

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

ANTONIO WILSON, *Et Al.*, :
 :
Plaintiffs, :
 :
V. :
 :
JIM NEIL, Sheriff, :
 :
Defendant. :

Case No. **1:13 CV 745**
Judge **J. DLOTT**

**PLAINTIFFS' APPLICATIONS TO PROCEED
IN FORMA PAUPERIS
WITHOUT PREPAYMENT OF COSTS AND FEES**

FILED
JOHN P. HEHMAN
CLERK

2013 OCT 16 AM 9:05

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OCT 16 2013

JOHN P. HEHMAN, CLERK
CINCINNATI, OHIO

Instructions: In order for the Court to properly consider your application, you must answer each question below and provide the information requested. No application will be considered until it is fully completed.

I. Are you employed? Yes _____ No

A. If you answered "Yes":

(1) What is the name and address of your employer

(2) How much do you earn per month?

B. If you answered "No"

(1) Have you ever been employed? Yes _____ No

If yes, what was the last year and month you were employed? Don't Remember

How much did you earn a month? _____

II. What is your marital status?

Single Married _____ Widowed _____ Divorced _____

A. If you answered "Married":

(1) Is your spouse employed? Yes _____ No _____

If yes, how much does your spouse earn each month?

\$ _____

III. Do you have any dependents? Yes _____ No

If you answered "Yes" list each dependent's name (minor children should be identified only by their initials), relationship to you, and the amount you contribute to their support:

<u>Name</u>	<u>Relationship</u>	<u>Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

IV. Within the past twelve (12) months, have you received any income from a business, profession or other form of self-employment, or in the form of rent payments, retirement benefits, annuity payments, interest or dividends, or any other source? Yes _____ No

A. If you answered "Yes," describe each source of income and the total amount you received from that source over the twelve-month period:

<u>Source</u>	<u>Amount</u>	<u>Source</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

V. Do you have any cash on hand or money in a savings, checking, or other account?

Yes _____ No

A. If you answered "Yes", state the combined total amount:

\$ _____.

VI. Do you own any real estate, stocks, bonds, notes, automobiles, or any other valuable property?

Yes _____ No

A. If you answered "Yes", describe each piece of property and state it's value:

<u>Property</u>	<u>Value</u>	<u>Property</u>	<u>Value</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

VII. List all your creditors, including banks, loan companies, charge accounts, personal loans, rent, utilities, child support, etc., and the amount you pay each month on each bill/obligation:

<u>Creditor</u>	<u>Amount Owed</u>	<u>Creditor</u>	<u>Amount Owed</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

VIII. State your address and telephone number where the Court can reach you.

226 0254

I declare under penalty of perjury that the above information is true and correct.

10-15-13
Date

Antonio Wilson
Signature of Applicant

Instructions: In order for the Court to properly consider your application, you must answer each question below and provide the information requested. No application will be considered until it is fully completed.

I. Are you employed?

Yes No

A. If you answered "Yes":

(1) What is the name and address of your employer

(2) How much do you earn per month?

0

B. If you answered "No"

(1) Have you ever been employed? Yes No

If yes, what was the last year and month you were employed? 2011 Sept

How much did you earn a month? 720.00

II. What is your marital status?

Single Married Widowed Divorced

A. If you answered "Married":

(1) Is your spouse employed? Yes No

If yes, how much does your spouse earn each month?

\$ _____

III. Do you have any dependents?

Yes No

If you answered "Yes" list each dependent's name (minor children should be identified only by their initials), relationship to you, and the amount you contribute to their support:

<u>Name</u>	<u>Relationship</u>	<u>Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

IV. Within the past twelve (12) months, have you received any income from a business, profession or other form of self-employment, or in the form of rent payments, retirement benefits, annuity payments, interest or dividends, or any other source?

Yes No

A. If you answered "Yes," describe each source of income and the total amount you received from that source over the twelve-month period:

<u>Source</u>	<u>Amount</u>	<u>Source</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

V. Do you have any cash on hand or money in a savings, checking, or other account?

Yes No

A. If you answered "Yes", state the combined total amount:

\$ 7.25

VI. Do you own any real estate, stocks, bonds, notes, automobiles, or any other valuable property?

Yes No

A. If you answered "Yes", describe each piece of property and state it's value:

<u>Property</u>	<u>Value</u>	<u>Property</u>	<u>Value</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

VII. List all your creditors, including banks, loan companies, charge accounts, personal loans, rent, utilities, child support, etc., and the amount you pay each month on each bill/obligation:

<u>Creditor</u>	<u>Amount Owed</u>	<u>Creditor</u>	<u>Amount Owed</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

VIII. State your address and telephone number where the Court can reach you.

I declare under penalty of perjury that the above information is true and correct.

10/15/2013
Date

Bryan Booker
Signature of Applicant

Instructions: In order for the Court to properly consider your application, you must answer each question below and provide the information requested. No application will be considered until it is fully completed.

I. Are you employed? Yes ___ No

A. If you answered "Yes":

(1) What is the name and address of your employer

(2) How much do you earn per month?

B. If you answered "No"

(1) Have you ever been employed? Yes No ___

If yes, what was the last year and month you were employed? LABOR WORK TEMP

How much did you earn a month? LESS THEN 100.00

II. What is your marital status?

Single ___ Married ___ Widowed Divorced ___

A. If you answered "Married":

(1) Is your spouse employed? Yes ___ No

If yes, how much does your spouse earn each month?

\$ _____

III. Do you have any dependents? Yes No ___

If you answered "Yes" list each dependent's name (minor children should be identified only by their initials), relationship to you, and the amount you contribute to their support:

<u>Name</u>	<u>Relationship</u>	<u>Amount</u>
<u>GH</u>	<u>SON</u>	<u>0.00</u>
<u>QH</u>	<u>SON</u>	<u>0.00</u>

IV. Within the past twelve (12) months, have you received any income from a business, profession or other form of self-employment, or in the form of rent payments, retirement benefits, annuity payments, interest or dividends, or any other source? Yes ___ No

A. If you answered "Yes," describe each source of income and the total amount you received from that source over the twelve-month period:

<u>Source</u>	<u>Amount</u>	<u>Source</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

V. Do you have any cash on hand or money in a savings, checking, or other account?
 Yes _____ No

A. If you answered "Yes", state the combined total amount:
 \$ _____.

VI. Do you own any real estate, stocks, bonds, notes, automobiles, or any other valuable property?
 Yes _____ No

A. If you answered "Yes", describe each piece of property and state its value:

<u>Property</u>	<u>Value</u>	<u>Property</u>	<u>Value</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

VII. List all your creditors, including banks, loan companies, charge accounts, personal loans, rent, utilities, child support, etc., and the amount you pay each month on each bill/obligation:

<u>Creditor</u>	<u>Amount Owed</u>	<u>Creditor</u>	<u>Amount Owed</u>
N/A	\$ 0.00	N/A	\$ 0.00
⋮	\$ _____	⋮	\$ _____
⋮	\$ _____	⋮	\$ _____
⋮	\$ _____	⋮	\$ _____

VIII. State your address and telephone number where the Court can reach you.

117 E 12th STREET -

I declare under penalty of perjury that the above information is true and correct.

10-15-2013
 Date

Gary Hedson
 Signature of Applicant

Instructions: In order for the Court to properly consider your application, you must answer each question below and provide the information requested. No application will be considered until it is fully completed.

I. Are you employed? Yes No

A. If you answered "Yes":

(1) What is the name and address of your employer

(2) How much do you earn per month?

B. If you answered "No"

(1) Have you ever been employed? Yes No

If yes, what was the last year and month you were employed? _____

How much did you earn a month? _____

II. What is your marital status?

Single Married Widowed Divorced

A. If you answered "Married":

(1) Is your spouse employed? Yes No

If yes, how much does your spouse earn each month?

\$ _____

III. Do you have any dependents? Yes No

If you answered "Yes" list each dependent's name (minor children should be identified only by their initials), relationship to you, and the amount you contribute to their support:

<u>Name</u>	<u>Relationship</u>	<u>Amount</u>
SHAGUILLE	SON	{ 110.00 monthly } { CHILD SUPPORT }
_____	_____	_____
_____	_____	_____

IV. Within the past twelve (12) months, have you received any income from a business, profession or other form of self-employment, or in the form of rent payments, retirement benefits, annuity payments, interest or dividends, or any other source? Yes No

A. If you answered "Yes," describe each source of income and the total amount you received from that source over the twelve-month period:

<u>Source</u>	<u>Amount</u>	<u>Source</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

V. Do you have any cash on hand or money in a savings, checking, or other account?

Yes _____ No

A. If you answered "Yes", state the combined total amount:

\$ _____.

VI. Do you own any real estate, stocks, bonds, notes, automobiles, or any other valuable property?

Yes _____ No

A. If you answered "Yes", describe each piece of property and state it's value:

<u>Property</u>	<u>Value</u>	<u>Property</u>	<u>Value</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

VII. List all your creditors, including banks, loan companies, charge accounts, personal loans, rent, utilities, child support, etc., and the amount you pay each month on each bill/obligation:

<u>Creditor</u>	<u>Amount Owed</u>	<u>Creditor</u>	<u>Amount Owed</u>
<u>N/A</u>	\$ _____	<u>N/A</u>	\$ _____
<u>N/A</u>	\$ _____	<u>N/A</u>	\$ _____
<u>N/A</u>	\$ _____	<u>N/A</u>	\$ _____
<u>N/A</u>	\$ _____	<u>N/A</u>	\$ _____

VIII. State your address and telephone number where the Court can reach you.

1176 12 STREET

I declare under penalty of perjury that the above information is true and correct.

10/15/13
Date

Shutter Jenks
Signature of Applicant

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

ANTONIO WILSON, :
c/o Jennifer M. Kinsley, Esq. :
Post Office Box 19478 :
Cincinnati, Ohio 45219, :

Case No. **1:13 CV 745**
Judge J. DLOTT

GARY HUDSON, :
c/o Jennifer M. Kinsley, Esq. :
Post Office Box 19478 :
Cincinnati, Ohio 45219, :

SHAFTER JINKS, :
c/o Jennifer M. Kinsley, Esq. :
Post Office Box 19478 :
Cincinnati, Ohio 45219, :

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

AND :

BRANDON BOOKER, :
c/o Jennifer M. Kinsley, Esq. :
Post Office Box 19478 :
Cincinnati, Ohio 45219, :

RECEIVED

OCT 16 2013

JOHN P. HEHMAN, CLERK
CINCINNATI, OHIO

Plaintiffs, :

V. :

JIM NEIL, Sheriff, :
In His Official Capacity Only, :
Hamilton County Sheriff's Office, :
1000 Sycamore Street :
Cincinnati, Ohio 45202, :

Defendant. :

Now come Plaintiffs Antonio Wilson, Gary Hudson, Shafter Jinks, and Brandon Booker, by and through counsel, who for their complaint against Defendant Jim Neil, in his official capacity as Sheriff of Hamilton County, Ohio state as follows:

PRELIMINARY STATEMENT

1. This is an action under the Constitution and laws of the United States asserting that Defendant Sheriff Jim Neil, by and through the Hamilton County Sheriff's Office, has engaged in a concerted campaign against Plaintiffs and others who are homeless in an effort to deprive homeless persons of their constitutional rights. This campaign includes posting "no trespass" signs on the exterior plazas of the Hamilton County Courthouse and the Hamilton County Justice Center, two quintessential and traditional public forums that cannot be closed to the public, and then threatening to arrest any individuals who sleep or otherwise seek repose on the steps, benches, and sidewalks surrounding these facilities. Plaintiffs seek declaratory and injunctive relief against Sheriff Neil under 42 U.S.C. § 1983 on the grounds that his threats to evict and arrest the homeless violate the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and analogous provisions of the Ohio Constitution.

JURISDICTION

2. This is a lawsuit authorized by law to redress deprivations, under color of state law, of rights, privileges and immunities secured by the First, Fourth, Eighth, and Fourteenth Amendments of the United States Constitution. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331; 28 U.S.C. § 1343; 28 U.S.C. §§ 2201 and 2202; and by 42 U.S.C. § 1983.

3. Plaintiffs also state causes of action under the Constitution and laws of the State of Ohio. These claims are inherently related to the other claims in this case, over which this Court has original jurisdiction, that they are a part of the same case or controversy under Article III of the United States Constitution. Accordingly, this Court has supplemental jurisdiction of these claims under 28 U.S.C. § 1367.

4. Venue in this Court is appropriate as the various actions and directives from and for which Plaintiffs seek relief occurred or are being enforced within the Southern District of Ohio, Cincinnati Division.

PARTIES

5. Plaintiff Antonio Wilson is a resident of the City of Cincinnati and the State of Ohio. He is presently homeless and for the past 6 to 12 months has been forced to seek repose on the concrete plaza and benches surrounding the Hamilton County Courthouse and the Hamilton County Justice Center. Mr. Wilson lacks the financial and other resources to own or rent a more stable home and, as such, has no choice but to sleep on the streets. He has chosen to sleep at the Courthouse and the Justice Center because these areas are generally safer and more stable than other alternatives and because he desires to associate with a community of other individuals who face similar struggles.

6. Plaintiff Gary Hudson is a resident of the City of Cincinnati and the State of Ohio. He is presently homeless and for the past 4 to 5 years has been forced to seek repose on the concrete plaza and benches surrounding the Hamilton County Courthouse and the Hamilton County Justice Center. Mr. Wilson lacks the financial and other resources to own or rent a more stable home and, as such, has no choice but to sleep on the streets. He has chosen to sleep at the Courthouse and the Justice Center because these areas are generally safer and more stable than other alternatives and because he desires to associate with a community of other individuals who face similar struggles.

7. Plaintiff Shafter Jinks is a resident of the City of Cincinnati and the State of Ohio. He is presently homeless and for the past 3 years has been forced to seek repose on the concrete plaza and benches surrounding the Hamilton County Courthouse and the Hamilton County

Justice Center. Mr. Wilson lacks the financial and other resources to own or rent a more stable home and, as such, has no choice but to sleep on the streets. He has chosen to sleep at the Courthouse and the Justice Center because these areas are generally safer and more stable than other alternatives and because he desires to associate with a community of other individuals who face similar struggles.

8. Plaintiff Brandon Booker is a resident of the City of Cincinnati and the State of Ohio. He is presently homeless and for the past 12 months has been forced to seek repose on the concrete plaza and benches surrounding the Hamilton County Courthouse and the Hamilton County Justice Center. Mr. Wilson lacks the financial and other resources to own or rent a more stable home and, as such, has no choice but to sleep on the streets. He has chosen to sleep at the Courthouse and the Justice Center because these areas are generally safer and more stable than other alternatives and because he desires to associate with a community of other individuals who face similar struggles.

9. Defendant Jim Neil is the elected Sheriff of Hamilton County, Ohio and by virtue of his elected office directs the deputies, employees, and agents of the Hamilton County Sheriff's Office. At all times relevant to this complaint, he has acted under color of state law in determining the policies and procedures of the Sheriff's Office with respect to individuals who sleep or congregate overnight at the Hamilton County Courthouse and Justice Center.

STATEMENT OF THE CASE

9. Homelessness is a pervasive and troubling problem that afflicts many American communities. Hamilton County and the City of Cincinnati are not immune to this issue. Over the course of a year, approximately 25,000 people in the Greater Cincinnati area experience

homelessness, having no stable place to stay and no roof over their heads. As a result, numerous individuals sleep on the streets of downtown Cincinnati each and every night.

10. For many years, the plaza and benches surrounding the Hamilton County Courthouse and the adjacent Hamilton County Justice Center have provided temporary overnight shelter to individuals experiencing homelessness. These areas contain wide concrete areas with ample lighting, benches, and access to restroom facilities inside the Justice Center. The open sight lines through the plazas from the street make the area safe to those who gather there as well as to the general public. On any given night, approximately 50 to 60 persons with nowhere else to go rest on the Courthouse and Justice Center plazas.

11. Those individuals who sleep outside the Courthouse and Justice Center typically do not arrive until the late evening hours and generally disperse before 6:00a.m. They therefore do not come into frequent contact, if any at all, with judges, jurors, witnesses, litigants, attorneys, and other members of the public who attend legal proceedings during the day. In fact, nearly all court hearings begin at 8:00a.m. or later and conclude by 4:00p.m., well before the homeless individuals arrive outside.

12. Those individuals who seek refuge at the Courthouse and Justice Center do not erect tents, swings, hammocks, or any other structures. They do not permanently deface or alter the property in any way. At most they use sleeping bags, blankets, or cardboard to keep warm. They remove their belongings when they vacate the premises each morning.

13. Beginning in the summer of 2013, Sheriff Jim Neil and his employees began a campaign to evict homeless persons from the courthouse area. The campaign began when an employee of the Sheriff's Office contacted Josh Spring, Director of the Greater Cincinnati Homeless Coalition, to convey the Sheriff's plan. Over the weeks that followed that initial call,

Mr. Spring and others from the Cincinnati social services community worked tirelessly to find stable temporary housing and other alternatives to arrest. Their efforts resulted in a revised plan by the Sheriff to assist homeless individuals rather than to arrest them. The Sheriff held a press conference on September 12, 2013 where he communicated his intent to work with social services and to postpone arrests until October.

14. On or about October 10, 2013, the Sheriff reneged on his promise to assist homeless individuals and instead indicated to a room full of homeless advocates that he would begin arresting anyone sleeping or resting outside the Courthouse or Justice Center on Thursday, October 17, 2013.

15. The Sheriff followed through with his plan to arrest the homeless on Friday, October 11, 2013, when he erected "no trespassing" signs outside both the Courthouse and the Justice Center. The signs at the Justice Center were later removed, but the signs at the Courthouse remain posted and visible as of the filing of this Complaint.

16. As such, Plaintiffs are in fear that if they continue their long-standing practice of resting on the Courthouse and Justice Center plazas, they will be arrested for no other reason than being homeless.

STATEMENT OF THE CLAIM

COUNT ONE: Violation of Eighth Amendment Rights Under 42 U.S.C. § 1983

17. Each of the foregoing paragraphs is incorporated by reference as if repeated here.

18. Plaintiffs have a protected Eighth Amendment right to remain free from cruel and unusual punishment, including the right not to be criminally punished solely for their status as homeless individuals.

19. Defendant's threat to begin arresting individuals experiencing homelessness and to evict them from the Courthouse and Justice Center plazas violate Plaintiffs' Eighth Amendment rights. More specifically, the policy of the Hamilton County Sheriff to arrest individuals sleeping overnight on the most visible and historically open public property, to deprive them of the ability to peacefully carry on even the basic exigencies of life in a public place, to hound them from place to place and out of public sight, and to compel them to live an even more transitory and migratory existence than they already do, all of which amounts to a criminalization of the mere fact of homelessness, and imposes on the homeless themselves the cruel and unusual punishment of being forever hounded from place to place.

20. Plaintiffs are therefore entitled to declaratory relief that Defendant's planned practice of evicting and arresting homeless individuals is unconstitutional, as well as preliminary and permanent injunctive relief enjoining Defendant and his agents, deputies, and employees from arresting individuals who merely sleep, rest, or assemble at the Courthouse and Justice Center overnight.

**COUNT TWO:
Violation of First Amendment Rights
Under 42 U.S.C. § 1983**

21. Each of the foregoing paragraphs is incorporated by reference as if repeated here.

22. The courthouse steps constitute the most traditional public forum for free expression purposes that exist in our country.

23. Plaintiffs maintain a protected First Amendment right to petition the government for redress and to access the courts for relief. This right extends to the courthouse steps.

24. In addition, Plaintiffs maintain a protected First Amendment right to communicate their plight as homeless individuals, to gather together for the purpose of sharing

ideas and information pertinent to individuals experiencing homelessness, and to engage in expressive conduct designed to call public attention to the issue of homelessness.

25. Defendant's policy of arresting individuals experiencing homelessness at the Courthouse and Justice Center in effect closes traditional public fora in violation of the First Amendment and further constitutes an unlawful prior restraint of Plaintiffs' protected expression and assembly.

26. Plaintiffs are therefore entitled to a declaration that Defendant's policy of arresting homeless individuals on the courthouse plaza violates the First Amendment, as well as preliminary and permanent injunctive relief precluding enforcement of that policy against Plaintiffs.

**COUNT THREE:
Violation of Fourteenth Amendment Rights
Under 42 U.S.C. § 1983**

27. Each of the foregoing paragraphs is incorporated by reference as if repeated here.

28. Plaintiffs maintain a substantive due process right to their personal autonomy and bodily integrity that may not be dictated or abridged by government.

29. By threatening to criminalize and punish Plaintiffs' status as homeless individuals, Defendant is significantly impeding Plaintiffs' protected Fourteenth Amendment substantive due process rights to define and determine their own existence.

30. Plaintiffs are therefore entitled to a declaration that Defendant's policy of arresting homeless individuals at the Courthouse and Justice Center violates the Fourteenth Amendment substantive due process guarantee, as well as preliminary and permanent injunctive relief precluding enforcement of that policy against Plaintiffs.

**COUNT FOUR:
Violation of Fourth Amendment Rights
Under 42 U.S.C. § 1983**

31. Each of the foregoing paragraphs is incorporated by reference as if repeated here.

32. Plaintiffs maintain a right secured by the Fourth Amendment to be free from unreasonable searches and seizures and more specifically arrests that are unsupported by probable cause that a crime has occurred.

33. Because the Hamilton County Courthouse and Justice Center plazas constitute open, public property that cannot be closed to citizens, Defendant lacks probable cause that Plaintiffs have committed or will commit a criminal trespass or other criminal offense punishable under Ohio law.

34. In addition, because the status of being homeless cannot be criminalized under the Eighth Amendment, Defendant lacks probable cause that Plaintiffs have committed or will commit a criminal offense punishable under Ohio law.

35. Defendant's policy of arresting homeless individuals at the Courthouse and Justice Center therefore constitutes an unreasonable arrest prohibited by the Fourth Amendment.

36. Plaintiffs are accordingly entitled to a declaration of unconstitutionality, as well as preliminary and permanent injunctive relief enjoining Defendant from arresting homeless individuals at the Courthouse and Justice Center.

**COUNT FIVE:
Unconstitutional Official Policy
Under 42 U.S.C. § 1983**

31. Each of the foregoing paragraphs is incorporated by reference as if repeated here.

32. Each of the aforementioned actions resulted from the official policy, custom, and practice of the City of Cincinnati to engage in a pattern of depriving the constitutional rights of homeless individuals.

**COUNT SIX:
Violations of Ohio Constitution**

33. Each of the foregoing paragraphs is incorporated by reference as if repeated here.

34. Plaintiffs plead each of the foregoing federal constitutional claims in the alternative as state constitutional claims under the Ohio Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Antonio Wilson, Gary Hudson, Shafter Jinks, and Brandon Booker seek the following relief against Defendant Sheriff Jim Neil:

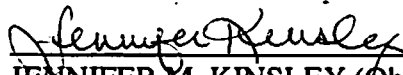
1. A declaration that the Sheriff's policy of arresting homeless individuals at the Hamilton County Courthouse and Justice Center violates the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and analogous provisions of the Ohio Constitution;

2. A temporary restraining order and preliminary and permanent injunctive relief prohibiting the Sheriff from arresting homeless individuals at the Hamilton County Courthouse and Justice Center;

3. An award of Plaintiff's reasonable attorney fees and costs pursuant to 42 U.S.C. 1988; and

4. Any such other relief in law or equity that this Court deems appropriate under the circumstances.

Respectfully submitted,



JENNIFER M. KINSLEY (Ohio Bar No. 0071629)

Kinsley Law Office

Post Office Box 19478

Cincinnati, Ohio 45219

(513) 708-2595

Kinsleylawoffice@gmail.com

Counsel for Plaintiffs Antonio Wilson, Gary
Hudson, Shafter Jinks, and Brandon Booker

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

ANTONIO WILSON, *Et Al.*, :
 :
Plaintiffs, :
 :
V. :
 :
JIM NEIL, Sheriff, :
 :
Defendant. :

Case No. **1:13CV745**
Judge J. DLOTT

RECEIVED

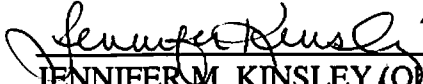
OCT 16 2013

JOHN P. HEHMAN, CLERK
CINCINNATI, OHIO

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER**

Now come Plaintiffs Antonio Wilson, Gary Hudson, Shafter Jinks, and Brandon Booker, by and through counsel, and respectfully move the Court pursuant to Fed. R. Civ. P. 65 for a temporary restraining order prohibiting Defendant Sheriff Jim Neil from arresting homeless individuals who sleep, gather, and rest overnight on the plazas surrounding the Hamilton County Courthouse and the adjacent Justice Center. This motion is supported by the attached memorandum.

Respectfully submitted,



JENNIFER M. KINSLEY (Ohio Bar No. 0071629)
Kinsley Law Office
Post Office Box 19478
Cincinnati, Ohio 45219
(513) 708-2595
Kinsleylawoffice@gmail.com

Counsel for Plaintiffs Antonio Wilson, Gary Hudson, Shafter Jinks, and Brandon Booker

MEMORANDUM

I. Introduction

Plaintiffs Antonio Wilson, Gary Hudson, Shafter Jinks, and Brandon Booker are presently experiencing homelessness. For the past several months, and in the case of Hudson and Jinks several years, these men have been forced to seek repose on the concrete plaza and benches surrounding the Hamilton County Courthouse and the Hamilton County Justice Center. They lack the financial and other resources to own or rent a more stable home and, as such, reside overnight outside the Courthouse and Justice Center because these areas are generally safer and more stable than other alternatives and because they desire to associate with a community of other individuals who face similar struggles.

For many years, the plaza and benches surrounding the Hamilton County Courthouse and the adjacent Hamilton County Justice Center have provided temporary overnight shelter to individuals who, like Wilson, Hudson, Jinks, and Booker, are experiencing homelessness. These areas contain wide concrete areas with ample lighting, benches, and access to restroom facilities inside the Justice Center. The open sight lines through the plazas from the street make the area safe to those who gather there as well as to the general public. On any given night, approximately 50 to 60 persons with nowhere else to go rest outside the Courthouse and Justice Center. They typically do not arrive until the late evening hours and generally disperse before 6:00a.m. They therefore do not come into frequent contact, if any at all, with judges, jurors, witnesses, litigants, attorneys, and other members of the public who attend legal proceedings during the day. In fact, nearly all court hearings begin at 8:00a.m. or later and conclude by 4:00p.m., well before the homeless individuals arrive outside.

Nevertheless, Hamilton County Sheriff Jim Neil has threatened, both publicly and privately, to arrest any homeless individual who remains on the Courthouse or Justice Center plazas beginning on Thursday, October 17, 2013. He erected “no trespassing” signs and dispatched deputies to begin cataloging the names and identities of individuals who normally rest on these premises overnight. As set forth below, this policy violates the constitutional rights of the homeless and should be immediately restrained by the Court.

II. The Court Should Issue A Temporary Restraining Order Prohibiting The Sheriff From Arresting Homeless Individuals At The Courthouse And Justice Center.

The elements in this circuit to be considered and carefully balanced in deciding whether to issue or withhold a temporary restraining order (“TRO”) are: (1) whether the movant has shown a substantial likelihood or probability of success on the merits; (2) whether the movant has shown irreparable injury; (3) whether the preliminary injunction could harm third parties; and (4) whether the public interests would be served by issuing the preliminary injunction. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 460 (6th Cir. 1999); *Mason County Medical Association v. Knebel*, 563 F.2d 256, 264 (6th Cir. 1977). Plaintiffs can establish each of these factors.

A. Plaintiffs have a substantial likelihood of succeeding on their constitutional claims.

1. Eighth Amendment claim

The Eighth Amendment prohibition against cruel and unusual punishment prohibits the government from criminalizing an individual's status. *See, e.g., Robinson v. California*, 370 U.S. 660 (1962). In accordance with this protection, courts have overturned vagrancy statutes and restrictions on public sleeping that in essence punish the status of being homeless. *See, e.g., State v. Penley*, 276 So.2d 180 (Fla. App. 2 Dist.), *cert denied*, 281 So.2d 504 (Fla. 1973) (finding that

statute prohibiting sleeping in public places was unconstitutional); *Wheeler v. Goodman*, 306 F.Supp 58, 64 (W.D. N.C. 1969); *Headly v. Selkowitz*, 171 So.2d 368 (Fla. 1965). For example, in *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992), the court enjoined the city of Miami's practice of arresting homeless people who were sleeping and standing in the park. In so doing, the court found the practice of sleeping on benches in parks to be "inseparable from the[] involuntary condition of being homeless," and further concluded that "arresting homeless people for harmless acts they are forced to perform in public effectively punishes them for being homeless." *Id.* at 1564.

Much like the practice of arresting homeless people for sleeping in public that was squarely condemned in *Pottinger*, enforcement of the Sheriff's arrest policy against homeless individuals sleeping at the Courthouse and Justice Center "results in a regime in which the poor and unpopular are permitted to [exist] only at the whim of any police officer." *Papachristou*, 405 U.S. at 170 (internal citations omitted). The policy therefore criminalizes a homeless person's status. The government cannot condemn the plight of the homeless by converting otherwise innocent, non-harmful, life-sustaining activity into a crime. Plaintiffs are therefore likely to succeed on their Eighth Amendment claim and should be granted a TRO on this basis.

2. Substantive Due Process claim

In plain terms, our Constitution affords its citizens the fundamental "right to be let alone." *Olmstead v. United States*, 277 U.S. 438, 478 (1928), overruled on different grounds by *United States v. Jones*, 132 S. Ct. 945 (U.S. 2012). Consistent with this right, the Supreme Court has consistently invalidated laws which invade an individual's right to private, autonomous decision-making in matters concerning the body. This right of bodily integrity and to exercise individual autonomy over the use and movement of one's body derives from two sources of authority: 1) the

line of cases recognizing a fundamental right to make decisions impacting the body without governmental interference, and 2) Supreme Court jurisprudence surrounding the right to travel. The Court solidified this right in *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 269 (1990), when it remarked: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body." *Id.* (citing *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-130, 105 N.E.2d 92, 93 (1914)). "Because our notions of liberty are inextricably entwined with our idea of physical freedom and self-determination, the Court has often deemed State incursions into the body repugnant to the interests protected by the Due Process Clause." *Cruzan*, 497 U.S. at 287.

Also relevant to the right of bodily integrity is the right to travel or to move one's body freely from place to place. In this regard, the Supreme Court has consistently recognized that the right to interstate travel embodied in the Fourteenth Amendment includes the right of repose on public property. Indeed, the freedom to loiter on public property for innocent purposes is subsumed within the liberty interest protected by the right of substantive due process. *See City of Chicago v. Morales*, 527 U.S. 41, 53-54 (1999). To be sure, "an individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers . . . or the right to move to whatever place one's own inclination may direct." *Id.* (citing *Kent v. Dulles*, 357 U.S. 116, 126 (1958); 1 W. Blackstone, *Commentaries on the Laws of England* 130 (1765)). As the Supreme Court observed in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), which invalidated a vagrancy ordinance on due process grounds:

[Walking, strolling, loafing, and loitering] are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent

and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

Id. at 164. Citizens therefore "have a constitutionally protected liberty interest to be in parks or on other city lands of their choosing that are open to the public generally . . . [and] in lawfully visiting city property that is open to the public." *Occupy Ft. Myers v. City of Ft. Myers*, 2001WL 5554034 (M.D. Fla. Nov. 15, 2011) (citing *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1265-66 (11th Cir. 2011)).

The Sheriff's arrest policy impermissibly interferes with the fundamental rights of bodily integrity and of free movement embodied in the Fourteenth Amendment substantive due process protection. Under *Papachristou* and its progeny, individuals have a right to move about on public property and, concomitantly, a right of repose in public areas. Plaintiffs are therefore likely to succeed on this claim as well.

B. Plaintiffs Will Suffer Irreparable Harm Absent a TRO.

The implications of a failure to act in this case could not be more clear. If this Court does not grant the requested TRO, Plaintiffs will literally lose their liberty, as the Sheriff's threat to initiate arrests is imminent and serious. Moreover, loss of constitutional freedoms and liberties for even minimal periods of time is sufficient to constitute irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976) (holding loss of First Amendment freedom for minimal time period constitutes irreparable harm).

C. A Temporary Restraining Order Will Not Harm Third Parties.

Enjoining the Sheriff from arresting homeless individuals at the Courthouse and Justice Center will have no obvious effect on any third party. In fact, it is in third parties' interests to prohibit these arrests. For example, in the days since the Sheriff threatened to begin arrests and

individuals who normally reside overnight on the Courthouse plaza dispersed into other areas of downtown and Over the Rhine, store owners and other local businesses have reportedly complained to police. Permitting persons experiencing homelessness to reside together as a peaceful and lawful group in a well-lit, open area actually promotes public safety and the safety of the homeless individuals, as well as facilitating and consolidating police efforts to a single location. To be sure, the Sheriff's ostensible justifications for his actions -- protecting the homeless and removing unsightly objects from the public's view -- hardly count as a real harm to society or any third party.

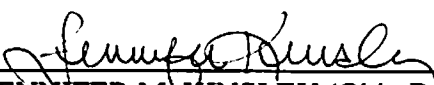
D. The Public Interest Will Be Served by the Issuance of a TRO.

Constitutional rights are at stake in this matter, and the protection of such rights is undoubtedly in the public interest. *See G&V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a temporary restraining order should be granted and Defendant should be enjoined from arresting individuals solely because of their homeless status at the Hamilton County Courthouse and Justice Center. Defendant remains free to arrest individuals who are committing actual crimes on courthouse property, but may not criminalize the act of remaining outside these buildings overnight consistent with the First, Fourth, Eighth, and Fourteenth Amendments.

Respectfully submitted,

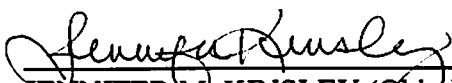


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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing document was provided via hand delivery to the Hamilton County Prosecutor's Office, 230 East Ninth Street, Fourth Floor, Cincinnati, Ohio 45202 on the 16th day of October, 2013.



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1:13 CV 745

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Antonio Wilson, Gary Hudson, Shafter Jinks, and Brandon Booker

(b) County of Residence of First Listed Plaintiff Hamilton
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Jennifer M. Kinsley, PO Box 19478, Cincinnati, Ohio 45219
(513) 708-2595

DEFENDANTS

Jim Neil, Hamilton County Sheriff

County of Residence of First Listed Defendant Hamilton
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Hamilton County Prosecutor's Office, 230 E 9th Street, Cincinnati, Ohio 45202
(513) 946-3000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983

Brief description of cause:

Challenge to policy of arresting homeless individuals at county courthouse and justice center

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
10/16/2013

SIGNATURE OF ATTORNEY OF RECORD

Jennifer M. Kinsley

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____