

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES GIBSON,)	
)	
Plaintiff,)	
)	Case No. 19 C 4152
v.)	
)	Judge Sara L. Ellis
CITY OF CHICAGO, et al.,)	
)	Magistrate M. David Weisman
Defendants.)	

**PLAINTIFF JAMES GIBSON’S MOTION FOR
PARTIAL SUMMARY JUDGMENT AGAINST THE CITY OF
CHICAGO ON THE SECOND ELEMENT OF HIS *MONELL* CLAIM**

Plaintiff James Gibson hereby moves for partial summary judgment on the second element of his *Monell* claim (Count X) against the City of Chicago.

INTRODUCTION

In 1989, James Gibson, a Black man, was detained by Chicago Police Department (CPD) officers working under the supervision of the notorious Jon Burge. The officers tortured Mr. Gibson until he provided false testimony that was later used to convict him of a double murder he did not commit. Because of that torture, Mr. Gibson spent over 29 years in prison—until he proved that he had been tortured, his conviction was vacated, and he became a free man once again.

This torture did not just happen to Mr. Gibson. It happened to scores of other Black men. For decades, the City of Chicago—including the CPD, the City Council, and several mayors—has publicly recognized this practice. For decades, over and over again, the City has publicly admitted that, in the 1980s, there was a custom or practice of physically and mentally torturing criminal suspects, carried out by Jon Burge and the officers under his supervision. Yet despite the City’s many public acknowledgements of this practice, the City continues to deny it in this litigation.

But the undisputed evidence and record are as clear as the City's public pronouncements: Jon Burge and officers under his command had a custom or practice of torturing Black men they arrested. As early as 1991, the CPD's own investigators found that Burge's abuse was "systematic" over "more than ten years" and it "was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture." Joint Statement of Undisputed Material Facts ("JSUMF") ¶ 9. In 2015, the City Council recognized in a resolution that Jon Burge and officers under his command had tortured suspects and expressed its "profound regret" for what occurred. *Id.* ¶ 24. And in 2016, the Police Accountability Task Force, chaired by Lori Lightfoot, now Chicago's mayor, found that Burge and his officers "tortured and abused at least 100 African-Americans on the South and West sides in attempts to coerce confessions," *id.* ¶ 41. Mayor Lightfoot later recognized that Jon Burge's torture left "[s]o many lives shattered" and a "horrible stain on the legitimacy of policing," and it "caused immeasurable harm to so many people," *id.*

As the City has admitted everywhere but in court, the evidence supports only one conclusion: there was a widespread custom or practice of Burge and officers under his supervision torturing suspects in the 1980s. This Court, thus, should grant partial summary judgment on the portion of Mr. Gibson's *Monell* claim that requires him to show that the City had such a practice.

PROCEDURAL BACKGROUND

In April 2019, Mr. Gibson finally won his freedom. After he had served 29 years in prison, the Illinois Appellate Court vacated his conviction, finding that "Burge's subordinates beat [Mr. Gibson] during his interrogation" and that the false "incriminating statement" the police procured by torturing Mr. Gibson "proved to be the decisive evidence against him, the lynchpin of his conviction," First Am. Compl. ¶ 94, ECF No. 111 (quoting *People v. James Gibson*, 2019 IL App. (1st) 182040-U, at *10, *16 (Mar. 13, 2019)). On April 26, 2019, the State of Illinois asked for all charges against Mr. Gibson to be dismissed, and the court did so. *Id.* ¶ 96.

On May 10, 2019, Mr. Gibson filed this action against the City of Chicago and the CPD officers who tortured him in 1989. ECF No. 1. He alleges that officers under the command of Jon Burge detained, interrogated, and tortured him to procure false statements used to wrongfully convict him to a life sentence. First Am. Compl. ¶¶ 1–5. He alleges that he suffered “physical beatings, hitting, kicking, slapping, burning, sleep deprivation, threats, racial slurs and insults,” in violation of his constitutional, federal, and state law rights. *Id.* ¶ 3. Among other claims, he brings a claim against the City under *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978), for violating his constitutional rights through a custom or practice of Jon Burge and officers under his command torturing suspects in the 1980s. *Id.* ¶¶ 184–190. On July 29, 2020, the Court denied in part the City’s motion to dismiss and authorized Mr. Gibson to pursue his *Monell* claim against the City. Order at 2, 29, 33, ECF No. 116.

On March 15, 2021, Mr. Gibson informed the City that he intended to move for partial summary judgment on the second element of his *Monell* claim, described the basis of the motion, and proposed a Joint Statement of Undisputed Material Facts. Over the next 13 months, the parties exchanged multiple drafts of the joint statement.¹ On May 2, 2022, Mr. Gibson and the City agreed to the JSUMF, which is attached to this motion.²

¹ Following this Court’s suggestion that a stipulation might obviate the need for a partial summary judgment motion, Tr. of Proceedings Before Hon. Sara L. Ellis at 10 (Apr. 7, 2021), on April 12, 2021 Mr. Gibson proposed that he and the City enter into a stipulation with a similar set of facts as the JSUMF that he had proposed to the City on March 15. But the City refused to substantively respond to the proposed stipulation. Accordingly, the parties proceeded to negotiate and agree upon a JSUMF for the purposes of this partial summary judgment motion.

² The City insisted on including facts in the JSUMF that are not relevant to this motion, some of which Mr. Gibson disputes. To avoid unnecessary litigation and because Mr. Gibson is entitled to partial summary judgment, even on the facts that the City insisted on including in the JSUMF, Mr. Gibson has agreed to assume those facts for the purpose of this motion only.

FACTUAL BACKGROUND

There's no dispute that for years, Jon Burge and the officers under his supervision tortured Black men whom they arrested. Burge was the lieutenant in charge of Area 2 Violent Crimes from 1981 to 1986 and the commander of Area 3 from 1988 to 1991. JSUMF ¶ 3. “Burge’s methods [of abuse] included administering electric shocks to victims’ genitals, suffocating them with typewriter covers, threatening them with loaded guns, and burning them on radiators.” *Id.* ¶ 4 (quoting Police Accountability Task Force, Report, Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve 34 (April 2016) (Police Accountability Taskforce Report)). Other methods included “punching, kicking, and hitting suspects, including with objects like telephone books.” *Id.* Over the past several decades, “Mayors, City Council Members, and other City of Chicago officials have acknowledged that Burge and officers under his command tortured suspects.” *Id.* ¶ 40.

A. Police and prosecutorial investigators, and the Police Accountability Task Force, found systematic abuse by Burge and officers under his supervision

Investigators for the City have repeatedly concluded there was systematic abuse by officers under Burge’s supervision. *See* JSUMF ¶¶ 5–11. In September 1990, for example, nine months after James Gibson alleges he was tortured by Burge’s officers, the Office of Professional Standards, a CPD division that investigates police misconduct, investigated and issued a report about the conduct of Burge and officers under his supervision (the Goldston Report). *Id.* ¶ 5. An aim of this investigation and report was “to determine if there was systematic abuse” under Burge’s supervision. *Id.* ¶ 8 (quoting Goldston Rpt. Cover Memo). The report found that there was:

In the matter of alleged physical abuse, *the preponderance of the evidence is that abuse did occur and that it was systematic*. The time span involved covers more than ten years. The abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture.

Id. ¶ 9 (quoting Goldston Rpt. Cover Memo) (emphasis added). It also found that “[t]he number

of incidents” involving Burge’s officers “can lead to only one conclusion. Particular command members were aware of the systematic abuse and perpetuated it either by actively participating in same or failing to take any action to bring it to an end. This conclusion is also supported by the number of incidents” *Id.* ¶ 11 (quoting Goldston Rpt. at 3). And it identified at least 50 potential victims of Burge and officers under his supervision. *See* Goldston Rpt. App’x F.

The Goldston Report reached its factual findings based on a host of evidence, “includ[ing] complaint register files, police reports, court transcripts, and other Chicago Police Department documents,” JSUMF ¶ 12. The report provides a database that identifies the alleged victims it considered, how each victim was identified, and the dates of the incidents. Goldston Rpt. App’x A, B, and C. The report did not cover all of the alleged victims of Burge and his officers, because it only evaluated alleged victims through October 1986, Goldston Rpt. App’x F, and Burge was not suspended until 1991. JSUMF ¶ 3. Still, the report identified at least 50 alleged victims. Goldston Rpt. App’x F. And it identified more than 50 alleged incidents of torture: “[s]hocking[s],” “hangings,” “bag[gings],” or “beatings,” to name just a few. *Id.* In making their findings, the investigators were required to make credibility determinations about the alleged victims. And while the investigators questioned the credibility of some alleged victims, others “were quite credible as a result of how they related what allegedly happened to them and being supported by corroborating evidence such as medical records,” with “some individuals . . . so credible that civil suits filed by them resulted in settlements.” JSUMF ¶ 10 (quoting Goldston Rpt. at 2).

A month later, in October 1990, OPS investigator Francine Sanders submitted a separate report regarding the conduct of Jon Burge and officers under his supervision, the so-called Sanders Report. *Id.* ¶ 6. The report investigated Andrew Wilson’s claim that he was abused “while in the custody of Area 2 personnel” as a suspect in the killing of two police officers. *Id.* The report “Sustained” a number of violations of policy against Burge and other officers under his command,

including that Burge “repeatedly administered electrical stimulation to Mr. Wilson’s body in order to create pain and that he held Mr. Wilson, handcuffed, against a hot radiator causing burns to Mr. Wilson’s face, chest and thigh.” *Id.* ¶ 7 (quoting Sanders Rpt. at 63–64). In addition, Burge “engaged Andrew Wilson in several unjustified physical altercations during which Mr. Wilson was handcuffed and incapable of providing any resistance,” and “[f]ailed to provide prompt medical attention to Andrew Wilson, a prisoner in his custody who was suffering from multiple injuries,” *id.* (quoting Sanders Rpt. at 64). The report found that other officers, too, were involved in these assaults. *See id.* (citing Sanders Rpt. at 64–66).

In 2006, the Cook County State’s Attorney—the same office that prosecuted Mr. Gibson—“investigate[d] allegations of torture, perjury, obstruction of justice, conspiracy to obstruct justice, and other offenses by police officers under the command of Jon Burge at Area 2 and Area 3 Headquarters in the city of Chicago during the period from 1973 to the present.” JSUMF ¶ 15 (quoting Egan Rpt. at 3). The authors of this report “interviewed hundreds of witnesses and submitted 148 complaints to an investigation, including the complaints of 64 people who had alleged acts of brutality at the hands of Jon Burge and those under his command.” *Id.* ¶ 17.

The State’s Attorney report also found abuse. It identified three cases in which the State’s Attorney believed *criminal* indictments should be sought, but the report concluded that Burge’s torture extended far beyond these three cases: there were “many other cases” in which evidence supported claims of abuse, even if the State’s Attorney at that time was not convinced he could secure a criminal conviction. *Id.* ¶¶ 19, 20 (quoting Egan Rpt. at 16). It also found that “the commander of the Violent Crimes section of [] Areas 2 and 3, Jon Burge, was guilty of such abuse. It necessarily follows that a number of those serving under his command recognized that, if their commander could abuse persons with impunity, so could they.” *Id.* ¶ 19 (quoting Egan Rpt. at 16). The report observed that “if some action had been taken against Jon Burge at the time of the

Andrew Wilson case, or even shortly after, our appointment would not have been necessary.” *Id.* ¶ 37 (quoting Egan Rpt. at 12–13); *see id.* ¶ 20.

A decade later, in 2016, the Chicago Police Accountability Task Force, appointed by Mayor Rahm Emmanuel and chaired by Lori Lightfoot, yet again reaffirmed that there was a widespread practice of torture. It found that:

From 1972 to 1991, CPD detective and commander Jon Burge and others he supervised tortured and abused at least 100 African-Americans on the South and West sides in attempts to coerce confessions. Burge’s methods included administering electric shocks to victims’ genitals, suffocating them with typewriter covers, threatening them with loaded guns and burning them on radiators. For years, Burge and the City denied allegations of torture, reinforcing community beliefs in a police “code of silence.” Burge was eventually suspended in 1991, and the Chicago Police Board fired him in 1993. After Burge’s firing, the FOP attempted (unsuccessfully) to enter a float in the South Side Irish Parade honoring him.

Id. ¶ 41 (quoting Police Accountability Task Force Report at 34).

B. Federal and state courts have recognized the torture practice

Federal and state courts too have recognized that there was a custom or practice in the 1980s of torturing suspects under Burge’s supervision. For example, in a case arising from a 1986 homicide investigation, U.S. District Judge Shadur stated: “It is now common knowledge that in the early to mid-1980’s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in physical abuse and torture [of prisoners] to extract confessions.” *Id.* ¶ 21 (quoting *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999)). Likewise, Circuit Judge Wood explained that “a mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department during the exact time period pertinent to Hinton’s case,” which was 1983. *Id.* (quoting *Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring)). And in 2015 the Illinois Appellate Court recognized a trial court’s finding that there was “pervasive evidence that Burge and many of the officers working under him regularly engaged in the physical abuse and torture of suspects with the goal of

extracting confessions.” *Id.* (quoting *People v. Whirl*, 2015 Il App (1st) 111483, ¶ 98).

C. The City Council recognized and condemned the torture practice

The City Council too has recognized that this widespread practice of torture occurred and condemned it. In 2015, the City Council passed a resolution, officially recognizing that Burge and officers operating under his supervision had tortured Black male suspects and formally expressing its profound regret. *Id.* ¶ 24. The resolution stated that “words alone cannot adequately convey the deep regret and remorse that we and our fellow citizens feel for any and all harm that was inflicted by Burge and the officers under his command.” *Id.* ¶ 25 (quoting City Council Resolution, *Establishment of reparations fund for victims of torture by Police Commander Jon Burge* (Substitute Res. 2015-256)). The City Council further stated that “wrongs [] were committed and injustices [] were perpetrated” by Burge and his officers, and explained that recognizing that those “wrongs [] were committed” would “enable us, as a City, to take the steps necessary to ensure that similar acts never again occur in Chicago.” *Id.* ¶ 26 (quoting Substitute Res. 2015-256).

D. All Chicago mayors since 1989 have recognized and condemned the torture

The City of Chicago has had three mayors since 1989, when Mr. Gibson was tortured. All three of them have recognized the torture practice and condemned it.

Richard M. Daley was Chicago’s mayor from 1989 to 2011. JSUMF ¶ 28. In 2006, responding to the State’s Attorney report (described above), Mayor Daley acknowledged a “pattern of misconduct on the part of Burge and his unit” and commented that “the public deserves to know the full story about this shameful episode in our history.” *Id.* ¶ 43 (quoting *Press Release re: Statement of Mayor Richard M. Daley: Special Prosecutors Report*, July 21, 2006).

Rahm Emmanuel, who succeeded Mayor Daley in 2011, also recognized the torture practice and condemned it in “announc[ing] a sweeping reparations package for the individuals Burge abused and tortured.” *Id.* ¶ 42 (quoting Press Release, Mayor’s Press Office, *Mayor Emanuel*,

Aldermen, and Representatives of Burge Victims Announce Reparations Package to Bring Closure to Dark Chapter of City's History (Apr. 14, 2015). He stated his package “includ[es] a public recognition of the torture committed by Jon Burge,” the “City will acknowledge and educate the public about this dark chapter in Chicago’s history,” that this practice is a “disgrace – to Chicago,” and the City must “right those wrongs” that Burge committed. *Id.* (quoting the Emmanuel Press Release).

Lori Lightfoot, the City of Chicago’s current mayor, has also recognized and condemned the torture practice. As the chair of the Police Accountability Task Force, she authored the 2016 report (described above) that found that Jon Burge and his officers tortured at least 100 Black people to coerce confessions, including with electric shocks, suffocation, and threatening with guns and radiator burns. *Id.* ¶ 41. And after Burge’s death, Lightfoot said “we must reflect on the dark legacy that he embodied. . . . So many lives shattered, and a horrible stain on the legitimacy of policing that resonates today.” *Id.* (quoting Herbert G. McCann, *Former Chicago police commander linked to torture dead at 70*, AP News (Sept. 19, 2018)). On July 12, 2020, two months after this action was filed, Lightfoot explained how “Jon Burge caused immeasurable harm to so many people.” *Id.* (quoting Planet Money, *Reparations for Police Brutality*, NPR (July 3, 2020)).

E. Many other municipal, county, and state officials have recognized and condemned the Burge torture practice

Many other City, County, and State officials have recognized the Burge torture practice, including current and former Aldermen Thomas Allen, Ed Smith, Isaac Carothers, Joe Moore, and David Orr; former Alderman and current U.S. Representative Danny Davis; former State Representative Jim Sacia; and former State Senator and current Illinois Attorney General Kwame Raoul. *See* JSUMF ¶¶ 44–51. For instance, at a 2007 City Council hearing on Burge’s torture, Alderman Allen said the question is “how we deal with Burge, not . . . whether or not Burge tortured people,” *id.* ¶ 44 (quoting Statement of Alderman Thomas Allen (Chicago City Council,

Committee on Police and Fire, Police Torture Hearing, July 24, 2007), at p. 33, 34, 36). And David Orr, an alderman in the 1980s and the Cook County Clerk from 1990 to 2018, explained that in the 1980s he “signed a resolution demanding action” about Burge’s torture, the evidence of it “was indisputably strong then as the Egan/Boyle report concedes,” and Burge and his officers “conducted a program of torture involving beatings, mock executions, electric-shock, suffocation and racist psychological abuse to obtain confessions.” *Id.* ¶ 48.

F. The State of Illinois created a commission to address Burge’s torture

In 2009, the Illinois General Assembly created the Illinois Torture Inquiry and Relief Commission for the purpose of investigating claims of torture and abuse by Burge and his officers. *Id.* ¶ 1. This commission was created to respond to the large number of individuals who claimed that they were physically abused and tortured by Burge and officers under this command. *Id.*

STANDARD OF REVIEW

“Summary judgment obviates the need for a trial where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *HSBC Bank USA, N.A. v. Leon*, No. 12 Civ. 9549, 2014 WL 1088810, at *1 (N.D. Ill. Mar. 18, 2014) (citing Fed. R. Civ. P. 56). “To determine whether a genuine issue of fact exists, the Court must pierce the pleadings and assess the proof as presented in depositions, answers to interrogatories, admissions, and affidavits,” *Cent. States, Se. & Sw. Areas Pension Fund v. Port Huron Bldg. Supply Co.*, No. 15 Civ. 2559, 2016 WL 611805, at *1 (N.D. Ill. Feb. 16, 2016) (citing Fed. R. Civ. P. 56). “The party seeking summary judgment bears the initial burden of proving that no genuine issue of material fact exists,” and then the non-moving party “must use the evidentiary tools . . . to identify specific material facts that demonstrate a genuine issue for trial.” *Id.* (citation omitted).

A plaintiff need not seek summary judgment on an entire claim, but instead may seek partial summary judgment on a portion of a claim. *See, e.g., Paldo Sign & Display Co. v. Wagener*

Equities, Inc., 67 F. Supp. 3d 874, 880 (N.D. Ill. 2014); *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, No. 14 Civ. 748, 2016 WL 4033276, at *29 (W.D. Wis. July 27, 2016). It is proper to seek partial summary judgment on a portion of a *Monell* claim where the relevant material facts are undisputed, including where, as here, the undisputed facts show the challenged practice was a government’s policy, practice, or custom. *See, e.g., Horn v. City of Chicago*, No. 85 Civ. 6838, 1986 WL 15035, at *4–5 (N.D. Ill. Dec. 31, 1986) (granting partial summary judgment on element of a *Monell* claim as material facts established the challenged practice “was the County’s ‘policy, practice, or custom.’”).

ARGUMENT

“To establish a municipality’s liability under *Monell*, a plaintiff must show that: ‘(1) [h]e suffered a deprivation of a federal right; (2) as a result of either an express municipal policy, widespread custom, or deliberate act of a decision-maker with final policy-making authority for the City; which (3) was the proximate cause of his injury.’” *Spearman v. Elizondo*, 230 F. Supp. 3d 888, 893 (N.D. Ill. 2016) (quoting *Ovadal v. City of Madison*, 416 F.3d 531, 535 (7th Cir. 2005)). The “policy or custom” element is satisfied by showing “a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law,” *Gable v. City of Chicago*, 296 F.3d 531, 537 (7th Cir. 2002) (quoting *Baxter v. Vigo Cnty. Sch. Corp.*, 26 F.3d 728, 735 (7th Cir. 1994)); *see also Fields v. City of Chicago*, 981 F.3d 534, 562 (7th Cir. 2020).³

The Court should grant partial summary judgment on the second element of Mr. Gibson’s *Monell* claim. The undisputed evidence shows that there was a widespread custom or practice in

³ To the extent that Mr. Gibson might be required to establish that a policymaker had notice of a widespread custom or practice prior to subjecting him to that practice—a requirement that he disputes—Mr. Gibson does not seek partial summary judgment on that question here. Rather, through this motion Mr. Gibson only seeks partial summary judgment over whether the City had a widespread custom or practice of the Burge torture practice.

the 1980s of Jon Burge and officers under his command physically and mentally torturing suspects.

Since 1990, the City—through its Council, its mayors, and its police department—has investigated whether Burge and officers under his command engaged in torture, including interviewing hundreds of witnesses and reviewing voluminous records of the abuse; they have repeatedly confirmed that there was a systematic practice of those officers physically and mentally torturing numerous suspects in the areas Burge supervised (Areas 2 and 3); they have condemned that practice; and they have recognized the immeasurable impact Burge’s torture had on a huge number of people. *Supra* at 3–9; *e.g.*, JSUMF ¶¶ 5–12 (OPS report finding that Burge’s abuse was “systematic” over a 10-year period based on a review of register files, police reports, court transcripts, and other police documents); *id.* ¶¶ 17–19 (Egan report, based on interviews with hundreds of witnesses and investigating 148 complaints, finding several cases that would justify an indictment, “many other cases” that led investigators to believe suspects were abused by Burge and his officers, and that Burge was guilty of that abuse); *id.* ¶ 41 (Police Accountability Task Force Report finding Burge and officers under this command “tortured and abused at least 100 African-Americans on the South and West sides . . . to coerce confessions”); *id.* ¶¶ 24–26 (“Chicago City Council recognized that the torturing of African American suspects by Burge and officers working under his command” and expressed “deep regret and remorse” for “all harm that was inflicted by Burge and the officers under his command.”) (quoting Substitute Res. 2015-256); *id.* ¶¶ 41–43 (Chicago’s mayors recognizing and condemning torture and abuse under Burge, including Mayor Daley acknowledging a “pattern of misconduct on the part of Burge and his unit”).

This undisputed evidence—much of it from the City itself—is more than sufficient to establish the existence of a municipal custom or practice. Although “there is no clear consensus” as to the minimum number of incidents sufficient to establish a municipal practice, *Mundo v. City of Chicago*, No. 20 Civ. 2562, 2021 WL 3367160, at *3 (N.D. Ill. Aug. 3, 2021) (quoting *Thomas v. Cook*

Cnty. Sheriff's Dep't, 604 F.3d 293, 303 (7th Cir. 2010)), it is clear that a “series of violations” is enough. *Palmer v. Marion Cnty.*, 327 F.3d 588, 596 (7th Cir. 2003); accord *Thomas*, 604 F.3d at 303 (stating a series of violations is enough to find a widespread policy to satisfy *Monell* and upholding a jury verdict against Cook County). Here, the undisputed facts plainly establish a series of violations: The City itself has found that Burge and his officers tortured at least 100 Black people. JSUMF ¶ 41. Indeed, the City’s own investigation found that years before Mr. Gibson encountered Burge or his officers, there were at least 50 potential victims of Burge’s torture. *See id.* ¶ 9.

Courts have routinely held that far fewer incidents are sufficient to establish a custom or practice under *Monell*. *See Mundo*, 2021 WL3367160, at *4 (rejecting the City of Chicago’s argument that the plaintiff had not shown a widespread custom where the complaint alleged “dozens of instances of sexual harassment” by a single senior agency administrator “over [the] course of several years” and that the administrator “acted without fear of discipline”); *Hunter v. Cnty. of Sacramento*, No. 06 Civ. 00457, 2008 WL 4177602, at *5 (E.D. Cal. Sept. 8, 2008) (holding that 40 to 50 incidents of excessive force in county’s main jail over five-year period could establish a widespread policy or custom under *Monell*); *see also Dixon v. Cnty. of Cook*, 819 F.3d 343, 348 (7th Cir. 2016) (holding that a county was not entitled to summary judgment on a *Monell* claim where a government investigative report and officials’ testimony revealed “systemic” inadequacies).

This case is a far cry from those in which *Monell* liability was lacking because the plaintiff could only identify “isolated instances of possible misconduct or negligence on the part of individual employees” throughout an entire agency. *Bridges v. Dart*, 950 F.3d 476, 480–81 (7th Cir. 2020) (affirming the grant of summary judgment for the defendant where the plaintiff identified only three to five incidents over a seven-year period of the Cook County Department of Corrections improperly placing prisoners on top bunks); *see also Jenkins v. Bartlett*, 487 F.3d 482, 493 (7th Cir. 2007) (granting summary judgment to a city where the plaintiff only identified four prior

incidents of officers exercising deadly force on suspects in vehicles over a five-year period in the entire city). As the City itself has said over and over again, the torture by Burge and officers under his supervision was not an isolated incident: It was a widespread, “systematic” practice. *See, e.g.* JSUMF ¶ 9. That alone is sufficient to grant summary judgment here.

The City cannot disregard the factual findings and admissions that its own agencies, the City Council, and government leaders have made recognizing the practice of torture. Governmental investigative reports that make factual findings about police misconduct, like the 1990 Goldston report, the 1990 Sanders report, the 2006 State’s Attorney report, and the 2016 Police Accountability Task Force Report (described above) are admissible evidence to prove a widespread custom or practice by a municipality under *Monell*. *See Estate of Loury v. City of Chicago*, No. 16 Civ. 4452, 2019 WL 1112260, at *1 (N.D. Ill., March 11, 2019) (holding that a Department of Justice report investigating the CPD and the Chicago Police Accountability Task Force Report were admissible as “factual findings from a legally authorized investigation” in support of plaintiff’s *Monell* claim against the City of Chicago, and stating that “[t]he Seventh Circuit has found similar reports admissible in support of *Monell* claims.”) (quoting Fed. R. Evid. 803(8)(A)(iii), and citing *Daniel v. Cook Cnty.*, 833 F.3d 728, 740–42 (7th Cir. 2016)).

In fact, in two recent cases courts in this district held that the findings of the Police Accountability Task Force—the same report that found that Burge and his officers tortured and abused over 100 African Americans—is admissible for the purpose of proving a *Monell* claim, along with other government investigative reports. *See Simmons v. City of Chicago*, No. 14 Civ. 9042, 2017 WL 3704844, at *8 (N.D. Ill. Aug. 28, 2017) (holding that the 2016 Police Accountability Task Force Report was admissible to show inadequacies in CPD’s disciplinary system and a Department of Justice report on the CPD was admissible to support a *Monell* claim on a range of practices); *LaPorta v. City of Chicago*, 277 F. Supp. 3d 969, 989 (N.D. Ill. 2017) (holding that the “contents of

the PATF and DOJ reports are admissible as ‘factual findings from a legally authorized investigation.’”) (quoting Fed. R. Evid. 803(8)(A)(iii), and collecting cases from the Seventh Circuit and Northern District of Illinois). These kinds of evaluative reports are “presumed to be admissible in a civil case” like this because “[w]e assume that public officials, in crafting such a report, acted properly and without bias.” *Daniel*, 833 F.3d at 740–42 (citation and quotations omitted).

The statements by the City’s officials (including all mayors since 1989), the City Council, and the City’s agencies recognizing and finding a systematic, pattern of misconduct by Burge and his officers are plainly admissible—as statements of a party opponent under Fed. R. Evid. 801(d)(2)(D)—to prove a custom or practice under *Monell*. See *LaPorta*, 277 F. Supp. 3d at 989 (holding “the Mayor’s statements and contents of the City-commissioned PATF report constitute admissions of a party opponent,” and citing *Nekolny v. Painter*, 653 F.2d 1164, 1171 (7th Cir. 1981) (requiring only that the statement “concern a matter within the scope of [] agency or employment” (citation and quotations omitted))). Here, as in *LaPorta* and *Cazares v. Frugoli*, No. 13 Civ. 5626, 2017 WL 1196978 (N.D. Ill. Mar. 31, 2017), “the Mayor’s acknowledgment” of a police practice, “along with the findings of the City’s Police Accountability Task Force,” as well as other officials and agencies’ admissions, “provide further, significant evidence regarding” the practice that Mr. Gibson challenges. *LaPorta*, 277 F. Supp. 3d at 989 (quoting *Cazares*, 2017 WL 1196978, at *18).

The City’s own investigators have repeatedly concluded—based on a mountain of evidence—that there was a widespread practice of torture by Burge and his officers. The City’s mayors have admitted it. The City Council has admitted it. And they have all rightly condemned it. There is simply no legitimate dispute that this practice existed. Accordingly, this Court should grant partial summary judgment on the second element of Mr. Gibson’s *Monell* claim.

CONCLUSION

For the foregoing reasons, the Court should grant this motion

May 3, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2022, I filed the foregoing motion with the Clerk of the Court using the CM/ECF system, which will send a notification of this filing to all attorneys of record.

/s/Andrew M. Stroth
Andrew M. Stroth

Counsel for Plaintiff James Gibson