

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

ESTATE OF MICHAEL HABAY, and
WILLIAM AND ELLEN HABAY, individually, and as Co-Representatives,

Plaintiffs,

v.

VINCENT GALLERANI, individually, and in his official capacity as an officer of the City of Boulder Colorado Police Department,
DAVID KICERA, individually, and in his official capacity as sergeant with the City of Boulder Colorado Police Department,
NICHOLAS SMETZER, individually, and in his official capacity as an officer with the City of Boulder Colorado Police Department,
RYAN LORD, individually, and in his official capacity as an officer of the City of Boulder Colorado Police Department,
IAN COMPTON, individually, and in his official capacity as an officer with the City of Boulder Colorado Police Department,
JENNIFER PADDOCK, individually, and in her official capacity as an officer with the City of Boulder Colorado Police Department,
STEVEN CAST, individually, and in her official capacity as an officer with the City of Boulder Colorado Police Department,
DAVID WILCOX, individually, and in her official capacity as an officer with the City of Boulder Colorado Police Department,
UNKNOWN OFFICERS AND EMPLOYEES OF THE BOULDER COLORADO POLICE DEPARTMENT, individually, in their official capacities as officers and employees with the City of Boulder Police Department; and
THE CITY OF BOULDER, COLORADO, a municipality,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiffs, through counsel, Jonathan S. Willett, Attorney at Law, and Darold W. Killmer,

Mari Newman and Andy McNulty of Killmer, Lane, Newman, LLP, hereby submit their Complaint and Jury Demand as follows:

I. INTRODUCTION

1. Michael Habay grappled with mental illness on a daily basis since his childhood. On November 24, 2013, Mr. Habay was in the midst of another struggle with his mental health problems when a neighbor called the Boulder Police Department. Calls for assistance to Mr. Habay's home based on his erratic behavior and outbursts were nothing new for the Boulder Police Department, but, on November 24, 2013, the Boulder Police Department responded to Mr. Habay's behavior in a way they had never before: with deadly force. Rather than utilizing de-escalation techniques to calm Mr. Habay during his episode, the Defendant law enforcement officers decided to employ military tactics.

2. The Defendant law enforcement officers arrived at Mr. Habay's home and waited outside for over twenty minutes, gathering tactical gear that included a SWAT rifle, battering ram and military shield. During this time, the Defendant law enforcement officers failed to conduct any sort of investigation into whether exigent circumstances existed that would have required them to force their way into Mr. Habay's home, or if Mr. Habay's reported erratic behavior was threatening the safety of any person. Instead, the Defendant law enforcement officers decided to shoot first and ask questions later. They used a battering ram to burst through the front door into Mr. Habay's living room, and then Defendant Gallerani killed him when he tried to flee through that same door with a knife in his hand. Defendants killed Mr. Habay because of his mental illness.

3. Defendants' actions violated Mr. Habay's rights under both the United States Constitution and the Americans with Disabilities Act.

II. JURISDICTION AND VENUE

4. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1332 (damages in excess of \$75,000), 1343, 42 U.S.C. §§ 12101, *et seq.*, 1983, 1985, 1986, 1988 (for attorneys fees and costs), United States Constitution Amendments IV, V, XIV, and the law of pendent and ancillary state claims.

5. Venue is proper in the District of Colorado pursuant to 28 U.S.C. §1391(b) as all the events described occurred in Colorado.

III. PARTIES

6. At all times relevant to the subject matter of this litigation, the decedent, Michael Habay, was a citizen of the United States and a resident of the State of Colorado.

7. William Habay is a citizen of the United States and a resident of Lake County, Illinois. Mr. Habay is the father of the deceased, Michael Habay.

8. Ellen Habay is a citizen of the United States and a resident of Lake County, Illinois. Ms. Habay is the mother of the deceased, Michael Habay.

9. At all times relevant hereto, Vincent Gallerani was an adult resident of Colorado. Mr. Gallerani is an officer with the City of Boulder, Colorado Police Department and was acting under color of state law. Mr. Gallerani is sued in his individual and official capacity.

10. At all times relevant hereto, David Kicera was an adult resident of Colorado, a sergeant with the City of Boulder Police Department, and acting under color of state law. Mr.

Kicera is sued in his individual and official capacity.

11. At all times relevant hereto, Nicholas Smetzer was an adult resident of Colorado, a sergeant with the City of Boulder Police Department, and acting under color of state law. Mr. Smetzer is sued in his individual and official capacity.

12. At all times relevant hereto, Ryan Lord was an adult resident of Colorado, an officer with the City of Boulder Police Department, and acting under color of state law. Mr. Lord is sued in his individual and official capacity.

13. At all times relevant hereto, Ian Compton was an adult resident of Colorado, an officer with the City of Boulder Police Department, and acting under color of state law. Mr. Compton is sued in his individual and official capacity.

14. At all times relevant hereto, Jennifer Paddock was an adult resident of Colorado, a sergeant with the City of Boulder Police Department, and acting under color of state law. Ms. Paddock is sued in her individual and official capacity.

15. At all times relevant hereto, Steven Cast was an adult resident of Colorado, an officer with the City of Boulder Police Department, and acting under color of state law. Mr. Cast is sued in his individual and official capacity.

16. At all times relevant hereto, David Wilcox was an adult resident of Colorado, a sergeant with the City of Boulder Police Department, and acting under color of state law. Mr. Wilcox is sued in his individual and official capacity.

17. The City of Boulder Colorado is a municipality and is responsible for supervision, training, official policies, customs and actual practices of its agents, the City of Boulder Police

Department.

18. At all times relevant hereto, “Unknown Officers” were adult residents of Colorado and officers and employees with the City of Boulder Colorado Police Department acting under color of state law. These persons are sued in their individual and official capacities.

IV. FACTS

19. On November 24, 2013, at approximately 12:30 p.m. Defendant Gallerani shot and killed Michael Habay at Mr. Habay’s apartment located at 3009 Madison Avenue #J-209, Boulder, Colorado. The weapon used to kill Mr. Habay was Gallerani’s SWAT rifle, a Heckler & Koch 516 .223 caliber assault rifle.

20. According to the coroner’s report, Mr. Habay died as a result of two bullets: one bullet pierced his heart, and the other his left lung. Both bullets took a downward trajectory through Mr. Habay’s body. One bullet pierced Mr. Habay’s heart, eventually lodging itself in the T6 vertebrae. The other bullet pierced his lung, eventually ending up in the right lobe of his liver. The coroner stated there was no evidence of close range or contact gunfire, demonstrating that Mr. Habay was still some distance from Defendants when they shot him.

21. Michael Habay was well-known within the Boulder Police Department. Since 2005, Boulder Police have had a number of contacts with Michael Habay, including multiple mental health checks. On several occasions, Boulder police imposed or were involved in the imposition of mental health holds on Mr. Habay.

22. Mr. Habay has a long history of mental health problems, which are well known to Defendants. The Boulder Police Department uses a wide range of data collection software in the

course of policing its citizens. Some of these software systems, such as COPLINK, collect data about people from a wide variety of sources, including school and mental health records. Upon information and belief, such software systems were used by the Boulder Police Department at the time the incident in this case took place.

23. As a youth, Mr. Habay was diagnosed with ADHD, visual and auditory dyslexic behaviors, alienation and isolation from peers, depression, anxiety, impulsivity, poor behavior control and bi polar disorder. When Mr. Habay was particularly distressed, he would pace about yelling insults and epithets. Boulder police had many encounters with Mr. Habay wherein he was in such a state of distress and, in fact, some of these incidents led to the aforementioned mental health checks.

24. On November 24, 2013 at about 7:00 a.m., Kathleen Waldman, the mother of Mr. Habay's girlfriend Kirsten Stenseng, called the Boulder police from her home in Florida. She complained that Mr. Habay had taken her daughter's possessions out of the apartment and put them into the street. She further reported that her daughter was not in the apartment with Mr. Habay, but was somewhere outside sitting in her Cadillac. She also told Defendant Gallerani that Mr. Habay had not made any threats to her daughter. Defendant Vincent Gallerani, who had spoken with Ms. Waldman on the telephone, responded to Mr. Habay's residence, along with Officers Lord, Compton, Cast, and Parker.

25. After arriving at Mr. Habay's apartment, Defendants Gallerani, Compton, Lord and Parker attempted to contact Mr. Habay at approximately 7:30 a.m. on November 24, 2013. From inside Mr. Habay's apartment, Gallerani could hear a man yelling epithets. When

Gallerani knocked on the door, Mr. Habay did not answer.

26. Subsequently, according to a recorded interview, Defendant Gallerani obtained Ms. Stenseng's telephone number from dispatch. He contacted Ms. Stenseng outside in her Cadillac. According to Gallerani's report, Ms. Stenseng reported that she had gone to Mr. Habay's apartment the day before to wish him a happy birthday and obtain some of her belongings. They ate pizza, watched television, and played with their puppy. They had no problems. It was late and she slept in a separate area downstairs. The next morning, she was in a bad mood and she yelled at Mr. Habay. She took her property out to her vehicle and called her mother in Florida, who in turn called the police.

27. Defendant Gallerani proceeded to contact Sergeant Kicera, who explained in a recorded interview that he told Gallerani there was no reason to arrest Mr. Habay, as there was no offense other than the possible violation of a protective order. Any citation for failing to comply with the protective order would be referred to the Boulder District Attorney to add to the existing charges.

28. At approximately 12:00 p.m. on November 24, 2013, Boulder Police Department Dispatch sent out a "tone alert" for the address of 3009 Madison Avenue Boulder Colorado #J-208. A "tone alert" is a special call for officers to respond to an emergency situation. While eating his lunch, Defendant Gallerani heard the alert and responded knowing that he had been to that location earlier in the day. Defendants Compton, Lord Paddock, Smetzer and Sergeant Kicera all responded to the apartment.

29. Upon information and belief, the residents of another apartment in the same

complex had called police at approximately 12:30 p.m. upon witnessing a man who they believed to be the resident of #J-208, outside near the pool who appeared to be yelling while holding a sheath. They reported that the man may have stabbed a wooden railing with a knife. There was no report of a woman being with the man. According to the neighbor, the man disappeared from her view and may have gone inside his apartment.

30. There was no emergency or crime in progress. The tone alert was not warranted by any fact, policy, or practice, and was the result of inadequate training.

31. Defendant Gallerani responded within five minutes of the 12:30 phone call and he assumed a position immediately outside of Mr. Habay's apartment.

32. At the time of Defendant Gallerani's arrival at Mr. Habay's apartment, Ms. Stenseng was completely safe with her cell phone chatting with a neighbor in an apartment approximately 100 feet from the Habay apartment.

33. The reporting neighbors and Ms. Stenseng were all available to the police at the apartment complex and by their cell phones.

34. Defendant Gallerani, and the team of officers at the scene did not use even the most rudimentary police procedures, policies and practices to ascertain there was no crime being committed and that no emergency existed.

35. Rather than simply contacting the reporting neighbors or Ms. Stenseng, Defendant Gallerani and other officers took up offensive Special Weapons and Tactics (SWAT) positions outside Mr. Habay's apartment. Once backup arrived, Defendant Gallerani obtained his SWAT rifle, a Heckler & Koch 516 assault rifle, from the trunk of his vehicle. Defendant Gallerani was

also armed with a pistol in a holster and a backup firearm on his left ankle, and protective clothing.

36. According to eyewitnesses in other apartments viewing the situation develop outside Mr. Habay's apartment, including Ms. Meyer and Mr. Stock, Maria Garibay, Maria Silva Morales, B.H. (a minor), Sergio Hernandez, J.H.S. (a minor), the officers covertly set up their SWAT positions for nearly twenty minutes as Mr. Habay unwittingly remained alone inside his apartment.

37. Six police cars had responded to the scene. The officers responding who were directly involved in the SWAT assault into Mr. Habay's apartment were Defendants Gallerani, Kicera, Smetzer, Wilcox, Cast, Compton, Lord, and Paddock. These officers all communicated by radio while establishing their SWAT based positions readying for unlawful entry into the Habay apartment. Upon her arrival, Paddock asked if any officer had a "less lethal" weapon. Nobody did. She pulled her Remington 470 from her trunk and loaded it with beanbag rounds.

38. All of the Defendant officers had tactical armor protective gear.

39. Pursuant to departmental policy, no officer was required to, or did employ Crisis Intervention Training, or any other widely accepted and utilized de-escalation tactics at any time during the fatal encounter. This was a cause of death of Mr. Habay because the individual Defendants instead escalated the situation by provoking him.

40. The City of Boulder and the supervisor Defendants were deliberately indifferent to the need to train and supervise officers regarding the appropriate treatment of mental health calls, and to discipline officers who failed to properly address mental health related concerns.

41. The Boulder Police Department has an informal policy, custom, or practice of utilizing excessive force and entering homes unlawfully when responding to calls for assistance regarding individuals with perceived mental illness. In 2006, the Boulder Police Department settled a lawsuit after Boulder law enforcement officers illegally entered a mentally ill woman's home and deployed a Taser without warning.¹

42. Defendant Gallerani is a SWAT team leader, a defensive tactics instructor, and an officer survival instructor. Defendant Gallerani has received no Crisis Intervention Training (CIT) or any similar training geared toward de-escalating police encounters with people under crisis or stress.

43. Defendant Smetzer is also a SWAT officer and fully trained in SWAT tactics, which was the exclusive training employed in the fatal encounter despite the fact that all law enforcement officers who participated in the SWAT operation knew when planning and executing the operation that Mr. Habay had multiple serious mental illness.

44. Defendant Kicera was the commanding officer in charge. He agreed to defer to Defendants Gallerani and Smetzer the discretion to use SWAT tactics on the situation.

45. All of the Defendant officers had guns drawn as they set up tactical positions.

46. Taking staggered tactical positions outside the apartment, Defendant Lord went up to the door with the battering ram. Defendant Smetzer followed with a protective shield, and Defendant Gallerani was third with his assault SWAT rifle. Defendant Paddock had loaded a

¹ See Mitchell Byars, *Boulder reaches \$80,000 settlement with woman over Taser use*, DailyCamera, (September 29, 2011), http://www.dailycamera.com/ci_19005121.

Remington 470 shotgun with “less lethal” bean bag rounds, but she was standing behind the gun wielding SWAT team leaders.

47. Defendants Kicera and Gallerani conferred by radio and decided to force entry in the apartment with the battering ram after a single knock and announcement by police at the door.

48. No officer attempted to contact Ms. Stenseng, before using lethal SWAT tactics to illegally enter the apartment.

49. There was no information in the radio chatter or by dispatch that any probable cause existed or other legally valid basis existed to enter the apartment. Likewise, Defendants did not seek or obtain a warrant to enter Mr. Habay’s apartment.

50. After Defendant Lord breached the door with approximately three slams of the battering ram, Defendants Smetzer and Gallerani charged and entered into the apartment, with weapons drawn. Defendant Smetzer lead the charge with his shield.

51. Without giving Mr. Habay an adequate opportunity to comply with any law enforcement directives, Defendant Gallerani unloaded several lethal rounds as Mr. Habay, still in his home, tried to flee with the knife in his hand. One round pierced Mr. Habay’s heart took a downward trajectory winding up in his T6 vertebrae. The other bullet pierced his lung and lodged itself in his liver. A third bullet fragment was recovered in a staircase railing inside the apartment. Mr. Habay was falling as he was gunned down.

52. Notably, Defendants have attempted to justify their use of illegal force with false reports. For example, Gallerani later falsely stated Smetzer was “getting all cut up” during the

encounter with Mr. Habay, when in fact, Defendant Smetzer suffered no injury. Defendant Gallerani also later falsely claimed Mr. Habay was armed with a machete.

53. As Mr. Habay lay bleeding on the threshold of his apartment, Ms. Stenseng came running up having heard the shots. As she arrived, all the officers were in a “lethal stance” with weapons drawn over Mr. Habay’s body, yelling at him to “drop the knife.” Critically, it was only after Defendant Gallerani had shot and killed Mr. Habay that the officers told Mr. Habay to disarm.

54. Also noteworthy, in addition to shooting Mr. Habay dead, were the actions the individual Defendants deliberately failed to undertake before resorting to lethal force against a man who was alone, in his home. No individual Defendant ever asked Mr. Habay to come outside before smashing down his door with a battering ram. No individual Defendant ever asked Mr. Habay to drop the knife before using lethal force. No individual Defendant attempted in any other way to talk down Mr. Habay before shooting him. No individual Defendant resorted to any form of non-lethal force before discharging their firearms, including but not limited to a taser or beanbag gun. Both of these forms of non-lethal force were readily available to the individual Defendants who entered Mr. Habay’s home. No individual Defendant so much as hinted at the idea that simply leaving Mr. Habay’s house was a better option than shooting him dead under the circumstances, as Mr. Habay was not presenting a physical threat to anyone in the home (besides perhaps himself) before officers stormed inside and needlessly provoked a fatal encounter.

55. Eventually, Defendant Paddock stated, “I think we should call an ambulance.” The ambulance arrived at 12:54 p.m. Mr. Habay was pronounced dead at 1:21 p.m.

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 – 4th & 14th Amendment Violation – Excessive Force
(Against all Defendants)

56. Plaintiffs hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

57. At all relevant times hereto, Defendants were acting under the color of state law in their capacities as Boulder law enforcement officers.

58. At the time when Mr. Habay was unlawfully apprehended, shot, and killed by Defendant Gallerani, Mr. Habay had a clearly established constitutional right under the Fourth Amendment to the United States Constitution to be secure in his person from unreasonable seizure through excessive force.

59. Any reasonable law enforcement officer knew or should have known of this clearly established right at the time of Mr. Habay's death.

60. Defendant Gallerani engaged in the use of force that was objectively unreasonable in light of the facts and circumstances confronting him, violating Mr. Habay's Fourth Amendment rights.

61. All of the Defendants made active decisions to employ lethal tactical force in effectuating the illegal entry onto Mr. Habay's apartment that resulted in Defendant Gallerani's use of objectively unreasonable force.

62. Defendant Gallerani's actions, as described herein, were undertaken intentionally, maliciously, callously, willfully, wantonly, and/or in reckless disregard of Plaintiff's federally protected rights.

63. Defendant Gallerani unreasonably used excessive force against Mr. Habay, resulting in Mr. Habay's death.

64. None of the Defendants took reasonable steps to protect Mr. Habay from the objectively unreasonable use of force of any other Defendant, despite being in a position to do so. Each is therefore liable for the damages resulting from the objectively unreasonable force used by the others.

65. The acts or omissions of Defendants were the moving force behind and proximate cause of Mr. Habay's injuries.

66. The acts and omissions of Defendants were engaged in pursuant to the custom, policy, and practice of the City of Boulder, which encourages, condones, tolerates, and ratifies the use of excessive force by law enforcement officers in the City, and covers up such unconstitutional behavior in response to complaints or other notice.

67. The acts or omissions of Defendants caused Mr. Habay damages in that he suffered extreme physical and mental pain during the assault that resulted in his death.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 12132 – ADA
(Against All Defendants)

68. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

69. Mr. Habay was a qualified individual with a disability, pursuant to the Americans with Disabilities Act.

70. Defendants excluded Mr. Habay from participation in, or otherwise denied him,

of the City of Boulder's services, programs, or activities, or otherwise discriminated against him because of his disability, and this denial of services, programs, or other activities and/or discrimination resulted in the shooting of Mr. Habay and his resulting damages.

71. Defendants were faced with no reasonable exigency when they forced entry into Mr. Habay's apartment unit. Defendants had no information, and no reasonable belief, that anyone other than Mr. Habay was present inside his apartment, and were aware of Mr. Habay's disability and the symptoms and manifestations of Mr. Habay's recognized disability. Defendants conduct excluded Plaintiff from participation in, and denied Mr. Habay the benefits of, Defendant City of Boulder's programs and activities, and/or discriminated against Mr. Habay.

72. Defendants wrongly arrested and used excessive force against Mr. Habay because they of his disability.

73. Defendants failed to reasonably accommodate Mr. Habay's disability in the course of their interaction with Mr. Habay and caused Mr. Habay to suffer greater injury or indignity during his arrest than other arrestees.

74. Defendant City of Boulder failed to properly train, supervise, and/or discipline the Law Enforcement Defendants in recognizing symptoms of disability under Title II of the American with Disabilities Act.

75. The exclusion, denial of benefits, and/or discrimination against Mr. Habay was by reason of Mr. Habay's recognized disability.

76. The acts or omissions of Defendants caused Mr. Habay damages in that he suffered extreme physical and mental pain during the assault that resulted in his death.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 – Failure to Train or Supervise
(Against Defendant City of Boulder)

77. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

78. Defendant City of Boulder failed to properly train and supervise its employees to avoid the use of excessive force, particularly the use of excessive force against those with disabilities.

79. Defendant City of Boulder knew, or should have known, that its employees would use excessive force violating those with disabilities constitutional rights.

80. Defendant City of Boulder was deliberately indifferent to the constitutional rights of those with disabilities, knowing that dangerous and potentially fatal consequences could be suffered by such individuals (including Mr. Habay) by failing to properly train and supervise its employees. Defendant City of Boulder could have and should have pursued reasonable methods for the training and supervising of such employees, but failed to do so.

81. Defendant City of Boulder's policies, customs, or practices in failing to properly train and supervise its employees were the moving force and proximate cause of the violation to Mr. Habay's constitutional rights.

82. The custom, policy, and practice of the City of Boulder of encouraging, condoning, tolerating, and ratifying the use of excessive force by law enforcement officers in The City, as described herein, were the moving force behind and proximate cause of the violation to Mr. Habay's constitutional rights.

83. Through Stanley L. Garnett's written report, which condones the conduct of Defendant Law Enforcement Officers and otherwise, Garnett, on behalf of the City and County of Denver, ratified the unconstitutional practices of the Defendant Law Enforcement Officers.

84. The acts or omissions of Defendant City of Boulder caused Mr. Habay damages in that he suffered extreme physical and mental pain during the assault that resulted in his death.

85. The actions of Defendant City of Boulder as described herein deprived Mr. Habay of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused him other damages.

FOURTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – 14th Amendment Violation – Deprivation of Life Without Due Process
(Against All Defendants)

86. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

87. All individual Defendants to this claim, at all relevant times hereto, were acting under the color of state law in their capacities as Boulder law enforcement officers.

88. At the time of Mr. Habay's death, Mr. Habay had a clearly established constitutional right under the Fourteenth Amendment to the United States Constitution to not be deprived of his life without due process of law.

89. Defendants acted willfully, maliciously, in bad faith, and with reckless disregard of Mr. Habay's constitutionally protected federal rights.

90. The acts or omissions of the individual Defendants were moving force behind and proximate cause of Mr. Habay's death.

91. The acts or omissions of Defendants caused Mr. Habay damages in that he suffered extreme physical and mental pain during and possibly after the assault that resulted in his death.

92. The acts and omissions of Defendants were engaged in pursuant to the custom, policy, and practice of the City of Boulder, which encourages, condones, tolerates, and ratifies the use of excessive force and deprivation of constitutionally protected interests by law enforcement officers and others acting under color of state law in the City of Boulder.

FIFTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – 4th & 14th Amendment Violation – Unlawful Entry
(Against All Defendants)

93. Mr. Habay hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

94. Mr. Habay had a constitutionally protected right to be secure in his person against unreasonable intrusions into and searches of his residence.

95. Defendants entered Mr. Habay's residence without his permission or consent.

96. Defendants had no warrant authorizing a search or entry of Mr. Habay's residence.

97. No legally recognizable exigent circumstances existed which would have permitted Defendants' warrantless entry of Mr. Habay's residence.

98. Neither Mr. Habay nor anyone in control of Mr. Habay's residence consented to permit Defendants to enter Habay's residence.

99. Defendants' conduct violated clearly established rights belonging to Mr. Habay of which reasonable law enforcement officers knew or should have known.

100. The acts and omissions of Defendants were engaged in pursuant to the custom, policy, and practice of Defendant City of Boulder, which encourages, condones, tolerates, and ratifies its law enforcement officers' unlawful entries into private residences.

101. One such custom, policy, and practice of Defendant City of Boulder is its failure to properly hire, train, supervise, and/or discipline members of its law enforcement regarding issues of constitutionally permissible entry into a residence.

102. This inadequate hiring, training, and/or supervision results from a conscious or deliberate choice to follow a course of action from among various alternatives available to the Defendant City of Boulder.

103. Such failure to properly hire, train and supervise was the moving force behind and proximate cause of Defendants' unlawful entry into Mr. Habay's residence, and constitutes an unconstitutional policy, procedure, custom and/or practice.

104. Defendants' violation of Mr. Habay's rights under the Fourth Amendment and Fourteenth Amendment was the direct and proximate cause of, and moving force behind, Mr. Habay's damages.

105. Defendants' conduct proximately caused significant injuries, damages, and economic losses to Mr. Habay.

SIXTH CLAIM FOR RELIEF
42 U.S.C. § 1986 – Failure to Intervene
(Against All Defendants)

106. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

107. The individual Law Enforcement Defendants had knowledge that the wrongs conspired to be done as described herein were about to be committed, had the power to prevent or aid in preventing the commission of those wrongs, neglected or refused to prevent the commission of those wrongs, and could have, by reasonable diligence, prevented those wrongs.

108. The custom, policy, and practice of the City of Boulder of encouraging, condoning, tolerating, and ratifying the use of excessive force by law enforcement officers in The City, and of neglecting or refusing to prevent such excessive force, as described herein, were the moving force behind and proximate cause of the violation to Mr. Habay's rights.

SEVENTH CLAIM FOR RELIEF
Survival Action
(Against All Defendants)

109. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

110. Plaintiffs William Habay and Ellen Habay are the heirs and personal representatives of the Estate of Michael Habay.

111. As a result of the deliberate indifference, reckless indifference and/or negligence of Defendants as more fully described above, the Estate of Michael Habay has suffered injuries and damages, including, but not limited to funeral expenses, emotional distress and pain and suffering, loss of enjoyment of life, and loss of consortium.

EIGHTH CLAIM FOR RELIEF

**State Law Claim for Wrongful Death under C.R.S. § 13-21-202
(Plaintiffs William Habay and Ellen Habay Against all Defendants)**

112. Plaintiffs hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

113. Plaintiffs William and Ellen Habay, as the parents of Michael Habay, suffered and continue to suffer economic and non-economic damages due to Defendants' conduct toward their son, including but not limited to damages for grief, loss of her son's companionship, impairment in the quality of life, inconvenience, pain and suffering, and extreme emotional stress.

114. Defendants' conduct was attended by circumstances of malice, or willful and wanton conduct, which Defendants must have realized was dangerous, or that was done heedlessly and recklessly, without regard to the consequence to Mr. Habay and his parents.

115. Defendants consciously disregarded a substantial and unjustifiable risk that they knew or should have known would cause the death of another.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against each of the Defendants, and award them all relief allowed by law, including but not limited to the following:

- (a) Appropriate relief at law and equity;
- (b) Declaratory relief and other appropriate equitable relief;
- (c) Economic losses on all claims as allowed by law;
- (d) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, loss of companionship and

association with family members, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;

- (e) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (f) Attorneys fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;
- (g) Pre- and post-judgment interest at the appropriate lawful rate;
- (h) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated: November 23, 2015

Respectfully submitted,

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

I. (a) PLAINTIFFS
 Estate of Michael Habay, and William and Ellen Habay

(b) County of Residence of First Listed Plaintiff Denver
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Darold W. Killmer
 Killmer, Lane & Newman, LLP, 1543 Champa Street, Suite 400, Denver, CO
 (303) 571-1000

DEFENDANTS
 Vincent Gallerani, et al.

County of Residence of First Listed Defendant Denver
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

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

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 USC 1983; 42 USC 12132; 42 USC 1983; 42 USC 1986; CRS 13-21-202

Brief description of cause: AP Docket
 4th 14th Amendment Violations; Failure to Train or Supervise; Violations of ADA; Wrongful Death

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

DATE: November 23, 2015 SIGNATURE OF ATTORNEY OF RECORD: s/ Darold W. Killmer

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____