

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

WORCESTER, SS.

CASE NO.:

BRIMA FOFANA, and  
FELIPE PANIAGUA  
Plaintiffs

v.

CITY OF WORCESTER,  
THOMAS B. DUFFY, LT. MICHAEL J. HANLON,  
SHAWN FRIGON, BRENDON A. TIVNAN,  
THOMAS J. BARNEY, JASON R. POWERS,  
SGT. CHRISTOPHER A. PANARELLO,  
TREVIS COLEMAN, STEPHEN MITCHELL, STEVEN  
SARGENT, EDWARD AUGUSTUS

Defendants.

) **CIVIL ACTION NO.**  
) **4:22-cv-40148-MRG**  
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) **AMENDED COMPLAINT AND**  
) **DEMAND FOR**  
) **JURY TRIAL**  
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**INTRODUCTION**

1. Implemented in 1971, the outdated and predatory War on Drugs initiative was introduced in an effort to curb narcotic trafficking and drug use in our country but has achieved very little in regards to the amount of drugs reaching the American people.
2. While drugs continue to win the War on Drugs, there is one constant loser, communities of color.
3. Although drug usage rates between racial groups remain largely the same, black and brown men are arrested at nearly five times the rate of white men.
4. The terms “Stop and Frisk” and “Driving while black” are well known in communities of color, as violations of their fourth and fourteenth amendment rights are frequent and systematic.

5. Discriminant policies have proven ineffective in combating drug crime, while perpetuating and augmenting racial division in our union.
6. The consistency in which American police departments target black and brown men is astonishing and is a prime reason Brima Fofana and Felipe Paniagua were arrested.
7. Brima Fofana and Felipe Paniagua were physically attacked, arrested and charged for no discernible reason other than an assumption of criminal behavior based on the color of their skin.
8. Officer Thomas B. Duffy and other named Defendants of the City of Worcester acted recklessly, on nothing more than a hunch and brutalized two young men because of their race.
9. After realizing their mistake, Worcester City Police officers, Chief Steven Sargent, Edward Augustus and the City of Worcester failed to correct the wrong and allowed the two plaintiffs to be falsely prosecuted until the Worcester County District Attorney's Office took the correct action by dismissing the action against the two plaintiffs.
10. Officers named in this complaint falsified reports in an attempt to cover up their various violations of constitutional rights while charging these two men of color with crimes they did not commit.
11. The Worcester Police and the City of Worcester have allowed the practice of stopping individuals of color and allowing false police reports to be filed by its officers without any recourses.
12. The Worcester Police and the City of Worcester have allowed a practice by the Bureau of Professional Standards to conduct investigations that are not impartial and that protect Worcester Police Officers from prosecution for violations of individuals constitutional rights.

### **PARTIES**

13. Plaintiff Brima Fofana, hereinafter referred to as "Fofana", resides in Worcester County, Massachusetts.
14. Plaintiff Felipe Paniagua, hereinafter referred to as "Paniagua", resides in Worcester County, Massachusetts.

15. Brima Fofana and Felipe Paniagua, collectively, hereinafter referred to as “Plaintiffs”.
16. Defendant City of Worcester, hereinafter referred to as “City”, is a duly chartered municipal corporation of the Commonwealth of Massachusetts with a place of business abode at 455 Main Street, Worcester, Worcester County, Massachusetts.
17. Defendant Officer Shawn Frigon, hereinafter referred to as “Frigon”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
18. Defendant Officer Trevis Coleman, hereinafter referred to as “Coleman”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
19. Defendant Officer Shawn Tivnan, hereinafter referred to as “Tivnan”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
20. Defendant Officer Thomas B. Duffy, hereinafter referred to as “Duffy”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
21. Defendant Lt. Michael J. Hanlon, hereinafter referred to as “Hanlon”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
22. Defendant Officer Thomas J. Barney, hereinafter referred to as “Barney”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
23. Defendant Officer Stephen Mitchell, hereinafter referred to as “Mitchell”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.

24. Defendant Officer Jason R. Powers, hereinafter referred to as “Powers”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
25. Defendant Sgt. Christopher A. Panarello, hereinafter referred to as “Panarello”, was at all pertinent times a duly appointed and sworn Worcester police officer. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
26. Defendant Steven Sargent, hereinafter referred to as “Sargent”, was at all pertinent times a duly appointed and sworn Worcester police Chief of the Worcester Police Department. Employed by the Worcester Police Department, 9-11 Lincoln Street, Worcester, Worcester County, Massachusetts.
27. Defendant Edward Augustus, hereinafter referred to as “Mayor”, was at all pertinent times the Mayor of the City of Worcester.

#### **JURISDICTION AND VENUE**

28. Plaintiffs bring this civil rights action lawsuit pursuant to 42USC § 1983 to redress the deprivation by Defendants, at all times herein acting under color of state law, of rights, secured to Plaintiff under the Constitution of the United States, including the Fourth and Fourteenth Amendments and the Massachusetts Declaration of Rights (Article 1).
29. Jurisdiction is conferred on this Court by 28 U.S.C. Sections 1343(a)(1) and (a)(3), which provide for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. Section 1983. Jurisdiction is also conferred by 28 U.S.C. Section 1331 because claims for relief derive from the Constitution of the United States and the laws of the United States.
30. Venue is properly established in the United States District Court for the Commonwealth of Massachusetts pursuant to 28 U.S.C. Section 1391, in that the events and circumstances herein alleged occurred in the City of Worcester, Worcester County, Massachusetts, and all of the Defendants were either employed in or are residents of Worcester County in the Commonwealth of Massachusetts

where jurisdiction is the United States District Court for the District of Massachusetts located in Worcester, Massachusetts.

### **FACTUAL BACKGROUND**

31. On January 30, 2020 at approximately 6:40pm Officer Duffy was assigned surveillance of the area of Irving street and Austin street, in an unmarked police vehicle.
32. While monitoring the area, Officer Duffy observed an unknown black male stand in front of 39-41 Irving st and make several phone calls.
33. Shortly after the phone calls, Officer Duffy observed a Volkswagen Jetta (MA Reg:4ST862) drive into a lot near 39-41 Irving.
34. Mr. Fofana was the driver of the Volkswagen Jetta while Mr. Panigua was the front seat passenger.
35. Officer Duffy observed the unknown black male enter the Volkswagen Jetta and sit in the back seat.
36. After about a minute, Officer Duffy observed the unknown black male exit the Volkswagen Jetta and inspect an item in his hand.
37. Officer Duffy was not familiar with Mr. Fofana or Mr. Panigua or the unknown black male that had entered Fofana's vehicle.
38. Both Mr. Fofana and Mr. Panigua are black males.
39. Officer Duffy testified at the motion to suppress hearing that he could not recall which side of the car the unknown black male had entered.
40. Officer Duffy testified at the motion to suppress hearing that he did not observe the driver or passenger hand anything to the unknown black male.
41. Officer Duffy continued to stalk the Volkswagen Jetta as it exited the lot and drove down Irving street before turning onto Austin street and then onto High street.
42. At no time did Mr. Fofana violate any moving law as he traveled on Irving Street to Austin Street and then onto High Street.
43. At no time did Officer Duffy call for the stop of the unknown black male, he only called for the stop of the Volkswagen Jetta.

44. Officer Duffy radioed Worcester Police Gang Unit and Vice Officers in regards to a suspected drug transaction and to request assistance in pulling over and investigating the Volkswagen Jetta.
45. Mr. Fofana stopped his car at the red light at the corner of Highland Street and Salisbury Street.
46. Officer Duffy claimed that during the stop of the Volkswagen Jetta, Fofana accelerated in a dangerous manner; ultimately, striking two police officers and crashing into a street pole but video obtained shows this allegation to be false.
47. As Mr. Fofana approached the redlight at the corner of Salisbury St and Highland St. he came to a stop at the red light.
48. Multiple unmarked police cars without their blue lights on approached Mr. Fofana and Mr. Panigua from the rear and left side of the Volkswagen because Mr. Fofana was in the right lane to take a right turn.
49. Mr. Fofana came to a stop and suddenly an unmarked police car to Mr. Fofana's left pulled very close to Mr. Fofana's vehicle and was moving closer causing Mr. Fofana to fear that this unknown vehicle was about to strike his vehicle.
50. Nearly a dozen police cars approached Mr. Fofana's vehicle from the rear and side.
51. The vehicle to Mr. Fofana's left continued to move towards Mr. Fofana's vehicle without its blue lights activated.
52. Both Fofana and Panigua believed that the car next to them was trying to force them off the road.
53. The car to the left of Fofana did not display any police insignia and the two occupants of this car did not display any badges.
54. Suddenly both Fofana and Panigua heard yelling on both sides of the car.
55. Multiple defendant officers were yelling at the same time, "get out of the fucking car"!
56. Fofana and Panigua had no knowledge that anyone yelling was a police officer as none of the individuals identified themselves as police officers and multiple officers were swearing "get out of the fucking car!"
- 57. Suddenly Defendant Brendan Tivnan smashed the drivers side window with his flashlight.**

**58. Mr. Fofana was forcefully grabbed by the neck, hair and his jacket by Officer Tivnan, Officer Mitchell and Officer Powers causing Mr. Fofana's jacket to be ripped.**

59. Mr. Fofana was suddenly and forcefully pulled from the car and as he was pulled from the car his foot came off the brake causing the car to suddenly spring forward.

60. Officers then aggressively grabbed Paniagua from the neck and head and pulled him out of the car and slammed him to the ground.

61. Officers then began punching and kicking both Paniagua and Fofana as they lay on the ground.

62. At no time did Mr. Fofana or Mr. Paniagua resist arrest.

63. Officers submitted false and misleading police reports to their supervisors as a result of this aggressive encounter.

64. Video footage obtained of the encounter between defendants and plaintiffs shows nearly a dozen unmarked City police vehicles blocking a busy intersection to surround Fofana's car in traffic.

65. Of the 10 unmarked cars that surrounded Fofana's vehicle, only two police vehicles, about 40 feet behind the plaintiffs, had blue lights flashing.

66. After being blocked in by the unmarked vehicles, Fofana attempts to pull over to the side of the road and is quickly met with force by nearly a dozen plain clothed police officers.

67. It is nearly impossible to identify which vehicles in the video belonged to City police or the exact number of police officers due to a number of them being in plain clothes and a majority of the vehicles being unmarked cars but one can clearly see 10 people exiting vehicles surrounding the Volkswagen Jetta and joining to punch and kick the plaintiffs.

68. Officers began demanding to know how Mr. Fofana was able to afford his jacket that was ripped by the officers when he was pulled out of the vehicle.

69. Mr. Fofana was arrested and charged with assault and battery with a dangerous weapon 2 counts, possession with intent to distribute class D marijuana, unlicensed operation, negligent operation of a motor vehicle and failure to stop for a police officer in Worcester District Court Docket 2262CR000580.

70. Mr Panigua was arrested and charged with possession of a class D controlled substance marijuana and resisting arrest in Worcester District Court Docket 2062CR000572.
71. Mr. Fofana provided the Commonwealth with a copy of the video showing the stop and the aggressive actions by the officers in the stop of Mr. Fofana and Mr. Paniagua.
72. All criminal charges against Mr. Fofana and Mr. Paniagua were dismissed by the Worcester County District Attorney's Office on September 27, 2021.
73. The charge of failing to stop for a police officer was amended to failure to use care and caution in stopping.
74. Mr. Fofana accepted a responsible filing on this charge to close the case.
75. Mr. Fofana and Mr. Paniagua were only targeted by Officer Thomas Duffy and the other named defendants because they are black.
76. A motion to suppress all evidence was filed by Mr. Fofana and Paniagua that was granted by Judge Deangelo.
77. Each of the named defendants filed false police reports in an attempt to justify the arrest and use of force upon Mr. Fofana and Mr. Paniagua.
78. The use of force by police in stopping the vehicle and apprehending the plaintiffs does not seem fit in regards to the nature of the initial call by Officer Duffy.
79. Surveillance video of the area of Fofana and Paniagua's encounter with the defendants shows various discrepancies from the official reports submitted by the named defendant officers.
80. Mr. Fofana filed a complaint with the Bureau of Professional Standards of the Worcester Police.
81. Sgt. Steven Pageau of the Worcester Police Bureau of Professional Standards conducted an investigation.
82. Sgt. Pageau falsely determined that there was a lengthy investigation into Mr. Fofana.
83. Mr. Fofana was interviewed on Wednesday November 25, 2020 by Sgt. Pageau.
84. Mr. Fofana told Sgt. Pageau that he believed that he was racially profiled.
85. Defendant Duffy falsely wrote in his report that there have been 20 responses to the address of 39-41, many personal observations at that location, a one month investigation and successful controlled buys relation to this investigation.



86. Counsel for Mr. Fofana requested in a FOIA request P017402-021922 the following documents: 1. All records, police reports, log entries, reports, administrative reports, or anything memorializing all motor vehicle stops that resulted in a search but did not amount to an arrest or a citation. 2. All race statistics memorializing all motor vehicle stops that resulted in a search but did not amount to an arrest or a citation. 3. All records, police reports, log entries, reports, administrative reports, or anything memorializing all motor vehicle stops that did not amount to an arrest or a citation. 4. All race statistics memorializing all motor vehicle stops that resulted in a search but did not amount to an arrest or a citation. 5. All records, police reports, log entries, reports, administrative reports, or anything memorializing all pedestrian and motor vehicle stops of suspected drug buyers or suspected drug dealers by all specialty units within the Worcester police that resulted in a search but did not amount to an arrest. 6. All race statistics of all pedestrian and motor vehicle stops of suspected drug buyers or suspected drug dealers by all specialty units within the Worcester police that resulted in a search but did not amount to an arrest.
87. The City of Worcester responded in the FOIA request, “The City is unable to provide records responsive to your request as the information requested is not searchable in the police server/records management system. This information and data is not tracked and your request does not reference searchable fields. Therefore, the records you describe cannot be located in the server, and crime analysis cannot produce an extract of information to create records containing the requested statistics/aggregated data. ”
88. The City of Worcester and the Worcester Police Department do not require police officers to maintain records of stops that do not amount to an arrest or citation.
89. Worcester Police and the City of Worcester allow police officers to stop and search individuals of color without probable cause or reasonable suspicion.
90. Worcester Police Officers are not mandated to report any stops of individuals of color unless an arrest is made or a citation is issued.
91. Worcester Police Officers are not mandated to report searches of individuals of color unless an arrest is made or a citation is issued.
92. Counsel for Mr. Fofana also filed a FOIA request for all incidents and complaints involving 39-41 Irving Street.
93. An incident history from December 3, 2019 to January 28, 2020 included 26 incidents that included 1 call for check on welfare, 2 calls for loud music, 3 calls

calls for motor vehicle obstructing traffic, 15 calls for an ambulance, 1 overdose, 1 dead body, 1 fraud, 1 accident, 1 motor vehicle violation.

94. None of the calls for service to 39-41 Irving Street were calls for drug distribution as alleged by Officer Duffy.

95. Officer Duffy told Sgt. Pageau that he had been conducting an investigation for approximately 1 month that involved 3 controlled buys from the residence but at the motion to suppress hearing Officer Duffy was not familiar with the unknown male, Mr. Fofana or Mr. Paniagua.

96. Sgt. Pageau found that there was reasonable suspicion to believe a crime had been committed though Judge Andrew Deangelo determined there was none.

97. Judge Deangelo stated in his decision, THE COURT: Good point. Okay.

I sometimes don't make decisions right away, but I don't even think this one is close, frankly. I am going to allow the defendants' motion to suppress. I don't even think there was even remotely close to enough evidence that there was reasonable suspicion to believe that that car was involved in drug activity. And although I acknowledge Attorney Galvin's argument that seemingly innocent behavior in the view of an experienced police officer can lead to reasonable suspicion, in this case, what I find credible is that he saw someone after making phone calls get into a car, then get out of a car, and he looked at his hand. He couldn't see what was in his hand. He couldn't even make it clear that he had something in his hand. He said -- I believe the quote was it looked as if he had like something in his hand. That is not enough for reasonable suspicion, and therefore, I am allowing the defendants -- both defendants' motion to suppress.

98. Officer Powers filed a knowingly false police report stating: Once we exited and approached the Volkswagen, *the operator began to pull off swerving at and striking other officers. The operator attempted to flee and struck a street light pole. PO Stephen Mithchell, Brendon Tivnan and I were able to get the operator out of the vehicle and place him in handcuffs and arrested. The operator was identified as Brima Fofana and transported to the station via the patrol wagon.*

**99. When interviewed by Sgt. Pageau, Officers Tivnan and Powers stated the same response when asked if the suspect vehicle struck the officers before or after the subject was removed from it?**

**100. Both Officers Tivnan and Powers stated that their recollection of the incident was that it was simultaneous after both had reviewed the video.**

101. Officer Frigon knowingly filed a false police report stating that the vehicle continued forward swerving to the side of the road, striking other officers and crashing into the base of a traffic light.

102. When questioned by Sgt. Pageau, Officer Frigon admitted that the driver was not in the vehicle when the car struck the pole.

103. All officers interviewed by Sgt. Pageau falsely reported that Mr. Fofana was forcibly removed from a vehicle while trying to elude police custody.

104. Sgt. Pageau falsely reported in his internal affairs investigation that the vehicle is trying to avoid being stopped by the police.

105. Sgt. Pageau does not address in his report the fact that none of the unmarked police cars had their blue lights flashing or siren on.

106. At the time of the motor vehicle stop the police did not have knowledge of an arrestable offense.

107. After viewing the video, Sgt. Pageau had the officers correct their report to BOPS to more accurately reflect the order of events to protect the officers.

108. Chief Steven Sargent and the Worcester Police Department exonerated the officers of any wrongdoing without interviewing Mr. Paniagua.
109. The Worcester Police Bureau of Professional Standards has a history of exonerating officers of wrongdoing without conducting a complete and thorough investigation.

**AS TO THE VIDEO AT THE INTERSECTION OF HIGHLAND STREET  
AND SALISBURY STREET**

110. The video referenced in the BOPS report by Sgt. Pageau shows the Plaintiffs approaching Highland and Salisbury St. intersection at 18:37:55.
111. Mr. Fofana is in the far right lane and is operating at all times within the speed limit.
112. The video shows an unmarked police car to the left of Mr. Fofana's vehicle and that this unmarked police car does not have its blue lights activated. This unmarked police car fails to stop at the red light and then stops in the intersection.
113. Another unmarked SUV pulls to the left of Mr. Fofana's vehicle without blue lights activated and then begins to drive closer to Mr. Fofana's vehicle.
114. At 18:38:17 there are at least 9 unmarked police cars with only one police car at least 4 cars behind with the blue lights flashing.
115. Officers then ran up to the car on both sides of Mr. Fofana's car.
116. At 18:38:27, Officer Tivnan broke the window where Mr. Fofana was seated and began to pull him causing Mr. Fofana's foot to come off the brake.
117. At 18:38:28 Mr. Fofana is pulled from the car and thrown onto the ground.
118. At 18:38:31 Mr. Fofana's car struck the traffic light pole but Mr. Fofana was not inside the vehicle.

119. Several more unmarked and marked police cars arrived after the vehicle struck the pole.

#### Injuries to Mr. Paniagua and Mr. Fofana

120. Without an attempt to conduct a routine traffic stop, defendants escalated to a full use of force which resulted in significant bodily harm and property damage.

121. Fofana and Paniagua were seen at Saint Vincent's Hospital in Worcester shortly after their release from police custody.

122. Fofana's medical report includes observations of abrasions to the face and severe congestion.

123. Paniagua describes repeated strikes to the head, face and abdomen

124. Paniagua's medical report shows injuries consistent with a concussion.

125. Recent developments in medical science show concussions have lifelong effects on one's mood, motor skills and cognitive function.

126. Fofana and Paniagua are embarrassed by the media coverage caused by the false charges pressed against them by City officials.

127. Paniagua was not able to receive his commercial driver's license endorsement due to the false criminal charges.

128. Fofana and Paniagua's reputations in their community have suffered due to media publications detailing the false charges pressed against them by Worcester Police.

129. The media publications listing Fofana and Paniagua's charges are still visible online although their cases have been dismissed.

130. Fofana and Paniagua have both suffered a great deal of financial, physical and emotional injuries as a result of their encounter with the defendants.

#### **The BOPS Investigation**

131. An internal affairs investigation was conducted by the Worcester Police

Department Bureau of Professional Standards commencing on June 25, 2020 and

Sargent cleared all officers of any wrongdoing on January 2, 2021.

132. The lead investigator was conducted by Sgt. Pageau an individual that was

previously sued for violating the civil rights of a juvenile and procuring a false confession after lying to her during an interrogation following the death of her baby brother. See, e.g., *Nga Truong v. Kevin Pageau, John Doherty, City of Worcester, et al*, Case No. 1:12-cv-12222 Dkt. 1, (D. Mass. Nov. 30, 2012).

133. The federal complaint alleged among other things: The interrogation was held in a small, closed and windowless room. Nga was confronted by Pageau and Doherty, two older and much larger men who spoke with absolute authority, their tone becoming increasingly aggressive as the interrogation proceeded, yelling and using abusive language. Her requests to terminate the interrogation were denied.
134. Pageau and Doherty falsely told Truong that they knew she killed her baby brother when she was only nine years old when they knew that the cause of his death was Sudden Infant Death Syndrome, and they mocked her when she told them the cause of his death.
135. Pageau and Doherty supplied the scenario of Khyle's death by smothering that they wanted her to admit. They falsely stated again and again that there was medical evidence Khyle had been smothered, when they knew the cause of death had not been determined by the medical examiner, and said that only Nga could have been responsible. They also falsely described the meaning of the autopsy report. They falsely characterized Khyle as a healthy baby when in fact he had chronic medical conditions and had been ill.
136. Pageau and Doherty falsely promised her that admitting she had smothered Khyle

allow her to “get help” because she was a juvenile and confessing to the crime would allow her younger brothers to be removed from her mother’s home where their care was neglected and finally Pageau and Doherty falsely promised her that she would be treated as a juvenile if she confessed to murdering her child.

137. All criminal charges against Nga Truong were dismissed when a Worcester Superior Court Judge Kenton-Walker listened to Pageau’s testimony in late 2010, she concluded that the detective was “not credible.” She ruled that the detectives never gave Truong “a genuine opportunity for a meaningful consultation and suppressed the evidence.

138. She also concluded when she ordered the confession suppressed in her decision that Detectives Kevin Pageau and John Doherty resorted to "deception regarding medical evidence" and that neither detective offered Truong a “genuine opportunity” as required by law, to consult with a parent, before she agreed to speak with the police.

139. When Truong sued the Pageau/Doherty the City and former Chief of Police Gary Gemme was quoted locally saying “I believe that the allegations raised (lack of probable cause and coercion) are unfounded, and that the officers will be vindicated,” adding “The interrogation and arrest was validated by District Attorney Joseph Early. His decision to pursue a criminal prosecution against Ms. Truong for the death of her infant son was based, in part, on the interrogation conducted by the department.” Croteau SJ Civil rights suit filed against Worcester police, Telegram & Gazette, Dec. 3, 2012.

[www.telegram.com/story/news/local/north/2012/12/04/civil-rights-suit-filed-again-st/49240493007/](http://www.telegram.com/story/news/local/north/2012/12/04/civil-rights-suit-filed-again-st/49240493007/)

140. In June 2016 the City of Worcester agreed to pay Truong and her lawyers a settlement of \$2.1 Million dollars to settle her federal civil rights claims against the City.
141. The findings by a Superior Court judge nor the \$2.1M settlement mattered or hindered the career path of Kevin Pageau's-- shortly after he was promoted to the rank of sergeant and offered a cushy job in the WPD BOPS.
142. Sgt. Pageau wrote in his report, Initially officers' perception was that everything occurred "simultaneously" and that Mr. Fofana was in the vehicle when it struck the light pole and they wrote their report from that perspective. It was only when they reviewed the video carefully, in a controlled environment and numerous times did they realize that their perception of the events was slightly different than the video indicates. Two of the officers directly involved stating it all seemed to happen simultaneously and within seconds of each other. The third officer (Frigon) did not initially address the order of events but did so in his BOPS report and came to his conclusions, once again, only after carefully reviewing the video. Officer Mitchell stated in his report this was a "rapidly evolving incident". The events occur while officers are trying to coordinate a traffic stop, advise other officers of the rapidly changing circumstances while also attempting to assure police and civilian safety during a potentially volatile situation. All of this



happening simultaneously while also attempting to apprehend a non-cooperative subject of a drug investigation. Factoring in stress and tunnel vision ones perception may be slightly different than the actual events. The vehicle appears to hit the curbing before hitting the pole which is assuredly the cause of some confusion as to the exact timing of events as the officers were attempting to get Mr. Fofana out of the vehicle. It remains clear and officers do not deny that Mr. Fofana was forcibly removed from a vehicle as it struck an object while trying to elude police custody. This is undeniable and addressed in officers reports.

143. Sgt. Pageau concluded: "In the end this all comes down to perception of events. During the event all officers perceived the events the same and wrote their reports accordingly. That is that the vehicle "struck" something as they were trying to place two fleeing subjects under arrest. Only after viewwing the video several times in a controlled environment and with the benefit of time and the ability to view it as many times as possible did officers realize the events, which occurred within seconds of each other were slightly different than first believed. Armed with this information the officers involved resubmitted their BOPS reports to more accurately reflect the exact order of events.
144. The investigation into Brima Fofana's arrest was signed and ratified by Chief Sargent on January 1, 2021 who agreed with the logic and soundness of the investigation.
145. The investigation steered clear of serious allegations: an unlawful arrest motivated by racial profiling based upon facts that did not support reasonable suspicion as

found by Judge Deangelo in the district court.

146. Pageau concluded in his investigation that Duffy documented reasonable suspicion to conclude there was reasonable suspicion to stop the Plaintiffs even though a district court judge concluded that he did not.
147. During the investigation it was learned that Tivnan broke Mr. Fofana's window with his flashlight confirming that force was used to affect the stop and then the arrest of Mr. Fofana and Mr. Paniagua though there was no reasonable suspicion or probable cause to do so.
148. Tivnan was not disciplined for breaking the window which further demonstrates an allowance of a culture within the Worcester Police Department that allows officers to use such force without consequences for their actions.
149. As part of the internal affairs investigation into the actions of all of the officers, none of the officers were called into the office and questioned but were simply given a series of questions that they were permitted to answer with the assistance of other officers including their union representatives and direct supervisors.
150. Chief Sargent's conclusions and his refusal to discipline the officers though it was concluded that Mr. Fofana and Paniagua were forcefully removed from the car prior to the vehicle striking the lightpole demonstrates knowledge that Sargent, Hanlon, Worcester Police and Augustus knew of the filing of inaccurate police reports but failed to discipline and, demonstrates deliberate indifference and the

existence of a code of silence in the WPD along with a culture of racial profiling that is ignored.

151. At all pertinent times the City of Worcester, Chief Sargent and Mr. Augustus observed a policy, custom, and practice in the Worcester Police Department that allowed officers, including all defendants in this case and others to employ unreasonable force, violate civil rights and engage in misconduct.
152. At all pertinent times the said parties observed a policy, custom, and practice of failing to discipline officers who violated the rights of citizens.
153. The WPD Bureau of Professional Standards (“BPS”) in charge of investigating violations to the policies and procedures of the police department, including those on excessive force, invariably credited police testimony over civilian testimony.
154. The BOPS largely and often ignored credible allegations and evidence of police misconduct.
155. The crux of the false reporting involved a patently false police report from that suggested a demonstrably false police narrative: “Once we exited and approached the Volkswagen, *the operator began to pull off swerving at and striking other officers. The operator attempted to flee and struck a street light pole. PO Stephen Mithchell, Brendon Tivnan and I were able to get the operator out of the vehicle and place him in handcuffs and arrested. The operator was identified as Brima Fofana and transported to the station via the patrol wagon.*”

156. Worcester traffic cameras and other surveillance cameras demonstrated none of this happened.

157. But none of this matter to the WPD BOPS specially the lead investigator, Sgt. Pageau who went out of his way to justify fabrication of evidence, an act that if not for the video surveillance tapes would have landed Fofana and Paniagua in jail:

158. "Initially officers' perception was that everything occurred "simultaneously" and that Mr. Fofana was in the vehicle when it struck the light pole and they wrote their report from that perspective. It was only when they reviewed the video carefully, in a controlled environment and numerous times did they realize that their perception of the events was slightly different than the video indicates. Two of the officers directly involved stating it all seemed to happen simultaneously and within seconds of each other. The third officer (Frigon) did not initially address the order of events but did so in his BOPS report and came to his conclusions, once again, only after carefully reviewing the video. Officer Mitchell stated in his report this was a "rapidly evolving incident". The events occur while officers are trying to coordinate a traffic stop, advise other officers of the rapidly changing circumstances while also attempting to assure police and civilian safety during a potentially volatile situation. All of this happening simultaneously while also attempting to apprehend a non- cooperative subject of a drug investigation. Factoring in stress and tunnel vision ones perception may be slightly different than the actual events. The vehicle appears to hit the curbing before hitting the

pole which is assuredly the cause of some confusion as to the exact timing of events as the officers were attempting to get Mr. Fofana out of the vehicle. It remains clear and officers do not deny that Mr. Fofana was forcibly removed from a vehicle as it struck an object while trying to elude police custody.”

159. The report continued: “The video obtained from cameras at the intersection of Tuckerman and Salisbury St. is in three sections one eight minutes fifty-five seconds, the next nine minutes, and four seconds and the third four minutes and fifty-seven seconds. Viewing the initial recording of the incident from Salisbury and Tuckerman St. at or 18:38:27 one can see the part of the video in question, upon viewing carefully and repeatedly it appears the vehicle is trying to avoid being stopped by the police. As it creeps forward officers engage the vehicle and subjects within. At this point it lurched (possibly hitting the curb) a male subject falls to the ground and the vehicle strikes curbing then stops up against the light pole all within seconds of each other. The vehicle appears to hit and stop twice once on the curb and once against the light pole. This may explain why when the vehicle first hit something officers assumed it was the pole though through careful and repeated viewing of the video it appears that the vehicle may have hit the curb first. It then lurched forward again and struck the pole. Officers would not have been aware of this as they were engaged in efforts to get the vehicle stopped and arrest the non-cooperative subject(s) within. The perception of the officers was that the vehicle "struck" something as they were trying to affect an arrest as indicated in their reports. In the end this all comes down to perception of events. During the event all officers perceived the events the same and wrote their reports accordingly. That is that the vehicle "struck" something as they were trying to

place two fleeing subjects under arrest. Only after viewing the video several times in a controlled environment and with the benefit of time and the ability to view it as many times as possible did officers realize the events, which occurred within seconds of each other were slightly different than first believed. Armed with this information the officers involved resubmitted their BOPS reports to more accurately reflect the exact order of events.”

160. Only one officer, Duffy, was investigated. He was not investigated at all for unreasonable use of force and was exonerated from “Awareness of Activities” despite the fact he had a long trove of civilian complaints for excessive use of force complaint, neglect of duty, incompetence, mishandling evidence and other charges
161. The WPD rarely, if ever, affirmed or sustained citizen complaints of unreasonable force by members of the WPD.
162. In the lion’s share of investigations over the past 10 years in which citizens alleged unreasonable force the officers were exceptionally cleared of any wrongdoing.
163. The internal investigatory process and practices of the WPD do not comply with acceptable and professional police practices.
164. By way of example, up until very recently, the BOPS investigatory policy allowed

police officers accused of wrongdoing to submit written statements without participating in in-person interviews, while complainants were subject to adversarial interrogation by WPD officers.

165. In this internal investigation officers were simply asked to submit written statements.
166. The net effect of this faulty deliberative investigatory policy resulted in automatically clearing officers of excessive force complaints where complainants would not submit to personal interrogation, even when criminal charges were pending against them.
167. Acceptable investigatory practices require, except in cases of minor procedural violations, that all interviews of police officers accused of violations to the WPD policies and procedures should be conducted in person, that they be recorded and transcribed.
168. Without in person interviews of officers accused of misconduct the City and police administrators cut off an important investigatory avenue to collect all relevant facts.
169. Up until very recently the policy that allows investigations to proceed without requiring in person interview of officers allowed officers investigated of misconduct to generate vague, perfunctory use of force reports or injured prisoner reports conveying an impression of oversight while the reports in fact did not

enable substantive review of officers' conduct by police administrators.

170. These policies, customs or practices led police officers including all defendants in this case and others to believe they were the above the law, that they could violate the rights of citizens because they knew they would not be disciplined.
171. Upon information and belief, despite its written policy the City of Worcester, the Chief and Mr. Augustus permitted an unconstitutional policy, custom and practice that allowed the unreasonable use of excessive force to go unpunished.
172. The City of Worcester, the Chief and Mr. Augustus failed to adequately train, supervise, control, monitor and discipline officers, including all defendants in this case.
173. Upon information and belief, the City of Worcester, the Chief and Mr. Augustus failed to track or to require tracking of stops of individuals that resulted in searches and unlawful detention by the NRT unit, Gang units, and Vice units.
174. The City of Worcester, the Chief and Mr. Augustus knew at all pertinent times that officers of the Worcester Police were conducting stops without reasonable suspicion and conducting unlawful searches on individuals of color but failed to take action.
175. The City of Worcester, the Chief and Mr. Augustus failed to provide for and require training of officers, including all defendants in this case in the proper use



of force.

176. At all times pertinent hereto the City of Worcester, the Chief and Mr. Augustus observed a policy, custom, and usage of failing to exercise discipline and control over the use of force by police officers, demonstrating deliberate indifference to the rights and safety of citizens.
177. The aforesaid policy, custom and usage allowed officers to operate in the field with little supervision and without effective monitoring and at all times pertinent hereto the defendants and other police officers were aware that this was the case.

**Policy of the City of Worcester and Mr. Augustus and Chief Sargent**

178. At all pertinent times the City of Worcester, Chief Sargent and Mr. Augustus observed a policy, custom, and practice in the Worcester Police Department that allowed officers, including all defendants in this case and others to employ unreasonable force, violate civil rights and engage in misconduct.
179. At all pertinent times the said parties observed a policy, custom, and practice of failing to discipline officers who violated the rights of citizens.
180. The WPD Bureau of Professional Standards (“BPS”) in charge of investigating violations to the policies and procedures of the police department, including those on excessive force, invariably credited police testimony over civilian testimony.

181. The BOPS largely and often ignored credible allegations and evidence of police misconduct.
182. The WPD rarely, if ever, affirmed or sustained citizen complaints of unreasonable force by members of the WPD.
183. In the lion's share of investigations over a 10 year period in which citizens alleged unreasonable force the officers were exceptionally cleared of any wrongdoing.
184. The internal investigatory process and practices of the WPD do not comply with acceptable and professional police practices.
185. By way of example, up until very recently, the BOPS investigatory policy allowed police officers accused of wrongdoing to submit written statements without participating in in-person interviews, while complainants were subject to adversarial interrogation by WPD officers.
186. The net effect of this faulty deliberative investigatory policy resulted in automatically clearing officers of excessive force complaints where complainants would not submit to personal interrogation, even when criminal charges were pending against them.

187. Acceptable investigatory practices require, except in cases of minor procedural violations, that all interviews of police officers accused of violations to the WPD policies and procedures should be conducted in person, that they be recorded and transcribed.
188. Without in person interviews of officers accused of misconduct the City and police administrators cut off an important investigatory avenue to collect all relevant facts.
189. Up until very recently the policy that allows investigations to proceed without requiring in person interview of officers allowed officers investigated of misconduct to generate vague, perfunctory use of force reports or injured prisoner reports conveying an impression of oversight while the reports in fact did not enable substantive review of officers' conduct by police administrators.
190. These policies, customs or practices led police officers including the defendants in this case and others to believe that they could violate the rights of citizens with impunity because they knew they would not be disciplined.
191. Upon information and belief, despite its written policy the City of Worcester, the Chief and Mr. Augustus permitted an unconstitutional policy, custom and practice that allowed officers of specialized units including the Gang, Vice and NRT Units to conduct random and baseless stops of individuals of color to go unpunished.

192. The City of Worcester, the Chief and Mr. Augustus failed to adequately train, supervise, control, monitor and discipline officers, including all defendants in this case.

193. Upon information and belief, the City of Worcester, the Chief and Mr. Augustus failed to track or to require tracking of stops of individuals of color allowing unlawful searches and detention to occur unless the stops and searches resulted in an arrest or criminal complaint.

194. The City of Worcester, the Chief and Mr. Augustus knew at all pertinent times that unlawful stops and searches of individuals of color were taking place within the specialized units that included the Gang, Vice and NRT Units but failed to stop such unlawful actions.

195. The City of Worcester, the Chief and Mr. Augustus failed to provide for and require training of officers, including all defendants in this case in the proper use of force.

196. At all times pertinent hereto the City of Worcester, the Chief and Mr. Augustus observed a policy, custom, and usage of failing to exercise discipline and control over the use of force by police officers, demonstrating deliberate indifference to the rights and safety of citizens.

197. The aforesaid policy, custom and usage allowed officers to operate in the field

with little supervision and without effective monitoring and at all times pertinent hereto the defendants and other police officers were aware that this was the case

**A policy of police impunity regarding unreasonable force and duplicity**

198. In January of 2019, Worcester police had little reason to believe that the chain of command above them was serious about monitoring their uses of force or in holding them accountable for honest reporting and any use of excessive force.

199. The failures of the City of Worcester, the Chief, Mr. Augustus, and his predecessors to monitor and control officers' use of force and monitor racial statistics on stops and searches was readily apparent from the results of past citizen complaints to the WPD claiming excessive force and racial profiling.

200. By way of example and not limitation both Sargent and Augustus knew of the following disturbing cases and failed to fire or discipline officers they knew deserved to be booted out of the WPD.

201. Both knew of the case of Officer Rodrigo Olivera who seriously assaulted a 15-year- old mentally ill handcuffed boy at a local clinic who was being transported for a psychiatric assessment to a local hospital.

202. The complaint was sustained only because it was witnessed by a clinician and the forty-day suspension memorialized in a last chance agreement trivialized the fact that the officer had been found to use excessive force and been untruthful.

203. No criminal charges were brought against Officer Oliveira for punching a

handcuffed teenager.

204. Both knew of the case of Officer Ryan Joyal who on or about July 21, 2020 was videotaped by a civilian repeatedly striking a restrained mentally ill individual strapped to a gurney while being transported by police and ambulance personnel for a psychiatric exam at local hospital.
205. Both knew Joyal lied in his police report by failing to disclose that he assaulted a restrained individual in his initial report.
206. Both knew he was forced to correct the next day his police report, only to report it as “an open hand distraction,” a cop euphemism for an assault and battery.
207. Joyal was not tagged or disciplined for excessive force or even for filing a false report. Instead, he was given a slap on the wrist, a less than a week suspension not even for filing a false report but rather for “failure to report use of force.”
208. In any event, Joyal's brief slap on the wrist suspension resulted in a mini-police insurrection when 14 to 15 fellow officers who worked his shift decided to call in sick on the day Joyal was supposed to begin his suspension to protest his toothless punishment.
209. No one has been disciplined for this episode with Officer Joyal.

210. Both knew the case of Officer James J. D’Andrea, a connected cop who got a 60- day work suspension for driving drunk, crashing his car, leaving the scene of an accident and lying about the circumstances of the incident, alleging, “a deer had run in front of his pick-up truck,” a story no one believed.

211. Both knew of another case in which, a statement of facts from a Worcester County District Court alleged and charged a Worcester cop with a home invasion after he, “climbed into the home breaking a couple of blinds while doing so” and assaulting the male companion of his ex-wife.

212. That event resulted in a 60-day work suspension signed by Augustus and former Chief of Police Gemme.

213. In *Agyeah v. City of Worcester, et al*, Case No. 4:21-cv-40020 Dkt. 5, (D. Mass.Feb. 19, 2021) an African immigrant sued members of the narcotics unit for fabrication of evidence, false reporting, for assault and battery, resisting arrest, breaches of peace against them when they arrested him while filming the police during the beating of another immigrant who was allegedly attempting to solicit a police decoy pretending to be a sex worker.

214. Police asked him repeatedly why he was recording the police and to provide them with the password to his phone but when he refused to do so he was arrested.

215. While were deliberately twisting his handcuffed hands and twisting his fingers

to inflict pain, he defecated on himself and when he asked narcotics officers not to abuse him he was asked by one of them “Is this how you fucking monkeys treat your police officers?”

216. In early 2023, during discovery in *Agyeah*, the commanding officer of the BOPS who had been leading that department since 2016 intimated that since 2016 Chief Sargent had not sustained a single complaint for the use of excessive force on the part of a Worcester police officer.

217. Or in *Ayala-Melendez v. City of Worcester*, CA No. 20-11453, Dkt. 26-1 Amended Complaint (D. Mass. Feb. 22, 2021) the federal case involved a Worcester police officer that set a vicious police dog on a peaceful, unsuspecting man from behind without provocation or legal cause of any kind whatsoever, then failed to seek prompt medical attention for the resulting injuries and falsely and maliciously charged him with serious crimes based on fictional account of riotous conduct. As he calmly addressed an officer, who engaged with him and gave no sign of concern about his conduct, Officer Shawn G. Tivnan grabbed him from behind and swung him into the jaws of K-9, as a second officer joined in the assault.

218. The plaintiff suffered a number of lacerations and abrasions, was traumatized by the experience and subjected to great public embarrassment, concern for his reputation and future, and legal expenses arising from publicized accusations of assault and battery on police, resisting arrest and disorderly conduct.



219. Even though it is a crime for police officers in Massachusetts to file false police reports Officer Tivnan was not charged with criminal conduct.
220. Chief Sargent recently explained why Officer Tivnan was not criminally charged for preparing a false report and setting in motion the criminal prosecuting Ayala- Melendez: *“I believe it was a mistake of the head and not of the heart. I don't think he wrote a false report intentionally, but it was not accurate. It was not an accurate report to what happened that I could see. We didn't have the opportunity to interview the complainant. [Mr. Ayala-Melendez].”*
221. The City Manager, in line with Chief Sargent, testified in early February 2022 he was unaware police officers can be criminally charged when they prepare false police reports, and the WPD have never charged a single Worcester officer who has been administratively found to have filed a false police report.
222. His response as the firing and hiring authority for the police department demonstrated deliberate indifference to the rights of citizens that come in contact with police.
223. Despite Chief Sargent’s musing about Officer Tivnan’s state of mind when Mattis bit Ayala-Melendez on October 19, 2021, he also informed the Office of the District Attorney’s Office that Officer Shawn Tivnan had *“lied about a defendant’s conduct and thereby allowed a false or inflated criminal charge to be prosecuted.”*

224. On January 26, 2021 the City Manager provided Officer Tivnan with a Notice of Contemplated Discipline Hearing under MGL, c. 31§ 41 and requesting a forty (40) tour suspension alleging: *“It is clear from reviewing the video that your reporting of your interaction with Mr. Ayala-Melendez is not accurate. Once you pushed Mr. Ayala-Melendez toward Franklin Street, K-9 Mattis engaged Mr. Ayala-Melendez by biting his lower back. Mr. Ayala-Melendez did not, as you assert, come back toward you. When provided with an opportunity to amend your report in light of the video, you stood by your original account. **Conclusion** If the allegations contained herein are true, the forty (40) tour suspension is warranted.”* (Emphasis supplied).

225. Despite the City Manager’s condemnation of Officer Tivnan’s false reporting, he, like the Chief, and the BOPS chose not to go after Officer Tivnan for allowing a vicious dog to maul Ayala-Melendez by portraying the incident as *“...[a]n accidental byproduct of the interaction. It wasn’t, at least from what I could tell, an order to the dog, bite or attack, or anything of that nature.”*

226. Despite exonerating itself from wrongdoing by claiming there was a policy failure, to be sure, to a policy that Chief Sargent promulgated in 2017, it took more than two years for the City to amend policy 401.

227. The City, the Chief police or the City Manager have not moved to have Officer Tivnan fired for fabricating evidence.

228. On September 2022, the City agreed to pay Ayala-Melendez the sum of

\$275,000 to compensate him for violation of his civil rights.

229. In *Eric Rojas-Rodriguez v. Officer Daniel Pennellatore, City of Worcester, Edward M. Augustus and Chief Steven W. Sargent*, U.S. District Court, CA No. 4:22-cv- 40034-TSH (D. Mass. Mar. 31, 2022) Rojas Rodriguez alleged he was mauled by a WPD K-9 and that police fabricated evidence.
230. The complaint alleges that a Worcester officer purposely sicced a vicious police dog on a restrained and unsuspecting man from behind without provocation or legal cause of any kind whatsoever. The victim, Eric Rojas Rodriguez, was kicked in the face, repeatedly punched while on the ground, and mauled by a police K-9 even though he was already handcuffed. The officer then falsely and maliciously charged him with serious crimes based on fictional account of riotous and assaultive conduct. Mr. Rojas suffered what a treating plastic surgeon described as five lacerations with significant soft tissue damage (muscle injury) in the medial calf along with two posterior lacerations.
231. Rojas Rodriguez alleged in his complaint he was disabled for months, unable to step on his left leg, was traumatized by the horrific experience, and subjected to great public embarrassment. The mauling resulted in significant scarring, atrophy and deformity to his left leg and calf.





232. Rojas Rodriguez was accused of assault and battery on police, (punching an officer on the back of the head) resisting arrest and disorderly conduct and disturbing the peace. All charges except one, for disorderly conduct, were dismissed at the request of the Commonwealth and with the consent and agreement of members of the Worcester police department after a surveillance video and cell phone video of the incident surfaced that contradicted the falsehoods of the false police narrative, i.e., Rojas Rodriguez never struck a police officer, was not given any warning before being mauled by the police K-9 and a video also demonstrates that the K-9 was allowed to bite even after he had handcuffed.

233. An internal investigation uncritically excused police official lies and deception and spun the police explanation to justify the K-9 mauling constituted a lawful use of force.

234. Sgt. Avedian from the BOPS attempted to harmonize false reports with surveillance tapes as follows:

235. “On July 07, 2022, a second interview was conducted with Officer Daniel Pennellatore in order to view a video that was secured by Officer Kevin McCarthy and entered into the Detective Bureau as evidence for court on April 1, 2019. This video had not been reviewed by Officer Pennellatore at the time of the incident nor was he afforded the opportunity to review the video with ADA Nathan Morse and his boss Jeff Travers who had decided not to pursue three out of the four charges against Eric Rojas Rodriguez. As stated earlier in this report, Officer Pennellatore was never involved in the court process and was not aware that these charges were dropped or given the ability to review the videos that were in their possession. After Officer Pennellatore reviewed the video (2019-03036) for the first time, he stated that it appeared that Eric Rojas Rodriguez had struck a bouncer and not Officer Kevin McCarthy as he had written in his original report. Officer Pennellatore had stated when he wrote his original report it was his

" perception" that led him to believe that he had seen Eric Rojas Rodriguez strike Officer Kevin McCarthy. After Officer Pennellatore reviewed the video a supplemental report was submitted and a copy is on file in the BOPS case file 2022-0011 . There seemed to be absolutely no deception on the officer's incident reports (as alleged by Attorney Pineiro) and that each report is independent of each other's arrests. As stated earlier in the report, Eric Rojas' charges were all dismissed without prejudice except for Disorderly Conduct which was continued without a finding and dismissed if he was to seek employment or school. It again should be noted that there was no agreement amongst the four officers named in this lawsuit agreeing to have the charges dismissed after reviewing the videos provided by Attorney Pineiro.

236. Chief Sargent, who is responsible under the Massachusetts injured prisoner statute to document how police officers use force in the field so that it complies with constitutional requirements testified during a January 2022 depositions along with the City Manager they were unaware of the existence of Rojas' case or the photographs of his injuries.

237. Chief Sargent trivialized and deflected the question of whether he thought Rojas injuries were serious, *"Once again, I'm -- it's not*

*relevant. I don't know what would be considered serious unless I got the medical report and I could read it. I may still not understand."*

238. City Manager Augustus, like Sargent, staunchly refused to characterize Rojas' injuries as serious despite their grotesque appearance as revealed in photographs: *"It's hard for me to say, you know. There's some kind of wound but, again, how much of it is dried blood and what is the wound, I don't know."*
239. Chief Sargent would only concede Rojas' mauling *"...it looks bloody."*
240. On December 12, 2022 Brima Fofana, an African-American male and Felipe Paniuaga sued an elite group of police officers who racially profiled him, followed him, conducted a car stop and without warning violently pulled Fofana and Paniagua from the car that rolled down accidentally and struck a street pole.
241. They went onto charge Fofana with very serious charges which included assault and battery with a dangerous weapon, negligent operation.

242. Or in *Carlos Alvarez v. City of Worcester, et al* Case No. 4:20-cv-40004-TSH (D. Mass. Jan. 8, 2020) the City of Worcester agreed to pay Carlos Alvarez \$275,000 in November 2022 in a civil rights case alleging fabrication of evidence.

243. In *Alvarez*, the officer sought criminal charges against the Plaintiff and submitted an application for criminal complaint citing the presence of the text message as evidence of the Plaintiff's involvement in drug distribution. The officer wrote in his application that he read the text message from the phone's outer screen but did not open the phone or press buttons. The officer's statement about the text message was demonstrably false because the seized phone is incapable of displaying text messages on its outer screen. The officer deliberately repeated this falsehood throughout the course of the criminal proceedings against the Plaintiff. The officer falsely testified on three occasions: at the Grand Jury proceedings, at an evidentiary hearing on the Plaintiff's motion to suppress and at the Plaintiff's trial. As a direct and proximate result of the officer's conduct in the criminal proceedings, and the customs and practices Plaintiff was wrongfully convicted for approximately 3 years.



244. No one has ever been held to account for Alvarez' 3-year wrongful incarceration precipitated by an unlawful arrest and fabrication of evidence.

245. A forensic review of the phone in question demonstrated there was significant activity on the phone after Mr. Alvarez was arrested demonstrating the phone was opened and buttons were pressed in order to make outgoing phone calls, accepted three incoming calls, and read text messages that were in the "read" state.

246. In *Cosenza v. City of Worcester et al*, Case No. 4:18-cv-10936-TSH Dkt. 102, (D. Mass. Oct. 21, 2020) a federal jury returned an \$8 million verdict in favor of Cosenza on September 30, 2022 after a jury found police fabricated evidence to convict him.

247. No one was ever sanctioned or disciplined on account of Cosenza's wrongful incarceration flowing from fabrication of evidence.

248. The policy, practice, and usage of the City, Chief of Police and Mr. Augustus of impunity for the use of excessive force and other

police misconduct is further evidenced by events following the arrest of Rev. Joseph Rizzuti, Pastor Joseph Rizzuti Jr. Karissa Rizzuti, that resulted in him being tased, beaten and his daughter in law punched by the police. Rizzuti v. Officer Michael Cappabianca, Jr. et al, District of Massachusetts, CA No. 4:22-cv-40094-AK.

249. In May of 2023, 12 individuals filed civil rights complaints as a result of false arrests, excessive use of force and filing false police reports along with other civil rights violations as a result of their arrest during the George Floyd protests in June of 2020.

250. On February 1, 2022 the City Manager was asked to express his reaction to the dismissal of criminal charges during the George Floyd protests of June 1, 2020.

251. His response was a classic exercise of burying his head in the sand: *"I don't know if I had a reaction, you know. Cases, you know, the courts deal with the cases as they see fit, or the DA's office as he sits fit, so I don't know if I had a reaction."*

252. But Sargent did have a reaction to the District Attorney's dismissal of the criminal case- it was red meat to the rank and file of the WPD: "We are very surprised and disappointed that these

charges have been dropped without prior consultation with anyone at the Worcester Police Department,” he wrote in a statement.

253. City Manager Augustus when questioned in his capacity as conservator of the peace in the City whether he monitored the progress of that particular investigation he responded: *“You know, I keep it a very high level of conversation with the chief but I don't get into the minutia of any investigations.”*

**COUNT I  
FIRST CLAIM FOR RELIEF AGAINST  
DEFENDANTS**

(42 U.S.C. § 1983 Violation of the Fourth and Fourteenth  
Amendments Unlawful Search and Seizure)

254. Plaintiffs incorporate here all previously stated allegations.
255. Defendants lacked any probable cause to believe Plaintiffs committed a drug offense or a traffic violation and there was no basis for a traffic stop.
256. Defendants lacked any reasonable suspicion that Plaintiffs were engaged in or were about to become engaged in the commission of a felony or misdemeanor and there was no basis for a traffic stop.
257. The detention of Plaintiffs, along with the unwarranted search of Plaintiffs' automobile, were unreasonable under the prevailing circumstances and thus violated the Plaintiffs' right not to be subjected to

unreasonable search and seizure guaranteed by the Fourth Amendment of the United States Constitution.

258. At all times relevant Defendants acted under color of law when they unlawfully and unreasonably seized Plaintiffs, subjected them to an unreasonable delayed detention and searched Plaintiffs' automobile in violation of their rights under the Fourth Amendment as applied to the states by the Fourteenth Amendment to be free from unreasonable searches and seizures.

259. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs suffered economic damage, emotional injury, embarrassment, and humiliation.

**COUNT II**  
**SECOND CLAIM FOR RELIEF AGAINST**  
**DEFENDANTS**

(42 U.S.C. § 1983 Violation of the Fourteenth Amendment  
Equal Protection)

260. Plaintiffs incorporate here all previously stated allegations.

261. A traffic stop by a law enforcement officer must be based on observed conduct that gives the officer probable cause to believe there has been a violation of a traffic law or regulation; or reasonable suspicion to believe other criminal activity is afoot.

262. Plaintiffs neither violated laws nor engaged in conduct giving rise to reasonable suspicion or probable cause at the time they were stopped by the Defendants.

263. Plaintiffs are African American and they were subjected to a stop, seizure and search because of their racial identity.

264. Defendant Duffy's decision to stop the Plaintiffs was not based on observed improper or illegal conduct.

265. Defendant Duffy did not commence pursuit of Plaintiffs but falsely reported to other officers that he had observed drug activity.

**266. Defendant Tivnan asked Mr. Fofana how he could afford the jacket that Fofana was wearing implying that Mr. Fofana was not able to buy such jacket.**

**267. The Defendants forcefully pulled both plaintiffs from the car without any evidence of criminal conduct.**

268. Defendants' actions were consistent with those of law enforcement officers who in reliance on racial stereotypes about the inherent criminality of people of African ancestry, believe that contraband will eventually be discovered during a stop of a black male.

269. Defendants' actions were motivated by evil motive or intent and/or involved reckless or callous indifference to the Plaintiffs' rights. Specifically, Defendants willfully and/or maliciously engaged in unconstitutional racial profiling.

270. The effect of Defendants' actions was racial discrimination against Plaintiffs in that drivers of other races who, like Plaintiffs, were lawfully operating their motor vehicles, were not stopped and detained in the same way and for the same reasons as Plaintiffs.

**COUNT III  
42 U.S.C. § 1983  
MONELL LIABILITY**

271. All preceding and subsequent paragraphs are incorporated by reference.

272. At all times herein, Defendant City of Worcester, through its Police Department, supervisors and/or policymakers, established and/or maintained the following customs, usages, policies and/or practices:

- a) Allowing officers to stop individuals of color without maintaining a record of such stops.
- b) Allowing officers to search individuals of color without maintaining a record of such search.
- c) Allowing officers to beat, shoving, tackle, and brutalize individuals of

color during motor vehicle stops while conducting searches without probable cause.

- d) Detaining individuals of color and conducting searches without probable cause.
- e) Failing to maintain records of stops of individuals of color.
- f) Using excessive use of force during motor vehicle stops of individuals of color.

273. In particular, Defendant City of Worcester, acting through its Police Department, supervisors and/or policymakers, were aware that members of the vice unit, NRT unit, and Gang Unit were engaged in a practice of stopping individuals of color and subjecting them to searches without maintaining any record of such stops and searches.

274. In particular, Defendant City of Worcester, acting through its Police Department, supervisors and/or policymakers, allowed officers to engage in the practice of conducting random and arbitrary stops of individuals of color, thereby condoning and/or acquiescing in Defendants Duffy, Tivnan, Powers, FRigon, Coleman, Mitchell, Panarello unconstitutional use of force, arrests, detentions, invasion of First and Fourth Amendment rights, and retaliatory conduct in violation of 42 USC §1981.

275. Each of the aforementioned policies, customs, and/or practices was known to Defendant City of Worcester, and Defendants, each acting in their official

capacities, as being highly likely and probable to cause violations of the constitutional rights of members of the public, including but not limited to Plaintiffs herein.

276. The conduct of the individually named Defendants herein was committed pursuant to the customs, policies and/or practices of Defendant City of Worcester.

277. Each such custom, policy and/or practice, referenced above, was a moving force in the violations of Plaintiffs' constitutional rights, as set forth herein.

278. Worcester Police policymakers including the Mayor of the City of Worcester and Chief Sargent have acted with utter disregard for the constitutional rights of individuals of color by authorizing, both explicitly and implicitly, the use of force upon those stopped by officers for the purposes of conducting an illegal search.

279. Worcester Police policymakers including the Mayor of the City of Worcester and Chief Sargent have acted with utter disregard for the constitutional rights of individuals of color by failing to properly train, supervise, condemn, and discipline Worcester Police officers regarding appropriate use of force during a motor vehicle stop and by failing to rectify the Worcester Police unconstitutional custom of stopping individuals of color and conducting unreasonable searches without probable cause or reasonable suspicion.

280. Worcester Police policymakers including the Mayor of the City of Worcester and Chief Sargent have acted with utter disregard for the

constitutional rights of individuals of color by failing to discipline officers that conduct improper stops and searches of individuals of color and failing to maintain proper statistics regarding stops and searches of individuals of color.

281. Worcester Police policymakers including the Mayor of the City of Worcester and Chief Sargent have acted with utter disregard for the constitutional rights of individuals of color by failing to discipline officers that knowingly submit false police reports.

282. Worcester Police policymakers including the Mayor of the City of Worcester and Chief Sargent have acted with utter disregard for the constitutional rights of individuals of color by allowing the BOPS division to conduct an impartial investigation when an officer is alleged to have violated a department policy.

283. As a direct and proximate result of Defendants' unlawful actions, Plaintiffs have sustained injuries and damages including, physical injury, mental anguish and emotional distress, humiliation and embarrassment.

#### **COUNT IV**

#### **CIVIL CONSPIRACY**

**(42 U.S.C. Section 1983)**

**(Against named defendants)**

284. Plaintiffs incorporate here all previously stated allegations.

285. All preceding and subsequent paragraphs are incorporated by reference.

286. At all relevant times, Defendants have acted—and continue to act— under color of state law.



287. In doing the acts complained of herein, defendants acted under color of law to deprive plaintiffs of certain constitutionally protected rights including, but not limited to:

- a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth amendment to the United States Constitution,
- b. The right not to be deprived of life or liberty without due process of law, as guaranteed by the Fifth and Fourteenth amendments to the United States Constitution,
- c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment to the United States Constitution, and
- d. The right to be free from interference with the zone of privacy, as protected by the Fourth Amendment to the United States Constitution.

WHEREFORE, plaintiff prays for relief as hereinafter set forth below

#### **COUNT IV**

##### **(Assault and Battery)**

(As to defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

288. All preceding and subsequent paragraphs are incorporated by reference.

289. At all relevant times, Defendants have acted—and continue to act— under color of state law.

290. Named defendants placed plaintiffs in immediate fear of death and severe bodily harm by assaulting and battering them without any just provocation or cause. Said defendants' conduct was neither privileged nor justified under statute or common law. As a proximate result of said defendants' conduct, plaintiff suffered damages hereinafter set forth.

#### **COUNT V**

##### **(False Arrest and Imprisonment)**

(As to Defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

291. All preceding paragraphs are incorporated by reference.

292. Named defendants falsely arrested and imprisoned the plaintiffs without just provocation or probable cause. Plaintiffs had not committed any crime, and there was no basis upon which defendant officers could have reasonably believed that plaintiffs had committed a crime.

293. Said defendants failed to observe proper or reasonable procedures while falsely arresting and imprisoning plaintiffs without probable cause.

### **COUNT VI**

#### **Unreasonable Force**

(As to defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

294. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 47 of this complaint.

295. In the act of falsely arresting and imprisoning plaintiffs, the named defendants used unreasonable and excessive force, causing significant physical injuries, emotional trauma and lasting mental distress to the plaintiffs.

296. Unreasonable force describes situations when government officials legally entitled to use force exceed the necessary minimum amount to diffuse an incident or to defend others or themselves from harm. In the case between our plaintiffs and defendants, dozens of City police officers disregarded traffic stop protocols and escalated to a use of force. City officers smashed the plaintiffs car windows, pulled plaintiffs out of the vehicle in traffic while punching and kicking the unarmed and non combative plaintiffs.

### **COUNT VII**

#### **(Destruction of property)**

(As to defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

297. All preceding paragraphs are incorporated by reference.

298. In the unusually violent traffic stop, defendants caused significant damage to the Volkswagen Jetta belonging to Fofana as they smashed his car windows and pulled him out of the vehicle, allowing his vehicle to continue rolling forward, ultimately smashing into a metal pole.

299. Officers Tivnan and Powers by using unnecessary and unreasonable use of force destroyed Mr. Fofana's jacket by ripping it.

### **COUNT VIII**

#### **Unreasonable search and seizure)**

(As to defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

(As to defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

300. All preceding paragraphs are incorporated by reference.

301. At all relevant times, Defendants have acted—and continue to act— under color of state law.

302. Defendants detained, seized, handcuffed, arrested, and searched Plaintiffs' persons and their personal property despite the lack of any individualized probable cause or reasonable suspicion that Plaintiffs committed any crime.

303. The "arresting officers" did not actually witness or assert any facts describing Plaintiffs' alleged violations of law.

304. As a direct and proximate result of Defendants' unlawful actions, Plaintiffs have sustained injuries and damages including physical injury, mental anguish and emotional distress, humiliation and embarrassment, and have incurred attorney fees.

### **COUNT IX**

#### **(Civil Conspiracy)**

(As to defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

305. All preceding paragraphs are incorporated by reference.

306. Upon realizing their mistake, defendants conspired to falsify official reports in an attempt to conceal their wrongdoing. Nearly a dozen City employees provided false reports in order to charge the defendants with a multitude of fabricated crimes.

### **COUNT X**

#### **Filing of false police reports**

(As to defendants City, Duffy, Tivnan, Powers, Barney, Frigon, Hanlon, Coleman & Panarello)

307. All preceding paragraphs are incorporated by reference.

308. Upon realizing their mistake, defendants conspired to falsify official reports in an attempt to conceal their wrongdoing the named defendants provided false reports in order to charge the defendants with a multitude of fabricated crimes.

### **DAMAGES**

309. As a direct and proximate result of defendants' wrongful conduct, plaintiffs suffered the following injuries and damages:

- a. Violation of their constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable search and seizure of his person,
- b. Loss of physical liberty,
- c. Physical injuries leading to severe pain, emotional trauma, mental distress and various medical expenses,
- d. Violations of the following clearly established and well-settled federal constitutional rights include but are not limited to: (1) freedom from unreasonable search and seizure of their persons under the Fourth Amendment to the United States Constitution; and (2) right to equal protection under the Fourteenth Amendment to the United States Constitution,

- e. The conduct of named defendant police officer Duffy was malicious, wanton and oppressive. Plaintiff is therefore entitled to an award of punitive damages against said defendant lice officers; and
- f. Plaintiff found it necessary to engage the services of private counsel to vindicate his rights under the law. Plaintiff is therefore entitled to an award of all attorney's fees incurred in relation to this action for violation of his civil rights.

**PRAYER**

WHEREFORE, plaintiff prays for judgment against the Defendants, as follows:

- 1. All compensatory damages recoverable,
- 2. For special damages according to proof,
- 3. For punitive damages against named defendant police officers, according to proof,
- 4. For reasonable attorney's fees pursuant to 42 U.S.C. Sections 1983 and 1988,
- 5. For costs of suit herein incurred, and
- 6. For such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,  
Brima Fofana & Felipe Paniagua

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