

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**LYNN BUCK, ALMA ROSA SILVA-BANUELOS,
CAMILLE CHAVEZ, DENIS DOYON,
LORI EATON, LUCY GILSTER (by her next
best friend, JENNIE LUSK), BRIAN HANEY,
ALICIA KISNER (by her next best friend, LISA KISNER),
LISA KISNER, MICHAEL KISNER, LANE LECKMAN,
MARIA SANTELLI, SUSAN SCHURMAN,
CHRISTINA MAYA TRAFTON,
CURTIS TRAFTON, and NICK WECHSELBERGER,**

Plaintiffs,

vs.

No. CV 04-1000 JP/DJS

**CITY OF ALBUQUERQUE; MAYOR MARTIN
CHAVEZ, in his official and individual capacity;
DEPARTMENT OF PUBLIC SAFETY CHIEF NICK
BAKAS, in his official and individual capacity;
CHIEF OF POLICE GILBERT GALLEGOS, in hi
official and individual capacity; DEPUTY CHIEF OF
POLICE RAY SCHULTZ, in his official and individual
capacity; CAPTAIN JOHN GONZALES, in his
official and individual capacity; ALBUQUERQUE
POLICE OFFICERS RAYMOND DeFRATES,
MICHAEL FISHER, JAMES LEROY FOX, ND
GONZALES, ALLEN S. HANCOCK, SGT. S. HILL,
C. LOPEZ, DANIEL S. MAGETTERI, JAMES
MONTROYA, SGT. SHAWN O'CONNELL, PABLO A.
PADILLO, JAMES PERDUE, JOHN DOE and
JANE DOE, in their individual capacities;**

Defendants.

**DEFENDANT CAPTAIN JOHN GONZALES'S ANSWER TO PLAINTIFFS'
FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF AND FOR DAMAGES CAUSED BY DEPRIVATION
OF CIVIL RIGHTS AND TORITIOUS CONDUCT**

COMES NOW Defendant John Gonzales, by and through his attorney, Jerry A.
Walz, Walz and Associates, hereby answers Plaintiffs' First Amended Complaint for

Injunctive Relief, Declaratory Relief and for Damages Caused by Deprivation of Civil Rights and Tortious Conduct as follows:

JURISDICTION AND VENUE

1. Upon information and belief, Defendant Captain John Gonzales, (hereinafter “Defendant Gonzales”), admits the allegations set forth in paragraph 1 of Plaintiffs’ Amended Complaint, (hereinafter “Plaintiffs’ Amended Complaint”).

PARTIES

2. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 2 of Plaintiffs’ Amended Complaint and therefore denies same.

3. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 3 of Plaintiffs’ Amended Complaint and therefore denies same.

4. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 4 of Plaintiffs’ Amended Complaint and therefore denies same.

5. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 5 of Plaintiffs’ Amended Complaint and therefore denies same.

6. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 6 of Plaintiffs’ Amended Complaint and therefore denies same.

7. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 7 of Plaintiffs' Amended Complaint and therefore denies same.

8. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 8 of Plaintiffs' Amended Complaint and therefore denies same.

9. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 9 of Plaintiffs' Amended Complaint and therefore denies same.

10. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 10 of Plaintiffs' Amended Complaint and therefore denies same.

11. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 11 of Plaintiffs' Amended Complaint and therefore denies same.

12. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 12 of Plaintiffs' Amended Complaint and therefore denies same.

13. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 13 of Plaintiffs' Amended Complaint and therefore denies same.

14. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 14 of Plaintiffs' Amended Complaint and therefore denies same.

15. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 15 of Plaintiffs' Amended Complaint and therefore denies same.

16. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 16 of Plaintiffs' Amended Complaint and therefore denies same.

17. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 17 of Plaintiffs' Amended Complaint and therefore denies same.

18. Upon information and belief, Defendant Gonzales admits the allegations set forth in paragraph 18 of Plaintiffs' Amended Complaint.

19. Upon information and belief, Defendant Gonzales admits that Mayor Martin Chavez (hereinafter "Chavez") is, and has been at all material times, the Mayor of the City of Albuquerque. Defendant Gonzales also admits upon information and belief that Mayor Chavez's authority as Mayor of the City of Albuquerque is found in part in the City of Albuquerque's Charter and ordinances. To the extent that these allegations do not track the verbatim language of the City of Albuquerque's Charter and ordinances, these allegations are denied. Furthermore, Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore denies same.

Furthermore, any allegations set forth in paragraph 19 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

20. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 20 of Plaintiffs' Amended Complaint and therefore denies same.

21. Upon information and belief, Defendant Gonzales admits that Deputy Chief Administrative Officer Bakas was a Deputy Chief Administrative Officer during all material times. However, Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 21 of Plaintiffs' Amended Complaint and therefore denies same. Furthermore, Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore denies same. Furthermore, any allegations set forth in paragraph 21 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

22. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 22 of Plaintiffs' Amended Complaint and therefore denies same.

23. Upon information and belief, Defendant Gonzales admits that Chief Gilbert Gallegos was the Chief of Police for the Albuquerque Police Department during all material times. However, Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 23 of Plaintiffs' Amended Complaint and therefore denies same. Furthermore, Plaintiffs plead a legal

conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore denies same. Furthermore, any allegations set forth in paragraph 23 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

24. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 24 of Plaintiffs' Amended Complaint and therefore denies same.

25. Upon information and belief, Defendant Gonzales admits that Deputy Chief of Police Ray Schultz was a Deputy Chief of Police for the Albuquerque Police Department at all material times. However, Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 25 of Plaintiffs' Amended Complaint and therefore denies same. Furthermore, Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore deny same. Furthermore, any allegations set forth in paragraph 25 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

26. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 26 of Plaintiffs' Amended Complaint and therefore denies same.

27. Defendant Gonzales admits that he had supervisory authority over certain other law enforcement officers involved in this litigation. However, Defendant Gonzales

denies that he was the supervisor with the most authority over the actions taken by all the individual officers at the political protests which are the focus of this litigation.

Furthermore, all allegations set forth in paragraph 27 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

28. Defendant Gonzales admits he was acting under color of state law and within the scope of his duties at all material times and that he was present at the scene. However, Defendant Gonzales denies that he was supervising all of the actions of the Defendant officers at all times. Furthermore, all allegations set forth in paragraph 28 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

29. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer Raymond DeFrates is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 29 of Plaintiffs' Amended Complaint and therefore denies same.

30. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer Michael Fisher is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 30 of Plaintiffs' Amended Complaint and therefore denies same.

31. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer James Leroy Fox is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient

information or belief to admit or deny the remaining allegations set forth in paragraph 31 of Plaintiffs' Amended Complaint and therefore denies same.

32. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer ND Gonzales is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 32 of Plaintiffs' Amended Complaint and therefore denies same.

33. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer Allen S. Hancock is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 33 of Plaintiffs' Amended Complaint and therefore denies same.

34. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Sergeant S. Hill is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 34 of Plaintiffs' Amended Complaint and therefore denies same.

35. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer C. Lopez is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 35 of Plaintiffs' Amended Complaint and therefore denies same.

36. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer Daniel S. Magetteri is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 36 of Plaintiffs' Amended Complaint and therefore denies same.

37. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer James Montoya is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 37 of Plaintiffs' Amended Complaint and therefore denies same.

38. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Sergeant Shawn O'Connell is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 38 of Plaintiffs' Amended Complaint and therefore denies same.

39. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer Pablo A. Padilla is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 39 of Plaintiffs' Amended Complaint and therefore denies same.

40. Upon information and belief, Defendant Gonzales admits that Albuquerque Police Officer James Perdue is, or was at all material times, a police officer for the City of Albuquerque. Defendant Gonzales is without sufficient information or

belief to admit or deny the remaining allegations set forth in paragraph 40 of Plaintiffs' Amended Complaint and therefore denies same.

41. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 41 of Plaintiffs' Amended Complaint and therefore denies same.

42. Plaintiffs do not assert a factual allegation in paragraph 42 of Plaintiffs' Amended Complaint. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny and therefore denies same.

FACUTAL BACKGROUND RELEVANT TO ALL PLAINTIFFS,
ALL DEFENDANTS, AND ALL CLAIMS

43. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 43 of Plaintiffs' Amended Complaint and therefore denies same.

44. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 44 of Plaintiffs' Amended Complaint and therefore denies same.

45. Defendant Gonzales denies the allegations set forth in paragraph 45 of Plaintiffs' Amended Complaint and therefore denies same.

46. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 46 of Plaintiffs' Amended Complaint and therefore denies same.

47. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 47 of Plaintiffs' Amended Complaint as stated and therefore denies same.

48. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 48 of Plaintiffs' Amended Complaint as stated and therefore denies same.

49. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 49 of Plaintiffs' Amended Complaint as stated and therefore denies same.

50. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 50 of Plaintiffs' Amended Complaint and therefore denies same.

51. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 51 of Plaintiffs' Amended Complaint and therefore denies same.

52. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 52 of Plaintiffs' Amended Complaint as stated and therefore denies same.

53. Defendant Gonzales denies the allegations set forth in paragraph 53 of Plaintiffs' Amended Complaint as stated.

54. Defendant Gonzales denies the allegations set forth in paragraph 54 of Plaintiffs' Amended Complaint as stated.

55. Defendant Gonzales denies the allegations set forth in paragraph 55 of Plaintiffs' Amended Complaint as stated.

56. Defendant Gonzales admits that he was present and was a supervisor of some of the Defendant police officers at the scene. However, Defendant Gonzales denies

the remaining allegations set forth in Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 56 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

57. Defendant Gonzales admits that Albuquerque Police Department SWAT officers wore crowd control gear. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 57 of Plaintiffs' Amended Complaint as stated and therefore denies same.

58. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 58 of Plaintiffs' Amended Complaint as stated and therefore denies same.

59. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 59 of Plaintiffs' Amended Complaint as stated and therefore denies same.

60. Defendant Gonzales admits that the Albuquerque Police Department initially responded to the incident which is the subject matter of the lawsuit and that other specialized units subsequently responded to the scene. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 60 Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 60 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

61. Defendant Gonzales admits that various street were closed to protect protesters and motorists from the obvious danger that they posed to one another. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 61 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 61

of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

62. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 62 of Plaintiffs' Amended Complaint and therefore denies same.

63. Defendant Gonzales admits that he ordered the formation of skirmish lines. However, Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 63 of Plaintiffs' Amended Complaint as stated and therefore denies same.

64. Defendant Gonzales admits that protesters illegally entered and stayed on the streets. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 64 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 64 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

65. Defendant Gonzales denies the allegations set forth in paragraph 65 of Plaintiffs' Amended Complaint.

66. Defendant Gonzales is without sufficient information to admit or deny the allegations set forth in paragraph 66 of Plaintiffs' Amended Complaint as stated and therefore denies same.

67. Defendant Gonzales denies the allegations set forth in paragraph 67 of Plaintiffs' Amended Complaint.

68. Defendant Gonzales denies the allegations set forth in paragraph 68 of Plaintiffs' Amended Complaint.

69. Defendant Gonzales admits that he observed small children among the group of protesters. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 69 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 69 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

70. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 70 of Plaintiffs' Amended Complaint as stated and therefore denies same.

71. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 71 of Plaintiffs' Amended Complaint as stated and therefore denies same.

72. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 72 of Plaintiffs' Amended Complaint as stated and therefore denies same.

73. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 73 of Plaintiffs' Amended Complaint as stated and therefore denies same.

74. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 74 of Plaintiffs' Amended Complaint as stated and therefore denies same.

75. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 75 of Plaintiffs' Amended Complaint as stated and therefore denies same.

76. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 76 of Plaintiffs' Amended Complaint and therefore denies same.

77. Defendant Gonzales denies the allegations set forth in paragraph 77 of Plaintiffs' Amended Complaint.

78. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 78 of Plaintiffs' Amended Complaint as stated and therefore deny same.

79. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 79 of Plaintiffs' Amended Complaint as stated and therefore denies same.

80. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 80 of Plaintiffs' Amended Complaint and therefore denies same.

81. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 81 of Plaintiffs' Amended Complaint as stated and therefore denies same.

82. Defendant Gonzales admits that Albuquerque Police Department used a round from a beanbag shotgun to control a protester's threatening and unlawful conduct as alleged in paragraph 82 of Plaintiffs' Amended Complaint.

83. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 83 of Plaintiffs' Amended Complaint as stated and therefore denies same.

84. Defendant Gonzales denies the allegations set forth in paragraph 84 of Plaintiffs' Amended Complaint.

85. Defendant Gonzales admits that Albuquerque Police Department officers used OC to control protesters' unlawful conduct. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 85 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 85 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

86. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 86 of Plaintiffs' Amended Complaint as stated and therefore denies same.

87. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 87 of Plaintiffs' Amended Complaint as stated and therefore denies same.

88. Defendant Gonzales denies the allegations set forth in paragraph 87 of Plaintiffs' Amended Complaint.

89. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 89 of Plaintiffs' Amended Complaint as stated and therefore denies same.

90. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 90 of Plaintiffs' Amended Complaint and therefore denies same.

91. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 91 of Plaintiffs' Amended Complaint as stated and therefore denies same.

92. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 92 of Plaintiffs' Amended Complaint and therefore denies same.

93. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 93 of Plaintiffs' Amended Complaint and therefore denies same.

94. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 94 of Plaintiffs' Amended Complaint and therefore denies same.

95. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 95 of Plaintiffs' Amended Complaint and therefore denies same.

96. Defendant Gonzales admits that Albuquerque Police Department officers used the Horse Mounted Unit to prevent protesters from violating the rights of other protesters. However, Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 96 of Plaintiffs' Amended Complaint as stated and therefore denies same. Furthermore, all allegations set forth in paragraph 96 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

97. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 97 of Plaintiffs' Amended Complaint as stated and therefore denies same.

98. Defendant Gonzales admits that Albuquerque Police Department officers used an objectively reasonable amount of force to control the illegal/threatening conduct of the protestors. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 98 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 98 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

99. Defendant Gonzales admits that Albuquerque Police Department officers used an objectively reasonable amount of force to control the illegal/threatening conduct of the protestors. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 99 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 99 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

100. Defendant Gonzales denies the allegations set forth in paragraph 100 of Plaintiffs' Amended Complaint.

101. Defendant Gonzales admits that Albuquerque Police Department used chemical agents in an objectively reasonable manner to control the protestors' illegal/threatening conduct. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 101 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 101 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

102. Defendant Gonzales admits that Albuquerque Police Department officers used chemical agents in an objectively reasonable manner to control the protesters' illegal/ threatening conduct. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 102 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 102 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

103. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 103 of Plaintiffs' Amended Complaint as stated and therefore denies same.

104. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 104 of Plaintiffs' Amended Complaint as stated and therefore denies same.

105. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 105 of Plaintiffs' Amended Complaint as stated and therefore denies same.

106. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 106 of Plaintiffs' Amended Complaint as stated and therefore denies same.

107. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 107 of Plaintiffs' Amended Complaint as stated and therefore denies same.

108. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 108 of Plaintiffs' Amended Complaint as stated and therefore denies same.

109. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 109 of Plaintiffs' Amended Complaint and therefore denies same.

110. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 110 of Plaintiffs' Amended Complaint as stated and therefore denies same.

111. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 111 of Plaintiffs' Amended Complaint as stated and therefore denies same.

112. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 112 as stated of Plaintiffs' Amended Complaint as stated and therefore denies same.

113. Defendant Gonzales admits that several protesters were arrested. Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 113 of Plaintiffs' Amended Complaint and therefore denies same. Furthermore, all allegations set forth in paragraph 113 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

114. Defendant Gonzales admits that protesters had several avenues which they could have used to leave the area of protest. Defendant Gonzales also admits that

Albuquerque Police Department officers left the area once protesters no longer threatened to obstruct traffic on Central Avenue. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 114 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 114 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

115. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 115 of Plaintiffs' Amended Complaint and therefore denies same.

116. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 116 of Plaintiffs' Amended Complaint and therefore denies same.

117. Defendant Gonzales admits that a small number of protestors filed complaints with the Police Oversight Commission. However, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 117 of Plaintiffs' Amended Complaint as stated and therefore denies same. Furthermore, all allegations set forth in paragraph 117 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

118. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 118 of Plaintiffs' Amended Complaint as stated and therefore denies same.

119. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 119 of Plaintiffs' Amended Complaint as stated and therefore denies same.

120. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 119 of Plaintiffs' Amended Complaint as stated and therefore denies same.

121. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 121 of Plaintiffs' Amended Complaint as stated and therefore denies same.

122. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 122 of Plaintiffs' Amended Complaint as stated and therefore denies same.

123. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 123 of Plaintiffs' Amended Complaint as stated and therefore denies same.

124. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 124 of Plaintiffs' Amended Complaint as stated and therefore denies same. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny the allegations in paragraph 124 of Plaintiffs' Amended Complaint and therefore denies same.

COUNT I – FALSE IMPRISONMENT
WAIVED BY THE NM TORT CLAIMS ACT
(By Plaintiffs Silva-Banuelos, Michael Kisner, Doyon Against Individual
Defendant police officers, and Against Defendant City)

125. Defendant Gonzales incorporates paragraphs 1-124 of Plaintiffs' Amended Complaint as if fully stated herein.

126. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny the allegations set forth in paragraph 26 of Plaintiffs' Amended Complaint and therefore deny same.

127. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 127 of Plaintiffs' Amended Complaint and therefore denies same.

128. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 128 of Plaintiffs' Amended Complaint and therefore denies same.

129. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 129 of Plaintiffs' Amended Complaint and therefore denies same.

130. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 130 of Plaintiffs' Amended Complaint and therefore denies same.

131. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 131 of Plaintiffs' Amended Complaint and therefore denies same.

132. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without

sufficient information or belief to admit or deny the allegations set forth in paragraph 132 of Plaintiffs' Amended Complaint and therefore denies same.

133. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 133 of Plaintiffs' Amended Complaint and therefore denies same.

134. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 134 of Plaintiffs' Amended Complaint and therefore denies same.

135. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 135 of Plaintiffs' Amended Complaint and therefore denies same.

136. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 136 of Plaintiffs' Amended Complaint and therefore denies same.

137. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 137 of Plaintiffs' Amended Complaint and therefore denies same.

138. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 138 of Plaintiffs' Amended Complaint and therefore denies same.

COUNT II – BATTERY
WAIVED BY THE NM TORT CLAIMS ACT
(By All named Plaintiffs Against Individual Defendant police officers
And Against Defendant City

139. Defendant Gonzales incorporates paragraphs 1-138 of Plaintiffs' Amended Complaint as if fully stated herein.

140. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 140 of Plaintiffs' Amended Complaint and therefore denies same.

141. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 141 of Plaintiffs' Amended Complaint and therefore denies same.

142. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 142 of Plaintiffs' Amended Complaint and therefore denies same.

143. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 143 of Plaintiffs' Amended Complaint and therefore denies same.

144. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 144 of Plaintiffs' Amended Complaint and therefore denies same.

145. Defendant Gonzales admits that Defendant police officers used tear gas canisters in an objectively reasonable manner to control the protesters' unlawful/ threatening conduct. However, Defendant Gonzales is without sufficient information or belief to admit or deny the remaining allegations set forth in paragraph 145 of Plaintiffs' Amended Complaint and therefore denies same. Furthermore, all allegations set forth in paragraph 145 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

146. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 146 of Plaintiffs' Amended Complaint and therefore denies same.

147. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 147 of Plaintiffs' Amended Complaint and therefore denies same.

148. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 148 of Plaintiffs' Amended Complaint and therefore denies same.

149. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 149 of Plaintiffs' Amended Complaint and therefore denies same.

150. Defendant Gonzales denies the allegations set forth in paragraph 150 of Plaintiffs' Amended Complaint.

151. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 151 of Plaintiffs' Amended Complaint and therefore denies same.

152. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 153 of Plaintiffs' Amended Complaint and therefore denies same.

153. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 153 of Plaintiffs' Amended Complaint and therefore denies same.

154. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 154 of Plaintiffs' Amended Complaint and therefore denies same.

155. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 155 of Plaintiffs' Amended Complaint and therefore denies same.

COUNT III – MALICIOUS ABUSE OF PROCES
WAIVED BY THE NM TORT CLAIMS ACT
(By Plaintiffs Silva-Banuelos, Michael Kisner, Doyon, Against Individual
Defendant police officers, Defendant John Gonzales and Defendant City

156. Defendant Gonzales incorporates paragraphs 1-155 of Plaintiffs' Amended Complaint as if fully stated herein.

157. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 157 of Plaintiffs' Amended Complaint and therefore denies same.

158. Defendant Gonzales denies the allegations set forth in paragraph 158 of Plaintiffs' Amended Complaint.

159. Defendant Gonzales denies the allegations set forth in paragraph 159 of Plaintiffs' Amended Complaint.

160. Defendant Gonzales denies the allegations set forth in paragraph 160 of Plaintiffs' Amended Complaint.

161. Defendant Gonzales denies the allegations set forth in paragraph 161 of Plaintiffs' Amended Complaint.

162. Defendant Gonzales denies the allegations set forth in paragraph 162 of Plaintiffs' Amended Complaint.

163. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 163 of Plaintiffs' Amended Complaint and therefore denies same. Furthermore, Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant

Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 163 of Plaintiffs' Amended Complaint and therefore denies same.

164. Defendant Gonzales denies the allegations set forth in paragraph 164 of Plaintiffs' Amended Complaint.

165. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 165 of Plaintiffs' Amended Complaint and therefore denies same.

166. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 166 of Plaintiffs' Amended Complaint and therefore denies same.

167. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 167 of Plaintiffs' Amended Complaint and therefore denies same.

168. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 168 of Plaintiffs' Amended Complaint and therefore denies same.

COUNT IV – 42 U.S.C. § 1983 – WRONGFUL SEIZURE AND ARREST
(By Plaintiffs Silva-Banuelos, Michael Kisner, Doyon Against Individual
Defendant police officers, and Defendant Gonzales

169. Defendant Gonzales incorporates paragraphs 1-168 of Plaintiffs' Amended Complaint as if fully stated herein.

170. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 170 of Plaintiffs' Amended Complaint and therefore denies same.

171. Defendant Gonzales denies the allegations set forth in paragraph 171 of Plaintiffs' Amended Complaint.

172. Defendant Gonzales denies the allegations set forth in paragraph 172 of Plaintiffs' Amended Complaint.

173. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 173 of Plaintiffs' Amended Complaint and therefore denies same.

174. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 174 of Plaintiffs' Amended Complaint and therefore denies same.

COUNT V – 42 U.S.C. § 1983 – EXCESSIVE USE OF FORCE
(By All named Plaintiffs Against
Individual Defendant police officers and Defendant Gonzales

175. Defendant Gonzales incorporates paragraphs 1-174 of Plaintiffs' Amended Complaint as if fully stated herein.

176. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 176 of Plaintiffs' Amended Complaint and therefore denies same.

177. Defendant Gonzales denies the allegations set forth in paragraph 177 of Plaintiffs' Amended Complaint.

178. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 178 of Plaintiffs' Amended Complaint and therefore denies same.

179. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 179 of Plaintiffs' Amended Complaint and therefore denies same.

180. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 180 of Plaintiffs' Amended Complaint and therefore denies same.

**COUNT VI – 42 U.S.C. § 1983 – SUPPRESSION OF RIGHTS TO
FREEDOM OF EXPRESSION AND ASSEMBLY
(By All named Plaintiffs Against Individual Defendant
Officers and Defendant John Gonzales)**

181. Defendant Gonzales incorporates paragraphs 1-180 of Plaintiffs' Amended Complaint as if fully stated herein.

182. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 182 of Plaintiffs' Amended Complaint and therefore denies same.

183. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without

sufficient information or belief to admit or deny the allegations set forth in paragraph 183 of Plaintiffs' Amended Complaint and therefore denies same.

184. Defendant Gonzales denies the allegations set forth in paragraph 184 of Plaintiffs' Amended Complaint.

185. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 185 of Plaintiffs' Amended Complaint and therefore denies same.

186. Defendant Gonzales denies the allegations set forth in paragraph 186 of Plaintiffs' Amended Complaint.

187. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 187 of Plaintiffs' Amended Complaint and therefore denies same.

188. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 188 of Plaintiffs' Amended Complaint and therefore denies same.

189. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 189 of Plaintiffs' Amended Complaint and therefore denies same.

190. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without

sufficient information or belief to admit or deny the allegations set forth in paragraph 190 of Plaintiffs' Amended Complaint and therefore denies same.

COUNT VII – 42 U.S.C. § 1983 – RETALIATORY PROSECUTION
(By Plaintiffs Silva-Banuelos, Michael Kisner, Dovon, Against Individual
Defendant police officers, and Defendant John Gonzales

191. Defendant Gonzales incorporates paragraphs 1-190 of Plaintiffs' Amended Complaint as if fully stated herein.

192. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 192 of Plaintiffs' Amended Complaint and therefore denies same.

193. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 193 of Plaintiffs' Amended Complaint and therefore denies same.

194. Defendant Gonzales denies the allegations set forth in paragraph 194 of Plaintiffs' Amended Complaint.

195. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 196 of Plaintiffs' Amended Complaint and therefore denies same.

196. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore deny same. Further, any allegations

set forth in paragraph 196 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

COUNT VIII – 42 U.S.C. § 1983 – MALICIOUS PROSECUTION
(By Plaintiffs Silva-Banuelos, Michael Kisner, Doyan Against Individual Defendant Police Officers, and Defendant John Gonzales

197. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 197 of Plaintiffs' Amended Complaint and therefore denies same.

198. Defendant Gonzales denies the allegations set forth in paragraph 198 of Plaintiffs' Amended Complaint.

199. Defendant Gonzales denies the allegations set forth in paragraph 199 of Plaintiffs' Amended Complaint.

200. Defendant Gonzales denies the allegations set forth in paragraph 200 of Plaintiffs' Amended Complaint.

201. Defendant Gonzales denies the allegations set forth in paragraph 201 of Plaintiffs' Amended Complaint.

202. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore deny same. Further, any allegations set forth in paragraph 202 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

203. Defendant Gonzales denies the allegations set forth in paragraph 203 of Plaintiff's Amended Complaint.

204. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore deny same. Further, any allegations set forth in paragraph 204 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

205. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 205 of Plaintiffs' Amended Complaint and therefore denies same.

206. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information to admit or deny and therefore deny same. Further, any allegations set forth in paragraph 206 of Plaintiffs' Amended Complaint not specifically admitted by Defendants are hereby denied.

COUNT IX – 42 U.S.C. § 1983-
CLAIM OF SUPERVISORY LIABILITY AND MUNICIPAL LIABILITY
FOR VIOLATIONS OF CONSTITUTIONAL RIGHTS
(By All named Plaintiffs Against Defendants City, Chavez,
Bakas, Gallegos, Schultz, and John Gonzales

207. Defendant Gonzales incorporates paragraphs 1-206 of Plaintiffs' Amended Complaint as if fully stated herein.

208. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 208 of Plaintiffs' Amended Complaint and therefore denies same.

209. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 209 of Plaintiffs' Amended Complaint and therefore denies same.

210. Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 210 of Plaintiffs' Amended Complaint and therefore denies same.

211. Defendant Gonzales denies the allegations set forth in paragraph 211 of Plaintiffs' Amended Complaint.

212. Defendant Gonzales denies the allegations set forth in paragraph 212 of Plaintiffs' Amended Complaint.

213. Upon information and belief, Defendant Gonzales admits that he was present and that he was a supervisor of some of the officers at the scene. However, Defendant Gonzales denies the remaining allegations set forth in paragraph 213 of Plaintiffs' Amended Complaint. Furthermore, all allegations set forth in paragraph 213 of Plaintiffs' Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

214. Plaintiffs plead legal conclusions for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 214

of Plaintiffs' Amended Complaint and therefore denies same. Furthermore, all allegations set forth in paragraph 214 of Plaintiff's Amended Complaint not specifically admitted by Defendant Gonzales are hereby denied.

215. Defendant Gonzales denies the allegations set forth in paragraph 215 of Plaintiffs' Amended Complaint and all subparts of paragraph 215, including but not limited to, 215(A) – 215(G).

216. Plaintiffs plead a legal conclusion for which an answer is generally not required. To the extent that an answer is required, Defendant Gonzales is without sufficient information or belief to admit or deny the allegations set forth in paragraph 216 of Plaintiffs' Amended Complaint and therefore denies same.

AFFIRMATIVE DEFENSES

First Affirmative Defense

None of the actions described in Plaintiffs' Complaint constitutes a violation of Plaintiffs' constitutional rights.

Second Affirmative Defense

The actions of Defendant Gonzales were objectively reasonable under the circumstances and authorized by the clearly established law, entitling him to qualified immunity.

Third Affirmative Defense

Plaintiffs allege a number of causes of action which fail to state a claim for which relief may be granted. *See* Fed.R.Civ.P. 12(b)(6).

Fourth Affirmative Defense

Plaintiffs' injuries, if any, were proximately caused by an independent intervening cause for which Defendant Gonzales is not liable.

Fifth Affirmative Defense

Plaintiffs failed to serve the State of New Mexico with a tort claim notice within ninety (90) days from the date that his claim against Defendant Gonzales began to run as required under the New Mexico Tort Claims Act.

Sixth Affirmative Defense

Plaintiffs failed to mitigate their damages.

Seventh Affirmative Defense

Defendant Gonzales' alleged negligence or intentional torts, if any, must be compared with the intentional torts and negligence of Plaintiffs and all other parties whether named or unnamed in these proceedings.

Eighth Affirmative Defense

Under 42 U.S.C. § 1983, punitive damages are not recoverable against Defendant Gonzales in his official capacity.

Ninth Affirmative Defense

Under the New Mexico Tort Claims Act, punitive damages are not recoverable against Defendant Gonzales.

JURY DEMAND

Defendant Gonzales demands a trial by jury for all claims which may be tried by a jury.

Respectfully submitted,

ELECTRONICALLY FILED

Jerry A. Walz, Esq.
Attorney for Defendant Gonzales
12009 N. Hwy. 14
Cedar Crest, NM 87008
(505) 281-3414

Certificate of Mailing

I hereby certify that a true
and correct copy of the
foregoing was sent to all
counsel of record via
U.S. Mail on March 28, 2005:

ELECTRONICALLY FILED

Jerry A. Walz, Esq.