

maintained a custom, policy and/or practice within their offices of failing to observe proper methods of taking and documenting evidence, and producing potentially exculpatory evidence in its possession and ignoring the requirements of *Miranda v. Arizona*, *Brady v. Maryland*, and *California v. Trombetta*.

79. Based on information and belief, Defendant County of El Paso through its District Attorney had actual or constructive notice of ADA Davis's actions and omissions, yet failed to remedy them. There is a consistent pattern over the years from 1989 through 2004 of the El Paso District Attorney's office failing to provide potentially exculpatory evidence in its possession to Brandon Moon. The direct action of the District Attorney, Steve Simmons and his successors, including Jaime Esparza, all policymakers, in failing to supervise his servants and employees led to the failure to disclose exculpatory evidence in violation of Brandon's 14th Amendment due process rights. As a direct result of this official custom, practice, and/or policy, defendants John Davis, Dan Kopra, Kevin Shannon and Joe Edd Boaz of the District Attorney's Office, Sergio Reyes of the El Paso County Sheriff's Department, and Omar Garcia of the office of the El Paso County District Clerk and then District Clerk Edie Rubalcaba as an official policy-maker, with deliberate indifference to Brandon's rights, withheld and failed to document the chain of custody of potentially exculpatory evidence. Additionally, the District Clerk's office did not have a system in place to properly keep track of and document evidence which was a custom or official policy that was deliberately indifferent to the high likelihood that constitutional violations would occur as a result.

80. The County of El Paso, by and through then District Attorney Steve Simmons and his successors, including Jaime Esparza, in their official policymaking capacity, also

condoned and maintained the following customs, policies and/or practices within the El Paso District Attorney's office:

- a. Concealing and/or failing to disclose exculpatory evidence;
- b. Failing to adequately train its Assistant District Attorneys in the proper methods of documenting chain of custody;
- c. Failing to train Assistant District Attorneys in concerning their duties to disclose exculpatory information; and
- d. Failing to supervise Assistant District Attorneys to ensure that they do not unfairly target suspects without probable cause and engage in malicious prosecution.

81. Each of these policies was so well settled that they constituted a custom that fairly represented the El Paso County District Attorney's Office's official custom, practice or policy in the period of time from 1987 through 2004.

82. Each of these policies were known to and condoned not only by El Paso District Attorney's office supervisors, but also by County of El Paso policymakers.

83. County of El Paso policymakers, including but not limited to then District Attorney Steve W. Simmons, had actual and constructive notice of each of the above policies.

84. County of El Paso policymakers, including but not limited to then District Attorney Steve W. Simmons, also knew that Assistant District Attorneys were certain to confront recurring constitutional obligations related to the chain of custody and potentially exculpatory evidence.

85. Current El Paso County District Attorney Jaime Esparza is liable in his official capacity as the successor to then District Attorney Steve Simmons.

86. Each of these policies was deliberately indifferent to Brandon Moon's clearly established constitutional rights under the Fourth, Sixth and Fourteenth Amendments and federal rights as explained herein.

87. Each of the above policies directly and proximately caused, and was the moving force behind, the El Paso District Attorney's office employees' deprivations of Brandon's clearly established constitutional rights under the Fourth, Sixth and Fourteenth Amendments.

88. As a consequence of the above deliberately indifferent policies, which were the moving force behind Brandon's constitutional injuries, the County of El Paso is liable for the damages Brandon suffered from his unlawful arrest, indictment, prosecution, conviction, and wrongful imprisonment for more than seventeen years.

**COUNT VI**

**42 U.S.C. § 1983: FOURTEENTH AMENDMENT VIOLATION BY RON  
URBANOVSKY AND GLEN ADAMS**

89. Brandon hereby incorporates by reference all of the foregoing and further alleges as follows:

90. Upon information and belief, defendant Ron Urbanovsky, director of the Texas Department of Public Safety, created and maintained an official custom, practice and/or policy of failing adequately to train and supervise department employees as agents, including, without limit, Glen Adams and Donna Stanley regarding the proper methods of

evidence testing, and observing the requirement of *Miranda v. Arizona*, *Brady v. Maryland*, *California v. Trombetta*.

91. Ron Urbanovsky knew or had notice of Glen Adams unlawful investigative tactics based on his prior similar misconduct, yet failed to take any corrective training or supervisory action that would have averted Brandon's ordeal.

92. Ron Urbanovsky knew or had notice of Donna Stanley's lack of training in the proper methods of following up on test results and requests for more samples when she had suspicion that such test results might be exculpatory.

93. As a direct result of this unconstitutional custom, practice and/or policy of failing to adequately train or supervise laboratory technicians in constitutional methods of testing evidence, Glen Adams, with deliberate indifference to Plaintiffs' rights, gave misleading and factually inaccurate testimony which caused Brandon to go to prison and serve more than seventeen years for a crime he did not commit, and caused him to suffer all of the other injuries and damages set forth herein.

**COUNT VII:**

**42 U.S.C. § 1983: FOURTEENTH AMENDMENT VIOLATIONS Against Defendants EDIE RUBALCABA and OMAR GARCIA**

94. Brandon hereby incorporates by reference all of the foregoing and further alleges as follows:

95. By failing to maintain a system to allow for the preservation of evidence from criminal trials in a manner that would preserve evidence and ensure that the evidence was still in good condition for trials, Defendants Edie Rubalcaba and Omar Garcia denied Brandon Moon of his right to a fair trial. Defendants' fundamentally flawed system of evidence cataloging completely undermined the accuracy of the adjudicatory process,

guttled Brandon's procedural due process rights and turned his trial into a foregone conclusion.

96. Defendant Gilbert Sanchez is liable in his official capacity as successor to then District Clerk Edie Rubalcaba.

97. As a result, the very procedures designed to shield Brandon from arbitrary and erroneous deprivations served to keep him in prison for a crime he did not commit. Following the trial, by not having a system in place to preserve the chain of custody, Defendants kept Brandon from bringing meaningful appeals and putting on a defense. This was not due process and Brandon's period of incarceration was prolonged as a result of it.

98. Defendants' conduct was deliberately indifferent to Brandon's clearly established procedural due process rights as guaranteed by the Fourteenth Amendment, and deliberately indifferent to Brandon's clearly established right to put on a defense as guaranteed by the Sixth and Fourteenth Amendments.

99. Defendants' acts and omissions violated this right and caused Brandon to be falsely arrested, indicted, prosecuted, convicted, and imprisoned for over seventeen years, and to suffer serious damages.

#### **COUNT VIII:**

#### **MALICIOUS PROSECUTION AGAINST DEFENDANTS DET. JEFFREY DOVE and DET. SAL OLIVAREZ**

100. Brandon hereby incorporates by reference all of the foregoing and further alleges as follows:

101. A criminal prosecution was commenced against Brandon.

102. Defendant DET. SAL OLIVAREZ, initiated and/or procured the prosecution.

103. The prosecution terminated in Brandon's favor in 2005 based on Brandon's actual innocence.

104. Defendants DET. JEFFREY DOVE and DET. SAL OLIVAREZ, did not have probable cause for the proceedings and acted maliciously.

105. As a result of the malicious prosecution, Brandon suffered severe damages.

**COUNT IX:**  
**FALSE IMPRISONMENT AGAINST DEFENDANTS DET. JEFFREY DOVE**  
**AND DET. SAL OLIVAREZ**

106. Brandon Moon hereby incorporates by reference all of the foregoing and further allege as follows:

107. DET. JOE VILLA and Defendants, DET. JEFFREY DOVE, DET. SAL OLIVAREZ, unlawfully arrested and detained Brandon without consent.

108. DET. JOE VILLA and Defendants DET. JEFFREY DOVE, DET. SAL OLIVAREZ, had no legal authority or justification to arrest or detain Brandon.

109. DET. JOE VILLA and Defendants, DET. JEFFREY DOVE, DET. SAL OLIVAREZ, proximately and directly caused Brandon to suffer severe damages.

**COUNT X:**  
**CONSPIRACY AGAINST DEFENDANTS DET. JEFFREY DOVE, AND**  
**DET. SAL OLIVAREZ**

110. Brandon Moon hereby incorporates by reference all of the foregoing and further allege as follows:

111. DET. JOE VILLA and Defendants, DET. JEFFREY DOVE, DET. SAL OLIVAREZ, acted together to falsely arrest, indict, prosecute, and wrongfully imprison Brandon.

112. DET. JOE VILLA and Defendants DET. JEFFREY DOVE, DET. SAL OLIVAREZ, had a meeting of the minds about the object of the conspiracy.

113. DET. JOE VILLA and Defendants, DET. JEFFREY DOVE, DET. SAL OLIVAREZ, committed numerous overt and unlawful acts in order to further their conspiracy and wrongfully imprison Brandon.

114. The conduct of DET. JOE VILLA and Defendants DET. JEFFREY DOVE, DET. SAL OLIVAREZ, proximately and directly caused Brandon to suffer severe damages.

**COUNT XI:  
NEGLIGENT SUPERVISION AGAINST THE CITY OF EL PASO**

115. Brandon hereby incorporate by reference all of the foregoing and further allege as follows:

116. Defendants THE CITY OF EL PASO, had a duty to supervise the investigation and interrogation practices of the El Paso Police Department's Detectives, including without limitation DET. JOE VILLA and defendants DET. JEFFREY DOVE, and DET. SAL OLIVAREZ. Defendant the City of El Paso breached this duty by failing to train and supervise them in proper investigative techniques and make sure those techniques were followed.

117. This failure to supervise directly and proximately caused Brandon to be arrested, indicted, prosecuted, convicted, and imprisoned for a crime he did not commit, and suffer severe damages.

**COUNT XII:  
NEGLIGENT SUPERVISION AGAINST DEFENDANT EL PASO COUNTY AND  
EDIE RUBALCABA**

118. Brandon hereby incorporate by reference all of the foregoing and further allege as follows:

119. Defendant El Paso County and Edie Rubalcaba acting in her individual capacity, had a duty to supervise the record keeping, documentation of chain of evidence, and evidence gathering practices of the El Paso District Clerk's office and its employees, including Omar Garcia.

120. Defendants El Paso County and Edie Rubalcaba breached this duty.

121. This failure to supervise directly and proximately caused Brandon to be arrested, indicted, prosecuted, convicted, and imprisoned for a crime he did not commit, and suffer severe damages.

**COUNT XIII:  
NEGLIGENT SUPERVISION AGAINST DEFENDANT RON URBANOVSKY**

122. Brandon hereby incorporate by reference all of the foregoing and further allege as follows:

123. Defendant Ron Urbanovsky acting in his individual capacity, had a duty to supervise the testing procedures and practices of the Department of Public Safety's office and its employees, including Glen Adams.

124. Defendant Ron Urbanovsky breached this duty.

125. This failure to supervise directly and proximately caused Brandon to be arrested, indicted, prosecuted, convicted, and imprisoned for a crime he did not commit, and suffer severe damages.