

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

OUMAR DIOMBELE  
Administrator of the ESTATE OF  
MOHAMED SQUARE,

Plaintiff,

v.

CITY OF TOLEDO; GEORGE KRAL, acting  
in his individual capacity as Chief of Police  
for the City of Toledo, and DUSTIN  
KINDLE, acting in his individual capacity as  
a Toledo Police Officer for the City of Toledo

Civil Action No.: 3:24-cv-45

JUDGE:

**COMPLAINT WITH JURY DEMAND**

**COMPLAINT**

Plaintiff OUMAR DIOMBELE, as personal representative of the ESTATE OF MOHAMED SQUARE, deceased, by and through undersigned counsel, brings this action for damages against Defendants CITY OF TOLEDO, TOLEDO POLICE DEPARTMENT, former POLICE CHIEF GEORGE KRAL, and OFFICER DUSTIN KINDLE.

For this Complaint, Plaintiff alleges the following:

**NATURE OF THE ACTION**

1. This is a civil rights action, accompanied by state law tort claims, including wrongful death, brought against the City of Toledo and individual officers. As set forth below, a chaotic and reckless vehicle pursuit initiated by Defendants on February 27, 2022, resulted in the tragic,

but avoidable death of Mohamed Souare (“Mr. Souare”), an innocent bystander, and a remarkable young man whose life was horrifically ended at the age of 36.

2. Mr. Souare’s catastrophic personal injury and death occurred as a direct and proximate result of the City of Toledo Police Department’s aggressive “apprehension at all costs” policing policies that resulted in customs and practices of tolerating, encouraging, or ratifying unjustified and dangerous high-speed pursuits by its officers.

3. Mr. Souare was one of many unfortunate victims of Defendant’s dangerous policing and unchecked use of high-speed vehicle pursuits on even the most minor of traffic infractions.

4. Defendant City of Toledo and Police Chief Kral knew officers were regularly engaging in inherently dangerous vehicular pursuits, placing the public at risk of severe injury or death. Despite its knowledge, the City and Chief Kral ignored, or even worse, reviewed and condoned the Toledo Police Department’s pursuit practices.

5. Defendant Kindle, like many other Toledo police officers, fully embraced the Toledo Police Department’s dangerous pursuit practices, and Mr. Souare – like many before him – suffered the consequences.

### **PARTIES**

6. Plaintiff Oumar Diombele has been appointed as the administrator of the Estate of Mohamed Souare, by the Superior Court in Cabarrus County, North Carolina. At the time of his death, Mohamed Souare was a U.S. Citizen and a resident of Cabarrus County, North Carolina.

7. Defendant City of Toledo (“City”) is a charter municipality organized in accordance with the laws and Constitution of the State of Ohio and located within the territorial boundaries of Lucas County, Ohio.

8. Plaintiff asserts claims against the City of Toledo under *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

9. The Toledo Police Department is not a separate suable entity, but rather a sub-unit of the City of Toledo.

10. Defendant George Kral was at all times material herein, a citizen of the United States, a resident of the State of Ohio, and duly acting in the course and scope of his former employment with the City of Toledo as Chief of the Toledo Police Department. He is sued individually, in his official capacity as former Chief of Police. At all times relevant herein, Defendant Kral was a state actor, acting under the color of state law.

11. Defendant Dustin Kindle was at all times relevant to this action, a citizen of the United States, a resident of the State of Ohio, and a duly sworn police officer in the City of Toledo Police Department, employed by the City of Toledo. He is sued individually, in his official capacity. At all times herein, Defendant Kindle was a state actor, acting under the color of state law.

### **JURISDICTION AND VENUE**

12. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of the Plaintiff and the Defendants, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

13. Original jurisdiction over claims arising from Defendants' civil rights violations is conferred upon this Court by 28 U.S.C. § 1343 and § 1331. Jurisdiction over state law claims is authorized under 28 U.S.C. § 1391.

14. Venue is proper in this district and division under 28 U.S.C. § 1391(b)(2), as the Defendant, City of Toledo, is organized in this district and all of the contested actions take place in this district.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

**A. The City Encourages and Enables Dangerous and Unconstitutional Pursuit Practices**

15. The City of Toledo fulfills its policing functions through the Toledo Police Department.

16. As a matter of formal policy, the Toledo Police Department recognizes and acknowledges that vehicular pursuits can be inherently dangerous, not only to officers, but to the public as well.

17. In recognition and acknowledgement of the inherent risks that arise when its officers engage in vehicular pursuits, including a stated effort to “protect all persons from bodily injury,” the Toledo Police Department has a formal “Pursuit Operations” (“Pursuit Policy”).

18. The current Pursuit Policy rescinded and replaced the Department’s 2018 policy.

19. The Toledo Police Department understands that every pursuit can end in disaster, whether it’s an innocent bystander killed, or a police officer, or the suspect.

20. The very first line of the Pursuit Policy unequivocally states, “**A VEHICLE PURSUIT SHALL BE TERMINATED WHENEVER THE LEVEL OF DANGER CREATED BY THE PURSUIT OUTWEIGHS THE IMMEDIATE CONSEQUENCES OF THE SUSPECT'S ESCAPE.**” (emphasis original).

21. On its face, the Pursuit Policy expressly prohibits an officer from initiating or engaging in a vehicle pursuit without first evaluating all environmental conditions and other external factors that could impact the pursuit or its outcome. This includes, but is not limited to:

a. The nature and seriousness of the offense;

- b. The area of the pursuit;
- c. The speed and evasive maneuvers of the suspect;
- d. The condition and capabilities of the police vehicle; or
- e. Whether the suspect is known to the officers or is easily identifiable.

22. The Pursuit Policy prohibits pursuit speeds from exceeding “**REASONABLE**” speeds, after consideration of all environmental factors. (emphasis original).

23. The Pursuit Policy mandates that officers and supervisors constantly re-evaluate all relevant factors during a pursuit so as to make a reasonable determination regarding continuation or termination of the pursuit.

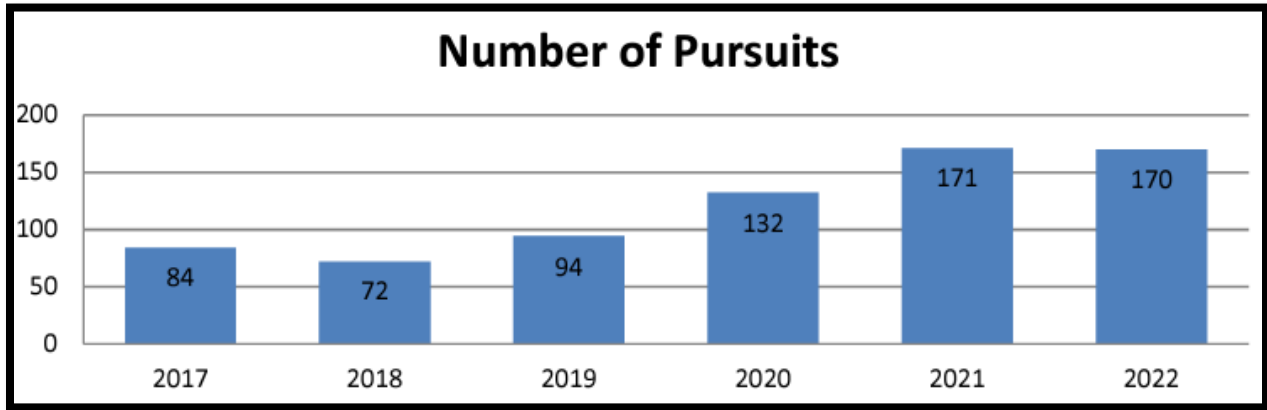
24. The Pursuit Policy has additional language regarding “**MANDATORY TERMINATION,**” that mirrors the very first line of the policy with the exception of the inclusion of the modifier “immediate” before “escape”: “**A VEHICLE PURSUIT SHALL BE TERMINATED WHENEVER THE LEVEL OF DANGER CREATED BY THE PURSUIT OUTWEIGHS THE CONSEQUENCES OF THE SUSPECT'S IMMEDIATE ESCAPE.**” (emphasis original).

25. The Toledo Police Department conducts an annual review of its pursuits, tracking such statistics as the number of pursuits, reasons pursuits are initiated, duration of pursuits, the reason pursuits are terminated, and the number of accidents and injuries caused by the pursuit.

26. The Toledo Police Department states that one of the main purposes of the report is to identify “patterns or trends that indicate training needs and/or policy changes.”

27. The Toledo Police Department’s 2022 “Annual Pursuit Analysis Report” (“Pursuit Report”) reveals police pursuit statistics that evidences that Toledo Police Department practices are contrary to the mandate of its Pursuit Policy.

28. The Pursuit Report details that over a five-year period, from 2018 through 2022, the number of pursuits increased over 130%.



29. The Pursuit Report revealed that minor offenses, such as traffic violations, trigger over 50% of Toledo Police Department's pursuits.

30. Since 2019, the number of pursuits lasting more than 8 minutes, has doubled.

31. The number of pursuits terminated due to accident in the course of the pursuit, has nearly tripled over a five-year period, with more than one in three Toledo Police Department pursuits ending with an accident.

32. In contrast, in 2022, of the 170 pursuits, less than five were terminated by the officer in pursuit.

33. Over 50% of pursuits that result in an accident-injury, involve injury to a third-party, including death.

34. The Toledo Police Department, formally acknowledging that it has a responsibility to the community to identify officers who require additional training, implemented an "Early Intervention System" policy ("EIS").

35. The Toledo Police Department purports to utilize the EIS to identify and address deficiencies with officers “as early as possible.”

36. While not mandated by the policy, an officer with “two or more violations of the Vehicle Pursuit Policy within a 12-month period” may trigger an “early” intervention.

37. Likewise, an officer with “two or more preventable accidents within a 12-month period” may trigger an “early” intervention.

38. The Pursuit Report indicates that between 2021 and 2022, there were 341 pursuits that resulted in 117 accidents and caused 95 incidents of injury, including 5 deaths.

39. Despite the Pursuit Policy, which mandates that vehicular pursuits: must only be initiated and continued if it is reasonable given all environmental conditions and external factors; must be conducted in a manner that protects “all persons from bodily injury and unnecessary property loss”; and must be “terminated whenever the level of danger created by the pursuit outweighs the immediate consequence of the suspect’s escape”, the Pursuit Report indicates that in the 341 pursuits in 2021 and 2022 resulting in 117 accidents, 95 incidents of injury, including 5 deaths, the Toledo Police Department only found that 14 of pursuits involved some violation of the policy – almost all of which it determined was minor – and only warranted a verbal reprimand and refresher on the pursuit policy.

40. Although the Toledo Police Department pays “lip service” to the Pursuit Policy that gives the appearance that it has a vehicular pursuit policy designed to protect people from injury and property from damage, in practice the policy is disregarded and the paramount objective of all officers is to pursue and apprehend all offenders at any cost, including those involving minor traffic offenses.

41. The Toledo Police Department's pursuit practices and customs, along with its failure to train and/or discipline offending officers, even in instances where accidents, property damage, injury or death to innocent bystanders result, have led to a pattern and practice of excessive, unreasonable, and dangerous vehicular pursuits by officers.

42. The Toledo Police Department's "accountability system" is insufficient and ineffective at holding its officers accountable for unnecessary or dangerous pursuits. The Department's Internal Affairs Unit is toothless – rarely ever investigating or finding a violation of the Pursuit Policy, almost always determining that any violation is minor in nature, and in all cases simply providing the offending officers with nothing more than counseling on procedure or a verbal reprimand.

43. This lack of accountability is consistent with the Department's "Early Intervention" that merely suggests that an officer with "two or more violations of the Vehicle Pursuit Policy" or "two or more preventable accidents" within a 12-month period" may trigger an "early" intervention that simply considers whether additional training may be needed.

44. Rather than deal with the problem and harm caused by Police Department's pursuits, the City of Toledo enable the Police Department to the detriment of its citizens, who are the subjects of unconstitutional pursuit practices, and of its taxpayers, who foot the bill for the resulting damage.

45. The longstanding culture of the Toledo Police Department regarding pursuits and the paramount importance of apprehension, encourages a hyper-aggressive policing culture and instills knowledge among the rank-and-file that they are empowered to freely make decisions to engage in, conduct, and/or unnecessarily and unconstitutionally escalate vehicular pursuits with impunity.



46. It is also a custom and practice of Defendant City of Toledo to justify its unlawful pursuit conduct by redirecting the public's attention to the person that made the decision to run.

47. Following public outcries over the number of fatalities in recent Toledo police pursuits, current Chief Michael Troendle was confronted by members of the public and offered that pursuits are "one of the necessary evils of policing." He further commented that it is unfortunate that "people try to place the blame on the police officer because they are the most visible person, but the reality is that the person that made the decision to run and cause the accident has culpability as well."<sup>1</sup>

48. Just weeks before the dangerous pursuit that killed Mr. Souare, the Toledo Police Department engaged in another high-profile pursuit that involved officers chasing a suspect into oncoming traffic on 475 and then ramming the suspect's vehicle to bring it to a stop.<sup>2</sup>

49. The Pursuit Policy expressly prohibits officers from pursuing vehicles the wrong way on the highway.

50. The Pursuit Policy also expressly prohibits "ramming", stating that it is an extremely high-risk maneuver...and "shall not be used as a pursuit tactic under any circumstance."

51. Toledo Police officers intentionally disregarded these pursuit prohibitions and instead of facing disciplinary action, were publicly praised by Defendant Police Chief Kral, who acknowledged the conduct was "dangerous" and it was against the department policy," but there would be no "discipline whatsoever to any officer involved" because the officer did a "fantastic job. He did what he had to do and I back him...110%."

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<sup>1</sup> <https://www.toledoblade.com/local/police-fire/2023/12/15/toledo-police-pursuit-policies-explained-at-community-meeting/stories/20231214146>

<sup>2</sup> <https://www.13abc.com/2022/01/05/tpd-clarifies-officers-not-disciplined-violating-department-pursuit-policy/>

52. When Toledo police officers blatantly disregard the formal pursuit policy, admittedly place the public at risk, apprehend the fleeing driver, and there are no serious injuries to the public, they are lauded as heroes who will face no discipline for their conduct.

53. When Toledo police officers blatantly disregard the formal pursuit policy, admittedly place the public at risk, apprehend the fleeing driver, and there are serious injuries or fatalities, they place blame at the driver who fled, and face no discipline for their conduct.

54. The Toledo Police Department's practices, customs, and culture regarding pursuits, its lack of training on pursuits, its lack of accountability for officers disregarding policy, and the City of Toledo's awareness and failure to address, led to the unlawful and lethal pursuit on February 27, 2022, that Officer Kindle initiated, conducted, and continued.

**B. The February 27, 2022, Pursuit**

55. On February 27, 2022, at approximately 11:50 pm, Officers Dustin Kindle was traveling near the intersection of Sylvania and Lewis when he noticed a vehicle with no headlights on.

56. Officer Kindle, along with his partner, Officer Daymien DaVaughn, initiated a traffic stop and the vehicle promptly pulled over on Willys Pkwy.

57. Within seconds of the stop, a second Toledo Police Department unit that was in the area, arrived on scene.

58. Officers Kindle and DaVaughn, as did Officer Nicholas Bocik and Sgt. Melvin Stachura, approached the vehicle.

59. The Officers positively identified the driver as Michael Jackson, a Black male.

60. The Officers also confirmed that Mr. Jackson lived at 3541 Willys Pkwy – just up the road from where he was stopped.

61. During the stop, the four officers surrounded Mr. Jackson's vehicle, shining flashlights on him and asking him to step out of the vehicle.

62. Mr. Jackson asked the officers if it would be alright if he could wait until his wife, who was at home just down the street, arrived on scene.

63. Officer Kindle asked him to step out of the vehicle so they could talk about it, then attempted to open Mr. Jackson's door.

64. This prompted Mr. Jackson to drive off – presumably in fear of the officers.

65. Officer Kindle rushed back to his vehicle and immediately initiated pursuit.

66. Officer Bocik, along with Sgt. Stachura, also engaged in the pursuit, following immediately behind Officer Kindle.

67. Shortly after the pursuit began, Sgt. Stachura instructed a third unit – with Officers Andrew Yarnell and Jacob Westcott – to join the pursuit as the secondary unit, while his unit continued to pursue.

68. The pursuit largely took place in densely populated residential areas in West Toledo, where the speed limit is 25 mph, and the streets are narrow.

69. For nearly nine minutes and over a distance of nearly nine miles, Officers engaged in a chase at speeds reaching 113 mph.

70. Officers relentlessly chased Mr. Jackson down one-way streets, into oncoming traffic, onto someone's front lawn, through dozens of intersections, through stops signs, and red lights throughout West Toledo.

71. Shortly before the end of the pursuit, Officer Bocik and Stachura's vehicle overheated and/or suffered engine failure, forcing them to discontinue the pursuit.

72. Officer Kindle's unit, as primary, and Officer Yarnell's unit, as secondary, continued the high-speed pursuit - chasing Mr. Jackson onto and down West Alexis Road at speeds well over 100 mph.

73. The City of Toledo and the Toledo Police Department were aware that Toledo Edison utility workers had closed West Alexis Road at Woodside Trail that evening and set up a work zone where they were actively working on line repairs.

74. Despite this knowledge, Toledo Police Department officers, including Officer Kindle, did not terminate the pursuit, but continued to pursue Mr. Jackson as he headed westbound on West Alexis, at high speeds, directly towards the work zone.

75. As Mr. Jackson unexpectedly encountered Toledo Edison's road closure, he slammed on his brakes and attempted to avoid a collision, but lost control of the vehicle, which crashed through the work zone, struck a utility truck, rolled over a utility pole, and slid into and over a pedestrian, killing him.

76. Officer Kindle was able to bring his vehicle to a stop before the work zone, however, Officer Yarnell was not, and slammed into the back of Officer's Kindle's vehicle.

77. After arresting Mr. Jackson, other Toledo Police units arriving on scene discovered the deceased pedestrian.

78. Officer Kindle located the pedestrian's driver's license and discovered that his name was Mohamed Souare, an over-the-road truck driver from North Carolina.

79. Mr. Souare had been traveling east on West Alexis in this semi-truck when he encountered Toledo Edison's work zone. He was stopped and stationary along with other eastbound traffic.

80. Mr. Souare exited his semi-truck and briefly chatted with Toledo Edison workers about how long they expected the road to be closed so he could inform his employer.

81. Before he could return to his truck, he fell victim to Officer Kindle and the Toledo Police Department's outrageous high-speed pursuit of Mr. Jackson.

**C. Pursuit Policy Violations**

82. Officer Kindle and the Toledo Police Department's pursuit and the accidents it caused ultimately involved more than 15 units and 20 officers.

83. Multiple police units raced down narrow streets and through densely populated residential neighborhoods.

84. The high-speed pursuit continued despite Mr. Jackson's dangerous speed and evasive maneuvers, which included speeds of 113 mph, driving into oncoming traffic, racing down one-way streets, running through dozens of intersections, red lights, stop signs, and through one Toledo resident's front lawn.

85. The pursuit was initiated and continued even after certain units suffered mechanical failure due to the manner and speed at which they were being operated.

86. The pursuit continued despite the Toledo Police Department channeling and chasing Mr. Jackson onto and down West Alexis Road, right towards a known and active Toledo Edison work zone.

87. The pursuit continued despite Officer Kindle and the Toledo Police Department knowing the exact identity and residence of Michael Jackson and having the ability and responsibility to terminate and follow-up with an arrest later.

88. Not only did the Toledo Police Department direct and/or cause a tremendous amount of City of Toledo resources and personnel to engage in the pursuit of someone who had traffic

violations, but the pursuit also resulted in costly mechanical damage to one Toledo Police Department unit, damage from a collision between two other units, involved damage to at least one resident's property, resulted in damage to a Toledo Edison truck and utility pole, and saw Mr. Jackson's vehicle totaled.

89. The pursuit was initiated, continued, and conducted in a manner that exposed others to likely and serious - even catastrophic - injuries, including Mr. Jackson, pedestrians, other drivers, residents, Toledo Police officers, and Toledo Edison workers.

90. Despite clearly knowing all this, Officer Kindle and the Toledo Police Department deliberately disregarded it and initiated, continued, and conducted the high-speed pursuit - intentionally deviating from clear duties of safety and policy and with an indifference to the all the consequences.

91. Defendants failed to follow any of the provisions in their stated Pursuit Policy. Instead, Officers Kindle and his supervisors failed to control or terminate the pursuit, even though it was required by the Pursuit Policy.

92. Despite the substantial risk of injury, Toledo police supervisors, including Defendant Kral, did not control, supervise, administer or terminate the pursuit.

93. The actions of Defendants in initiating, continuing, failing to supervise or control, and failing to terminate the pursuit affirmatively created or increased the risk that Mr. Souare would be injured or killed. Those actions placed the overall general public in Toledo, including specifically Mr. Souare, at risk. The Defendants knew or should have known that their actions specifically endangered Mr. Souare.

94. Mr. Souare, a man who immigrated to this country, became a U.S. citizen, got his commercial driver's license, joined the Army National Guard, and had worked hard to create a

better life for himself and his family, lost his life as a direct consequence of the outrageous conduct, practices, and customs of Defendants.

95. Upon information and belief, this costly and catastrophic pursuit initiated by Officer Kindle resulted in no officer discipline.

96. Toledo Police Department officers went on to conduct well over 140 more vehicle pursuits in 2022, including a pursuit less than two weeks after the one that killed Mr. Souare, which resulted in two more deaths.

97. More than one out of every three of the Toledo Police Department's pursuits in 2022 resulted in an accident.

98. More injuries resulted to innocent third parties in these pursuits than injuries suffered by suspects and officers combined.

99. Despite the known and experienced danger, the Toledo Police Department creates in police pursuits and its formal policy restricting pursuits, its actual policing practice, policy, and custom is to prioritize apprehension, of even minor traffic offenders, over public safety.

## **COUNT I**

### **CIVIL RIGHTS VIOLATIONS AGAINST CITY OF TOLEDO AND KRAL**

100. Plaintiff realleges and incorporates by reference herein each and every allegation contained in each paragraph above as if fully set forth herein.

101. The civil rights protected by 42 U.S.C. § 1983 includes the right not to be deprived of life, liberty, or property without due process of law, a right secured by the Fourteenth Amendment to the Constitution of the United States.

102. The City of Toledo and Defendant Kral know to an absolute certainty that their police officers will encounter fleeing suspects. The City of Toledo and the Toledo Police Department

have equipped their officers with vehicles and pursuit directives to allow them, in part, to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of pursuits, that they know can turn out to be deadly or damage property, is obvious and the failure to properly do so amounts to a deliberate indifference to one's constitutional rights under the Fourteenth Amendment.

103. Before February 27, 2022, the City of Toledo and the Toledo Police Department, led by Chief George Kral, adopted and/maintained a policy of inadequate training and supervision with regard to police vehicle pursuits.

104. Before February 27, 2022, the City of Toledo and the Toledo Police Department acted with deliberate indifference to the rights of citizens, initiated, tolerated, permitted, failed to correct, promoted and/or ratified a custom, pattern or practice on the part of the its officers regarding the improper police vehicle pursuits.

105. By failing to train, supervise, correct, and/or discipline all officers consistently with regard to vehicular pursuits, the City and Toledo Police Department policymakers, with the department's ratification and approval, have approved of a deficient and unlawful policy, custom or practice regarding the improper, and potentially deadly, police pursuits.

106. Further, before February 27, 2022, the City of Toledo, with deliberate indifference to the rights of citizens, initiated, tolerated, permitted, failed to supervise, correct or train, promoted and/or ratified a custom, pattern or practice on the part of the its officers, including Officer Kindle, on initiating, continuing, and/or conducting police pursuits when it was not justified.

107. The Defendants created the risk of injury or death to Mr. Souare, placed him specifically at risk, and acted with deliberate indifference, violating rights guaranteed to him by the Fourteenth Amendment to the U.S. Constitution.



108. Mr. Souare's death was directly and proximately caused by the aforementioned acts and omissions and by the City and the Toledo Police Department's customs, patterns, and/or practices, and the City of Toledo is thereby liable in an amount to be determined by the jury.

109. Plaintiff is entitled to fully recover his costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988.

## **COUNT II**

### **NEGLIGENCE AGAINST CITY OF TOLEDO**

110. Plaintiff realleges and incorporates by reference herein each and every allegation contained in each paragraph above as if fully set forth herein.

111. The City of Toledo is a political subdivision that is entitled to qualified immunity from harm caused by the conduct of its employees.

112. However, the City of Toledo, as a political subdivision, expressly waives immunity, rendering itself liable for damages in a civil action for injury or death to a person caused by the negligent operation of any motor vehicle by their employee in the course and scope of their employment.

113. On February 27, 2022, Officer Kindle was on duty when he initiated a traffic stop of Mr. Jackson.

114. During the course of the traffic stop, Officer Kindle learned the identity and residence of Mr. Jackson. He also learned that Mr. Jackson had minor, pending traffic infractions.

115. Following Officer Kindle's demands for Mr. Jackson to exit the vehicle, Mr. Jackson drove off.

116. Officer Kindle immediately initiated pursuit in violation of the City of Toledo's Pursuit Policy.

117. The Pursuit Policy did not permit Officer Kindle to initiate, continue, and/or conduct the pursuit under the circumstances.

118. The pursuit, as initiated or continued, by Officer Kindle did not constitute an emergency call and was not necessary or essential.

119. Officer Kindle relentlessly pursued Mr. Jackson throughout West Toledo, through densely populated residential areas, down narrow residential streets, through intersections and into a known work zone, at speeds in excess of 100 mph.

120. The pursuit of Mr. Jackson, as initiated, continued, and/or conducted, by Officer Kindle intentionally deviated from the Toledo Police Department's formal Pursuit Policy with the knowledge and appreciation of the likelihood of a resulting injury.

121. Officer Kindle, in initiating, continuing, and/or conducting the pursuit of Mr. Jackson, was aware of the risk and probability of serious harm the pursuit posed, and was indifferent, failing to exercise care.

122. As a direct and proximate result of Officer Kindle's initiating, continuing, and/or conducting the pursuit of Mr. Jackson, Mr. Souare was struck and killed in the course of the pursuit.

### **COUNT III**

#### **WANTON AND/OR RECKLESSNESS AGAINST OFFICER KINDLE**

123. Plaintiff realleges and incorporates by reference herein each and every allegation contained in each paragraph above as if fully set forth herein.

124. Officer Kindle was aware of the Toledo Police Department's formal Pursuit Policy.

125. Officer Kindle was aware the Pursuit Policy mandated that pursuits were not to be initiated unless and until the officer gave consideration to all environmental conditions and

factors, including whether the suspect was known to the officer, the underlying nature and seriousness of the offense, and the location of the pursuit.

126. Officer Kindle was aware the Pursuit Policy mandated that he was to constantly re-evaluate these factors, including excessive speed and evasive maneuvers of the suspect.

127. Officer Kindle was aware that he was mandated to terminate pursuit whenever the level of danger created by the pursuit outweighed the immediate consequence of the suspect's escape, and to arrest through a follow-up investigation.

128. Officer Kindle relentlessly pursued Mr. Jackson, who had minor traffic violations, at speeds well over 100 mph. He pursued him through densely populated residential areas. He pursued him while Mr. Jackson was driving into oncoming traffic down one-way streets. He pursued him through dozens of intersections, red lights, and stop signs. He pursued and/or channeled him onto West Alexis Road and then pursued him into an active work zone, knowingly risking numerous lives, and taking the life of Mr. Souare.

129. Officer Kindle failed to exercise any care towards the public, including Mr. Souare, knowing there was a great probability that harm would result.

130. Officer Kindle consciously and unreasonably disregarded and/or was indifferent to a known or obvious risk of harm towards the public, including Mr. Souare, knowing there was a great probability that harm would result.

131. As a direct and proximate result of Officer Kindle's initiating, continuing, and/or conducting the pursuit of Mr. Jackson, Mr. Souare was struck and killed in the course of the pursuit.

**COUNT IV**

**PUNITIVE DAMAGES AGAINST DEFENDANT KRAL**

132. Plaintiff realleges and incorporates by reference herein each and every allegation contained in each paragraph above as if fully set forth herein.

133. Defendant Kral, as Chief of Police for the City of Toledo, was at all relevant times, a policymaker for the Toledo Police Department.

134. Defendant Kral, as Chief of Police for the City of Toledo, had, at all relevant times, oversight and supervisory authority over the Toledo Police Department.

135. Defendant Kral had a duty to train and supervise Toledo police officers in the constitutional use of vehicle pursuits.

136. Defendant Kral created, promoted, and/or maintained an ad hoc policy regarding police pursuits that overrode policy specifically laid out by written Toledo Police Department Policy, and encouraged and/or caused circumvention of the formal policy and training that directly caused the constitutional violations described herein.

137. Defendant Kral failed to investigate, discipline, or retrain in any meaningful way any of the actions of officers involved in unconstitutional vehicle pursuits. Such failures were reckless, willful, wanton, and/or egregious.

138. Defendant Kral's conduct constitutes ratification and approval of the unconstitutional customs and policy of the City of Toledo regarding police pursuits.

139. Accordingly, Defendant Kral violated rights guaranteed to Mr. Souare by the Fourteenth Amendment to the U.S. Constitution.

**COUNT V**

**WRONGFUL DEATH, R.C. §2125.01**

140. Plaintiff realleges and incorporates by reference herein each and every allegation contained in each paragraph above as if fully set forth herein.

141. Defendants' conduct violated Plaintiff's rights and/or breached duties owed to him, as set forth herein.

142. The unconstitutional, negligent, wanton, willful, and/or reckless acts and omissions of Defendants directly and proximately caused the death of Mohamed Souare.

143. As a direct and proximate result of the Defendants' acts and omissions, Mr. Souare's wife, and two minor children have suffered damages by reason of his wrongful death.

144. These damages include, but are not limited to: funeral and burial expenses; loss of support from his reasonably expected earning capacity; loss of his services; loss of society, including the loss of his companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education; the loss of prospective inheritance; and mental anguish.

145. The City of Toledo is directly and vicariously liable for the actions of its employees for the wrongful death of Mr. Souare.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

a) That this Court find that the Defendants committed acts and omissions violating the United States Constitution, actionable under 42 U.S.C. § 1983;

- b) Compensatory damages against all parties, in an amount to be shown at trial, and punitive damages against the individual Defendants, in an amount to be shown at trial, for civil rights claims; and wrongful death damages and losses experienced by Mr. Souare's next of kin;
- c) Compensatory damages against all parties, in an amount to be shown at trial, and punitive damages against Officer Kindle, in an amount to be shown at trial, for Plaintiff's wrongful death claims.
- d) Costs incurred in this action;
- e) Attorney fees pursuant to 42 U.S.C. § 1988;
- f) Prejudgment interest;
- g) Injunctive and declaratory relief against Defendant City of Toledo and all official capacity Defendants declaring its pursuit policies, training, customs and practices unconstitutional and enjoining their further use;
- h) Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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*Attorneys for Plaintiff*

**JURY DEMAND**

Plaintiff demands a trial by jury on all triable issues.

Respectfully submitted,

CHARLES E. BOYK LAW OFFICES, LLC

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