IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

MARIA DEL SOCORRO MALINOWSKI, individually and as a personal representative of the Estate of Bryan K. Malinowski, deceased, and on behalf of the wrongful death beneficiaries of Bryan K. Malinowski,

Plaintiff,

v.

UNITED STATES OF AMERICA, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF), TIMOTHY BOLES, TROY DILLARD, CLAYTON MERRILL, TYLER COWART, MATTHEW SPRINKLES, JAMES BASS, MICHAEL GIBBONS, CHRIS GRIGGS, SHANNON HICKS, and AMY NESS, individually,

Defendants.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
MAY 15 2025
TAMMY H. DOWNS, CLERK
By: DEP CLERK

Case No. 4:25-cv-486-BSM

This case assigned to District Judge Miller
and to Magistrate Judge Volpe

COMPLAINT

Plaintiff Maria ("Maer") Malinowski, individually, as personal representative of her husband's estate, and on behalf of the wrongful death beneficiaries of Bryan K. Malinowski, brings this Complaint seeking damages against Defendants for their unreasonable and unlawful acts of the predawn morning of March 19, 2024, which culminated—less than two minutes after they arrived—in the killing of her husband acting in defense of her and their home. In the darkness of that morning, ATF forced entry into their home, broke down the door with a battering ram and, once inside, shot and killed Bryan Malinowski in front of his panic-stricken wife. The ATF predicated this ultimate

seizure of his person on a federal search warrant sought and issued based on suspicion and belief that Mr. Malinowski, the Executive Director of the Bill and Hillary Clinton (Little Rock) National Airport with no criminal history or indication of being a threat, was acting as a firearms dealer without having secured a $200 firearms license. But the Constitution rightfully requires more of law enforcement, and is designed to prevent this very tragedy. The Constitution requires reasonableness and, specifically here, that Defendants both knock and announce their presence and purpose and wait a reasonable time before entry. The ATF failed to do so, resulting in an entirely predictable, needless and tragic outcome. The United States should be held liable under the Federal Tort Claims Act and the Individual Defendants held liable under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

I. INTRODUCTION

1. "The law does not require us to close our minds to facts which are known to all reasonably intelligent people… If a person is awakened by banging on the door, an immediate and appropriate response may not be feasible. For at least a brief period, the erstwhile sleeper is likely to be too bewildered to react. He or she must then focus on the possibility that those demanding entry may have no legitimate business on the premises. This is especially true… [when] the bedroom is a considerable distance from the door, so that a suddenly awakened individual may not hear the officer's oral announcements identifying [themselves] as police officers armed with a search warrant… Moreover, most citizens are not clad… in a manner suitable for opening the door to strangers. If someone is not dressed, sufficiently or at all, dressing takes time. Finally, for most people awakened

or startled by loud banging [early] in the morning, the circumstances are not likely to be conducive to rational analysis or to swift or provident decision-making." *Griffin v. United States*, 618 A.2d 114, 121 (D.C. Cir. 1992) (internal citations omitted).

2. Officers' entry into the home of an unaware person "may provoke violence in supposed self-defense by the surprised resident." *Hudson v. Michigan,* 547 U.S. 586, 594 (2006).

3. Before dawn on the morning of March 19, 2024, ten carloads of federal and state law enforcement officers assembled in the dark and arrived in a quiet cul-de-sac in Little Rock, Arkansas.

4. At 6:02:42 a.m., seven ATF agents and task force officers stacked onto the front porch steps of 4 Durance Court, a large gray stucco home, while the family who lived there slept inside.

5. Inside the home Bryan Malinowski laid in bed next to his wife of 25 years, Maer Malinowski, and their two pug dogs.

6. The carloads of agents and task force officers had assembled in the dark that morning to execute a search warrant on the Malinowski home. Bryan's suspected crime? Failing to secure a $200 federal firearms license before selling firearms at local gun shows.

7. ATF agents covered up the Malinowskis' video doorbell camera with tape, and less than one minute later, the team leader ordered agents to pry open the locked, glass storm doors and break down the inner, wooden doors with a battering ram to breach the entry.

8. Less than 20 seconds later, at 6:03:46 a.m., gunshots rang out, and Bryan

Malinowski crumpled to the ground, shot in the head by an ATF agent following an exchange of gunfire.

9. Bryan had scrambled out of bed and crept into the dark hallway with his gun to protect himself and his wife from whom he reasonably believed were intruders. He did not know that he was under investigation, much less that the people who broke down his front doors were law enforcement, because they failed to adequately knock and announce their presence and give him a reasonable time to wake up and come to the door.

10. Bryan's wife, Maer, did not heed his direction to stay in their bedroom, and instead followed her husband into the dark hallway where she saw him shot in the head.

11. It was only after the exchange of gunfire when Maer heard a demand to put her hands up that she learned the men who broke down her front door and shot her husband were federal agents.

12. Bryan Malinowski succumbed to his injuries two days later at the hospital, on March 21, 2024. He was 53 years old.

13. More than 75 years ago, the Supreme Court grimly anticipated this scenario, noting:

> many home-owners in this crime-beset city doubtless are armed. When a woman sees a strange man, in plain clothes, prying up her bedroom window and climbing in, her natural impulse would be to shoot. A plea of justifiable homicide might result awkwardly for enforcement officers. But an officer seeing a gun being drawn on him might shoot first. Under the circumstances of this case, I should not want the task of convincing a jury that it was not murder. I have no reluctance in condemning as unconstitutional a method of law enforcement so reckless and so fraught with danger and discredit to the law enforcement agencies themselves.

McDonald v. United States, 335 U.S. 451, 461 (1948).

14. Maer Malinowski, individually, as personal representative of the Estate of Bryan K. Malinowski, and on behalf of the wrongful death beneficiaries of Bryan K. Malinowski, brings this action against the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and the United States of America ("USA") under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80; and brings this civil rights action against the individual defendant officers pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

II. JURISDICTION AND VENUE

15. This action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq*. & § 1346, *et seq*. for money damages for death and other injuries caused by institutional failures and the negligent or wrongful acts or omissions of one or more employees of the United States government while acting within the course and scope of their office or employment under circumstances where Defendant USA, if a private person, would be liable to Plaintiff in accordance with Arkansas law.

16. This Court has original jurisdiction over Plaintiff's federal civil rights claims pursuant to 28 U.S.C. §§ 1331, 1343, 1346. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

17. This action arises out of an incident that occurred in Pulaski County, Arkansas, the same county in which Plaintiff resides. Pulaski County lies in the Eastern District of Arkansas, Central Division.

18. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 as a substantial part of the acts or omissions which give rise to this cause of action occurred in

Pulaski County, Arkansas, which lies within the Eastern District of Arkansas.

19. The United States of America has waived its immunity from suit for the acts and omissions set forth herein under the Federal Tort Claims Act ("FTCA") pursuant to 28. U.S.C. § 1346(b), 2401(b), 2671, et seq.

20. Further, Plaintiff's action against the individual Defendants is authorized pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

III. CONDITIONS PRECEDENT

21. Pursuant to 28 U.S.C. § 2675(a), Plaintiff timely presented her claims to the United States by submitting administrative tort claims within the applicable time period, which were denied by the United States of America by letter dated January 10, 2025.

22. Plaintiff's action under the FTCA is brought within six (6) months after the denial of their administrative tort claims was mailed.

23. Plaintiff has exhausted her administrative remedies under the Federal Tort Claims Act and has fully complied with the statutory prerequisites for bringing this tort action against the Defendant USA.

IV. PARTIES

24. Plaintiff Maer Malinowski, the surviving spouse of Bryan Malinowski, was appointed personal representative of the Estate of Bryan K. Malinowski on April 12, 2024, by Order of the Circuit Court of Pulaski County, Arkansas in Case No. 60PR-24-812. A copy of the Probate Order is attached as **Ex. A**. Plaintiff sues both individually and as the personal representative of the Estate of Bryan K. Malinowsi, and is the proper person to

bring suit on behalf of the Estate of Bryan K. Malinowski pursuant to the Arkansas Survival of Actions Statute, Ark. Code Ann §16-62-101(a)(1) and on behalf of the wrongful death beneficiaries of Bryan K. Malinowski pursuant to the Arkansas Wrongful Death Statute, Ark. Code Ann. §16-62-102(b). Maer Malinowski is, and at all times during the incident that is the subject of this Complaint, was a resident of Little Rock, Pulaski County, Arkansas.

25. Defendant United States of America acted through Defendant Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and its agents, its task force officers, and ancillary Little Rock Police Department ("LRPD") officers during the ATF's execution of a search warrant at the home of Bryan Malinowski on March 19, 2024.

26. Defendant ATF, at all relevant times, acted as an agent of the United States of America as a federal law enforcement agency under color of law.

27. Defendant Timothy Boles, at all relevant times, was a special agent with the ATF, and acted under the color of federal law. He is sued in his individual capacity.

28. Defendant Troy Dillard, at all relevant times, was a special agent with the ATF, and acted under the color of federal law. He is sued in his individual capacity.

29. Defendant Clayton Merrill, at all relevant times, was the resident agent in charge of the Little Rock ATF office, and acted under the color of federal law. He is sued in his individual capacity.

30. Defendant Tyler Cowart, at all relevant times, was a special agent with the ATF, and acted under the color of federal law. He is sued in his individual capacity.

31. Defendant Matthew Sprinkles, at all relevant times, was a special agent with

the ATF, and acted under the color of federal law. He is sued in his individual capacity.

32. Defendant James Bass, at all relevant times, was a special agent with the ATF, and acted under the color of federal law. He is sued in his individual capacity.

33. Defendant Michael Gibbons, at all relevant times, was a law enforcement officer employed by the North Little Rock Police Department, who was affiliated and embedded as a Task Force Officer ("TFO") with the ATF office based in Little Rock, Arkansas, and acted under the color of federal law. He is sued in his individual capacity.

34. Defendant Chris Griggs, at all relevant times, was a law enforcement officer employed by the Mississippi County (Arkansas) Sheriff's Office, who was affiliated and embedded as a Task Force Officer ("TFO") with the ATF office based in Little Rock, Arkansas, and acted under the color of federal law. He is sued in his individual capacity.

35. Defendant Shannon Hicks, at all relevant times, was a special agent with the ATF, and acted under the color of federal law. She is sued in her individual capacity.

36. Defendant Amy Ness, at all relevant times, was a special agent with the ATF, and acted under the color of federal law. She is sued in her individual capacity.

V. FACTUAL ALLEGATIONS

37. Bryan Malinowski was a lifelong collector. As a child he started collecting coins, a hobby he carried into his adulthood. Several years ago, his father handed him down his gun collection, which sparked Bryan's interest in firearms. He became a gun collector and hobbyist.

38. One of Bryan's interests was attending gun shows on the weekends, where he would set up a table, display his guns and coins, and buy, sell, and trade with others.

39. Federal law charges the ATF with promulgating rules and regulations, through the Code of Federal Regulations,[1] which are necessary to carry out the provisions 18 U.S.C. Chapter 44.[2]

40. In March 2024, federal regulations did not require an individual seller to hold a federal firearms license ("FFL") as a dealer in firearms unless that individual's principal objective in selling firearms was livelihood and profit. 27 CFR Part 478.

41. Specifically, in March 2024, 27 C.F.R § 478.11 defined a "dealer in firearms" as "[a] person who devotes time, attention, and labor to dealing in firearms…*with the principal objective of livelihood and profit.*" 27 C.F.R. § 478.11 ("Engaged in the business," subsection (c)) (emphasis added).

42. At the time of his death, Bryan Malinowski was the highest paid city employee in the city of Little Rock as the Executive Director of the Little Rock Airport, where he earned an annual salary of more than $260,000.

43. Upon information and belief, Bryan did not believe that by selling at gun shows he was engaging in conduct "with the principal objective of livelihood and profit," and therefore did not believe he needed an FFL to sell firearms at gun shows.

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[1] See 18 U.S.C. § 926 (Attorney General is granted rule-making authority); see also 28 C.F.R. § 0.130(c) (Attorney General delegates rule-making authority to the ATF); ATF Final Rule 03-1657 (redesignating 28 C.F.R. § 47, with relevant parts designated as 28 C.F.R. § 478).

[2] 27 C.F.R. § 478.1 states that "[t]he regulations contained in this part… are promulgated to implement… 18 U.S.C. Chapter 44, of the Gun Control Act of 1968."

A. The ATF's Investigation and Search Warrant for the Malinowski Home

44. In December 2023, the ATF opened an investigation and began following Bryan to and from work and on the weekends, placing a tracker on his car, and surveilling his daily activities.

45. During the investigation, at least two agents acting undercover interacted with Bryan at a gun show in Arkansas. Bryan answered one of the undercover agent's inquiries by noting that he was a private seller, meaning he believed he did not need an FFL.

46. During their investigation, ATF learned a lot about Bryan.

47. They knew he worked in a secure environment at the airport, where guns were not allowed.

48. They knew he had lived a law-abiding life with no criminal history, that he lived at home with his wife and two dogs, and that they kept a very regular schedule.

49. Bryan had no reason to believe that he was under investigation for violating federal law.

50. Bryan never received a letter of inquiry, audit, personal visit, or request for information from the ATF; nor did he ever receive a target or subject letter from the Department of Justice notifying him that he was under investigation.

51. On March 6, 2024, ATF Special Agent Troy Dillard obtained two federal search warrants, which authorized federal agents to search the Malinowski home and Bryan's vehicle for firearms, ammunition, electronics, sales records, and correspondence.

52. Importantly, it was not an arrest warrant. Nor did it set forth any facts that

would lead any person to believe Mr. Malinowski would evade law enforcement, fail to cooperate, be dangerous, or pose a threat or risk of destroying evidence.

B. ATF's Efforts to Close the "Gun Show Loophole" and Announcement of Rule Change One Month After Bryan is Killed

53. On April 11, 2024, less than a month *after* the ATF raid that killed Bryan, the ATF announced a new rule to "close the gun show loophole," and expand the definition of what it meant to be "engaged in the business" of selling firearms, newly requiring anyone who sells guns at a profit to register as a federally licensed firearms dealer. ATF, Final Rule, *Definition of "Engaged in the Business' as a Dealer in Firearms*, (April 11, 2024), https://www.atf.gov/firearms/final-rule-definition-engaged-business-dealer-firearms.

54. Specifically, the new rule revised 27 C.F.R. § 478.11 to change the definition of "engaged in the business" to remove the word "livelihood," thus reading "with the principal objective of profit."

55. The law at the time had been "vague, exempting people who occasionally sold guns as a hobby but not spelling out how many sales was too many." Eduardo Medina, THE NEW YORK TIMES, *What Set the ATF and an Airport Leader on the Path to a Deadly Encounter?,* May 24, 2024, https://www.nytimes.com/2024/05/24/us/bryan-malinowski-arkansas-atf-guns.html.

56. Before the rule change, the Everytown Research and Policy nonprofit, which advocated for the new administrative rule, published a paper noting that the "lack of clarity in the federal definition of 'engaging in the business' of selling firearms has created a hazy arena between firearm dealers who must obtain a license, and occasional sellers who need

not obtain a license or conduct background checks." Everytown, Nov. 12, 2015, *Business as Usual* Report, https://everytownresearch.org/report/business-as-usual/.

57. The new administrative rule aimed to "close the gun show loophole," a move touted by the then-administration as the most significant increase in U.S. gun regulation in decades. Perry Stein, THE WASHINGTON POST, "*Biden Rule to Close Gun Show Loophole is Final, Increasing Background Checks*," April 11, 2024, https://www.washingtonpost.com/national-security/2024/04/11/gun-show-loophole-closed-biden-atf/.

58. Meanwhile, the change worried law-abiding gun owners nationwide about how the revision would target them as responsible gun owners. 12 NEWS NOW, *Gun owners concerned in light of Biden administration's crackdown on 'gun show loophole,'* April 15, 2024, https://www.12newsnow.com/article/news/local/gun-owners-concerned-in-light-of-biden-administrations-crackdown-gun-show-loophole/502-cdefa485-149b-4df6-a074-825f0f1b1527.

59. The *New York Times* called the new regulation, which did not go into effect for another month until May 2024, "the broadest expansion of federal background checks in decades" and "likely to face legal challenges." Glenn Thrush & Erica Green, THE NEW YORK TIMES, *Biden Administration Approves Expansion of Background Checks on Gun Sales*, (April 11, 2024), https://www.nytimes.com/2024/04/11/us/politics/biden-guns-background-checks.html.

60. In the months preceding his death, even though ATF's new regulation intended to tighten the definition of a person "engaged in the business of selling firearms"

had not yet gone into effect, the ATF concluded Bryan Malinowski had crossed the ambiguously defined line and violated federal law by not holding an FFL.

61. They decided his suspected infraction was serious enough to warrant a pre-dawn dynamic raid at his home while they knew he and his family would be sleeping.

C. ATF Develops its Operations Plan, Recognizing Bryan Was Not Dangerous

62. According to Special Agent Timothy Boles, the Arkansas ATF office is a small office, and "anytime anybody's running an investigation, the other people know what's going on."

63. As lead investigator, Special Agent Troy Dillard drafted and submitted the ATF Operations Plan for the execution of the search warrant at the Malinowski home.

64. The Operations Plan was approved and signed by Special Agent in Charge (SAC) Clayton Merrill.

65. Nothing in the Operations Plan indicated Bryan posed a danger to himself or others, or that he was not expected to comply with law enforcement if he knew they were at his door.

66. The ATF agents—including Agent Boles—knew that Bryan did not pose a threat to their safety or the safety of others during the anticipated execution of the search warrant.

67. Specifically, ATF investigative officers would learn during their months-long investigation leading up to Bryan's death that Bryan did not pose an immediate threat to their safety or the safety of others during the search; that Bryan had no criminal history or history of violence; that Bryan had never threatened law enforcement officers; and that

Bryan's wife and dogs lived with him and would be present during a pre-dawn search warrant execution at the family home.

68. The agents never observed any person or event, and received no information that would change the circumstances as they understood them at the time Agent Dillard created, and RAC Merrill approved, the Operations Plan.

69. According to Special Agent Shannon Hicks, Mr. Malinowski was "the last person I would have imagined that we would have been in an armed confrontation with."

70. According to Special Agent Tyler Cowart, "[w]e thought this would be an easy search warrant and we'd be out of there pretty quick. And [Mr. Malinowski] would cooperate and everything, and it was supposed to be easy."

71. There was no indication or belief at any time that evidence would be, or was being, destroyed.

72. Special Agent Dillard documented in the Operations Plan, and the agents and task force officers were aware, that:

a. Bryan Malinowski was the director of the Bill and Hillary Clinton National Airport in Little Rock, Arkansas;

b. He had no criminal history and no history of violence;

c. He lived at home with his wife and possibly a small-sized dog;

d. There were no other known occupants of the home;

e. Based on data obtained from a GPS tracking device that ATF placed on his vehicle, Bryan was not expected to leave for work until approximately 9:00 to 10:00 a.m.;

f. That Bryan worked in a gun-free zone, an airport;

g. That Bryan's home was situated on a 0.6 acre lot located at the end of a cul-de-sac;

h. Based on county records, Bryan's home was a large, single-story home, approximately 2,780 square feet with four (4) bedrooms, three (3) full bathrooms, and two (2) half bathrooms. According to Special Agent Adam Bass, it was "a big house."

73. There was no indication or belief by law enforcement prior to or during the forced entry that Mr. Malinowski or his wife were a danger to any person or that they would not comply with the agents' requests or would in any way inhibit the agents' ability to execute the search warrant.

D. ATF Plans and Prepares for a High-Risk Dynamic Entry

74. According to Agent Hicks, the vast majority of the search warrants executed by the Arkansas ATF team are dynamic entries, and that when ATF makes a dynamic entry into a home, they are usually "dealing with violent armed career criminals and drug dealers… [that's] the bulk of the types of cases that we work."

75. According to the Operations Plan, if a "reasonable time" passed with no response, the entry team leader would give the command for the team to conduct a "limited penetration."

76. A "limited penetration" is a type of dynamic entry where an ATF agent carrying the shield enters first. The agent with the shield then stops a foot or two inside the threshold of the door, followed by additional agents visually securing each part of the home visible from the front door threshold. Agents then call out to the occupants.

77. In the wake of the chaos of ATF's 1993 raid of the Branch Davidian compound in Waco, Texas, the agency came under significant public criticism and

congressional scrutiny for using excessive force in carrying out their enforcement responsibilities.

78. The resulting federal review of ATF's use of force and operations concluded that a "dynamic entry, which relies on speed and surprise and may involve forced entry, is a preferred tactic during high-risk operations—those where ATF believes that suspects pose a threat of violence or in operations where evidence can be easily destroyed," and that "a dynamic entry could be planned only after all other tactical options had been considered." *See* United States General Accounting Office ("GAO"), REPORT, *Use of Force*, at 6-7, https://www.gao.gov/assets/ggd-96-17.pdf

79. Additionally, "through the use of dynamic entries in certain high-risk situations, law enforcement agents hope to act so quickly that the suspects do not have time to respond or, at a minimum, give agents the advantage by forcing suspects to react to agent actions rather than the reverse." *Id.* at 49.

80. The GAO use-of-force report noted dynamic entries are meant to reduce "the potential for suspects to react to notification of warrant service." *Id.* at 7.

81. Additionally, the GAO's Use of Force report identified several scenarios exemplary of ATF's dynamic entry when executing a search warrant in "high-risk" scenarios, including the following:

> An ATF agent knocks and announces ATF's identify and purpose. If there is no response after a reasonable period and the door is locked or fortified, one or two agents breach the door using a ram or other tool to gain entry to the premise. Teams carrying body bunkers then quickly enter and search the premise to locate suspects and clear the premise of any danger.

See United States General Accounting Office, REPORT, *Use of Force*, at 60,

https://www.gao.gov/assets/ggd-96-17.pdf

82. This description matches the Arkansas ATF field office's Operations Plan for a "limited penetration" in executing its warrant at the Malinowski home.

83. Despite knowing that Bryan did not pose a danger to them and believing that he would cooperate, ATF agents planned for a dynamic entry, approaching the Malinowski home wearing tactical gear, including ballistic vests and tactical helmets.

84. Most were armed with semi-automatic Colt M4 carbine rifles chambered in 5.56 caliber—a common weapon used by the U.S. military. They also possessed 9mm handguns. One agent carried a battering ram, another carried a ballistic shield, and another had a Halligan pry tool.

85. The agents and TFOs decided to approach the home stealthily and under the cover of darkness and planned to cover the home's video doorbell to obscure their presence.

86. The agents chose to prepare for and execute a dynamic entry despite the Malinowski search warrant execution not posing a threat of violence or evidence destruction.

E. Agents Call Off a Planned Raid on March 12, 2024, When They Learn Bryan is Out of Town

87. Agents had originally prepared to execute the search warrant on March 12, 2024, a week prior to the actual execution and raid on the Malinowski home.

88. Agents, TFOs, and LRPD officers assembled in the pre-dawn hours in the parking lot of a Walmart located at 19301 Cantrell Rd., approximately 1.5 miles from the Malinowski home.

89. They used the Walmart parking lot as a staging area to congregate before executing the search warrant.

90. However, a law enforcement officer who was surveilling the Malinowski home notified the search warrant team that he had observed Bryan leave his home prior to 6:00 a.m., so they did not execute the warrant.

91. Bryan had left his home early that morning to take a flight to Washington, D.C. for work.

92. Nothing prevented the agents from executing the search warrant on March 12, 2024.

93. Because Bryan was not at home when the agents intended to execute the search warrant, they aborted its execution.

94. Agents Dillard, Boles, and Merrill decided to delay the execution of the search warrant until they could be assured Bryan would be present.

F. ATF Fails to Comply with the Operations Plan in Preparing for the Second Attempt at the Search Warrant Execution

95. Agent Dillard set a new date for the warrant execution, March 19, 2024, and prepared an Operations Plan on March 15, 2024, which SAC Merrill approved that day.

96. After the aborted attempt a week prior, some of the agents assigned to the warrant execution changed. For example, the person assigned to "knock and announce" changed from TFO Robert Bell to Matt Sprinkles after Bell was unavailable March 19, 2024.

97. The Operations Plan specifically called for the team to conduct a briefing on

March 18, 2024, the day before execution of the warrant. That briefing did not occur, despite the personnel changes from the original planned execution.

98. Instead, the agents, TFOs, and LRPD officers were briefed at the nearby Walmart staging area just prior to executing the search warrant. It was at this briefing that they were assigned their roles and responsibilities.

99. According to Entry Team Leader Agent Tim Boles in his interview with the Arkansas State Police two days after the shooting:

> We didn't really have a brief, another sit down brief at the office like we did [the week] before. We all met at the Walmart on Chenal, and got everybody together. Kind of went through a few things. I made the assignments. I told them that we were going to—told the team we were going to do a limited penetration on the house if nobody came to the door, if we had to breach the door. That was pretty much it for the brief.

100. Agent Boles assigned specific tasks to certain people the morning of the raid, and recalled to Arkansas State Police that "other than a few other things, that's all I can think of as far as what we were briefing on here in the parking lot."

G. <u>The "Team" Assembles and Divides Up Responsibilities for the Warrant Execution</u>

101. On March 19, 2024, the team, consisting of a total of thirteen (13) agents, task force officers, and LRPD officers, reassembled in the Walmart parking lot in preparation for executing the search warrant on the Malinowski home.

102. Special Agent Merrill was the Resident Agent in Charge ("RAC") of the Little Rock Field Office. He was responsible for supervising all criminal investigations at the Little Rock field office, and he supervised Agent Dillard's investigation of Bryan

Malinowski. On the morning of March 19, 2024, Agent Merrill served as the on-scene commander, and he formed part of the front perimeter with LRPD Officer Steve Woodall.

103. Special Agent Timothy Boles was the entry team leader responsible for deciding when to initiate the knock and announce procedure, for ensuring that the knock and announce procedure would be conducted lawfully in compliance with the Constitution and applicable statutes, and for assigning roles and responsibilities for the team of agents forcing entry into the Malinowski home.

104. Agent Boles ordered the initiation of the knock procedures, ordered the entry team to break the doors to the home, and ordered his agents to enter the home after they hesitated.

105. ATF Agent Adam Bass was the first agent in the entry team "stack" as it approached the Malinowski front porch. He placed tape over the video doorbell at the front door of the home, preventing any occupant from observing their presence—a practice commonly used in high-risk, dynamic entries where surprise and concealment are the goal.

106. Bass was the agent who carried the ballistic shield and discarded it on the front porch of the home before the agents breached the front doors. In the event of a forced entry, he was supposed to be first in the home, leading the team with his ballistic shield emblazed with large, unobstructed "POLICE" across the front. Agent Bass and the shield never made it into the home before agents shot and killed Bryan.

107. ATF Agent Matthew Sprinkles was responsible for conducting the "knock and announce" procedure.

108. Based on the operations plan, Agent Sprinkles was supposed to be the second

agent to enter the home, which would have placed him behind Agent Bass who had the shield. Instead, he entered first amid the disorganization and hesitation pursuant to Agent Boles' order.

109. Agent Tyler Cowart was a member of the entry team, and in the event of a forced entry was responsible for using a Halligan pry tool to force open the glass, French-style storm doors protecting the main, wooden doors on the front porch.

110. Agent Cowart expected to be approximately the fourth agent to enter the home during a forced entry, but unexpectedly found himself as the second agent to enter the home.

111. Task Force Officer ("TFO") Michael Gibbons was assigned to carry the ram, which, in the event of a forced entry, would be used to break down the front, wooden doors of the home.

112. Agent Troy Dillard, who was the agent in charge of the investigation, was also a member of the entry team. He was positioned near the back of the "stack" as it approached the Malinowski home.

113. Task Force Officer ("TFO") Chris Griggs was the final member of the seven-man entry team.

114. Agents Shannon Hicks and Amy Ness walked around to the back of the home and formed the rear perimeter.

115. Several Little Rock Police Department ("LRPD") officers assisted the ATF.

116. Officer Steve Woodall was originally assigned to be on the entry team, but based on the recommendation of his supervisor at LRPD, was taken off the entry team and

instead stood with RAC Merrill as part of the front perimeter.

117. LRPD Officer Olen Lakey parked in front of the home, facing a neighbor's house. Upon Agent Boles' command to initiate, Officer Lakey turned on his flashing lights and bumped his car's siren for approximately 1.5 seconds.

118. Little Rock Police Department Officer Clint Williams parked his vehicle at the top of the cul-de-sac and was responsible for keeping any non-law enforcement personnel from entering the cul-de-sac.

119. According to the Operations Plan, all agents, TFOs, and LRPD officers had the authority to abort the warrant execution.

H. None of the Agents, TFOs, or LRPD Officers Wore or Activated Their Body Cameras

120. None of the agents wore body cameras, despite a three-year-old policy initiated by the prior Administration that mandated ATF agents wear and activate body-worn cameras (Body Worn Cameras or "BWC") when executing search warrants. DOJ Policy, June 7, 2021, *Body Worn Camera Policy,* https://www.justice.gov/archives/dag/file/1144936-0/dl?inline=.

121. None of the officers on scene who were equipped with body cameras activated their body worn cameras either, despite a 2022 policy that called for all TFOs detailed to the ATF to wear body-worn cameras when engaged in federal law enforcement operations. ATF POLICY, June 2, 2022, *Task Force Officer Body-Worn Camera*, https://www.atf.gov/file/170136/download.

122. None of the LRPD uniformed Officers manually activated their body

cameras, despite LRPD's General Order 316, dated December 27, 2022, that LRPD officers "must activate his or her MVR [mobile video recording]/BWC [body worn camera]" during "the execution of search warrants…[and] forced entries…" and continue recording until the event has concluded.

123. But an audio record exists. When LRPD Officer Lakey initiated his lights and bumped his siren, his MVR and the audio from his BWC—by design—automatically started recording.[3]

I. <u>The Agents' and TFOs' Clothing Did Not Identify Them From the Side</u>

124. On the morning of March 19, 2024, the ATF agents and TFOs on the entry team were all similarly dressed. They wore dark blue long-sleeved shirts, and any law enforcement insignia or identification on the front and back of their shirts were mostly or completely covered by their bullet proof vests.

125. Any markings on the front of agents' vests that could have identified them as law enforcement were obscured by equipment strung across the chest and by the agents' arms and rifles, which were held in front of their bodies.

126. The agents wore tactical helmets without identifying insignia.

127. The rifles they carried were black and did not display any identifying markings.

128. The shield that Agent Bass carried was the largest, most obvious, and only

[3] Though Lakey's vehicle faced a neighbor's home, the audio from his MVR allowed for an unbiased review and accurate timeline of ATF's actions.

unobscured method of identifying the agents as law enforcement because of the large "POLICE" lettering on its front. Additionally, the ballistic shield in and of itself is an indication of law enforcement presence because, due to its size and weight, it is impractical and uncommon for private citizens to possess one.

129. However, as noted further in this Complaint, the entry team fell into disarray and the shield never made it into the home before Bryan was shot in the head.

130. The agents' clothing and equipment failed to present any identifying words, emblems, or markings on their shoulders or sides.

131. Any identification, if it was not otherwise obscured, was not visible to any person standing to the left or right of the agents.

J. <u>The Agents Arrive in Darkness to a Quiet Home</u>

132. When the agents arrived at the Malinowski home before sunrise on March 19, 2024, their ten (10) vehicle caravan occupied the entirety of the cul-de-sac on Durance Court.

133. It was still completely dark outside when agents arrived before 6:00 a.m.

134. Agents, TFOs, and officers did not encounter any person or observe any indication that someone was alerted to their presence. Nothing occurred prior to or during the officers' presence outside the home that presented a danger to agents or caused alarm.

135. There was no cause for the entry team to deviate from the constitutional and statutory requirement to knock and announce their identity and purpose and to wait a reasonable time so they could be admitted entry.

136. While staged in the cul-de-sac before approaching the home, the agents

formed a line or "stack" consisting of seven (7) agents and task force officers.

137. The agents maintained their stacked formation as they traversed the cobble-stoned pathway from the cul-de-sac to the eight steps leading to the front-entry landing and front doors.

138. The Malinowski home's front entry consisted of two sets of doors: a set of French-style, glass storm doors and the main doors behind them, which were two large wooden doors that provided entry into the home.

139. As they did every night, the Malinowskis locked the doors before they went to bed the prior evening and set the security system. Both sets of doors—the glass, French-style storm doors and the wooden main doors, remained locked at 6:00 a.m. on the morning of March 19, 2024.

K. <u>The Agents Hurriedly Knock and Fail to Clearly Announce</u>

140. The entry team was aware, or at least expected, that the Malinowski home had a video doorbell at the front door.

141. As agents approached the front door of the home, the first agent in the stack, Agent Bass, placed a piece of painter's tape over the video doorbell camera, which was positioned just to the right of the front doors. This action disabled the camera and concealed the presence and identity of the armed team on the front porch.

142. When all agents were in place and the video doorbell taped, Agent Boles gave the command to initiate the knock and announce procedure.

143. The agents never rang the doorbell. Despite having Bryan Malinowski's phone number and noting it in their Operations Plan, no one called to notify him of their

presence.

144. No officer or agent attempted to announce their presence by using an electronic public announcement (PA) system, though the Operations Plan provided that a PA system would be used to announce their presence.

L. Agents Fail to Wait a Reasonable Time Before Breaching the Malinowski Home and Fatally Shooting Bryan

145. At 6:02:58 a.m. on March 19, 2024, Agent Boles gave the command to "initiate." Little Rock Officer Lakey activated his vehicle's lights and sirens and then shut off the siren after one and a half (1.5) seconds.

146. According to ATF Agent Matt Sprinkles, the LRPD officer simply "chirped the siren a few times."

147. According to Special Agent Hicks, Officer Lakey performed this task "exactly like we asked him to do."

148. After the siren was silenced, the blue flashing lights remained active, but neither the Malinowskis nor any neighbors in the Durance Court cul-de-sac saw the lights or heard the brief bump of the siren.

149. In the subsequent investigation by the Arkansas State Police, special agents Justin Harmon and Jimmy Collins contacted residents of two homes on the cul-de-sac, and all stated that, although home in the pre-dawn hours of March 19, 2024, they did not hear any sirens or see the police lights—they slept through it.

150. Arkansas State Police Major Stacie Rhoads also testified to this fact in front of an Arkansas Senate Judiciary Committee on September 30, 2024. Arkansas Senate

Judiciary Committee Video, September 30, 2024, https://www.youtube.com/watch?v=nqFQFja4Ye4.

151. After the command to "initiate" from Commander Boles, Agent Sprinkles began shouting and knocking on the glass of the Malinowski's outer storm doors protecting their wooden front door.

152. Agent Amy Ness, posted in the backyard of the home, later reported to the Arkansas State Police investigator that she could not hear any knocking or announcing from the backyard.

153. Agent Sprinkles then paused his knocking for four seconds, before knocking on the glass outer doors a final time.

154. In total, the knocking on the Malinowskis' outer glass doors lasted approximately nineteen (19) seconds, from 6:02:58 a.m. to 6:03:17 a.m.

155. It was still dark outside, approximately an hour and ten minutes before sunrise.

156. At 06:03:17 a.m., less than twenty seconds from when ATF agents initiated the operation, the agents stopped knocking. At this point, the entry team ceased its knocking and shouting.

M. In 28 Seconds, Agents Begin Forcing Their Way into the Malinowski Home

157. Entry team leader Agent Boles stated in his interview with the Arkansas State Police that while he could see through the angled plantation shutters into the home, he did not see any lights turn on and did not observe any movement or hear any noises or voices

coming from inside the home.

158. Boles told the Arkansas State Police that "I've got a clock in my head. It's like we're out here, we're exposed. Um, so I told them, go ahead and breach the door."

159. Boles did not check his watch or keep track of the time on a watch or other device to measure how many seconds or minutes elapsed between the end of Agent Sprinkles' knocking and his decision to breach the home.

160. Despite no objective indication that the entry team—as they stood on the front porch—was in any danger, and despite no belief that the evidence inside to be seized through the warrant was being disposed of, or any other exigency, Agent Boles ordered the team to breach the home.

161. In less than twenty-eight (28) seconds from the time that Officer Lakey initiated the siren bump, Agent Boles ordered his agents to break the glass doors, breach the wooden doors, and enter the Malinowski home by force.

162. Agent Boles claimed that once he gave the command, "it was not a quick process" because "they had to get the Halligan out," the pry tool they used to break open the glass storm doors.

163. At 6:03:26 a.m., which was twenty-eight (28) seconds after Agent Boles' command to "initiate," Agent Cowart began striking the Malinowskis' glass storm doors with the Halligan tool to break them open.

164. After Agent Cowart breached the glass storm doors, TFO Gibbons used a ram to batter the wooden front doors of the Malinowski home, causing the doors to burst open with a loud bang upon a single strike. This strike breaching the main doors occurred

at 6:03:35 a.m., followed by the clattering of the ram as TFO Gibbons dropped it onto the porch.

N. **The Entry Team Falls into Disarray**

165. When forced entry is made and doors are rammed open, it is protocol at the Arkansas ATF office that agents automatically enter the home and execute a "limited penetration." When executing a "limited penetration," the person carrying the shield enters first.

166. In the process of breaking both sets of doors, the entry team became disorganized. According to Agent Sprinkles, "I think we were unprepared for the French doors."

167. When the main wooden doors were rammed open by TFO Gibbons, Agent Sprinkles unexpectedly found himself at the front of the entry stack. As Agent Sprinkles recalled to investigators, "I wasn't supposed to be the first entry." Agent Sprinkles stood still waiting for Agent Bass, who carried the shield, to enter the home first.

168. As previously stated, while the Operations Plan had called for Agent Bass to enter first utilizing the shield emblazoned with large letters identifying the agents as "POLICE," Bass discarded the shield near the front doors and never entered with it.

169. Later, Agent Amy Ness told Arkansas State Police investigators that after the raid, the shield was blocking the entryway of the house, and that she "cleared the doorway of the shield for medics to come in" the house, moving it out of the way so no one tripped on it.

170. At the moment that Agent Bass was supposed to lead the entry team in a

"limited penetration" with the shield, he was instead setting the shield down on the front porch. According to the entry team leader, Agent Boles, "I didn't know that at the time."

171. Entry team leader Boles failed to heed the signs that his team had fallen into disarray.

172. According to Agent Boles, "There was a brief hesitation [when the door opened], which I was surprised because with our package, once the door comes open, you go in. It was a split second, like that. And I said, 'go.' And then I don't know—you know. All I can see is black ATF agent stuff in front of me."

O. Two Agents Enter the Home with Guns Drawn

173. Upon the command of "Go" from Agent Boles, Agent Sprinkles entered the home with his semi-automatic rifle drawn.

174. Agent Sprinkles had ceased his knocking and shouting twenty seconds earlier at 6:03:17 a.m., yet as the agents pried open the glass doors and rammed into the wooden doors to breach the home, they were silent: no one announced their identity or purpose once the doors burst open.

175. As Agent Cowart, the second one in the door, recounted, there were no voice commands given as agents breached the door into the Malinowskis' entryway.

176. "I didn't say anything," Cowart recalled to state police investigators, and all he recalled Agent Sprinkles (the first agent in) saying once inside was "oh, shit."

177. Bryan Malinowski stood approximately thirty (30) feet from the front main doors, directly to Agent Sprinkles' left.

178. The ATF and TFO agents, including Agent Sprinkles and Cowart, were

dressed in dark tactical gear with no lettering, insignia, or badge on the shoulder or sides of their clothing to identify themselves from the side.

179. Neither the "POLICE" shield nor Agent Bass made it into the home before Agent Cowart shot Bryan Malinowski in the head.

P. Bryan Malinowski Hears the Sound of Intruders and Acts to Defend Himself and His Wife

180. Bryan and his wife Maer, in bed in their room at the back of the house, never heard the police siren or any voices at their door.

181. Upon hearing loud banging at their front door and someone trying to get inside, Bryan scrambled out of the bed he shared with his wife. Their bedroom sat in the northwest corner of the house, down a hallway, past his home office, and a considerable distance from the home's entryway.

182. Bryan quickly grabbed his handgun from the top drawer of his bedside table and went into the closet to retrieve a magazine. Mindful of his wife's safety, Bryan motioned for his wife to stay back, pushing her down and out of the doorway.

183. Bryan left the bedroom and moved approximately six to seven feet down a short side hallway to gain a view of the intruders coming through his front doors.

184. Unbeknownst to Bryan, Maer refused to stay in the bedroom and followed him down the short hallway.

185. Upon information and belief, Bryan believed intruders were breaking into his home, and he was going to defend himself, his wife, and his home from the intruders.

186. From Bryan's vantage point about thirty feet away down the dark hallway,

there was no clothing or gear on the intruder that would have identified him as a law enforcement officer.

187. Bryan had no reason to believe that the people who breached his front door were part of a team of federal agents. He had no idea that federal agents had been following him, investigating his firearms sales, or looking into his paperwork and transactions—much less that they had secured a warrant or would be executing it at his home more than an hour before sunrise.

188. Believing they were intruders, Bryan fired his gun at the floor and hit one of the agents in the boot sole.

189. Agent Cowart, who entered second in the stack directly behind Agent Sprinkle, returned fire, pointing his rifle at Bryan's head and pulling the trigger several times.

190. At 6:03:43 a.m., just 48 seconds after agents first approached his door to cover his doorbell, Bryan Malinowski lay bleeding on the floor of his hallway, shot in the head.

191. Several ATF agents and task force officers who subsequently entered the Malinowski home noted that although Bryan laid on the floor with a gunshot wound to the head, they could hear him struggling to breathe, yet offered no medical assistance because of the nature and extent of the bullet wound.

192. The Arkansas State Police were notified about the officer-involved shooting and responded to the Malinowski home to conduct their investigation.

193. Agent Bass noted in his subsequent interview to State Police investigators

that it takes "a while" to wake people up at that hour, telling investigators that after Malinowski was shot and killed, it took some time for State Police to arrive, such that they all "stood around outside for quite a while" because "it is 6:00, 6:30 in the morning at that point, so it takes a while to get everybody woke up."

Q. Agents, TFOs, and Officers Detain Maer Malinowski in a Patrol Vehicle For Hours as She Begs to be Released

194. Maer Malinowski, who had not followed her husband's directive to stay back in their bedroom, had instead followed him into the hallway, relaying now what was observable from where she stood.

195. She watched helplessly as her husband was shot in the head just inches from her. She stood by his body, screaming and crying, horrified to be covered with his blood.

196. Frozen in horror after and realizing the intruders had fatally wounded her husband, Maer saw several dark figures at the entryway.

197. The men pointed their rifles at her and yelled at her to show them her hands. It was only then that she realized they were law enforcement agents.

198. The agents then ordered Maer to step over her husband's limp body and allow them to secure her.

199. The agents then escorted her to the back of an LRPD cruiser, where she was held for the next several hours with no updates on her husband's condition.

200. At 6:00 on the morning of March 19, 2024, the temperature in Little Rock, Arkansas was approximately thirty-four (34) degrees Fahrenheit.

201. Maer Malinowski, having been in bed when the sound of intruders breaking

down her front door jolted her and her husband, was only wearing a spaghetti strap tank top and a pair of boxers (no shoes) when ATF agents removed her from her home and placed her in the patrol vehicle.

202. ATF agents placed Maer in the back of the LRPD patrol vehicle at approximately 6:07 a.m. She sat cold in the vehicle without any covering until she was provided a blanket at approximately 6:51 a.m. Even after receiving the blanket, she was still cold.

203. Maer repeatedly told the officers that she needed her clothes and medicine and to check on her dogs, and that she needed to use the bathroom.

204. LRPD Officer Lakey and ATF agents denied Maer's requests to ride to the hospital in the ambulance with her husband.

205. The audio from Officer Lakey's dash camera revealed Maer's desperation during those first few frantic moments. Less than ten minutes after the shooting, LRPD audio captured Maer recounting to the officers detaining her, what had happened:

> This is... This is a movie. It's a movie. We didn't do anything wrong. We don't, we don't- you got...you got the wrong house. Oh, you guys got the wrong house. We don't do anything wrong. We're honest people? Oh my God. Oh my God. Oh my God. Oh my god! Oh! Oh! Oh, no. This is no time for God. This is a nightmare.
>
> ...
>
> When they shot my husband, I opened the door from the bedroom because he closed it. We thought it was an intruder. So, I opened the door, he closed it, and then I opened it again. That's when they- he got shot.

206. Nearly an hour later, Maer continued begging to be released, but officers ignored her hysterical cries and denied her requests to be let out of the squad car:

> Hear me out. Let me out! Let me out! Please hear me out. Don't. I need, I

> need to go [unintelligible]. I need to... Oh my love, oh my love. Oh Bryan. Oh Bryan. You need to come [unintelligible]. You need to come. I don't know...I don't know what to do without him. God, I don't know what to do. Guide me, God. Guide me, God. Guide me. Guide me, God, please. I don't know what to do. I don't know what to do, God. I don't know what to do. Oh God. I don't know what to do, God. I can't- I don't know what to do. Help me! Help me!

207. They denied her requests for clothes.

208. They denied her requests for medicine.

209. They denied her requests to go check on her dogs, assuring her that they were in the house and accounted for. Later, she spotted one of her dogs who had escaped and was lost nearly a mile away roaming in the neighborhood near a busy four-lane road.

210. They denied her requests to use the bathroom at her neighbor's home.

211. They held her for hours while she cried hysterically, repeatedly asking for an explanation.

212. At approximately 7:20 a.m., ATF relented to her requests to use the bathroom. Agents and officers decided that Maer could use the restroom at a nearby fire station. However, they kept Maer in custody.

213. Officer Gladina Harris with LRPD arrived at the Malinowski home around 7:20am. Officer Harris was equipped with a body camera and dash camera, and she activated both.

214. Officer Harris drove Maer to a nearby Little Rock Fire Department station nearly three (3) miles from her home.

215. At the fire station, Officer Harris left Maer in the back seat of the police patrol vehicle while she first contacted a firefighter at the front door. Officer Harris notified

the firefighter that she had "a prisoner" that needed to use the restroom because "her whole house is a crime scene."

216. Maer Malinowski was still bare-footed and clad only in a tank top and boxers. Maer pulled the blanket over her shoulders to cover her body and legs as she entered the fire station. Officer Harris told one of the firefighters that Maer "barely had any clothes on."

217. When Maer walked into the fire station, one man held the door for her and Officer Harris. Three other men and a woman stood near the bathroom staring at Maer as she walked through the front door and into the bathroom.

218. When Maer entered the bathroom, Officer Harris entered with her, exclaiming, "I have to go in there with you." Officer Harris did not disable her body camera while Maer used the restroom in front of her, and her body worn camera captured the audio of Maer using the bathroom.

219. That audio was later produced as part of the body camera footage in response to a FOIA request.

220. Officer Harris then escorted Maer to the back seat of the patrol vehicle and drove her back to her cul-de-sac, where Maer remained in custody until after she provided an interview to the State Police.

221. For more than three (3) hours after her husband was shot, Maer Malinowski was held in custody by LRPD officers at the direction of ATF agents.

222. At approximately 9:15 a.m., agents turned Maer over to the Arkansas State Police so that they could interview her.

223. For several hours after Bryan was shot, the Malinowski home was secured, but not searched. During this time, ATF decided the Arkansas ATF team involved in that morning's raid would not conduct the search warrant.

224. SAC Merrill contacted the ATF office in Mississippi, which sent its agents to Little Rock to search the Malinowski home.

225. Additionally, the Arkansas State Police obtained a search warrant for the home as part of their officer-involved shooting investigation. The State Police did not turn over the Malinowski home to the ATF and RAC Merrill until 1:53 p.m. on March 19, 2024.

226. ATF agents did not begin to search the Malinowski home pursuant to the original warrant until after it was turned over to them that afternoon.

R. Bryan Succumbs to His Gunshot Wound and is Pronounced Dead on March 21, 2024

227. After the ambulance arrived, Bryan Malinowski was taken to Baptist Medical Center in Little Rock, Arkansas.

228. Maer Malinowski, finally released by officers several hours later, arrived at the hospital to find her husband in such dire condition that her family friend and neighbor told her not to go in the room and see him.

229. Despite medical efforts, Bryan succumbed to his injuries two days later and was officially pronounced dead on March 21, 2024. He was 53.

230. Bryan received Last Rites by the family's priest at Maer's request.

231. In accordance with his wishes, five of his organs, including his liver and lungs, were retrieved and donated to save the lives of others.

232. Plaintiff Maer Malinowski has been in continuous counseling since the event.

S. The Constitution Requires Officers to Knock and Announce and Wait a Reasonable Time Before Forcing Entry Where No Exigency Exists

233. In *Wilson v. Arkansas*, the Supreme Court held that the "common-law 'knock and announce' principle forms a part of the reasonableness inquiry under the Fourth Amendment." 514 U.S. 927, 929 (1995).

234. The requirement to knock and announce is also codified in 18 U.S.C. § 3109, stating that officers must give "notice of [their] authority and purpose," and must be refused admittance before forcing entry into a home.

235. Prior to entering a home to execute a search warrant, officers must identify themselves as law enforcement and announce their purpose to execute a search warrant.

236. This requirement has long been a fixture of the Fourth Amendment and is intended to protect the residents' privacy and dignity that can be destroyed by a sudden entrance.

237. More importantly, it protects "human life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident." *Hudson v. Michigan*, 547 U.S. 586, 594 (2006).

238. The law presumes that a resident will submit to the lawful authority of officers and provide entry to them. *Hudson*, 547 U.S. at 594 (2006).

239. The knock-and-announce rule "protects those elements of privacy and dignity that can be destroyed by a sudden entrance. It gives residents the 'opportunity to prepare themselves for' the entry of the police. 'The brief interlude between an

announcement and entry with a warrant may be the opportunity that an individual has to pull on clothes or get out of bed.' In other words, it assures the opportunity to collect oneself before answering the door." *Id.* (citations omitted).

240. Absent a reasonable belief that waiting would be futile, dangerous, or would allow for the destruction of evidence, law enforcement officers are required to wait outside of the home until they are admitted or refused. *Richards*, 520 U.S. 385, 394-95 (1997). A "reasonable belief" cannot be speculative but must be based on specific and articulable facts. *Id.*

241. "An officer's delay before entering ordinarily should be long enough to ensure that the resident has had time to hear the police knock and to answer the door." *U.S. v. Vesey*, 338 F.3d 913, 915–16 (8th Cir. 2003), *citing Wilson v. Arkansas*, 514 U.S. 927, 931–32, 936 (1995) (holding a ten-second delay was reasonable where, unlike here, the warrant recipients were at risk of disposing illegal drugs and officers were serving a warrant at a "small apartment…in the afternoon, when it was likely that any occupants were awake").

242. As the United States Supreme Court held, the time it will take an occupant "to get to the door," will "vary with the size of the establishment," and it could take "perhaps…several minutes to move through a townhouse." *U.S. v. Banks*, 540 U.S. 31, 40 (2003).

243. But where circumstances are not exigent, such as where a suspected drug dealer might be disposing of drugs, as in *Banks*, and where police do not arrive "during the day, when anyone inside would probably have been up and around," officers must wait a

sufficient time to allow the delay in responding to fairly suggest the occupants' refusal to let them in. *Banks*, 540 U.S. at 40.

244. "That is why, in the case with no reason to suspect an immediate risk of frustration or futility in waiting at all, the reasonable wait time may well be longer when police make a forced entry, since they ought to be more certain the occupant has had time to answer the door." *Id.* at 41.

245. The class of offense suspected also bears on the exigency analysis. As the Supreme Court noted, "[p]olice seeking a stolen piano may be able to spend more time to make sure they really need the battering ram." *Banks*, 540 U.S. at 41.

246. "Absent exigency, the police must knock and receive an actual refusal or wait out the time necessary to infer one." *Banks*, 540 U.S. 31, 43.

247. In September 2021, the Deputy Attorney General announced a knock and announce requirement for federal law enforcement agencies, including ATF, "to limit the circumstances in which agents may seek to enter a dwelling pursuant to a warrant without complying with the 'knock and announce' rule." DOJ Press Release, *Department of Justice Announces Department-Wide Policy on Chokeholds and 'No-Knock' Entries*, Sept. 14, 2021, https://www.justice.gov/archives/opa/pr/department-justice-announces-department-wide-policy-chokeholds-and-no-knock-entries.

248. The 2021 policy expressly incorporated the *Hudson v. Michigan* and *U.S. v. Banks* standards, stating agents must "'knock and announce' their identity, authority and purpose, and demand to enter," and then "must wait a reasonable amount of time based on the totality of the circumstances to permit the occupant to open the door before making

entry into a dwelling." *Id.*

249. The 2021 DOJ Policy states the only exception is where "exigent circumstances arise at the scene such that knocking and announcing the agent's presence would create an imminent threat of physical violence to the agent and/or another person." *Id.*

250. In limiting 'no knock' entries to instances where there is an imminent threat of physical violence, the mandatory DOJ Policy noted that "it is narrower than what is permitted by law," such that "the Department is limiting the use of higher-risk 'no knock' entries to only those instances where physical safety is at stake at the time of entry." *Id.*

251. Despite the lack of exigency or physical danger to police at the Malinowski home at 6:01 a.m. on March 19, 2024, Defendants broke down the door and forcibly entered the Malinowski home before waiting a reasonable amount of time to permit the Malinowskis to open the door or refuse entry, *or* a sufficient time to infer a refusal.

T. Arkansans and Americans Are Outraged, And Congressional Leaders Call Bryan Malinowski's Death a Senseless "Horror That Should Not Occur to Any American"

252. Within days of Bryan's death, news spread nationally that the ATF agents had dynamically and forcefully breached the home's doors and killed Bryan Malinowski.

253. News also spread that the agents involved were not wearing body cameras, in violation of the then-Administration's own policy.

254. As the *New York Times* reported, "Bryan's death has been met with outrage by his family, friends and gun rights supporters in Arkansas and beyond, who say the raid on March 19 was ill-conceived, unnecessary and a shocking case of government

overreach." Eduardo Medina, THE NEW YORK TIMES, *What Set the ATF and an Airport Leader on the Path to a Deadly Encounter?,* May 24, 2024, https://www.nytimes.com/2024/05/24/us/bryan-malinowski-arkansas-atf-guns.html.

255. Arkansas' United States Senators Tom Cotton and John Boozman began their own inquiry into Bryan's death, seeking answers as to how the agents' aggressive tactics complied with the law and ATF and DOJ's own policies.



256. Arkansas Attorney General Tim Griffin demanded answers and called on the ATF to release all body camera footage. "Arkansas AG Demanding Answers, Bodycams from ATF Over Fatal SWAT Raid," April 17, 2024, https://saf.org/arkansas-ag-demanding-answers-bodycams-from-atf-over-fatal-swat-raid/.

257. As state lawmakers called on the ATF to release body camera footage—before learning it did not exist—the U.S. House Judiciary Committee launched an investigation, sending a letter to ATF demanding answers. KATV, "House Judiciary Committee sends letter to ATF, demands answers in Malinowski raid probe," April 22,

2024,https://katv.com/news/local/house-judiciary-committee-sends-letter-to-atf-demands-answers-in-malinowski-raid-probe-republicans-clinton-airport-doj-investigation-biden-trump-sanders.

258. As Judiciary Committee Chairman Jim Jordan put it in his letter to ATF Director Steven Dettelbach, the "circumstances surrounding the raid, the subsequent death of Mr. Malinowski, and recent related rulemaking by the ATF raises serious questions about the weaponization of the agency against Americans." **Ex. B,** House Judiciary Letter to ATF, April 22, 2024, *available at* https://judiciary.house.gov/media/press-releases/chairman-jordan-demands-details-atf-fatal-raid.

259. Chairman Jordan further noted, "The circumstances of Mr. Malinowski's death raise questions about whether the ATF followed proper protocol during the execution of this search warrant. Department of Justice policy and President Biden's Executive Order 14074 requires ATF agents—including those who conducted the search warrant on March 19, 2024—to wear active body-worn cameras during the execution of a search warrant. The Department has since confirmed to the Malinowski family that ATF agents were not wearing body cameras during the raid, a violation of the Department policy." **Ex. B** at 2.

260. As Chairman Jordan recognized, the Malinowski raid pre-dated the then-Administration's implementation of the new regulation to restrict private firearm sales:

> "In particular, ATF seeks to drastically expand the universe of Americans who would be classified as a 'dealer' under federal law requiring them to obtain a license to become a Federal Firearms Licensee (FFL), subjecting them to a term of imprisonment of up to five years and a fine of up to $250,000, or both. Mr. Malinowski exercised his Second Amendment rights and was a firearms enthusiast. Even if, as ATF has alleged, Mr. Malinowski violated federal law, it does not justify ATF's actions that

ultimately lead to the use of deadly force."

Ex. B at 3.

261. Over the next few weeks and months, as more troubling details came to light, state and federal lawmakers pointed out that, in the absence of any reason to believe Bryan posed any threat to either the agents or of the destruction of evidence, ATF had a host of less-lethal search warrant options available, including serving the warrant at Bryan's workplace (a gun-free zone), knocking on his door during waking hours in the daylight, pulling him over in his vehicle and serving the warrant, or notifying him of their arrival through a "call out" via his cell phone or a bullhorn. John Besselman, Senior Legal Instructor, FEDERAL LAW ENFORCEMENT TRAINING CENTER MATERIALS, "*The Knock and Announce Rule: 'Knock, Knock, Knocking on the Suspect's Door*," https://www.fletc.gov/sites/default/files/imported_files/training/programs/legal-division/downloads-articles-and-faqs/research-by-subject/4th-amendment/knockandannounce.pdf.

262. Instead, absent any reasonable basis for doing so, ATF chose the most dangerous route possible: a predawn dynamic raid not involving members of an organized and purpose-trained tactical unit, but random members of an investigative squad. ATF made a baseless and reckless decision destined to wake up sleeping and unsuspecting occupants, and otherwise created circumstances and set in motion a series of events any reasonable officer would expect to bring about a dangerous result.

263. On May 22, 2024, the House Judiciary Select Subcommittee on the Weaponization of the Federal Government held a hearing focused on "actions taken by the

bureau that erode Americans' trust in the agency," with a particular focus on the Malinowski raid.

264. During questioning, a bipartisan group of lawmakers expressed disgust at the ATF's actions in the case, with Rep. Gerry Connolly (D-VA) describing what happened to Bryan Malinowski as "really a horror that should not occur to any American citizen or American resident." **Ex. C** at 48.

265. Rep. Greg Steube (R-FL) addressed Mrs. Malinowski directly, telling her, "This whole case is outrageous to me and, Ms. Malinowski, I feel like we owe you an apology on behalf of the American government today because ATF isn't going to give you that apology." **Ex. C.** at 53.

266. Chairman Jordan closed the May 22, 2024 hearing by noting that Bryan Malinowski's case epitomized the weaponization of government:

> The ATF decided to change the definition of what an FFL—what a licensee was from principal livelihood to someone who's earning a profit, but it's even worse because they didn't have the definition changed and enacted when this terrible incident happened with Mr. Malinowski. That, to me, is the weaponization of government, unilaterally making changes without it going through the Legislative Branch of government the way our system is supposed to work—the checks and balances how they're supposed to work—and in the case we're talking about so much today they hadn't even fully made that change. They didn't even follow their own rule, for goodness sake, and we have an American who's no longer with us because of that.

Ex. C at 68.

267. On May 23, 2024, the Committee met for a second day of ATF oversight hearings, during which time Chairman Jordan questioned ATF's then-Director Dettelbach about his agency's actions in the Malinowski investigation and raid.

268. Chairman Jordan played for Dettelbach and the Committee a video he described as showing "ATF agents assembling in the Walmart parking lot a week before March 19th when they were going to execute this search warrant, again pre-dawn hours a week before, but decided not to because they realized Mr. Malinowski wasn't home. Then, it shows what happened a week later as they approached the Malinowski home." **Ex. D** at 3.

269. Chairman Jordan then asked several questions of Dettelbach: "Why did you put the tape on the doorbell camera? Why did you cut the lights? Why didn't you wear the body cams? What are you trying to hide?" and finally, why weren't the Little Rock police officers who accompanied the ATF agents wearing their body worn cameras? **Ex. D** at 20-21.

270. Dettelbach refused to answer.

271. Rep. Darrell Issa (R-CA) asked Dettelbach, "If some group of ten carloads of people showed up and kicked in a door in the dark of night, and somebody came and shot at them, we wouldn't be talking about somebody getting shot in the toe, we would be talking exclusively about a planned murder of somebody, who may or may not be armed, but who had every right to have weapons in their home, an expectation they had weapons in their home, an expectation that they might use it." **Ex. D** at 28.

272. When Dettelbach again refused to answer, Rep. Issa said, "I hope they appropriately find that in spite of qualified immunity, that you blew it badly enough that, in fact, criminal charges should be considered." **Ex. D** at 28.

273. As Rep. Issa noted in his closing remarks, Bryan Malinowski would be alive if it weren't for the ATF's recklessness and unreasonably dangerous actions that day:

> He was killed doing what any normal citizen does when people enter their home in the dark of night and they don't know who they are. If you had body cameras, maybe Ms. Malinowski didn't hear right. Maybe you said "Police," and identified yourself. Maybe he said, "I don't care," and maybe he fired the shots. I don't believe that, and I don't think you do either. I believe he had every real belief that he was defending his wife and family. He fired warning shots. A ricochet hit a police officer or an ATF agent, and you killed him. Those are the facts. We have consistently seen there are two ATFs: The one we need and want and deserve, and the one that plays fast and loose, like ten cars going in deliberately with a warrant that did not entitle an arrest. When in fact if you wanted to arrest him, it would have been reasonable to arrest him at work and simultaneously go into his home. If you had done that, he would be alive today and we would be talking about other things, including whether you acted legally.

Ex. D at 29. ,

CAUSES OF ACTION

274. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

275. At all times relevant to this count, the individual Defendants were acting under color of law and within the course and scope of their employment as law enforcement agents (or duly authorized task force members) of the ATF.

276. Despite knowing the Malinowskis were asleep at 6:00 a.m. and seeing no movement inside the house for the precious few seconds they knocked on the outer glass doors, and despite Mr. Malinowski having no criminal history or indications of violence, the agents decided not to wait for even a minute before breaking down the doors and forcibly entering the home, guns raised, in the dark pre-dawn hours of March 19, 2024.

They then shot and killed Mr. Malinowski—his needless death a direct result of their recklessness and negligence.

277. Plaintiff seeks an award of compensatory and punitive damages and declaratory relief against Defendants, individually, as listed in Counts I-IV below pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

278. Plaintiff also seeks an award of compensatory damages and declaratory relief against the United States of America, as listed in Counts V-X, below, pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq.

279. The United States of America, if a private person, would be liable for the acts and omissions of its agents in the same manner and to the same extent as a private individual under like circumstances under the law of the state of Arkansas, where the acts and omissions occurred.

280. The discretionary function exemption does not apply because the ATF agents' tortious actions violated the United States Constitution.

281. Defendants' actions as alleged herein violated Plaintiff's clearly established, constitutionally guaranteed rights to be free from unreasonable and unlawful searches and seizures, and to be free from the use of excessive force.

282. As a direct and proximate result of the conduct of Defendants, Bryan Malinowski suffered physical injury and emotional trauma when he was shot and then left to die.

283. As a further direct and proximate result of Bryan's wrongful death, his statutory beneficiaries have suffered permanent economic damages, including, but not limited to, the benefit of the money, goods, and services that Bryan Malinowski would have contributed to Maer and his remaining statutory beneficiaries had he lived, as well as damages from the mental anguish suffered by Maer and the remaining statutory beneficiaries and reasonably probable to be suffered in the future, and the loss of consortium of Maer.

284. Plaintiff also seeks damages for Bryan's loss of life, his inability to labor and earn income and value of his earnings lost, funeral and burial costs, property damage, his conscious pain and suffering prior to his death, medical expenses attributable to his injuries, and other expenses incurred and expected to be incurred in the future.

285. In addition to her mental anguish due to the wrongful death of her husband, Plaintiff suffered and will continue to suffer, emotional pain and suffering due to her personal experience in witnessing the violent, unconstitutional invasion of her home and her unlawful detainment in her cul-de-sac, where she was exposed to the public strutiny of others, for three hours, during which she begged, but was refused, to be released and to attend to her husband, was denied requests for clothes, was denied requests for medicine, was denied requests to check on her dogs, was denied her request to use the bathroom in her neighbor's home but, instead, after one and a half hours, was taken to a nearby fire deparment where the officer referred to and treated her as a "prisoner," for which she may recover economic and compensatory damages in amounts to be determined by the factfinder.

286. Plaintiff also asserts a claim for damage to her home and personal property, , which occurred as a result of Defendants' conduct. Defendants' conduct was grossly negligent, reckless, malicious, willful, wanton, and conducted with a flagrant indifference for the value of human life with a subjective awareness of the risk that those within the residence would be seriously injured or killed, for which Plaintiff seeks punitive damages to the extent allowable by law.

COUNT I: FAILURE TO KNOCK AND ANNOUNCE
***BIVENS V. SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS*, 403 U.S. 388 (1971)**

(Against the Individual Defendants)

287. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

288. Without prior notice to Plaintiff of their presence or intent, Defendants used a show of force to enter onto the Malinowskis' property and into their domicile without sufficiently knocking and announcing their presence and purpose and without waiting a reasonable time before forcing entry as the law requires.

289. Defendants violated Maer and Bryan Malinowski's Fourth Amendment rights to be free from unreasonable searches and seizures when they failed to adequately knock and announce their presence and purpose at the Malinowskis' front door and wait a reasonable time before forcing entry.

290. Federal law enforcement officers executing a search warrant violate the Fourth Amendment and are subject to civil liability through a *Bivens* action when they enter a home before waiting a reasonable time to be admitted or refused, absent a

reasonable belief that waiting would be futile, dangerous, or would allow for the destruction of evidence. *Richards*, 520 U.S. 385, 394-95 (1997)

291. Defendants' brief, 11-13 seconds of knocking on outer glass storm doors and yelling at the entry of the Malinowskis' large home in the predawn hours, was insufficient to provide Plaintiff and Bryan Malinowski notice of their identity, presence, and purpose and deprived him of sufficient time to get to the door. *See U.S. v. Vesey*, 338 F.3d at 915–16 (8th Cir. 2003).

292. Defendants' conduct was done with reckless indifference or malice to Maer and Bryan Malinowski's federally protected rights.

293. As a proximate result of the Defendants' conduct, Bryan Malinowski was shot, suffered traumatic physical injury and severe pain, was hospitalized, lost bodily function, and suffered until he died, resulting in his wife and statutory beneficiaries continuing to suffer ongoing pain, emotional distress, and past and present economic loss.

COUNT II: UNLAWFUL ENTRY
***BIVENS V. SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS*, 403 U.S. 388 (1971)**

(Against the Individual Defendants)

294. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

295. Defendants' forced entry into the Malinowski residence less than one minute after they began knocking in the predawn hours was not reasonable.

296. Defendants had no reasonable belief, based upon the totality of facts and circumstances, to believe that the Malinowskis had refused them entry, nor was any

exigency present to justify failing to wait a reasonable time after knocking and announcing their presence.

297. Despite this, Defendants forcefully entered the Malinowski home without any legal right or justification and with a wholly unjustified degree of urgency and militaristic tactics, given the circumstances.

298. Federal law enforcement officers executing a search warrant violate the Fourth Amendment and are subject to civil liability through a *Bivens* action when they enter a home without being denied entry (or waiting a reasonable time to infer denial of entry) and without exigent circumstances. *Hudson v. Michigan*, 547 U.S. 586, 58 (2006).

299. Defendants' violation of the Malinowskis' Fourth Amendment rights was willful, egregious, and done with malice and deliberate indifference to their clearly established constitutional rights.

300. As a proximate result of the Defendants' conduct, Bryan Malinowski was shot, suffered traumatic physical injury and severe pain, was hospitalized, lost bodily function, and suffered until he died, resulting in his wife and statutory beneficiaries continuing to suffer ongoing pain, emotional distress, and past and present economic loss.

301. Plaintiff seeks an award of compensatory and punitive damages and declaratory relief against Defendants, individually, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), as a result of their actions which deprived Plaintiff and her deceased husband of their constitutional rights.

COUNT III: USE OF EXCESSIVE FORCE
***BIVENS V. SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS*, 403 U.S. 388 (1971)**
(Against the Individual Defendants)

302. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

303. Plaintiff seeks an award of compensatory and punitive damages and declaratory relief against Defendants, individually, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), as a result of their actions which deprived Plaintiff and her deceased husband of their constitutional rights.

304. Defendants used excessive force to enter onto the Malinowskis' property and into their domicile without waiting a reasonable time following knocking and announcing their presence and without any reasonable basis to believe that Bryan was a threat to the agents or TFOs.

305. Defendants violated the Malinowskis' Fourth Amendment rights to be free from unreasonable searches and seizures when they unlawfully seized Bryan Malinowski by shooting and killing him, when they lacked an arrest warrant and created the danger that required him to defend himself.

306. Defendants' actions were a direct result of their unconstitutional forced entry, which occurred in violation of Plaintiff's constitutional rights and was the proximate and but-for cause of Bryan Malinowski's death.

307. Defendants' conduct was done with reckless indifference or malice to the Malinowskis' federally protected rights.

308. As a proximate result of the Defendants' conduct, Bryan Malinowski was shot, suffered traumatic physical injury and severe pain, was hospitalized, lost bodily function, and suffered until he died, resulting in his wife and statutory beneficiaries continuing to suffer ongoing pain, emotional distress, and past and present economic loss.

COUNT IV: ILLEGAL DETENTION OF MAER MALINOWSKI
***BIVENS V. SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS*, 403 U.S. 388 (1971)**

(Against the Individual Defendants)

309. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

310. At all times relevant to this count, the individual Defendants were acting under color of law and within the course and scope of their employment as law enforcement agents of the ATF (or duly authorized task force members) when they seized and held Maer Malinowski in Officer Lakey's patrol car for hours following the shooting of her husband.

311. LRPD officers who participated in the unlawful detention of Maer Malinowski were acting at the command and direction of the ATF agents and TFOs and detained her on behalf of the ATF.

312. An objectively reasonable law enforcement officer would know that no probable cause existed to detain Maer Malinowski for hours after the shooting.

313. Defendants did not have a warrant for the arrest of Maer Malinowski.

314. Defendants did not have any reasonable articulable suspicion or probable cause that Maer Malinowski had committed any crime.

315. Defendants did not execute the search warrant during the time—more than three (3) hours—that they detained Maer Malinowski.

316. Maer Malinowski was not detained in her home, but exposed to the public scrutiny of neighbors when she was detained in her cul-de-sac, and was exposed to the public scrutiny of strangers when she was escorted into a fire station to use the restroom.

317. Pre-existing law gave the individual Defendants fair warning that their actions violated Plaintiff's Constitutional rights.

318. Plaintiff was seized when she was placed in the patrol car and denied the ability to leave the patrol car for hours, because "in view of all the circumstances, a reasonable person would have believed that she was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

319. Plaintiff is entitled to recover economic, compensatory and punitive damages for the Constitutional deprivations she suffered at the hands of the Defendants in an amount to be determined by the factfinder.

COUNT V: WRONGFUL DEATH
FEDERAL TORT CLAIMS ACT

(Against the United States)

320. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

321. At all times relevant to this count, the individual Defendants were acting as employees and/or agents of the United States and the ATF (or duly authorized task force

members) and in the course and scope of their employment and in their official capacity as employees or agents of the United States ATF.

322. The United States of America, if a private person, would be liable for the acts and omissions of the law enforcement officers set forth herein under the law of the state where the acts and omissions occurred.

323. The individual defendants, on behalf of the United States, committed various acts and omissions which would render them liable to the Plaintiff under the laws of the state of Arkansas if performed by a private person.

324. Defendants' actions caused the wrongful death of Bryan Malinowski, resulting in damages recoverable under Ark. Code Ann. §§ 16-62-101 and 16-62-102.

325. Bryan Malinowski's statutory beneficiaries under the Arkansas Wrongful Death Statute are his spouse, Maer Malinowski, his parents, Richard Malinowski of Millsboro, Delaware and Barbara Haigh of Easton, Pennsylvania, and his surviving siblings, Lynn Sosa of Easton, Pennsylvania and Lee Mociutec of Allentown, Pennsylvania. Bryan Malinowski was also survived by one brother, Matthew Malinowski, who died before the filing of this Complaint. Matthew Malinowski's wrongful death claim abated upon his death. *Fountain v. Chicago R.I. & P. Ry.*, 243 Ark. 947, 422 S.W.2d 878 (1968).

326. Arkansas law entitles Plaintiff, as personal representative of Bryan's estate, to bring this wrongful death action on behalf of the wrongful death beneficiaries and to recover "for things such as medical bills, conscious pain and suffering, funeral expenses, and loss-of-life damages." *See Durham v. Marberry*, 156 S.W.3d 242 (2004).

327. Damages under Arkansas wrongful-death statute include the benefit of the money, goods and services that Bryan Malinowski would have contributed to Maer and his remaining statutory beneficiaries had he lived, the mental anguish suffered by Maer and the remaining statutory beneficiaries and reasonably probable to be suffered in the future, and the loss of consortium of Maer. AMI 2216; *See* Ark. Code Ann. § 16-62-102(f).

328. In addition, Bryan Malinowski's estate is entitled to recover damages for Bryan's loss of life, his inability to labor and earn income and value of his earnings lost, funeral and burial costs, property damage, his conscious pain and suffering prior to his death, medical expenses attributable to his injuries, and other expenses incurred and expected to be incurred in the future. AMI 2216; *See* Ark. Code Ann. § 16-62-101.

COUNT VI: ASSAULT AND BATTERY
FEDERAL TORT CLAIMS ACT

(Against the United States)

329. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

330. At all times relevant to this count, the individual Defendants were acting as employees and/or agents of the United States and the ATF (or duly authorized task force members) and in the course and scope of their employment and in their official capacity as employees or agents of the United States ATF.

331. The United States of America, if a private person, would be liable for the acts and omissions of the law enforcement officers set forth herein under the law of the state where the acts and omissions occurred.

332. The individual defendants, on behalf of the United States, committed various acts and omissions which would render them liable to the Plaintiff under the laws of the state of Arkansas if performed by a private person.

333. All of the individual Defendant ATF and task force members who entered the Plaintiff's home were investigative or law enforcement officers, meaning any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

334. As described above, the individual Defendants committed acts of assault and battery against the Plaintiff in fatally wounding Bryan Malinowski.

335. Under Arkansas law, a defendant cannot assert a justification defense if they are the initial aggressor. *Matthews v. Rogers*, 279 Ark. 328, 338 (1983). A defendant in a civil suit for damages for assault and battery must be free from fault or carelessness. *Tygart v. Kohler*, 109 S.W.3d 147, 151 (2003).

336. As described above, the individual Defendants were the initial aggressors in carrying out the forcible, unreasonable and unlawful entry into the Malinowski home.

337. The individual Defendants' acts of assault and battery are wrongful torts under Arkansas law. *Mullins v. Helgren*, 638 S.W.3d 864, 872, (Ark. Ct. App. 2022).

338. As a direct and proximate result of Defendants' assault and battery, Plaintiff has suffered damages and is entitled to recover damages.

COUNT VII: NEGLIGENCE
FEDERAL TORT CLAIMS ACT

(Against the United States)

339. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

340. At all times relevant to this count, the individual Defendants were acting under color of law and within the course and scope of their employment as law enforcement agents of the ATF (or duly appointed task force members).

341. All of the individual Defendant ATF agents who entered Plaintiff's home were investigative or law enforcement officers, meaning any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

342. The individual Defendants had a duty to act with reasonable care and to abide by the U.S. Constitution and follow the law and their own practices and procedures in executing the warrant.

343. The individual Defendants breached this duty of care by failing to adequately knock and announce their presence and purpose and wait a reasonable time before entry to either be denied entry or to reasonably infer a denial, as the law requires.

344. Defendants had a duty to comply with the terms of the warrant, which included knocking and announcing themselves prior to entering the Malinowski home and waiting a reasonable time to be granted or denied entry before forcing down the door.

345. Defendants breached this duty.

346. The defensive force used by Bryan Malinowski was due to the agents' forcible, unreasonable and unlawful entry into his home.

347. The Malinowskis knew, or had reason to believe, that an unlawful and forcible entry was occurring or had occurred at the time Bryan used defensive force.

348. The Defendants, under the facts which were present at the time of their entry into the Malinowski home, had no right to enter the home in violation of the Fourth Amendment.

349. None of the Individual Defendant agents identified themselves upon entry into the home, and Bryan did not know nor reasonably should have known, prior to any use of defensive force, that the individuals in his home were law enforcement.

350. The use of deadly force on Bryan Malinowski by the Defendants was unreasonable, excessive, and in violation of clearly established Arkansas law prohibiting negligence.

351. Furthermore, Bryan Malinowski was entitled to use deadly force under Arkansas' "stand your ground" law, Ark. Code Ann. §§ 5-2-607, 5-2-607, and 5-2-620 because he reasonably believed the agents were about to use unlawful deadly physical force against him.

352. Defendants' armed, forced entry into the Malinowski home exhibited an excessive degree of physical force under the circumstances known to the agents at the time of entry.

353. The individual Defendants' negligent acts are wrongful torts under Arkansas law.

354. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered damages and is entitled to recover compensatory damages.

355. In addition, Defendants' conduct was grossly negligent, reckless, malicious, willful, wanton, and conducted with a flagrant indifference for the value of human life with a subjective awareness of the risk that those within the residence would be seriously injured or killed, for which Plaintiff seeks damages.

COUNT VIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
FEDERAL TORT CLAIMS ACT

(Against the United States)

356. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

357. At all times relevant to this count, the individual Defendants were acting as employees and/or agents of the United States and the ATF (or duly authorized task force members) and in the course and scope of their employment and in their official capacity as employees or agents of the United States ATF.

358. The United States of America, if a private person, would be liable for the acts and omissions of the law enforcement officers set forth herein under the law of the state where the acts and omissions occurred.

359. The individual defendants, on behalf of the United States, committed various acts and omissions which would render them liable to the Plaintiff under the laws of the state of Arkansas if performed by a private person.

360. Arkansas law provides for damages for the tort of outrage, or intentional infliction of emotional distress, where a defendant commits extreme and outrageous conduct. *Holman v. Flores*, 551 S.W.3d 1, 4 (Ark. Ct. App. 2018).

361. The individual defendants intended to inflict emotional distress on Plaintiff and her husband or knew or should have known that emotional distress was the likely result of their conduct in breaking down the door of their home in a predawn raid when they knew Plaintiff and her husband would be sleeping.

362. The individual defendants' conduct was extreme and outrageous and beyond all possible bounds of decency and were the cause of Plaintiff's distress. *Marlar v. Daniel*, 247 S.W.3d 473, 477 (Ar. 2007).

363. Finally, "the emotional distress sustained by Plaintiff was so severe that no reasonable person could be expected to endure it." *Id.*

COUNT IX: ARKANSAS VICTIM OF FELONIES ACT—MANSLAUGHTER & NEGLIGENT HOMICIDE
FEDERAL TORT CLAIMS ACT

(Against the United States)

364. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

365. Arkansas law authorizes any person injured or damaged by reason of conduct of another that would constitute a felony to file a civil action to recover damages resulting from the conduct. Ark. Code Ann. § 16-118-107.

366. In Arkansas, a person commits the felony offense of manslaughter, a class B felony, if they recklessly cause the death of another person. Ark. Code Ann. § 5-10-104(a)(3).

367. Within Manslaughter lies the included offense of Negligent Homicide.

368. In Arkansas, a person commits the felony offense of Negligent Homicide, a class D felony, if he or she negligently causes the death of another person by means of a deadly weapon. Ark. Code Ann. § 5-10-105(b)(2).

369. A person is criminally liable for the conduct of another person if he or she is an accomplice of that person in the commission of an offense. Ark. Code Ann. § 5-2-402(2).

370. No justification defense is available—even to a law enforcement officer—when a person "believes that the use of physical force is necessary," but the person is "reckless or negligent either in forming that belief or in employing an excessive degree of physical force." Ark. Code Ann. § 5-2-614(a).

371. Additionally, a person—including a law enforcement officer—who recklessly or negligently creates a substantial risk of injury to a third party cannot avail themselves a justification defense. Ark. Code Ann. § 5-2-614(b)

372. Under Arkansas law, "the right of an individual to defend himself… in the individual's home against harm, injury or loss by a person unlawfully entering or attempting to enter or intrude into the home is reaffirmed as a fundamental right." Ark. Code Ann. § 5-2-620(a).

373. Furthermore, "There is a legal presumption that any force or means used to accomplish the purpose described in subsection (a) of this section was exercised in a lawful and necessary manner." Ark. Code Ann. § 5-2-620(b). The legal presumption can only be overcome by clear and convincing evidence to the contrary. *Id.*

374. Arkansas law provides further protections to homeowners, noting that "a person may use deadly physical force" when in their home if that person "reasonably believes the use of deadly physical force is necessary to prevent the commission of a… burglary by a trespasser." Ark. Code Ann. § 5-2-608(b)(2).

375. Defendants' act of entering the Malinowski home with firearms drawn was intended to produce, and did produce, the threat of bodily impact, restraint, or confinement upon the Malinowskis. Such conduct is "physical force" as defined in Arkansas' justification statutes in Ark. Code Ann. § 5-2-601(6), and it is considered "deadly physical force" as defined in Ark. Code Ann. § 5-2-601(2).

376. Defendants recklessly or negligently formed the belief that deadly physical force was necessary—that they needed to make an armed forced entry into a peaceful home before being denied entry. And Defendants' armed, forced entry into the Malinowski home exhibited an excessive degree of physical force under the circumstances known to the agents at the time of entry.

377. Defendants caused the death of Bryan Malinowski, without justification, making them liable for Manslaughter, or in the alternative, the included offense of Negligent Homicide, without justification.

378. As a direct and proximate result of Defendants' actions that resulted in the death of Bryan Malinowski, which would constitute various felonies under Arkansas law, Plaintiff has suffered damages and is entitled to recovery.

COUNT X: ARKANSAS VICTIM OF FELONIES ACT—BATTERY
FEDERAL TORT CLAIMS ACT

(Against the United States)

379. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

380. In Arkansas, a person commits the offense of Battery in the Second Degree, a class D felony, if the person recklessly causes serious physical injury to another person by means of a deadly weapon. Ark. Code Ann. § 5-13-202(a)(3)(A).

381. Defendants recklessly caused serious physical injury to Bryan Malinowski by means of a deadly weapon and under circumstances manifesting extreme indifference to the value of human life, making them liable for battery without justification.

382. As a direct and proximate cause of Defendants' actions, Plaintiff suffered damages and is entitled to recovery.

COUNT XI: ARKANSAS VICTIM OF FELONIES ACTION—AGGRAVATED ASSAULT
FEDERAL TORT CLAIMS ACT

(Against the United States)

383. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

384. In Arkansas, a person commits the felony offense of Aggravated Assault if that person engages in conduct that creates a substantial danger of death or serious physical injury to another person; or displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person. Ark. Code Ann. § 5-13-204(a)(1-2). Such offense is a felony.

385. Defendants' conduct in their planned dynamic entry and their unconstitutional, unjustifiable entry with rifles drawn created a danger of death or serious physical injury to both Bryan and Maer Malinowski.

386. Defendants' unjustifiable shooting constitutes aggravated assault as it 1) created a substantial danger of death or serious physical injury toward Maer Malinowski and 2) was an unlawful display of a firearm that created a substantial danger of death or serious physical injury to Maer Malinowski.

387. As a direct and proximate result of Defendants' actions that created a substantial danger of death or serious physical injury to both Bryan and Maer Malinowski, for which they suffered damages, Plaintiff is entitled to recovery.

COUNT XII: ARKANSAS VICTIM OF FELONIES ACT—CRIMINAL MISCHIEF
FEDERAL TORT CLAIMS ACT

(Against the United States)

388. In Arkansas, a person commits the felony offense of Criminal Mischief in the First Degree if that person purposely and without legal justification destroys or causes damage to any property of another person; and such an offense is a felony if the

damage is valued at more than one thousand dollars ($1,000). Ark. Code Ann. § 5-38-203(b)(2-4).

389. Criminal Mischief in the Second Degree is an Included Offense of Criminal Mischief in the First Degree.

390. In Arkansas, a person commits the felony offense of Criminal Mischief in the Second Degree if that person recklessly destroys or damages any property of another person; and such an offense is a felony if the damage is valued at more than five thousand dollars ($5,000). Ark. Code Ann. § 5-38-204(b)(2).

391. Defendants purposely and without justification destroyed and caused damage to the home and property of Bryan and Maer Malinowski, in an amount that exceeded $5,000, making them liable for Criminal Mischief without justification.

392. As a direct and proximate result of Defendants' actions that resulted in extensive damage to the property of Bryan and Maer Malinowski, which would constitute various felonies under Arkansas law, Plaintiff has suffered damages and is entitled to recovery.

COUNT XIII: FALSE IMPRISONMENT OF MAER MALINOWSKI
FEDERAL TORT CLAIMS ACT

(Against the United States)

393. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

394. All of the individual Defendant ATF agents who participated in the detention of Plaintiff following her husband's death were investigative or law enforcement officers,

meaning any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

395. The individual Defendants' acts of false imprisonment and false arrest are wrongful torts under Arkansas law, which prohibits the unlawful violation of the personal liberty of another consisting of detention without sufficient legal authority. See *Headrick v. Wal-Mart Stores, Inc.*, 738 S.W.2d 418, 420, (Ark. 1987)

396. The individual Defendants falsely arrested Plaintiff Maer Malinowski when they detained her for hours in an LRPD patrol car, refusing her requests to leave, without any reasonable articulable suspicion and without probable cause.

397. Defendants did not have a warrant for the arrest of Maer Malinowski.

398. Defendants did not have any reasonable articulable suspicion or probable cause that Maer Malinowski had committed any crime.

399. Nor were Defendants executing the search warrant during the more than three (3) hours they detained Maer Malinowski against her will.

400. Maer Malinowski was not detained in her home, but exposed to the public scrutiny of neighbors when she was detained in her cul-de-sac, and was exposed to the public scrutiny of strangers when she was escorted into a fire station to use the restroom.

401. Plaintiff suffered emotional pain and suffering for which she may recover economic and compensatory damages in amounts to be determined by the factfinder.

402. Defendants' conduct in the false imprisonment of Maer Malinowski was grossly negligent, reckless, willful and wanton, such that malice may be inferred, and for which Plaintiff seeks damages.

403. Defendant United States of America is liable for the acts of the individual Defendants under the Federal Tort Claims Act.

NO EXCEPTIONS APPLY

404. None of Plaintiff's claims asserted herein are subject to any of the exceptions to sovereign immunity found in 28 U.S.C. § 2680.

405. Defendant USA, including the ATF and its employees, violated its own policies and procedures in executing the raid on the Malinowski home, and failed to exercise due care in the execution of its duties as described herein.

406. The actions described herein do not involve discretionary functions or duties.

DAMAGES

407. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

408. As a direct and proximate result of the negligent conduct and failures of Defendants, Bryan Malinowski died and Plaintiff has suffered damages.

409. By reason of the shooting and the death of Bryan Malinowski, Maer and the remaining statutory beneficiaries of Bryan Malinowski have suffered past and future pecuniary loss, meaning the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, that they, in reasonable probability, would have received from Bryan Malinowski had he lived.

410. By reason of the shooting and the death of Bryan Malinowski, Plaintiff has suffered past and future loss of companionship and society, meaning the loss of the positive

benefits flowing from the love, comfort, companionship, and society that Plaintiff, in reasonable probability, would have received from Bryan Malinowski had he lived.

411. By reason of the shooting and the death of Bryan Malinowski, Maer and the remaining statutory beneficiaries of Bryan Malinowski have suffered past and future mental anguish, meaning the emotional pain, torment, and suffering experienced by Plaintiff because of the death of Bryan Malinowski, Deceased.

412. As the personal representative of the Estate of Bryan K. Malinowski, deceased, Plaintiff further seeks compensatory and punitive damages to the extent allowable by law, for the physical pain and mental anguish Bryan endured from the time he was shot until the time of his death due to the negligence of Defendants. Ark. Code Ann. § 16-62-101.

413. Plaintiff further seeks compensatory and punitive damages to the extent allowable by law, for her mental anguish, emotional pain, torment and suffering caused by her personal experience of the wrongful conduct and detention by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays and demands verdict and judgment as follows:

a. That summons and process issue and the Defendant be served with this Complaint as required by law and that Defendant be required to appear and answer;

b. That Plaintiff's claims under the Federal Torts Claims Act against the Defendant United States of America be tried to a judge sitting as the fact finder;

c. That Plaintiff be awarded the damages sought herein in an amount determined by the trier of fact;

a. That Plaintiff be awarded punitive damages against the individual Defendants in an amount to be determined to deter each Defendant and others from similar misconduct in the future;

b. That Plaintiff be awarded Plaintiff reasonable attorney's fees, expenses and costs of litigation pursuant to applicable state and federal laws;

c. That Plaintiff be awarded pre and post-judgment interest; and

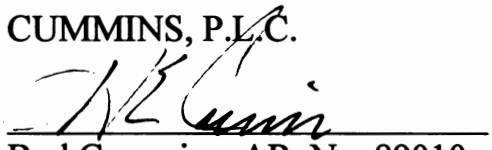
d. For such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: May 15, 2025

Respectfully submitted,

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