ibid.* The Eleventh Circuit also concluded that, "even if ... a constitutional violation of Lane's First Amendment rights occurred in these circumstances, Franks would be entitled to qualified immunity in his personal capacity" because the right at issue had not been clearly established. *Id.*, at 711, n. 2.

We granted certiorari, 571 U.S. ——, 134 S.Ct. 999, 187 L.Ed.2d 848 (2014), to resolve discord among the Courts of Appeals as to whether public employees may be fired—or suffer other adverse employment consequences—for providing truthful subpoenaed testimony outside the course of their ordinary job responsibilities. Compare 523 Fed.Appx., at 712 (case below), with, *e.g.*, *Reilly v. Atlantic City*, 532 F.3d 216, 231 (C.A.3 2008).

II

[2] [3] [4] [5] Speech by citizens on matters of public concern lies at the heart of the First Amendment, which "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people," *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957). This remains true when speech concerns information related to or learned through public employment. After all, public employees do not renounce their citizenship when they accept employment, and this Court has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights. See, *e.g.*, *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 605, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967); *Pickering*, 391 U.S., at 568, 88 S.Ct. 1731; *Connick v. Myers*, 461 U.S. 138, 142, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). There is considerable value, moreover, in encouraging, rather than inhibiting, speech by public employees. For "[g]overnment employees are often in the best position to know what ails the agencies for which they work." *Waters v. Churchill*, 511 U.S. 661, 674, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994) (plurality opinion). "The interest at stake is as much the public's interest in receiving informed opinion as it is the employee's own right to disseminate it." *San Diego v. Roe*, 543 U.S. 77, 82, 125 S.Ct. 521, 160 L.Ed.2d 410 (2004) (*per curiam*).

Our precedents have also acknowledged the government's countervailing interest in controlling the operation of its workplaces. See, *e.g.*, *Pickering*, 391 U.S., at 568, 88 S.Ct. 1731. "Government employers, like private employers, need a significant degree of control over their employees' words and actions; without it, there would be little chance for the efficient provision of public services." *Garcetti*, 547 U.S., at 418, 126 S.Ct. 1951.

[6] *Pickering* provides the framework for analyzing whether the employee's interest or the government's interest should prevail in cases where the government seeks to curtail the speech of its employees. It requires "balanc[ing] ... the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." 391 U.S., at 568, 88 S.Ct. 1731. In *Pickering*, the Court held that a teacher's letter to the editor of a local newspaper concerning a school budget *2378 constituted speech on a matter of public concern.*Id.*, at 571, 88 S.Ct. 1731. And in balancing the employee's interest in such speech against the government's efficiency interest, the Court held that the publication of the letter did not "imped[e] the teacher's proper performance of his daily duties in the classroom" or "interfer[e] with the regular operation of the schools generally." *Id.*, at 572–573, 88 S.Ct. 1731. The Court therefore held that the teacher's speech could not serve as the basis for his dismissal. *Id.*, at 574, 88 S.Ct. 1731.

In *Garcetti*, we described a two-step inquiry into whether a public employee's speech is entitled to protection:

"The first requires determining whether the employee spoke as a citizen on a matter of public concern. If the answer is no, the employee has no First Amendment cause of action based on his or her employer's reaction to the speech. If the answer is yes, then the possibility of a First Amendment claim arises. The question becomes whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." 547 U.S., at 418, 126 S.Ct. 1951 (citations omitted).

In describing the first step in this inquiry, *Garcetti* distinguished between employee speech and citizen speech. Whereas speech as a citizen may trigger protection, the Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Id.*, at 421, 126 S.Ct. 1951. Applying that rule to the facts before it, the Court found that an internal memorandum prepared by a prosecutor in the course of his ordinary job responsibilities constituted unprotected employee speech. *Id.*, at 424, 126 S.Ct. 1951.

III

[7] Against this backdrop, we turn to the question presented: whether the First Amendment protects a public employee who provides truthful sworn testimony, compelled by subpoena, outside the scope of his ordinary job responsibilities.[4] We hold that it does.

A

The first inquiry is whether the speech in question—Lane's testimony at Schmitz' trials—is speech as a citizen on a matter of public concern. It clearly is.

1

[8] Truthful testimony under oath by a public employee outside the scope of his ordinary job duties is speech as a citizen for First Amendment purposes. That is so even when the testimony relates to his public employment or concerns information learned during that employment.

[9] [10] In rejecting Lane's argument that his testimony was speech as a citizen, the Eleventh Circuit gave short shrift to the nature of sworn judicial statements and ignored the obligation borne by all *2379 witnesses testifying under oath. See 523 Fed.Appx., at 712 (finding immaterial the fact that Lane spoke "pursuant to a subpoena and in the litigation context"). Sworn testimony in judicial proceedings is a quintessential example of speech as a citizen for a simple reason: Anyone who testifies in court bears an obligation, to the court and society at large, to tell the truth. See, *e.g.*, 18 U.S.C. § 1623 (criminalizing false statements under oath in judicial proceedings); *United States v. Mandujano*, 425 U.S. 564, 576, 96 S.Ct. 1768, 48 L.Ed.2d 212 (1976) (plurality opinion) ("Perjured testimony is an obvious and flagrant affront to the basic concept of judicial proceedings"). When the person testifying is a public employee, he may bear separate obligations to his employer—for example, an obligation not to show up to court dressed in an unprofessional manner. But any such obligations as an employee are distinct and independent from the obligation, as a citizen, to speak the truth. That independent obligation renders sworn testimony speech as a citizen and sets it apart from speech made purely in the capacity of an employee.

In holding that Lane did not speak as a citizen when he testified, the Eleventh Circuit read *Garcetti* far too broadly. It reasoned that, because Lane learned of the subject matter of his testimony in the course of his employment with CITY, *Garcetti* requires that his testimony be treated as the speech of an employee rather than that of a citizen. See 523 Fed.Appx., at 712. It does not.

The sworn testimony in this case is far removed from the speech at issue in *Garcetti*—an internal memorandum prepared by a deputy district attorney for his supervisors recommending dismissal of a particular prosecution. The *Garcetti* Court held that such speech was made pursuant to the employee's "official responsibilities" because "[w]hen [the employee] went to work and performed the tasks he was paid to perform, [he] acted as a government employee. The fact that his duties sometimes required him to speak or write does not mean that his supervisors were prohibited from evaluating his performance." 547 U.S., at 422, 424, 126 S.Ct. 1951.

[11] But *Garcetti* said nothing about speech that simply relates to public employment or concerns information learned in the course of public employment. The *Garcetti* Court made explicit that its holding did not turn on the fact that the memo at issue "concerned the subject matter of [the prosecutor's] employment," because "[t]he First Amendment protects some expressions related to the speaker's job." *Id.*, at 421, 126 S.Ct. 1951. In other words, the mere fact that a citizen's speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech. The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties.

It bears emphasis that our precedents dating back to *Pickering* have recognized that speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment. In *Pickering*, for example, the Court observed that "[t]eachers are ... the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal." 391 U.S., at 572, 88 S.Ct. 1731; see also *Garcetti*, 547 U.S., at 421, 126 S.Ct. 1951 (recognizing that "[t]he *2380 same is true of many other categories of public employees"). Most recently, in *San Diego v. Roe*, 543 U.S., at 80, 125 S.Ct. 521, the Court again observed that public employees "are uniquely qualified to comment" on "matters concerning government policies that are of interest to the public at large."

The importance of public employee speech is especially evident in the context of this case: a public corruption scandal. The United States, for example, represents that because "[t]he more than 1000 prosecutions for federal corruption offenses that are brought in a typical year ... often depend on evidence about activities that government officials undertook while in office," those prosecutions often "require testimony from other government employees." Brief for United States as *Amicus Curiae* 20. It would be antithetical to our jurisprudence to conclude that the very kind of speech necessary to prosecute corruption by public officials—speech by public employees regarding information learned through their employment—may never form the basis for a First Amendment retaliation claim. Such a rule would place public employees who witness corruption in an impossible position, torn between the obligation to testify truthfully and the desire to avoid retaliation and keep their jobs.

Applying these principles, it is clear that Lane's sworn testimony is speech as a citizen.

2

[12] [13] [14] Lane's testimony is also speech on a matter of public concern. Speech involves matters of public concern "when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' or when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.' " *Snyder v. Phelps*, 562 U.S. ——, ——, 131 S.Ct. 1207, 1216, 179 L.Ed.2d 172 (2011) (citation omitted). The inquiry turns on the "content, form, and context" of the speech. *Connick*, 461 U.S., at 147–148, 103 S.Ct. 1684.

The content of Lane's testimony—corruption in a public program and misuse of state funds—obviously involves a matter of significant public concern. See, *e.g.*, *Garcetti*, 547 U.S., at 425, 126 S.Ct. 1951 ("Exposing governmental inefficiency and misconduct is a matter of considerable significance"). And the form and context of the speech—sworn testimony in a judicial proceeding—fortify that conclusion. "Unlike speech in other contexts, testimony under oath has the formality and gravity necessary to remind the witness that his or her statements will be the basis for official governmental action, action that often affects the rights and liberties of others." *United States v. Alvarez*, 567 U.S. ——, ——, 132 S.Ct. 2537, 2546, 183 L.Ed.2d 574 (2012) (plurality opinion).

* * *

We hold, then, that Lane's truthful sworn testimony at Schmitz' criminal trials is speech as a citizen on a matter of public concern.

B

[15] This does not settle the matter, however. A public employee's sworn testimony is not categorically entitled to First Amendment protection simply because it is speech as a citizen on a matter of public concern. Under *Pickering*, if an employee speaks as a citizen on a matter of public concern, the next question is whether the government had "an adequate justification for treating the employee differently from any other member of the public" based on the government's needs as an employer. *Garcetti*, 547 U.S., at 418, 126 S.Ct. 1951.

*2381 As discussed previously, we have recognized that government employers often have legitimate "interest[s] in the effective and efficient fulfillment of [their] responsibilities to the public," including " 'promot[ing] efficiency and integrity in the discharge of official duties,' " and " 'maintain[ing] proper discipline in public service.' " *Connick*, 461 U.S., at 150–151, 103 S.Ct. 1684. We have also cautioned, however, that "a stronger showing [of government interests] may be necessary if the employee's speech more substantially involve[s] matters of public concern." *Id.*, at 152, 103 S.Ct. 1684.

[16] Here, the employer's side of the *Pickering* scale is entirely empty: Respondents do not assert, and cannot demonstrate, any government interest that tips the balance in their favor. There is no evidence, for example, that Lane's testimony at Schmitz' trials was false or erroneous or that Lane unnecessarily disclosed any sensitive, confidential, or privileged information while testifying.[5] In these circumstances, we conclude that Lane's speech is entitled to protection under the First Amendment. The Eleventh Circuit erred in holding otherwise and dismissing Lane's claim of retaliation on that basis.

IV

[17] Respondent Franks argues that even if Lane's testimony is protected under the First Amendment, the claims against him in his individual capacity should be dismissed on the basis of qualified immunity. We agree.

[18] [19] Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al–Kidd*, 563 U.S. ——, ——, 131 S.Ct. 2074, 2085, 179 L.Ed.2d 1149 (2011). Under this doctrine, courts may not award damages against a government official in his personal capacity unless "the official violated a statutory or constitutional right," and "the right was 'clearly established' at the time of the challenged conduct." *Id.*, at ——, 131 S.Ct., at 2080.

The relevant question for qualified immunity purposes is this:

Could Franks reasonably have believed, at the time he fired Lane, that a government employer could fire an employee on account of testimony the employee gave, under oath and outside the scope of his ordinary job responsibilities? Eleventh Circuit precedent did not preclude Franks from reasonably holding that belief. And no decision of this Court was sufficiently clear to cast doubt on the controlling Eleventh Circuit precedent.

In dismissing Lane's claim, the Eleventh Circuit relied on its 1998 decision in *Morris v. Crow*, 142 F.3d 1379 (*per curiam*). There, a deputy sheriff sued the sheriff and two other officials, alleging that he had been fired in retaliation for statements he made in an accident report and later giving deposition testimony about his investigation of a fatal car crash between another officer and a citizen. *Id.*, at 1381. In his accident report, the plaintiff noted that the officer was driving more than 130 mph in a 50 mph zone, without using his emergency blue warning light. See *ibid.* The plaintiff later testified to these facts at a deposition in a wrongful death suit against the sheriff's office. *Ibid.* His superiors later fired him. *Ibid.*

The Eleventh Circuit, in a pre-*Garcetti* decision, concluded that the plaintiff's deposition testimony was unprotected. It held that a public employee's speech is *2382 protected only when it is " 'made primarily in the employee's role as citizen,' " rather than " 'primarily in the role of employee.' " *Morris*, 142 F.3d, at 1382. And it found the plaintiff's deposition testimony to be speech as an employee because it "reiterated the conclusions regarding his observations of the accident" that he "generated in the normal course of [his] duties." *Ibid.* Critically, the court acknowledged—and was unmoved by—the fact that although the plaintiff had investigated the accident and prepared the report pursuant to his official duties, there was no "evidence that [he] gave deposition testimony for any reason other than in compliance with a subpoena to testify truthfully in the civil suit regarding the ... accident." *Ibid.* The court further reasoned that the speech could not "be characterized as an attempt to make public comment on sheriff's office policies and procedures, the internal workings of the department, the quality of its employees or upon any issue at all." *Ibid.*

Lane argues that two other Eleventh Circuit precedents put Franks on notice that his conduct violated the First Amendment: *Martinez v. Opa–Locka*, 971 F.2d 708 (1992) (*per curiam*), and *Tindal v. Montgomery Cty. Comm'n*, 32 F.3d 1535 (1994). *Martinez* involved a public employee's subpoenaed testimony before the Opa–Locka City Commission regarding her employer's procurement practices. 971 F.2d, at 710. The Eleventh Circuit held that her speech was protected, reasoning that it addressed a matter of public concern and that her interest in speaking freely was not outweighed by her employer's interest in providing government services. *Id.*, at 712. It held, further, that the relevant constitutional rules were so clearly established at the time that qualified immunity did not apply. *Id.*, at 713. *Tindal*, decided two years after *Martinez*, involved a public employee's subpoenaed testimony in her co-worker's sexual harassment lawsuit. 32 F.3d, at 1537–1538. The court again ruled in favor of the employee. It held that the employee's speech touched upon a public concern and that her employer had not offered any evidence that the speech hindered operations. *Id.*, at 1539–1540.

Morris, *Martinez*, and *Tindal* represent the landscape of Eleventh Circuit precedent the parties rely on for qualified immunity purposes. If *Martinez* and *Tindal* were controlling in the Eleventh Circuit in 2009, we would agree with Lane that Franks could not reasonably have believed that it was lawful to fire Lane in retaliation for his testimony. But both cases must be read together with *Morris*, which reasoned—in declining to afford First Amendment protection—that the plaintiff's decision to testify was motivated solely by his desire to comply with a subpoena. The same could be said of Lane's decision to testify. Franks was thus entitled to rely on *Morris* when he fired Lane.[6]

Lane argues that *Morris* is inapplicable because it distinguished *Martinez*, suggesting that *Martinez* survived *Morris*. See *Morris*, 142 F.3d, at 1382–1383. But this debate over whether *Martinez* or *Morris* applies to Lane's claim only highlights the dispositive point: At the time of Lane's termination, Eleventh Circuit precedent did not provide clear notice that subpoenaed testimony concerning information acquired through public employment is speech of a citizen entitled to First *2383 Amendment protection. At best, Lane can demonstrate only a discrepancy in Eleventh Circuit precedent, which is insufficient to defeat the defense of qualified immunity.

Finally, Lane argues that decisions of the Third and Seventh Circuits put Franks on notice that his firing of Lane was unconstitutional. See *Reilly*, 532 F.3d, at 231 (C.A.3) (truthful testimony in court is citizen speech protected by the First Amendment); *Morales v. Jones*, 494 F.3d 590, 598 (C.A.7 2007) (similar). But, as the court below acknowledged, those precedents were in direct conflict with Eleventh Circuit precedent. See 523 Fed.Appx., at 712, n. 3.

There is no doubt that the Eleventh Circuit incorrectly concluded that Lane's testimony was not entitled to First Amendment protection. But because the question was not "beyond debate" at the time Franks acted, *al–Kidd*, 563 U.S., at ——, 131 S.Ct., at 2083, Franks is entitled to qualified immunity.

V

Lane's speech is entitled to First Amendment protection, but because respondent Franks is entitled to qualified immunity, we affirm the judgment of the Eleventh Circuit as to the claims against Franks in his individual capacity. Our decision does not resolve, however, the claims against Burrow—initially brought against Franks when he served as President of CACC—in her official capacity. Although the District Court dismissed those claims for prospective relief as barred by the Eleventh Amendment, the Eleventh Circuit declined to consider that question on appeal, see 523 Fed.Appx., at 711 ("Because Lane has failed to establish a *prima facie* case of retaliation, we do not decide about Franks' defense of sovereign immunity"), and the parties have not asked us to consider it now. We therefore reverse the judgment of the Eleventh Circuit as to those claims and remand for further proceedings.

* * *

For the foregoing reasons, the judgment of the United States Court of Appeals for the Eleventh Circuit is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, with whom Justice SCALIA and Justice ALITO join, concurring.

This case presents the discrete question whether a public employee speaks "as a citizen on a matter of public concern," *Garcetti v. Ceballos*, 547 U.S. 410, 418, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006), when the employee gives "[t]ruthful testimony under oath ... outside the scope of his ordinary job duties," *ante*, at 2378. Answering that question requires little more than a straightforward application of *Garcetti*. There, we held that when a public employee speaks "pursuant to" his official duties, he is not speaking "as a citizen," and First Amendment protection is unavailable. 547 U.S., at 421–422, 126 S.Ct. 1951. The petitioner in this case did not speak "pursuant to" his ordinary job duties because his responsibilities did not include testifying in court proceedings, see *ante*, at 2378, n. 4, and no party has suggested that he was subpoenaed as a representative of his employer, see Fed. Rule Civ. Proc. 30(b)(6) (requiring subpoenaed organizations to designate witnesses to testify on their behalf). Because petitioner did not testify to "fulfil[l] a [work] responsibility," *Garcetti, supra*, at 421, 126 S.Ct. 1951, he spoke "as a citizen," not as an employee.

*2384 We accordingly have no occasion to address the quite different question whether a public employee speaks "as a citizen" when he testifies in the course of his ordinary job responsibilities. See *ante*, at 2378, n. 4. For some public employees—such as police officers, crime scene technicians, and laboratory analysts—testifying is a routine and critical part of their employment duties. Others may be called to testify in the context of particular litigation as the designated representatives of their employers. See Fed. Rule Civ. Proc. 30(b)(6). The Court properly leaves the constitutional questions raised by these scenarios for another day.

All Citations

134 S.Ct. 2369, 189 L.Ed.2d 312, 98 Empl. Prac. Dec. P 45,095, 82 USLW 4513, 38 IER Cases 585, 14 Cal. Daily Op. Serv. 6721, 2014 Daily Journal D.A.R. 7828, 24 Fla. L. Weekly Fed. S 875

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 See, *e.g.*, Lawmaker Faces Fraud Charge in June, Montgomery Advertiser, May 6, 2008, p. 1B; Johnson, State Lawmaker's Fraud Trial Starts Today, Montgomery Advertiser, Aug. 18, 2008, p. 1B; Faulk, Schmitz Testifies in Her Defense: Says State Job was Legitimate, Birmingham News, Feb. 20, 2009, p. 1A; Faulk, Schmitz Convicted, Loses her State Seat, Birmingham News, Feb. 25, 2009, p. 1A.

2 Lane also brought claims against CACC, as well as claims under a state whistleblower statute, Ala.Code § 36–26A–3 (2013), and 42 U.S.C. § 1985. Those claims are not at issue here.

3 Because Burrow replaced Franks as President of CACC during the pendency of this lawsuit, the claims originally filed against Franks in his official capacity are now against Burrow.

4 It is undisputed that Lane's ordinary job responsibilities did not include testifying in court proceedings. See *Lane v. Central Ala. Community College*, 523 Fed.Appx. 709, 712 (C.A.11 2013). For that reason, Lane asked the Court to decide only whether truthful sworn testimony that is not a part of an employee's ordinary job responsibilities is citizen speech on a matter of public concern. Pet. for Cert. i. We accordingly need not address in this case whether truthful sworn testimony would constitute citizen speech under *Garcetti* when given as part of a public employee's ordinary job duties, and express no opinion on the matter today.

5 Of course, quite apart from *Pickering* balancing, wrongdoing that an employee admits to while testifying may be a valid basis for termination or other discipline.

6 There is another reason *Morris* undermines *Martinez* and *Tindal*. In *Martinez* and *Tindal*, the Eleventh Circuit asked only whether the speech at issue addressed a matter of public concern. *Morris*, which appeared to anticipate *Garcetti*, asked both whether the speech at issue was speech of an employee (and not a citizen) and whether it touched upon a matter of public concern. In this respect, one could read *Morris* as cabining *Martinez* and *Tindal*.

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BEN M. SIFUENTES, JR., P.C.
[redacted]

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: [redacted]

To:	Tammy Garcia Director of Human Resources
Of:	City of Seguin
From:	Ben M. Sifuentes, Jr.
Client/Matter:	Michael Guerra
Date:	June 21, 2018

DOCUMENTS	NUMBER OF PAGES
Letter	(+Coversheet)

COMMENTS:

Please note our request for more time based upon the missing audio file.

BEN M. SIFUENTES, JR., P.C.
ATTORNEY AT LAW
[redacted]

TELEPHONE
[redacted]
FAX
[redacted]

June 21, 2018

Chief Kevin Kelso
[redacted]

Re: Rebuttal - Pre-Disciplinary Hearing Corporal Michael Guerra
CD Audio Disk

Dear Chief Kelso:

Yesterday morning, Ms. Tammy Garcia provided to me a CD-R, which was labeled: I.A. 18-004 Guerra Interview, 6-8-18. This morning, I attempted to play the file contained on the CD-R. The only file name appearing on this CD-R is a file with the name: <Track01.cda>. The file properties indicate that the file size is 44 bytes and that it was created on December 31, 1994 at 6:00 p.m. This is not a playable file and is not Michael Guerra's interview.

Clearly, there has been an error in providing the audio interview of Michael Guerra. You have been very conscientious in providing materials necessary to guarantee Mr. Guerra's due process rights under *Loudermill*, so I trust this was an inadvertent error in copying.

I respectfully request that we be provided the audio file. Perhaps doing so on a USB thumb drive will avoid copying errors. Additionally, I am requesting that our five-day response deadline begin from the date we are provided a copy of Mr. Guerra's audio file.

Thank you for your time and attention.

Sincerely,

Ben M. Sifuentes, Jr.

cc: Tammy Garcia, HR Director
City of Seguin
Michael Guerra