

**Motion to Suppress and Dismiss**  
**Case No. 235900706**  
***State of Utah v. Golub***  
**November 29, 2024**

**INTRODUCTION**

The Defendant, Peter Golub, through *pro se* representation, respectfully moves this Honorable Court to suppress all evidence obtained in violation of his constitutional rights and to dismiss this case. This motion addresses a pattern of constitutional violation that begins with an officer running a red light to profile an establishment (*Video VII*, Ernstsens Dashcam, [00:00:03]) and ends with that officer's attempt to coerce evidence (*Video IV*, Ernstsens Bodycam, [1:10:09]). This motion addresses multiple issues that reveal procedural violations and a pattern of arbitrary enforcement where an officer: 1) broke traffic laws to enforce them; 2) disregarded constitutional protections; 3) initiated a DUI investigation based on biased assumptions instead of facts; 4) administered field sobriety tests improperly and mischaracterized results; 5) ignored procedural protocols for collecting and documenting evidence; 6) failed to administer *Miranda* warnings for approximately 70 minutes, and after reading them, attempted to perform unauthorized surveillance. Moreover, the arresting officer has a stop-to-arrest ratio that greatly exceeds Utah and national averages, suggesting that officer bias, not probable cause, was the reason for the investigation and colored the collection of evidence and interpretation of facts.

The evidence the State seeks to use against Mr. Golub stems from an unlawful stop and bears the taint of constitutional violation. Having shown that the stop lacked probable cause and that the officer broke multiple laws before making contact with the Defendant, the Defense should rest its case. However, this motion will outline the entire arrest to show how bias, negligence, and police impunity lead to prejudiced enforcement and arbitrary authority.

## STATEMENT OF FACTS

On September 6, 2023, at approximately 11:00 PM, Utah Highway Patrol Trooper Corporal Brock Ernstsén was patrolling State Street, Salt Lake City. Cpl. Ernstsén's dashcam footage shows the corporal running a red light and performing an illegal U-turn at State Street and Kensington without emergency lights or sirens (*Video VII*, [00:00:03])—a clear violation of Utah Code § 41-6a-212(2)(c) and (3)(a), which only permits such conduct during emergency situations with proper safety protocols. His squad car moves across the intersection on a red light as green-lit traffic moves in the perpendicular direction.

After the traffic violation, Cpl. Ernstsén decelerated to approximately five miles per hour while approaching Aces High (1588 s. State Street), behavior consistent with his publicly stated practice of targeting “areas with bars and nightclubs” (qtd. in Mike Stapley, “Utah Highway Patrol Troopers Are Watching for Distracted and Impaired Drivers This Summer,” *KSL*, 2023). This sequence of events is telling: from violating traffic laws to conducting surveillance without probable cause, this pattern is indicative of “police impunity” (Ryan Gabrielson, “What Police Impunity Looks Like: ‘There Was No Discipline No as Wrongdoing Was Found.’” *ProPublica*, November 16, 2023, 2021).

When Mr. Golub pulled away from the curb, Cpl. Ernstsén's vehicle was idling approximately 100 feet away with multiple vehicles obstructing his view. Although Cpl. Ernstsén claims Mr. Golub failed to signal while pulling away from the curb, video evidence shows no violation (*Video VII*, [00:00:23]). This irony merits emphasis: an officer who had just run a red light proceeded to initiate a traffic stop based on a signaling violation he could not have witnessed.

Despite the alleged traffic violation occurring at 1588 South, Cpl. Ernstsén followed Mr. Golub for over 10 blocks before initiating a stop near 2600 South. During his extended observation of Mr. Golub's driving, the corporal observed no traffic violations or signs of impaired driving,

stating in his court testimony that Mr. Golub’s driving during this period was “proper” and showed “no clues of impairment” (Cpl. Ernstsens, *Court Testimony*, May 29, 2024, [00:11:47]).

Soon after initiating the stop, Cpl. Ernstsens ordered Mr. Golub to exit his car and administered the Horizontal Gaze Nystagmus (HGN), Walk-and-Turn (WAT), and One-Leg Stand tests. Video evidence demonstrates that the tests were imperfectly administered with incomplete instructions (e.g. on the WAT test Cpl. Ernstsens quickly demonstrated three steps rather than nine (*Video IV*, [00:15:18])). Moreover, Mr. Golub performed the One-Leg Stand test without difficulty, maintaining balance for some 40 seconds without swaying or otherwise moving.

Cpl. Ernstsens and a second officer immediately proceeded to arrest Mr. Golub without formally administering the preliminary breath test or advising Mr. Golub of Utah’s implied consent requirements under Utah Code § 41-6a-520 (*Video IV*, [00:19:29])). A chemical breath test was administered (using the Intoxilyzer 8000 machine), which lasted approximately 140 seconds, exceeding the standard duration of 12–20 seconds by nearly 700% (*Video IV*, [1:04:45-1:07:03])). The breathalyzer recorded a volume of 2.039 liters, exceeding the standard volume of 1.1 to 1.5 liters. In this case, the machine (notoriously unreliable even when protocols are followed) should have been reset and another test administered. Finally, *Miranda* warnings were not administered until Mr. Golub was taken to jail (*Video VIII*, [1:09:11])). (NB This final issue is addressed in detail in Mr. Golub’s *Motion to Suppress Statements*.)

## **I. THE INITIAL TRAFFIC STOP LACKED PROBABLE CAUSE**

### **A. The Officer’s Basis for the Stop Is Not Supported by Evidence**

Under *Terry v. Ohio*, 392 U.S. 1 (1968), police must have reasonable suspicion of criminal activity to make a traffic stop. Cpl. Ernstsens claims he initiated the stop after observing Mr. Golub fail to signal while pulling away from the curb. However, three critical facts undermine this justification:

1. Cpl. Ernstsen was positioned approximately 100 feet away with multiple vehicles obstructing his view (*Video VII*, [00:00:21]);
2. Despite claiming this violation was serious enough to warrant a stop, the corporal followed Mr. Golub for over 10 blocks, initiating a stop only once Mr. Golub was on the freeway onramp;
3. The corporal observed no traffic violations or signs of impaired driving, admitting in court that Mr. Golub's driving was "proper" with "no clues of impairment" (*Testimony*, [00:11:47]).

**B. Cpl. Ernstsen's Initial Traffic Violations Taint the Subsequent Investigation**

Under Utah law, when an officer's own illegal conduct enables or leads to an investigatory stop, the entire investigation is constitutionally invalid. Video evidence (*Video VII*, [00:00:03]) shows Cpl. Ernstsen committing two distinct traffic violations—running a red light and executing an illegal U-turn—in direct violation of Utah Code § 41-6a-212(2)(c) and § 41-6a-802. The Utah Supreme Court's decision in *State v. Bello*, 871 P.2d 584, 587 (Utah Ct. App. 1994) establishes that evidence obtained following an officer's illegal conduct must be suppressed when that conduct directly enables the subsequent investigation. Here, Cpl. Ernstsen's traffic violations were not incidental to his surveillance of Mr. Golub but rather instrumental in positioning himself to conduct that surveillance.

This sequence of events triggers the exclusionary principles articulated in *State v. Thurman*, 846 P.2d 1256, 1263 (Utah 1993), requiring suppression of all evidence obtained through exploitation of the initial illegality. Moreover, Utah Code § 76-8-201 specifically prohibits public servants from performing unauthorized acts under color of office. When Cpl. Ernstsen violated traffic laws to position himself for surveillance, he exceeded his lawful authority under both state law and departmental policy. The principles established in *State v. Ramirez*, 817 P.2d 774, 786 (Utah 1991)

require courts to examine whether evidence was obtained via the exploitation of primary illegality. Here, every piece of evidence the State seeks to introduce stems directly from Cpl. Ernstsen's unauthorized traffic violations and subsequent targeted surveillance. Without these initial violations, the corporal could not have been in position to survey the establishment and conduct his enforcement operation. This unauthorized conduct is particularly egregious given that it enabled Cpl. Ernstsen's selective enforcement of a traffic violation that he could not have physically seen.

This case presents precisely the kind of "exploitation of primary illegality" that Utah courts have consistently held requires suppression. The corporal's violations of traffic laws immediately preceding his surveillance and stop of Mr. Golub's car render all subsequent evidence inadmissible as fruit of the poisonous tree under *Wong Sun v. United States*, 371 U.S. 471, 484-86 (1963).

### **C. The Officer's Conduct Demonstrates Arbitrary and Selective Enforcement**

The corporal's dashcam footage reveals more than just an isolated traffic violation—it demonstrates an approach to law enforcement where laws are optional for officers but absolute for civilians. When Cpl. Ernstsen runs the red light at State Street and Kensington without emergency lights or sirens, he not only violates traffic laws but the fundamental principles of professional conduct:

1. Direct Violation of Utah Code § 41-6a-212(4) includes failure:
  - To act as a "reasonably prudent" operator;
  - To justify "emergency" red-light violation;
  - To avoid unnecessary risk to public safety;
  - To follow department protocols requiring emergency equipment use.
2. Possible Violation of Professional Standards includes:
  - Ignoring IACP model policy requirements;

- Ignoring of departmental documentation requirements;
- Failure to log emergency response justification;
- Failure to follow safety protocols.

The Utah Supreme Court's holding in *Kouris v. Utah Highway Patrol*, 70 P.3d 72, 75 (Utah 2003) establishes that emergency vehicle operators maintain an affirmative duty of care even when operating with lights and sirens activated. This duty becomes particularly salient when, as in the present case, an officer violates traffic regulations without any emergency justification in order to perform unauthorized surveillance. While *Kouris* primarily addressed emergency response scenarios, its reasoning regarding officer duty of care extends logically to routine patrol activities.

The record demonstrates that the corporal proceeded directly from his own traffic violation to conduct targeted surveillance, absent any objectively observable indicators of criminal activity. This sequence of events, when examined within the framework established in *McFarland v. Skaggs Companies, Inc.*, 678 P.2d 298, 302 (Utah 1984), suggests a reliance on presumption rather than probable cause.

Utah Code § 76-8-201 (2023) specifically proscribes the unauthorized performance of official duties, while § 76-8-513 (2023) provides explicit statutory prohibition against detentions lacking legitimate law enforcement purpose. The fact that video evidence demonstrates the officer's driving behavior was objectively more problematic than the Defendant's raises interesting questions about selective enforcement. When viewed collectively, these circumstances suggest a detention predicated on inherent bias than the "specific-and-articulable-facts" mandate established in *Lopez* and reaffirmed in *State v. Worwood*, 164 P.3d 397, 402 (Utah 2007); *State v. Lopez*, 873 P.2d 1127, 1132 (Utah 1994).

#### D. Statistical Evidence Reveals a Systemic Pattern of Selective Enforcement

More troubling than the individual circumstances of the stop is the clear pattern it represents. Through a GAMMA request, the Defense has obtained statistics showing that Cpl. Ernstsen’s stop-to-arrest ratio is approximately 23.29%, meaning that nearly 1/4 traffic stops result not only in an arrest—it is a DUI arrest.<sup>1</sup>

##### **Total Stops and Arrests Made by Utah Highway Patrol Trooper Corporal Brock Ernstsen in 2023–2024, *per year***

Years	Traffic Stops	Total Arrests	DUI Arrests
2024*	541	97	97
2023	455	109	106

Source: Utah Department of Public Safety, October 8, 2024 (obtained via a GAMMA request).

*\* 2024 statistics show January to October 8; most DUI arrests are made in Q4.*

This ratio is literally “incomparable” if we compare Cpl. Ernstsen’s stop-to-arrest ratio to that of the state and national averages:

- National average: 2–6% (Bureau of Justice Statistics)
- Utah average: ~1% (Utah Department of Public Safety)
- Cpl. Ernstsen: 23.29%

And these statistics represent stop-to-arrest ratios in general, not specifically DUI arrests, which are necessarily much lower. Such a dramatic statistical anomaly suggests one of two possibilities:

- Cpl. Ernstsen possesses superhuman abilities to identify impaired drivers;
- Cpl. Ernstsen is engaging in targeted enforcement that falls well outside the scope of normal probable cause standards.

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<sup>1</sup> In 2023, Cpl. Brock Ernstsen had been a Utah Highway Patrol Trooper for five years.

The second proposition finds support in the corporal's own words. In a 2023 interview, he acknowledged being "very familiar with the location of nearly every bar" and described his practice of staking out "areas with bars and nightclubs" (*ibid.*, Stapley, 2023). The 2,500-word article not only describes in detail Cpl. Erntsen's practice of profiling specific establishments but also includes over a dozen photos showing the corporal arresting suspected drivers. Cpl. Erntsen's own acknowledgments and arrest record suggest that Mr. Golub was not stopped because of a traffic violation.

#### **E. Constitutional Implications of Selective Enforcement**

The arbitrary nature of enforcement raises constitutional concerns beyond just the Fourth Amendment. When America had just celebrated its centennial, the Supreme Court ruled in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) that even facially neutral laws become unconstitutional when applied with "an evil eye and an unequal hand." Consider how this might apply to the unequal application of the law in the present case:

##### *Equal Protection Issues:*

- Officer violates traffic laws with impunity;
- Immediately targets specific establishments;
- Proceeds to enforce fabricated infractions against civilians;
- Demonstrates a pattern of discriminatory enforcement.

##### *Due Process Violations:*

- Arbitrary exercise of police power;
- Personal discretion replacing legal standards;
- No clear enforcement guidelines;
- Selective application based on geographical location.



The Supreme Court has held that “in our system, police may not conduct searches whenever and wherever they like.” *Arizona v. Gant*, 556 U.S. 332, 347 (2009). Yet here we see an officer who treats traffic signals and probable cause requirements as suggestions to be followed or ignored based on a policing teleology ancillary to justice.

## **II. FIELD SOBRIETY TESTING DEMONSTRATES SYSTEMATIC DEPARTURE FROM ESTABLISHED PROTOCOLS AND CONSTITUTIONAL SAFEGUARDS**

Pursuant to Utah Code § 41-6a-523 and the standards established by the National Highway Traffic Safety Administration (NHTSA), field sobriety tests (FSTs) must adhere to strict standardized procedures to maintain validity. The Utah Supreme Court has held that deviations from standardized testing protocols can invalidate results. See *State v. Ramirez*, (emphasizing the importance of standardized procedures). Improper demonstration and administration of FSTs must result in the suppression of faulty evidence. Moreover, the court in *United States v. Horn* recognized that FSTs are susceptible to inaccuracies stemming from medical conditions or nervousness that may falsely indicate impairment. *United States v. Horn*, 185 F. Supp. 2d 530, 537 (D. Md. 2002).

### **A. Administration of the Walk-and-Turn (WAT) Test Violated NHTSA Requirements**

The officer’s administration of the Walk-and-Turn (WAT) test contravened mandatory NHTSA procedures. Video evidence (*Video IV*, [00:15:18]) clearly shows the officer demonstrated only three steps rather than the required nine, creating confusion that the officer then cited as evidence of impairment. This mirrors the constitutional concerns addressed in *State v. Garcia*, 965 P.2d 508, 512 (Utah Ct. App. 1998) (requiring clear and unambiguous instructions for FSTs). Mr. Golub did not conform to the abstract parameters of the test (i.e., taking 10 steps forward while the test stipulates nine) because the corporal did not demonstrate nine steps.

However, Mr. Golub demonstrated dexterity and control of movements, walking a straight line forward, turning around on a single point, and walking a straight line back. The point of the test is to assess whether a person has the dexterity to drive a car. Mr. Golub completed those parts of

the WAT test. Moreover, by Cpl. Ernstsens's own admission, suspects who "struggle with some of the several field sobriety tests pass the breathalyzer" (*ibid.*, Stapley, 2023).

## **B. Selective Interpretation of One-Leg Stand Results Demonstrates Prejudicial Bias**

Perhaps most telling is Cpl. Ernstsens's dismissal of Mr. Golub's perfect performance on the One-Leg Stand Test (OLST)—recognized by the NHTSA as the most challenging balance assessment. This demonstrates a concerning pattern of selective interpretation. Mr. Golub's OLST and WAT performance, combined with his actual driving on the road, would lead a reasonable (impartial) observer to conclude that not only was his driving not impaired but that it surpassed that of Cpl. Ernstsens.

The Utah Supreme Court has routinely upheld that law enforcement must consider both inculpatory *and* exculpatory evidence. See *State v. Brake*, 103 P.3d 699, 702 (Utah 2004). Yes, Mr. Golub took one extra step and turned around (which Cpl. Ernstsens counted as a second extra step)—but not only did Mr. Golub demonstrate dexterity, he likely performed better than most people under such strenuous conditions (*See* Robert Sapolsky, "The Frontal Cortex and the Criminal Justice System," *Philosophical Transactions of the Royal Society*, 2004).

This systematic disregard for both standardized protocols and exculpatory evidence violates the fundamental principles articulated in *Delaware v. Prouse*, 440 U.S. 648, 661 (1979), requiring standardized procedures to prevent arbitrary exercise of police power. As articulated in *McNabb v. United States*, 318 U.S. 332, 347 (1943), procedural safeguards are essential for a system interested in ensuring the liberty of its citizens. Cpl. Ernstsens's pattern of procedural violations and prejudiced interpretation suggests a predetermined outcome rather than an objective investigation.

## **C. Administration of the Horizontal Gaze Nystagmus Test**

Although the HGN test is the most technical of the three field sobriety tests, there is little video evidence can do to falsify or corroborate an officer's administration and interpretation of the

results. In *United States v. Horn*, 2002 the court ruled that while police officers trained in observing nystagmus could testify to their observations, they could not classify the Horizontal Gaze Nystagmus (HGN) as a “test,” label a subject’s performance as a “failure,” or interpret nystagmus as a “clue” or “sign” of intoxication without expert testimony or judicially recognized scientific evidence. Indeed, due to insufficient scientific validation, the court declined to recognize HGN as a scientifically reliable indicator of intoxication (*Horn*, 185 F. Supp. 2d at 557, 561). In *People v. McKown*, the Illinois Supreme Court determined that the HGN test necessitates expert interpretation for *Frye* purposes, despite its longstanding use by law enforcement. Multiple ophthalmology and forensics studies have shown that due to high variability, officers frequently misinterpret natural nystagmus as signs of impairment (Rubenzer, et. al., 2010, “Horizontal Gaze Nystagmus: A Review of Vision Science and Application Issues,” *Journal of Forensic Sciences*, 2009). Given that Cpl. Ernstsen likely took a one-day course and scored 80% or above on a multiple-choice test to receive his HGN certification, he may not be the ophthalmological expert necessary for the *Frye* standard.

The video does show that Cpl. Ernstsen’s administration of the HGN departed from NHTSA protocols. Cpl. Ernstsen passes varied significantly from the mandatory two-second duration requirement. Likewise, the deviation holds fell outside the prescribed four-second duration, sometimes lasting for as long as 20 seconds (*Video IV*, [00:12:34]. These deviations render the test results unreliable under the *Frye* standard and Utah’s requirements for scientific evidence. See *State v. Rimmasch*, 775 P.2d 388, 396-99 (Utah 1989). Furthermore, the officer’s confident conclusion of “six out of six clues” (i.e., a 100% fail rate vs. the 100% pass of the falsifiable OLS test) did not account for Mr. Golub’s documented condition of fatigue after nine hours of teaching, a factor scientifically demonstrated to produce nystagmus effects mimicking alcohol consumption. See Zils et al., “Differential Effects of Sleep Deprivation and Alcohol on Cognitive Performance,” 388 *Nature* 235 (2005).

### III. CHEMICAL TESTING ADMINISTRATION AND EQUIPMENT RELIABILITY DEMONSTRATE SUBSTANTIAL EVIDENTIARY DEFICIENCIES

#### A. Procedural Violations During the Administration of Chemical Testing

Cpl. Ernstsens's administration of the breathalyzer test demonstrates significant deviations from established procedures outlined in Utah Code § 41-6a-515 and Utah Administrative Rule R714-500, undermining the reliability of the results. As the Utah Supreme Court has emphasized, adherence to procedural standards is critical for the admissibility of chemical test results. *State v. Baker*, 56 P.3d 1223, 1229 (Utah 2002).

##### 1. Test Duration Violations

Video evidence (*Video IV*, [1:04:45–1:07:03]) establishes that the breathalyzer test lasted **140 seconds, exceeding the standard duration of 12–20 seconds** by nearly 700%. Prolonged testing is scientifically proven to artificially inflate alcohol concentration results, as confirmed by peer-reviewed studies of the physiological impacts of hyperventilation and forced exhalation. See J.D. Clapp, et al., “Predictors of Error in Estimates of Blood Alcohol Concentration: A Replication,” *Journal of Studies on Alcohol and Drugs*. 2009 Sep; 70(5):683–8. Despite visible signs of hyperventilation and distress exhibited by Mr. Golub during the test, Cpl. Ernstsens held the mouthpiece of the machine in Mr. Golub's mouth and repeated “keep blowing” and “keep going” as Mr. Golub was trying to breath, disregarding both procedural safeguards and human limitations. Such a substantial procedural deviation renders the results unreliable under Utah case law. *Murray City v. Hall*, 663 P.2d 1314, 1319 (Utah 1983).

##### 2. Volume Collection Violations

The breathalyzer recorded a volume of 2.039 liters, exceeding the standard requirement of 1.1 to 1.5 liters by 33%. Scientific literature highlights the correlation between excessive volume and artificially elevated BAC results (*ibid.* Clapp, 2009). The absence of documentation explaining this

deviation constitutes a failure to comply with procedural mandates, as acknowledged by Utah courts in *State v. Garcia* (965 P.2d 508, 512 (Utah Ct. App. 1998)).

### **3. Protocol Documentation Deficiencies**

Utah Administrative Rule R714-500-7 requires contemporaneous documentation of equipment calibration and test administration protocols. In this case:

- *Calibration records*: not presented for the Intoxilyzer 8000;
- *Maintenance logs*: not presented, leaving the machine's operational reliability unverified;
- *Second sample*: not collected, violating procedural protocols.

This undermines the reliability and admissibility of the test results. The lack of a second sample, after a clearly anomalous collection time constitutes a procedural violation under *State v. Baker*, 2002. In short, due to the anomalous gathering of evidence during the initial test (on what is potentially a faulty machine), required Cpl. Ernstsens to meet the bare minimum of his duties and perform a second test, because as a PBT was not administered, this would be the only physical evidence submitted by the State.

### **B. Reliability Issues Specific to the Intoxilyzer 8000**

The Intoxilyzer 8000 has been the subject of widespread judicial scrutiny due to its documented reliability issues, including false positives, software malfunctions, and *inadequate internal safeguards against improper administration*. See Cowley and Silver-Greenberg, *New York Times* (2019) who note that some 30,000 Intoxilyzer machines have been discontinued in the US due to reliability issues.

In light of Cpl. Ernstsens's other violations, the documented unreliability of the Intoxilyzer 8000 raises doubts about the veracity of the results. Multiple jurisdictions have excluded Intoxilyzer 8000 results due to reliability concerns. See *Commonwealth v. Camblin*, 478 Mass. 469, 478 (2017)

(rejecting similar breathalyzer evidence due to elevated or inaccurate results). The following factors compound trustworthiness concerns:

1. Excessive test duration of 140 seconds;
2. Excessive result volume of 2.039 liters;
3. Lack of second sample verification.

Contemporaneous calibration logs, maintenance logs, and error-checking mechanism logs have not been presented. This may violate the requirements set forth in Utah Administrative Rule R714-500-7, which mandates robust quality control measures for evidentiary testing.

As the Supreme Court of Massachusetts noted when excluding many similar results, “Our jurisprudence cannot rest on the ‘mystical incantation’ of technical results without understanding how those results are produced.” *Commonwealth v. Camblin*, 478 Mass. 469, 478 (2017).

And yet, in this case, we have results produced through a combination of:

- Known unreliable equipment
- Improper administration
- Protocol violations
- Lack of quality control
- Lack of documentation

Cpl. Ernstsen’s approach to breathalyzer administration mirrors his approach to traffic laws—treating established procedures as suggestions rather than requirements. Just as running a red light requires specific justification and documentation, deviations from test protocols requires explanation and validation. We have neither.

### **C. Officer Credibility Issues Undermine Evidence Reliability**

The totality of circumstances reveals a pattern of selective documentation and procedural violations that undermines the credibility of the evidence. The Utah Supreme Court has held that such patterns of misconduct can invalidate evidence collection. See *State v. Thurman*. The officer's arrest rate of 23.29% (109 DUI arrests in 2023 alone) is a statistical anomaly that suggests police impunity.

Consider the facts of the case as they stand:

- Cpl. Ernstsen violates traffic laws;
- Surveils an establishment without probable cause;
- Stops a person for a fabricated traffic violation;
- Misadministration of FSTs;
- Misadministration of breath test;
- Failure to document critical elements of the case;
- *Miranda* warnings not read for 70 min;
- Failed attempt to access Defendant's phone.

### **D. Statistical Anomalies**

The above suggests a heightened risk of inherent bias, selective enforcement, and disregard for professional standards. Utah courts have recognized that patterns of misconduct and biased enforcement undermine the credibility of evidence collection. *State v. Ramirez*, 1991. Under Utah Code § 41-6a-515, Utah Administrative Rule R714-500, these deficiencies render the chemical test results unreliable and inadmissible. As such, the Court should suppress these results to ensure adherence to police protocols legal standards.

#### **IV. CONSTITUTIONAL VIOLATIONS REQUIRE SUPPRESSION OF ALL EVIDENCE**

The investigation in this case demonstrates a pervasive disregard for constitutional protections under both federal and Utah law, requiring suppression of all evidence to preserve the integrity of the judicial process. This motion establishes that violations of the Fourth and Fifth Amendments, alongside corresponding provisions in the Utah Constitution, were not isolated incidents but systematic failures that render the entire investigation constitutionally infirm.

##### **A. The Investigation Demonstrates Systematic Fourth Amendment Violations**

*(NB The following issues are addressed in detail in Mr. Golub's Motion to Suppress Statements.)* The Fourth Amendment's protections against unreasonable searches and seizures, as incorporated through the Fourteenth Amendment and Article I, § 14 of the Utah Constitution, require suppression when law enforcement systematically disregards constitutional safeguards. See *State v. Larocco*, 794 P.2d 460, 465-66 (Utah 1990) (emphasizing Utah's distinctive constitutional protections against unreasonable searches). Thus, the investigation demonstrates multiple constitutional infirmities that under Utah law mandate suppression.

First, the officer's unjustified traffic violations preceded and enabled targeted surveillance without probable cause, violating the principles established in *State v. Lopez* (requiring specific, articulable facts for investigatory stops). Second, the manufacture of reasonable suspicion through selective enforcement contradicts the Utah Supreme Court's requirement for objective justification. See *State v. Hansen*, 63 P.3d 650, 660 (Utah 2002). The culmination of these Fourth Amendment violations renders the entire investigation legally unsustainable under both federal and Utah law.

##### **B. Fifth Amendment Violations Render the Evidence Constitutionally Inadmissible**

These constitutional deficiencies extend beyond Fourth Amendment violations to encompass substantial Fifth Amendment violations that independently require suppression under



Utah law. See *State v. Rettenberger*, 984 P.2d 1009, 1013 (Utah 1999) (establishing Utah’s framework for analyzing Fifth Amendment violations). Extended custodial questioning occurred without *Miranda* warnings, including over an hour of unwarned interrogation. Coercive tactics employed throughout detention, including psychological pressure and misleading “helpful” offers, further contravene Utah’s prohibition against tactics designed to circumvent constitutional safeguards. *State v. Strain*, 779 P.2d 221, 225 (Utah 1989); *Rhode Island v. Innis*, 446 U.S. 291 (1980). The investigation exhibits procedural deficiencies inconsistent with due process guarantees under the Fourteenth Amendment and Article I, § 7 of the Utah Constitution. Utah courts have long held that such procedural violations, particularly those undermining the reliability of evidence, require suppression. *State v. Ramirez*.

## **V. CONCLUSION: CUMULATIVE IMPACT OF SYSTEMATIC VIOLATIONS REQUIRES SUPPRESSION AND DISMISSAL**

The totality of constitutional and procedural violations creates a cascade effect that undermines all evidence obtained:

1. Initial Stop Tainted by:
  - Officer’s own traffic violation
  - Statistical evidence of targeting
  - Lack of probable cause
  - Pattern of selective enforcement
  - Manufacturing of reasonable suspicion
2. Field Testing Compromised by:
  - Procedural violations
  - Incomplete demonstrations
  - Selective interpretation
  - Ignoring exculpatory results
3. Chemical Testing Invalidated through:
  - Protocol violations
  - Equipment reliability issues

- Improper administration
- Excessive duration
- Documentation failures
- Lack of verification

Under Utah law, when multiple constitutional and procedural violations occur, their cumulative effect may require suppression even if individual violations might not. See *State v. Ramirez*. The present case demonstrates precisely such cumulative constitutional infirmity.

The initial seizure was fundamentally tainted by multiple factors, under *State v. Lopez*, and renders it constitutionally invalid. These include the officer's traffic violation, statistical evidence of targeted enforcement, and manufacture of reasonable suspicion without articulable facts.

The field sobriety testing phase compounds these initial violations through systematic procedural failures that Utah courts have traditionally ruled invalidate such evidence. See *State v. Horn*, 2002. The officer's selective interpretation and documentation of results, coupled with protocol violations, renders this evidence inadmissible under Utah's scientific evidence requirement. See *State v. Rimmasch*, 1989.

The chemical testing phase presents additional constitutional infirmities through protocol violations and equipment reliability issues that the Utah Supreme Court upheld as requiring suppression. See *Murray City v. Hall*. As articulated in *Mapp v. Ohio*, 367 U.S. 643, 659 (1961), governmental disregard for its own laws fundamentally undermines the constitutional order. The systematic nature of Cpl. Ernstsen's violations in this case demands suppression under both federal and Utah constitutional standards.

The totality of circumstances demonstrates pervasive constitutional and procedural violations that mandate suppression according to Article I, § 7 and 14 of the Utah Constitution and the Fourth and Fifth Amendments to the United States Constitution. The officer's arrest rate of 24

times the state average, coupled with systematic procedural violations, creates precisely the type of constitutional infirmity that Utah courts have held requires suppression. See *State v. Thurman*.

The cumulative constitutional and procedural violations in this case necessitate suppression of all the obtained evidence and the dismissal of all charges. The initial stop lacked probable cause and was tainted by statistical anomalies and biased enforcement. FSTs were conducted improperly and selectively documented, while chemical testing was compromised by protocol violations and unreliable equipment. These systemic failures render the evidence constitutionally inadmissible under both federal and Utah law.

The case presents a reminder that procedural protections must remain genuine to ensure that officers do not become de facto prosecutors, judges, and juries. The reality is that most people profiled by the police know neither the law nor their rights as citizens. This case barely highlights the procedural shortcuts and selective enforcements that are deployed every day to meet quotas and keep lower-income people from exercising their rights. To reference jurisprudence scholars Martha Nussbaum, John Rawls, and Ronald Dworkin, every slide in law enforcement threatens the social contract of society—laws are abstract things that govern real people’s lives. Having attended Columbia University and UC Berkeley, Mr. Golub is one of the lucky ones. Yet despite his degrees, he remains firmly a lower-class citizen. Yet despite his penury, he believes (perhaps naively) in that Lockian idea underlying much of today’s jurisprudence that men being by nature free, equal, and independent, cannot be subjected to the political power of the state without just cause. His belief is perhaps the result of the peculiar fact that people who arrived in the US as seekers of asylum must believe in the rule of law if they are to honestly participate in those time-honored pursuits of life and liberty, property and (god-willing) happiness.

**WHEREFORE, pursuant to Rules 7 and 12 of the Utah Rules of Civil Procedure, the Defense respectfully requests that this Honorable Court:**

1. **SUPPRESS** all evidence obtained from the unconstitutional traffic stop, including but not limited to:
  - a) All observations made by Cpl. Ernstsen following the illegal seizure;
  - b) All results of the HGN and WAT field sobriety tests;
  - d) The result of the chemical breath test.
2. **DISMISS** all charges arising from this constitutionally infirm investigation due to a lack of sufficient, untainted evidence.
3. **GRANT SUCH OTHER RELIEF** as this Court deems just and proper under Utah law.

Respectfully submitted this 29th day of November, 2024

Peter Golub  
Pro Se Defendant