

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**AMERICAN CIVIL LIBERTIES** )  
**UNION OF OHIO FOUNDATION, INC.,**)  
**et al.,** )  
 )  
                  Plaintiffs, )  
v. )  
 )  
**CITY OF CLEVELAND,** )  
**et al.** )  
 )  
                  Defendants. )  
 )

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Civil Action No.: 1:15-cv-1386

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, the American Civil Liberties Union of Ohio Foundation, Inc., Stephen McNulty, Robin Goist, Khalil Weathers, and Jason Rodney, respectfully move this Court, under the Constitution of the United States, Fed. R. Civ. P. 65(a), and the Court’s equitable powers, for an order preliminarily enjoining Defendants from carrying out their unconstitutional policy of arresting and detaining protesters for the purpose of preventing them from engaging in protest activity. This motion is supported by the Memorandum filed herewith and its several exhibits, and the Complaint in this matter. A proposed order is attached as Exhibit A.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed this 13<sup>th</sup> day of July, 2015 and served upon Defendants by courier, e-mail, and certified U.S. mail, return receipt requested, at the following address:

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Trial Attorney for Plaintiffs

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Civil Action No.: 1:15-cv-1386

**[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION**

The matter came before the Court on the Plaintiffs’ Motion for a Preliminary Injunction. After consideration of the parties’ legal arguments, the allegations in the Plaintiffs’ complaint, and the exhibits attached to the Plaintiffs’ motion, the Court concludes that a preliminary injunction is needed to prevent the violation of Constitutional rights.

When deciding whether to issue a preliminary injunction, the Court considers four factors:

(1) the movant's likelihood of success on the merits; (2) whether the movant will suffer irreparable injury without a preliminary injunction; (3) whether issuance of a preliminary injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of a preliminary injunction.

*Nat'l Viatical, Inc. v. Universal Settlements Int'l, Inc.*, 716 F.3d 952, 956 (6th Cir. 2013). When, as here, “a party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor.” *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 560 (6th Cir. 2014) (quotation omitted).

All four factors favor the issuance of a preliminary injunction in this case.

After reviewing the allegations in Plaintiffs' complaint and the exhibits attached to the Plaintiffs' motion for a preliminary injunction, and the legal argument set forth in the parties' briefs, the Court finds that Plaintiffs are likely to prevail on their claim that Defendants' protocol for arrests and detentions arising out of protests violates the First Amendment. The Court also finds that Plaintiffs face irreparable harm if an injunction is not entered. When, as here, "constitutional rights are threatened or impaired, irreparable injury is presumed." *Id.* at 560. Similarly, an injunction requiring Defendants to follow the Constitution will not harm Defendants. Finally, the Constitution defines the public interest in this case, which favors an injunction preserving the right to peacefully protest.

For the foregoing reasons, the Court grants Plaintiffs' Motion for a Preliminary Injunction.

Accordingly, it is hereby ORDERED:

- (1) Plaintiffs' Motion for a Preliminary Injunction is GRANTED;
- (2) Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of the foregoing, are hereby ENJOINED and RESTRAINED from basing the decision to seize, arrest, detain, or hold or continue to hold in custody any individual upon (a) that individual's participation in a protest or (b) the projected likelihood of that individual participating in any protest;
- (3) Defendants are further ORDERED to provide written notice to this Court and counsel for the Plaintiffs within 72 hours of arrests made by Defendants for conduct arising out of a protest. The written notice shall state (a) the number and identities of individuals arrested in connection to the protest, (b) a description of the specific basis for each arrest, (c) the charges (if any) filed for each arrest, (d) the length of time each arrestee was held in

custody and the location where the arrestee was detained, and (e) the specific reasons why the arrestee was held in custody for the length that he or she was;

(4) Defendants are further ORDERED to undertake steps reasonably calculated to provide notice of this order to its officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of the forgoing;

(5) It is further ORDERED that Plaintiffs are not required to provide security because Defendants are unlikely to sustain costs and damages arising out of this injunction and because the injunction is in the public interest. *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995).

It is so ordered.

Date: \_\_\_\_\_

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FOR THE NORTHERN DISTRICT OF OHIO  
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Civil Action No.: 1:15-cv-1386

**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

If the First Amendment means anything, it is that the government cannot use handcuffs and jail cells to silence critics. Yet the City of Cleveland, acting through its police force, has undertaken a campaign of flimsy arrests and unnecessarily long detentions of protesters with the design and express purpose (in the Deputy Chief of Police’s own words) of preventing protesters from going “back out on the streets to protest again.” *See* Rosnick Decl. at ¶ 11; *see also* McNulty Decl. at ¶ 12 (“I heard the guards state that we were being held to avoid our interrupting a Cleveland Indians’ game.”); Goist Decl. at ¶ 18 (“An officer informed us that we would not get out [on Sunday, May 24] because there was a Cleveland Cavaliers basketball game”).

The City’s policy of restraint, incapacitation, and retaliation of protesters was on full display throughout Memorial Day weekend, May 23-25, 2015. First, on May 23, police rounded up the scores of individuals who were protesting the acquittal of police officer Michael Brelo by trapping them in an alley, blocking both ends, and arresting them on manufactured low-level misdemeanor charges. *See* McNulty Decl. at ¶¶ 4, 5; Goist Decl. at ¶¶ 11-14; Rodney Decl. at ¶¶ 3-5; Weathers Decl. at ¶¶ 6-8. The charge was “failure to disperse,” but *if* any order to disperse

indeed was given (no one heard one), it would have been impossible to comply because the police formed lines intentionally blocking any possible exit. *See* McNulty Decl. at ¶¶ 5, 6; Goist Decl. at ¶ 12; Rodney Decl. at ¶¶ 5, 6; Weathers Decl. at ¶¶ 7, 8. Smith Decl. at ¶3. Then, on May 24, despite the fact that judges, prosecutors, and defense counsel were standing by *in order to* provide prompt judicial process to the arrested protesters, the police purposefully delayed another day and a half before finally allowing the protesters access to the courts – on May 25 – and letting them go. *See* Rosnick Decl. at ¶¶ 8, 9. Even if the police had had probable cause – which they did not – to make the arrests in the first place, the Constitution forbids the police from arresting and detaining individuals based, even in part, on their speech.

No free society should tolerate this coordinated effort by law enforcement to retaliate against, incapacitate, and deter citizens from criticizing the government. It certainly has no place in our constitutional government. The Court should promptly enter a preliminary injunction to prevent this egregious abuse of power to incapacitate and retaliate against protesters, until the merits of plaintiffs' complaint can be fully heard, and a permanent injunction entered.

Without a preliminary injunction, Plaintiffs and hundreds of others face irreparable harm. May 23 will certainly not be the last day of protests in this City. Our community is engaged in a robust debate over how the police treat citizens, and the near future promises events that will stimulate more public expression, both planned and spontaneous. Such occasions may include the ongoing Tamir Rice and Tanisha Anderson investigations, the July 24-26 Movement for Black Lives National Convening, and the first Republican Presidential Candidates' Debate on August 6. The City's manifest zeal to keep protesters off of the street presents protesters *now* with an unconstitutional choice: Stay home and shut up, or risk another weekend in jail.

The City's policy, though recently unleashed, is having its intended chilling effect on speech. Some individuals, like Plaintiff McNulty, have decided that the risk of a baseless arrest and retaliatory detention is too high, and are reluctant to attend protests in the future. McNulty Decl. at ¶ 14, Goist Decl. at ¶ 23, Weathers Decl. at ¶ 12; Rodney Decl. at ¶ 11. Protest organizers have found it difficult to find attendees, as citizens now fear official retaliation. Planned protests have fizzled because of "folks ... sympathizing w/protest, but not wanting to join for fear of consequences." *See* Kubit Decl. at p.3; *see also* Smith Decl. at ¶ 5 (Out of 100 individuals who committed to attend a protest at the Quicken Loans Arena on May 24, only 5 showed up); Smith Decl. at ¶ 6 ("Many others who had committed to attend (the Quicken Loans protest on May 24) were spooked and afraid to demonstrate out of fear of being arrested like the protesters the night before."), Kubit Decl. at p.2; ("Asked young woman if she planned to join potential protests downtown tonight. 'No,' she said. 'I can't get arrested. I've gotta (sic) graduate.'").

A preliminary injunction is needed to prevent the City from continuing its heavy handed reprisals against protesters, and to relieve would-be protesters from the fear engendered by the City's actions.

### **FACTUAL BACKGROUND**

Cleveland is a hotbed of controversy surrounding police practices. The citizenry's simmering frustration with police practices escalated on November 29, 2012, with the shooting deaths of Timothy Russell and Malissa Williams following a police chase that culminated in a barrage of police gunfire. Many individuals believed that the couples' deaths were the result of racially motivated and/or unconstitutionally excessive police violence.

Issues surrounding police practices reached another new low with the shooting death of 12 year-old Tamir Rice on November 22, 2014. By this point, Cleveland's citizens had become



increasingly disturbed by what they saw as unconstitutional practices on the part of police. Clevelanders weren't the only ones. In November, 2014, the United States Department of Justice found that Cleveland police "violate individuals' Fourth Amendment rights by subjecting them to stops, frisks, and full searches without the requisite level of suspicion,"<sup>1</sup> and that supervisors routinely approved inadequate reports detailing stops and seizures lacking probable cause, and failed to follow-up with officers after incidents involving use of force.<sup>2</sup>

Against this backdrop came the trial of Michael Brelo, the police officer who fired 49 of the 137 shots into Russell and Williams. After the conclusion of the bench trial, weeks passed as the judge waited for an opportune time to announce his verdict. City leaders took advantage of the delay to prepare and practice the official response to expected protests.<sup>3</sup>

Because protests were anticipated, the City deliberately delayed announcing the verdict until 10 am on the Saturday of a three-day Memorial Day weekend, May 23. To the great dismay of those seeking change, Michael Brelo was acquitted; in the eyes of many, a police officer would once again escape accountability for his actions. As anticipated, the verdict catalyzed community members to come together to speak out against what they saw as the latest in a series of law enforcement abuses. Numerous individuals chose to assemble and peacefully protest.

Among the hundreds who assembled were the four Plaintiffs. Although they set out separately, each with his or her own motivation, the four and about 70 others eventually found themselves herded into Johnson Court, a small alley that extends between West 6<sup>th</sup> Street and West

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<sup>1</sup> THE DEPARTMENT OF JUSTICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE 6 (December 4, 2014), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland\\_division\\_of\\_police\\_findings\\_letter.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Activists continue march for 'justice' after the Michael Brelo acquittal: The Big Story* (May 24, 2015), [http://www.cleveland.com/metro/index.ssf/2015/05/activists\\_continue\\_march\\_for\\_j.html](http://www.cleveland.com/metro/index.ssf/2015/05/activists_continue_march_for_j.html).

9<sup>th</sup> Street. McNulty Decl. ¶ 3, Goist Decl. ¶ 10, Weathers Decl. ¶ 6, Rodney Decl. ¶ 3. In the alley, they found themselves in an inescapable trap, where the full force of the Cleveland Division of Police would be on show. Without warning, two rows of riot-clad officers blocked the alley's exits from both ends, trapping the entire group inside without any way to leave. Goist Decl. ¶ 11, Smith Decl. ¶ 3. Video Clip 1 (Ex. 1 to Complaint), Sergeant Report (Ex. 3 to Complaint).

Bewilderment spread through the crowd. Protesters had no idea what was going on, nor why a small army was holding them under siege. Many cried out, "Where are we supposed to go?" "What do we do?" and plead to be set free. Video Clip 2 (Ex. 2 to Complaint); McNulty Decl. ¶4. When the questions and pleas fell on deaf ears, widespread fear encompassed the protesters. Rodney Decl. ¶ 4. Plaintiff Robin Goist shot her hands in the air, fearing that police may open fire. Goist Decl. ¶ 13. A few protesters headed for what they thought was an exit, but instead found themselves placed under arrest.

Eventually, the entire crowd found themselves bound with plastic zip-ties closed tightly around their wrists. McNulty Decl. ¶ 4; Goist Decl. ¶ 14; Rodney Decl. ¶ 4; Weathers Decl. ¶¶ 6, 9. Included in the mass arrest were not only peaceful protesters, but also eyewitnesses, including a newspaper reporter and legal observers who, in a cruel twist, were there to watch for (not personally experience) police misconduct. The pretext for the arrests was "failure to disperse." McNulty Decl. ¶ 5; Goist Decl. ¶ 15; Rodney Decl. ¶ 5; Weathers Decl. ¶ 7. Yet no dispersal order was given, or at least, not an order loud enough to have been heard by the protesters. McNulty Decl. ¶ 11; Rodney Decl. ¶ 5; Weathers Decl. ¶ 7; Goist Decl. ¶ 12. But had the police issued an audible order, there was no way for the trapped group to comply, as tight rows of riot-gear clad police had maneuvered to block both exits. Whenever an individual approached the wall of police, officers chanted "get back, get back, get back." Video Clip 1.

Having pushed the protesters into Johnson Court and manufactured a flimsy pretense for their arrest, the officers proceeded to transport them to Burke Lakefront Airport and then to jail. McNulty Decl. ¶ 8; Goist Decl. ¶ 16; Weathers Decl. ¶¶ 10, 11; Rodney Decl. ¶¶ 7, 8.

Plaintiff McNulty was set free late Sunday night, May 24 after his father bailed him out of jail following the filing of charges. McNulty Decl. ¶ 13. McNulty was relatively lucky – he had been held for a “mere” 24 hours. The other protesters, including the three other Plaintiffs, were held in the city jail until Monday, May 25 – almost a full 36 hours after their arrest. Goist Decl. ¶ 21; Weathers Decl. ¶ 11; Rodney Decl. ¶ 9.

Why were these non-dangerous individuals—guilty of, at most, low-level misdemeanors (even if we indulge the City’s tale)—held in custody for so long? While protesters languished in jail, the courts had been ready, judges alerted and on call, and prosecutors and public defenders lined up—specifically in order to quickly process and release the protesters. It was the Defendants, however, who, to keep the protesters off the streets, intentionally delayed their release. Multiple officers told the protesters that they would be held throughout Sunday to keep them from protesting during sporting events taking place that day. Goist Decl. ¶¶ 18, 19; McNulty Decl. ¶ 12. In fact there had been indeed a large planned demonstration for May 24 – one which many of the May 23 protesters had planned to attend. Smith Decl. ¶¶ 5, 6. Weeks later, the Deputy Chief of Police himself would confirm that the protesters were being held to keep them from protesting: “...from my perspective, it doesn’t make much sense to cite and release the protesters and let them back out on the streets to protest again.” Rosnick Decl. ¶ 11. Meanwhile, as the protesters were being kept in deplorable conditions, a few arrestees who had not been protesting (and thus, by implication, would not be protesting the next day) were released. Rosnick Decl. ¶ 5.

Finally, on the morning of May 25 – with the opportunity to protest on May 24 forever lost, and a day of their lives sacrificed – the protesters’ ordeal ended. All of the remaining protesters, including Plaintiffs Rodney, Weathers, and Goist, were finally given a hearing, arraigned, and released. Goist Decl. ¶ 21; Weathers Decl. ¶ 11; Rodney Decl. ¶ 9.

After this nightmarish weekend, the Plaintiffs now fear protesting. They fear that if they attend a protest, even if they again comply with all laws and police orders, they will once again be subjected to detention, arrest, and imprisonment - for an indefinite period of time. They fear that another arrest on their record could derail their bright futures. They fear for their freedom, dignity, safety and well-being. *See* Goist Decl. ¶ 23; McNulty Decl. ¶ 14; Weathers Decl. ¶12; Rodney Decl. ¶ 11.

#### **STANDARD OF REVIEW**

In general, a court considers four factors when deciding whether to grant a preliminary injunction: 1) Whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits; 2) Whether the plaintiff has shown irreparable injury; 3) Whether the issuance of a preliminary injunction would cause substantial harm to others; 4) Whether the public interest would be served by issuing a preliminary injunction. *Newsom v. Norris*, 888 F.2d 371, 373 (6th Cir. 1989) (citation omitted).

However, “[w]hen a party seeks a preliminary injunction on the basis of the potential violation of the First Amendment, the likelihood of success on the merits often will be the determinative factor.” *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). Likewise, “[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed.” *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 560 (6th Cir. 2014) (citations and

internal quotation marks omitted). Thus, when bedrock constitutional freedoms such as the right to free speech and assembly are violated—as is the case here—a preliminary injunction is needed.

The Defendants’ policy of arresting and confining protesters in retaliation for their exercise of free speech violates the First Amendment to the United States Constitution. The Defendants’ policy of holding protesters in jail for the express purpose of preventing them from going “back out on the streets to protest again” constitutes an unconstitutional prior restraint of speech, also in violation of the First Amendment. The Defendants’ policy has been clearly expressed and demonstrated, and would-be protesters are justifiably fearful and chilled. Plaintiffs therefore request a preliminary injunction requiring Defendants to halt this policy immediately - before it does even more violence to the constitutional rights of Cleveland protesters.

## **ARGUMENT**

### **I. The Court Should Enjoin the Cleveland Division of Police’s Unconstitutional Practice of Incarcerating and Retaliating Against Protesters For Their Political Speech**

#### **A. The City Has Adopted a Protocol of Arrest and Needlessly Long Detentions In Order to Incapacitate and Deter Protesters**

This is one of those “rare” cases with “direct evidence of retaliatory intent.” *Griffin v. Berghuis*, 563 F. App’x 411, 420 (6th Cir. 2014) (internal quotation omitted); *King v. Zamara*, 680 F.3d 686, 695 (6th Cir. 2012) (“Motive is often very difficult to prove with direct evidence in retaliation cases.”). (citation omitted). The bald statement by the Deputy Chief of Police that “it doesn’t make much sense to cite and release the protesters and let them back out on the streets to protest again,” Rosnick decl. ¶11, is candid confirmation of the reason for the protesters’ lengthy detention.

Even without the Deputy Chief’s admission, the City’s design to get protesters “off of the street” was reflected in the City’s carefully choreographed and practiced response to the May 23

protests, video clip 1, including the pretextual basis for the arrests and the gratuitous delay in releasing the protesters. Rosnick Decl. ¶¶ 8, 9, 10.

By directing the protesters down an alley, blocking their exit, and then preventing them from dispersing (assuming that an order to disperse was even given), the City manufactured an excuse to arrest protesters *en masse*. This excuse was then used by the City to place the protesters in custody, and hold them for an inordinate amount of time.

Even assuming that the City could manufacture criminal wrongdoing by arresting individuals for not following an order that was impossible to follow, there was no apparent purpose for the extended detention of the protesters, save the unconstitutional goal to incapacitate and deter those who would have criticized the police department. The 70-plus Johnson Court arrestees were cited only with simple misdemeanors.<sup>4</sup> Except for the possibility that the protesters would resume their public demonstration against police misconduct, these protesters posed no risk to public safety or order.

The Department's treatment of these minor, non-violent offenses stands in sharp contrast to the City's treatment of other offenses. For example, when Michael Brelo was charged with a violent felony (manslaughter), he was neither arrested nor detained.

Not only did the Department refuse to promptly release protesters arrested for minor offenses, but it gratuitously delayed bringing them before judges. The City knew that protests

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<sup>4</sup> The crimes for which some protesters were actually convicted—based on no contest pleas entered to avoid the burdens of fighting the (meritless) charges—are minor misdemeanors, a crime for which Ohio law flatly *bans* arrest and incarceration altogether, except in very narrow circumstances not present here. Ohio Rev. Code 2935.26(A) (“When a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation” unless specific conditions are met); Cleveland Municipal Court Local Rule 4.01(K) (severely limiting the time that an individual arrested for a minor misdemeanor may be detained (under the limited circumstances that an arrest can be had)).

were likely, and made extensive preparations for the possibility of arrests. Prosecutors and judges from Cleveland Municipal Court were standing by over the weekend, fully ready to ensure the timely processing (and release) of anyone arrested. Rosnick Decl. ¶¶ 8,9,10. And a network of attorneys was waiting to jump into action to represent anyone arrested. *Id.* ¶7. Rather than take advantage of the judicial process that was deliberately put in place, the Police Department refused to release or grant access to the courts to the vast majority of the protesters until Monday morning, two full nights and a day and a half after the arrests were made.<sup>5</sup>

It is revealing that the City began releasing individuals if they proved, to the Department's satisfaction, that they had *not* been protesting. For instance, a Northeast <sup>6</sup>Ohio Media Group editor covering the protest was arrested because he was unable to comply with law enforcement's inaudible and impossible order to disperse. Once the Department was convinced that he was an observer rather than participant in the protest, he was released. A legal observer/lawyer was released early as well. Rosnick Decl. ¶5. Similarly, the charges against Plaintiff McNulty were promptly dropped after the prosecutor concluded that he was only "taking photographs" rather than cooperating with the protesters.<sup>7</sup>

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<sup>5</sup> Whether this unnecessary delay violated the protesters Fourth Amendment rights will be an issue litigated later in this case. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) ("Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake."). But even if the delay somehow survived *Fourth* Amendment scrutiny, its purpose and effect to silence speech places it in direct conflict with the First Amendment.

<sup>6</sup> *Northeast Ohio Media Group crime editor arrested during Brelo verdict protest*, Kris Wernowsky, Cleveland.com, (May 23, 2015 at 12:23 AM, updated May 24, 2015 at 1:31 PM) [http://www.cleveland.com/metro/index.ssf/2015/05/northeast\\_ohio\\_media\\_group\\_cri.html](http://www.cleveland.com/metro/index.ssf/2015/05/northeast_ohio_media_group_cri.html)

<sup>7</sup> To be sure, the decision not to prosecute McNulty was manifestly correct, as McNulty had violated no law and there was no basis for his arrest. McNulty, however, was hardly unique in this regard. The fact that he was watching people speak rather than joining in the speech is entirely irrelevant to the charge of failure to disperse.

The City's decision to make retaliation a component of its official response to protests is particularly galling, coming on the heels of a Department of Justice report concluding a pattern and practice of, among other things, retaliation through the use of excessive force.<sup>8</sup> Retaliation through arrest and detention is also unlawful.

The City's campaign against protests on May 23 was hardly the act of a few rogue officers. Quite to the contrary, the police response to the protests was carefully choreographed, the product of extensive training and practice. *See*, Video Clip 1. Each synchronized movement of the small army of officers reflects their common purpose. High-ranking officials were on the scene and coordinating from afar. The mayor and the chief were personally involved in the official response as well. *See*, e.g., Cleveland Division of Police, *Media Update, Chief Williams: May, 24, 2015* (May 24, 2015), <https://clevelandpolice.wordpress.com/2015/05/24/media-update-chief-williams-may-24-2015/>

The City's design to incapacitate and punish had the intended effects. Locked away, the May 23 protesters were deprived of the opportunity to speak out against the police the following day. And not only were those protesters robbed of this chance, but "many other [protesters] who had committed to attend were spooked and afraid to demonstrate out of fear of being arrested like the protesters the night before." Smith Decl, ¶6. Out of the 100 protesters who had committed to

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<sup>8</sup> Dep't of Justice Findings Letter for Investigation of City of Cleveland Division of Police, Dec. 4, 2014, <http://www.justice.gov/file/180576/download> (finding "[t]he unnecessary, excessive or retaliatory use of less lethal force including tasers, chemical spray and fists. . . . At times, this force appears to have been applied as punishment for the person's earlier verbal or physical resistance to an officer's command."); *see also* Settlement Agreement, *United States of America v. City of Cleveland*, Case No. 1:15-cv-1046, Doc. 3-1 at PageID #: 97 (N.D. Ohio.) (Oliver, C.J.) ("officers will not use force against persons who only verbally confront them and do not impede a legitimate law enforcement function;" "CDP will explicitly prohibit the use of retaliatory force by officers. Retaliatory force includes, for example... force used to punish an individual for disrespecting officers.").



attend on May 24th, only five people showed up. But 50 to 60 police officers were at the protest site, standing in formation, when the five arrived. Smith Decl. ¶ 7. Kubit Decl. p.4.

By keeping the protesters incarcerated, the City prevented them, and deterred others, from reaching a regional and national audience. The sporting events attracted spectators and a television audience. By keeping the protesters locked up, the City stole their right to express their frustration on a national stage.

The City's actions sent a very clear message to deter other future protesters as well. Activist members of the ACLU are intimidated from attending demonstrations, out of fear of retaliation by the police. Complaint, ¶ 90. There is also "a paucity" of National Lawyers Guild Legal Observers as a "result of worry over the arrests and detainment of ... two Ohio NLG legal observers [who were arrested with the protesters] on May 23, 2015." Rosnick Decl. ¶ 6.

#### **B. The First Amendment Prohibits Incarceration to Prevent Speech**

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). For this reason, even when a government might lawfully impose criminal penalties on a speaker, the First Amendment is deeply hostile to the government preventing speech before it even happens. "Behind the distinction is a theory deeply etched in our law: a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand." *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559, 95 S. Ct. 1239, 1246, 43 L. Ed. 2d 448 (1975); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) (citation omitted) ("If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for the time.").

Most prior restraints are administrative or judicial orders that command a person to be silent. The City's approach here of *physically* locking up individuals to keep them from protesting the next day takes a prior restraint to a shocking new level.

**C. The Constitution Prohibits Retaliatory Action Partially Motivated By First Amendment Activity**

A prior restraint prevents speech *ex ante*; retaliation accomplishes the same end by punishing speech after the fact. This, too, is unconstitutional.

A plaintiff establishes a claim for unlawful retaliation if:

(1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by the plaintiff's protected conduct.

*Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc). All of these elements are readily met here.

First, Plaintiffs were engaged in conduct protected by the First Amendment on the evening of May 23.<sup>9</sup> “There is scarcely a more powerful form of expression than the political march,” *Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 611 (6th Cir. 2005), and speech expressing dissatisfaction with the government is “expression situated at the core of our First Amendment values.” *Texas v. Johnson*, 491 U.S. 397, 411 (1989); *see also Connick v. Myers*, 461 U.S. 138, 145 (1983) (citation and internal quotation marks omitted) (“speech on public issues

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<sup>9</sup> Even though McNulty did not attend the protest to participate in its expressive purpose, his interests (protected by the First Amendment) in hearing the protesters and documenting an important event directly led to his arrest and detention. *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“It is now well established that the Constitution protects the right to receive information and ideas.”); *Crawford v. Geiger*, 996 F. Supp. 2d 603, 614-15 (N.D. Ohio 2014) (“the right [to film police officers in the open] unquestionably exists under the First Amendment” (collecting cases)).

occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”).

*Second*, the City’s actions of citation, arrest, and detention readily qualify as adverse actions. *See, e.g., Kennedy v. City of Villa Hills, Ky.*, 635 F.3d 210, 219 (6th Cir. 2011) (“Kennedy’s right to be free from retaliatory arrest after insulting an officer was clearly established.” (collecting cases)); *Greene v. Barber*, 310 F.3d 889, 895 (6th Cir. 2002).

*Third*, as noted above, the decision to cite, arrest, and detain the protesters was motivated, at least in part, by the fact that they were protesting. The Deputy Chief’s comment dispels any doubt on this score, and all of the circumstances confirm the City’s purpose.

**D. The City’s Policy, if not Enjoined, Will Cause Irreparable Injury; the City Faces No Harm From Being Required to Comply with the Constitution, and the Public Interest Sharply Favors the Injunction**

The other factors clearly favor an injunction here. Cleveland’s near future promises events that will stimulate more public expression, both planned and spontaneous. Such occasions may include the ongoing Tamir Rice and Tanisha Anderson investigations, the July 24-26 Movement for Black Lives National Convening, and the first Republican Presidential Candidates’ Debate on August 6. But the Cleveland Division of Police has confronted protesters with an untenable, and unconstitutional, choice: stop protesting, or face the prospect of arrests and prolonged detentions in deplorable conditions. If an injunction is not entered, protesters face irreparable injury. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality). Imposing on protesters a “risk [of] being jailed is antithetical to our traditions, and constitutes a burden on free expression that is more than the First Amendment can bear.” *Am.-Arab Anti-Discrimin. Comm. v. City of Dearborn*, 418 F.3d 600, 612 (6th Cir. 2005).

Plaintiffs' risk of unconstitutional injury here is dispositive. The City has no interest in law enforcement tactics of censorship and fear, and "it is always in the public interest to prevent the violation of a party's constitutional rights." *Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 412 (6th Cir. 2014) (quotation omitted).

Given the outrageousness of the City's admitted purpose and the intolerable risk of ongoing and future First Amendment harms city-wide, an injunction is clearly warranted. "To do otherwise would be to do less than the First Amendment commands." *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 670 (2004).

### **CONCLUSION - REQUESTED ORDER**

To prevent the City from continuing its obviously unlawful policy and behavior, and to dissipate the fear of future speech-based retaliation that the City's actions have created, the Court should issue a preliminary injunction that:

- (1) Prohibits the Police from making any custodial arrests motivated by the suspect's participation in a protest or motivated by the projected likelihood that the suspect will participate in a protest.
- (2) Requires the Defendants, pending a full trial on the merits, to provide notifications to the Court and to counsel for the Plaintiffs when individuals are arrested for conduct arising out of a protest. Said reports would provide the basis and charges for each arrest and the length of time each arrestee is held in custody.

Respectfully submitted,

s/ Freda J. Levenson

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed this 13<sup>th</sup> day of July, 2015 and served upon Defendants by courier, e-mail, and certified U.S. mail, return receipt requested, at the following address:

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s/ Freda J. Levenson  
Freda J. Levenson (0045916)  
Trial Attorney for Plaintiffs

**DECLARATION OF JOCELYN ROSNICK**  
**(pursuant to 28 U.S.C. Section 1746)**

My name is Jocelyn Rosnick, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am a licensed attorney in the State of Ohio.
2. I am a co-coordinator and executive committee member of the Ohio Chapter of the National Lawyers Guild ("Ohio NLG") headquartered in Cleveland, Ohio. In this position, my responsibilities include providing legal observer trainings and dispatching legal observers upon request.
3. The National Lawyers Guild ("NLG"), founded in 1937, is a national network of public interest lawyers, law students, and legal workers dedicated to using the law as an instrument for the protection of the people, rather than for their repression. The NLG has chapters in cities throughout the country, including Cleveland, Ohio.
4. The NLG's Legal Observer Program, established in 1968 in New York City, is part of a comprehensive system of legal support designed to enable people to express their political views as fully as possible. NLG legal observers do not act as part of the demonstration but rather document interactions between demonstrators and law enforcement in anticipation of criminal defense or civil litigation.
5. On May 23, 2015, while observing the demonstrations in Cleveland following the Michael Brelo verdict, two Ohio NLG legal observers were arrested. One of them

was held for about 36 hours. The other is an attorney and one of the five executive committee members for the Ohio NLG. Within hours of receiving a call from an attorney, she was released.

6. Now, when Ohio NLG receives requests for Cleveland legal observers, we are hesitant to issue calls for legal observers because of the arrests of May 23, 2015. For example, Ohio NLG received a call for Cleveland legal observers on May 24, 2015, the day after the arrests. In order to avoid putting out a call for legal observers to volunteer, I chose to go out and legal observe myself, even though I was reluctant to do so after the arrests. However, to avoid me going out by myself, the Legal Observer Coordinator for the Detroit Chapter and a long-time NLG Mass Defense Committee member accompanied me. There were no Cleveland volunteers. We also received requests in June, and upon issuing a call for legal observers, we received very few responses. I believe that this paucity of responses is a result of worry over the arrests and detainment of the two Ohio NLG legal observers on May 23, 2015.
7. The NLG also recruits attorneys to provide legal representation to individuals who are arrested in connection with protest activity. I was involved in recruiting attorneys for the Brelo verdict protests, and at the time of the protests, a cadre of attorneys was standing at the ready. Beginning later in the evening on Saturday, May 23, 2015 and then again in the early morning of Sunday, May 24, 2015 (the morning following the protests), and throughout the day, I had conversations with some of these attorneys.

8. I was told by a few of these attorneys that, because the mass arrests had been anticipated and planned for, the courts were ready to be open, judges were on-call and available, and prosecutors and public defenders were ready to arraign and release the arrestees as of the early morning of Sunday, May 24, 2015.
9. Nevertheless, during the course of the day, as lawyers waited, the arraignments and releases did not take place. Finally, later in the day, the lawyers learned that the arraignments would not take place at all that day, but would happen instead the next morning, Monday, May 25, 2015. At a later date, I heard from these same attorneys that the delay was caused by the police department.
10. Based on the conversations I had and the information I learned, it is my understanding that although the court, municipal judges, city prosecutors, and the public defenders were available to process the Brelo arrestees on Sunday, May 24, 2015, the delay by the Cleveland Division of Police caused the arrestees to have to spend the remainder of the day and the entire night in jail.
11. On June 24, 2015, I attended a meeting with City of Cleveland officials to discuss the events of May 23, 2015 and, in particular, the arrest of Ohio NLG legal observers. When discussing our concerns, including the slow processing of those arrested, Deputy Chief Wayne Drummond of the Cleveland Division of Police said, (and these words are, to the best of my recollection, verbatim), "I'll let the Law Department respond to your concerns, but from my perspective, it doesn't make much sense to cite and release the protestors and let them back out on the streets to protest again." Other City of Cleveland officials present at the meeting included (to the best of my knowledge) Director of Law Barbara

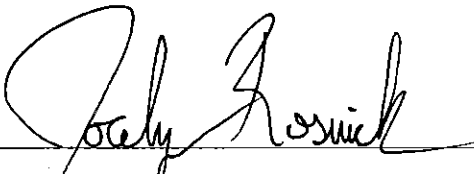


Langhenry, Chief Corporate Counsel Richard Horvath, Chief Counsel of the Civil Division Gary Singletary, Assistant Law Director Annette Butler, Assistant Law Director Nancy Kelly and Chief of Police Calvin Williams. In addition to city officials, Ohio NLG and Black Movement Law Project representatives, including Jacqueline Greene and Abraham Hassen, witnessed this statement.

12. I believe that the arrests of Ohio NLG legal observers on May 23, 2015 and the intentionally prolonged detention of protestors and legal observers to keep them from going “back out on the streets to protest again” has had a powerful chilling effect on the Ohio NLG’s ability to dispatch sufficient numbers of legal observers when requested.

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

Executed on July 13, 2015.



\_\_\_\_\_  
Jocelyn Rosnick

**DECLARATION OF STEPHEN MCNULTY**  
**(pursuant to 28 U.S.C. Section 1746)**

My name is Stephen McNulty, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am a first year medical student at the Ohio University College of Osteopathic Medicine in Athens, Ohio. I plan to pursue a career as a primary caregiver in rural, underserved, and austere communities.
2. Although I am now focused on a career in medicine, up until recently, I was a professional photographer. I still have a passion for documenting dramatic, emotionally laden human events. In my career, I have photographed the aftermath of earthquakes, tsunamis, and other catastrophic events, and have had my work published by organizations including iCNN and NPR.
3. On the evening of May 23, 2015, I was dining with friends on a restaurant patio on East 4<sup>th</sup> Street in downtown Cleveland. I noticed protesters and police officers marching north on East 4<sup>th</sup> Street towards Euclid Avenue. Following dinner, I followed them briefly, wanting to document the event, but I only had my camera phone with me, and I preferred my good camera. So I went home, which was close by on East 12<sup>th</sup> Street, to retrieve it. When I returned, I followed the sights and sounds of police cars and found that the protestors had moved to W. 6<sup>th</sup> Street, and that they were being herded by police into Johnson Court, a small alleyway that extends between West 6th and West 9th Streets. I followed the protesters into Johnson Court in order to continue documenting.
4. When the protestors and I were in Johnson Court, police officers moved in and, using lines of their riot-gear clad bodies to form blockades, closed off both ends

of the alley, effectively trapping us inside. Several people asked things like, “Where are we supposed to go?” “How do we get out?” I heard that the officers had opened a gap so that protestors could leave, but as some of us formed a line to try to leave, the police began arresting us. About 70 of us were arrested.

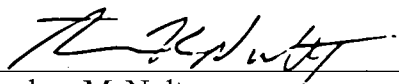
5. Although I later learned that I was arrested for failure to disperse, there was no dispersal order given – or at least I never heard one – and neither did any of the other arrestees that I later spoke to.
6. Even had I heard such an order, which I did not, there was no opportunity to disperse because the police completely surrounded us and there was no way to exit.
7. When I was arrested, I told the police I was a photographer, and they responded that I needed a permit if I wished to photograph. We were put in tight plastic handcuffs. Some people complained that the handcuffs cut off the circulation to their hands, but the police refused to do help. When one grey-haired older woman complained, the police actually tightened her cuffs.
8. I and other male protestors were put on a bus and taken to Burke Lakefront Airport, where we were made to sit on the concrete floor of an empty hanger. The floor had rodent feces on it. We were not given any water, despite our many requests. It was not until about 3 a.m. that I was given water.
9. After several hours, I was taken from Burke to the city jail on W. 3<sup>rd</sup> Street. We were placed in cells, two to a cell, even though there was only one bed in each. Everyone was given a dirty, thin mat and one blanket. The walls were filthy.
10. After another 12 hours, at about 1:00 pm on May 24, I was taken to the County

Workhouse, where I was housed in a barracks with other arrestees. At this facility, the only drinking water available was contaminated by a broken sewer line.

11. It wasn't until nearly 24 hours after we were arrested that we were finally told that we were being charged with 'failure to disperse', despite the fact that none of us had ever heard an order to disperse.
12. I heard the guards state that we were being held to avoid our interrupting a Cleveland Indians' game.
13. After the charges were formally filed against me, my father, who had been waiting at the courthouse for charges to be filed so that he could bail me out, immediately posted bail and I was released. However, another 60 or so protestors were detained for the rest of that night, until their hearings on May 25, 2015.
14. As a result of this treatment by the Cleveland Division of Police on the night of May 23, 2015, I am reluctant to attend any protests in Cleveland, despite my passion for documenting events such as the protests of May 23, 2015. I would fear getting corralled with no way to avoid getting arrested, through no fault on my part; I would fear being held in jail for so long; and I would worry about the risk of having an arrest blemishing the record that I aspire to create as an upstanding physician.

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

Executed on July 10, 2015.

  
Stephen McNulty

**DECLARATION OF ROBIN GOIST**  
**(Pursuant to 28 U.S.C. Section 1746)**

My name is Robin Goist, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am a 19-year old college student from Youngstown, Ohio currently attending John Carroll University. I am majoring in Journalism because I believe that thoughts, words and stories can change the world.
2. I consider myself an extremely passionate activist and defender of social justice. My parents raised me in an open-minded, socially active household. I attended my first protest with my mom when I was in the 5<sup>th</sup> grade. It was a demonstration against the Iraq War in Washington, D.C. Since then I have attended about 25-30 other protests. Never once have I been arrested.
3. I was awarded a scholarship to John Carroll as a result of my strong desire for social justice. Through this scholarship program, I have had the privilege of working on many important issues such as women's and LGBT rights, as well as police brutality and criminal justice reform.
4. During my time at John Carroll, I have grown to have a sense of community with the City of Cleveland and have become even more interested in issues pertaining to police brutality and discrimination. I feel that writing and peaceful protests are crucial ways to enact positive change within the world.
5. On the morning of May 23, 2015, after hearing of the Brelo verdict, I learned that others were organizing and protesting. I decided I needed to be a part of this peaceful assembly.

I left my home in Youngstown, Ohio around 12:30pm and made my way to Cleveland, Ohio to join the protest.

6. At 2:00pm I arrived at the Green Road RTA rapid station, parked my car, and boarded the train. I arrived at Tower City just after 3:00pm and made my way to the Justice Center in downtown Cleveland.
7. Once I arrived at the Justice Center I first noticed the entire block surrounding the building was fenced off with police officers standing around the fences. I made my way to the front of the building and joined about 20 other demonstrators, where we demonstrated peacefully.
8. Around 4:30pm, I rode with another demonstrator I just met over to the West Side of Cleveland near Impett Park, because we heard there were a larger number of demonstrators in that area demonstrating about the Tamir Rice situation. For the next hour and a half, a group of 150 marchers soon grew to 200 as we made our way from Impett Park to Downtown Cleveland. Though protesters were numerous, police outnumbered us by a great deal. The police seemed to be herding us as we made our way downtown.
9. At around 7:00pm one of my friends joined me in the march, as we began to congregate on the front steps of the Justice Center. After a variety of activists spoke, around 8:30pm, my friend and I decided to have dinner at a restaurant named Taza on West 6<sup>th</sup> Street and then head home.
10. As we were leaving the restaurant to head back home, we noticed around 100 protestors marching. It was around 9:45pm, and since I came to protest and let my voice be heard, I

decided to join the nonviolent group. As we travelled north on West 6<sup>th</sup> Street, two or three police cars blocked off the street, shepherding the group to turn and enter Johnson Court, an alley that stretches west from West 6<sup>th</sup> Street to West 9<sup>th</sup> Street.

11. As we started down Johnson Court, a group of about 30 police officers, in full riot gear, suddenly came from behind us, and ran past us, down the alley. They then arranged themselves into a barrier consisting of at least two rows of officers holding shields and blocked the west entrance to the alley. A similar two-row barricade of officers formed on the east side of the alley, where we had entered, completely trapping us inside Johnson Court. There was no way we could exit.
12. My friend and I remained in the street but watched most of the other protestors move to the sidewalks. We continued to stand on the street because no one had directed us to do otherwise. The lines of officers began to yell “Move Back!” but it was impossible to understand what they meant by this ambiguous order – especially because they were shouting it from both sides. I never heard any order for us to disperse or leave the area. Even if there had been one – which there was not – we could not have complied because there was no way to exit. I was frightened and wanted to approach the line of officers to ask if I could leave, but I knew I’d be arrested if I did, because anyone who approached the line was grabbed and arrested.
13. I put my hands up in a plea not to get shot. I yelled out, “Am I being detained?” I received no response. The officers then broke their formations and began to run and physically force us onto the sidewalk. One officer applied so much force to my chest that it left a red mark that lasted until the following afternoon. One officer on a megaphone commanded us to “turn around, face the wall, and put our hands on the wall.” The officer

then exclaimed that if we “didn’t want to get arrested,” we must “form a single-file line,” and that if we complied would be “free to go.”

14. Feeling panicked and only wanting to go home to my family, I followed the officer’s orders. After about ten to fifteen seconds, the officers came down the line and began to put “flexicuffs” tightly on our wrists. The officer never told me that I was under arrest.
15. The female arrestees and I were then loaded into vans and taken to Aviation High School for booking, where we were held in a hangar. After asking the police officers, they told us we were getting charged with “unlawful congregation” and “failure to disperse.” As the officers began to put my possessions into a plastic bag and take me over to get my mugshot, the officer taking the photo said “Wow, she’s the most innocent-looking arrest we’ve made all day!” As a white female, this statement made me feel a racist undertone pertaining to the entire events of that day.
16. I was at the hangar for less than an hour before I was transported to the city jail. That night I fell asleep feeling completely alone, scared, and starting to wonder if my right to protest for justice was worth this treatment. The next day almost all of the women, save for myself and three others, were transported to the County Workhouse.
17. On the morning of Sunday, May 24, 2015, I was able to have a phone call with my mother. Once hearing her voice I began to cry. Also that morning, the correctional officers told us that we were getting charged with “aggravated riot,” a felony. Apparently, our felony charge was the reason that we were the only women not transferred to the Workhouse. I was very confused at this information since we had been told at the hangar



that we were being charged with “failure to disperse” and “unlawful assembly,” both misdemeanors.

18. Sunday afternoon, our mug shots were taken again. One of us asked if this meant we were about to get out. An officer informed us that we would not get out that day (Sunday, May 24, 2015) because there was a Cleveland Cavaliers basketball game.
19. Later that evening, when we were back in our cells, one of us asked another officer, who had come on a different shift, if we were going to get out that night. The officer answered, “No, the Cavs are playing.”
20. To make my ordeal all the more uncomfortable, I was denied vegetarian meals accommodations, although I have been a vegetarian for at least ten years, and I was only provided cereal or four to five pieces of lettuce throughout my time in jail.
21. Finally, after over nearly two days and nights in jail, on the morning of Monday, May 25, 2015, I pled “no contest” at the court hearing and was released. I know I never committed any crime, but I pled “no contest,” because of the fear of possibly spending six months in jail. I felt that I could not miss school or put any other of my aspirations on hold.
22. After returning home, I began to feel an immense sense of regret for even going out to protest that day. Spending those two nights in jail caused my family worry and confusion.
23. Exercising my rights to demonstrate led to one of the scariest situations of my life. The experience of being arrested – for having done nothing unlawful - and being detained so very long has led me to be fearful of protesting and question if I will ever have the courage to protest again. I had intended to participate in other Black Lives Matter protests, but I’m sad to say that what the police did to me on May 23-25 has silenced me.

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

Executed on July 10, 2015

*Robin Goist*

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Robin Goist

**DECLARATION OF JASON RODNEY**  
**(pursuant to 28 U.S.C. Section 1746)**

My name is Jason Rodney, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am a Cleveland Heights native and a 2010 graduate of Macalester College in St. Paul, Minnesota. Following my graduation from college, I practiced art therapy in the St. Paul school system, and since June, I have been working as a phone canvasser for a lobbying organization called Clean Water Action.
2. I have always been dedicated to social justice, and have participated in a number of peaceful demonstrations. In the past, I attended the 2014 protest in Minneapolis against the Michael Brown verdict, Minneapolis' Annual May 1 immigrants' rights marches, anti-Iraq war protests with my family in Washington, D.C., and the CTUL action for labor rights in Minneapolis, among others.
3. I was visiting my father in University Heights on May 23, 2015, day that the Michael Brelo verdict was announced. That evening around 7:30pm, I went downtown to the steps of the Justice Center to join demonstrations that were happening in response to the verdict. I found a number of protestors gathered and began to march with them, eventually ending up at W. 6<sup>th</sup> Street. When we were walking down Johnson Court, an alleyway between W. 6<sup>th</sup> and W. 9<sup>th</sup> Streets, we noticed police lines had formed, blocking both ends of the alley so that we could not exit.
4. While surrounded and trapped in the alley, we could hear unclear sounds that seemed to be from a police loudspeaker, but I couldn't hear any of the words being articulated. From what I saw, those who moved forward to try to figure out what the police were saying, were being grabbed and arrested. I began to feel trapped and afraid, and shouted

to the police several times asking if there was a way to get out of the alley. None of them would respond to my queries. We did not have any idea of what the police wanted us to do, or what they were going to do with us. Eventually, about 70 of us were arrested.

5. Although I later learned that I had been arrested for failure to disperse, there was no dispersal order given – or at least I never heard one.
6. Even had I heard such an order, which I did not, there was no opportunity to disperse because the police completely surrounded us and there was no way to exit.
7. When I was arrested, I was put into very tight plastic handcuffs and lined up against a wall along with other protestors. I and other male protestors were put on a bus and taken to Burke Lakefront Airport, where we were made to sit on the concrete floor of an empty hanger. While at the airport, I saw a mouse running around. I was sneezing from all the dust. None of us were told why we were being held. Additionally, I realized later that I had about ten spider bites and a rash on my knee. (That could have been from sitting on the dirty floor, or possibly from the dirty jail cell where I was headed next.)
8. After about an hour, I was taken by bus to the city jail, and was placed in a cell with another protestor. The conditions of the jail were quite uncomfortable. I was sharing a cell with someone else despite the fact that it was intended for only one person, and as a result, I had to sleep with my head directly below the toilet. I spent Saturday night, all day Sunday, and Sunday night in jail.
9. I was still at the city jail on Monday morning, May 25, 2015, when an official of some sort came in and started giving me information about my charges. A little later, a public defender came and explained my options for a hearing that was about to be held. The public defender told me that pleading ‘not guilty’ was an option with possibly excessive

consequences, and I felt pressured to plead 'no contest'.

10. The public defender had people come up in alphabetical order to enter pleas, and I chose 'no contest' because I was about to leave for Minneapolis and was concerned that I wouldn't be able to fulfill family obligations while dealing with court matters.

11. As a result of this treatment by the Cleveland Division of Police on the night of May 23, 2015, despite my lifelong passion for social justice, I am frankly afraid to attend protests in Cleveland. I'm particularly nervous about protesting here at night, and would fear getting corralled with no way to avoid getting arrested, through no fault on my part; would fear being held in jail for so long; and would worry about the risk of having another arrest blemishing my otherwise perfectly clean record. I hope to continue protesting and participating in activism in Cleveland in the future because I generally spend about a month here every year, but my experiences with the Cleveland Division of Police on May 23, 2015 have made me extremely apprehensive of doing so.

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

Executed on July 10, 2015.

  
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Jason Rodney

**DECLARATION OF KHALIL WEATHERS**  
**(pursuant to 28 U.S.C. Section 1746)**

My name is Khalil Weathers, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am a 2014 graduate of Nexus Academy in Cleveland, Ohio, and am currently employed as a sales associate and cashier at Circle K. I also volunteer with an organization called Golden Ciphers, which does community outreach focusing on youth in Cleveland.
2. Although I had never participated in protests before the verdict in the Michael Brelo trial was issued, the repeated instances of police violence that have been in the news recently inspired me to get involved. I felt that this was my duty.
3. After hearing about the Michael Brelo verdict on May 23, 2015, I felt compelled to go downtown to participate in protests, and that afternoon, I made my way to the Justice Center to look for other protestors. I walked around for a while until I found and joined about 80 protestors near Euclid Avenue, marching toward the Justice Center. By that time it was about 5:30 pm. I did not see many police officers in the area. We made our way to the Justice Center, continued through Tower City and circled back to the area of West 3<sup>rd</sup> Street. At that point, some of the protestors left the march. I continued with the group that remained, and we marched on toward East 4<sup>th</sup> Street.
4. After we arrived at East 4<sup>th</sup> Street, I heard some commotion and glass crashing and saw some police running. Many protestors started running; I ran away from the crowd, exited East 4<sup>th</sup> Street, and turned right on Euclid Avenue, up to a bowling alley called The Corner Alley. I was in a group of protestors there, and we continued our march. I did not hear the police announce anything or give any orders to protestors, other than a line of police chanting, "move back, move back." And the protestors kept moving back.

5. I never heard the police give any order to disperse, but I stayed near the back of the group of protestors because I noticed that if a protestor got too close to the line of police, he would be grabbed and arrested.
6. We turned off Euclid and continued to march, with police behind us the entire time, until we arrived at West 6<sup>th</sup> Street. When we got there, we realized that the police had blocked off the road, so we had to turn left onto Johnson Court. Once inside Johnson Court, we were blocked on both ends by the police, and I was not sure what to do. There was no exit in either direction. While we were trapped in Johnson Court, several protesters asked the officers why we couldn't leave, and if there was someone in charge that we could talk to. I never heard an answer from the police. After about ten minutes, we heard the police say "let them go," so we starting forming a line to try to leave through a small gap the police had created in their line to let us pass. However, just a moment later I heard another officer say "stop, don't let them pass," and as we tried to leave the police began arresting us.
7. The only command I heard from the police while we were in Johnson Court was "move." I never heard any order to disperse.
8. Even had I heard such an order, which I did not, there was no opportunity to disperse because the police completely surrounded us and there was no way to exit.
9. When I was arrested, my arms were restrained with extremely tight zip ties. My hands were numb the entire time the zip ties were on, and despite the fact that I told the officers the ties were too tight, they did not do anything to relieve my suffering.
10. I was transported to a hangar at Burke Lakefront Airport along with other protesters, where we had to sit on a dirty concrete floor to await booking. The zip ties were still on

my wrists while in the hangar, and my hands were completely numb. I saw a rat running across the floor, and I was not given any water, despite my requests.

11. After booking, I was taken from Burke to the city jail on West 3<sup>rd</sup> Street. The conditions at the jail were horrible. I was housed with another protestor. At first, we thought we would just be held for a few hours, but a couple of hours turned into overnight, then the next day, then that day turned to night and we were still there the next day. I was not released from the jail until the morning of May 25, 2015. I had planned to attend demonstrations on Sunday, May 24, 2015. Being in jail prevented me from doing that.
12. I still do plan to participate in future protests, even after experiencing this treatment by the Cleveland Division of Police. I will do this because of my convictions, but I am much more worried that I could again be arrested for doing nothing wrong. Because the police were able to get away with such a blatant interference with my rights, I'm worried they will act even more aggressively the next time they want to stop people from protesting.

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

Executed on July 11, 2015.

  
Khalil Weathers



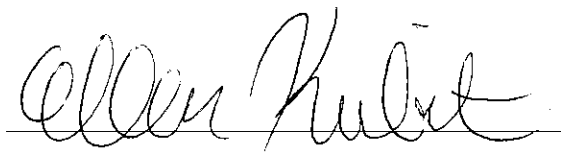
**DECLARATION OF ELLEN KUBIT**  
**(pursuant to 28 U.S.C. Section 1746)**

My name is Ellen Kubit, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am a Program Associate for the American Civil Liberties Union of Ohio Foundation.
2. Attached to this declaration are “tweets” made by Cleveland-area activists, news reporters, and organizations about arrests made by the Cleveland Division of Police on May 23, 2015 following the acquittal of Cleveland police officer Michael Brelo.
3. Twitter is a website that provides a platform for individuals to make and share 140-character-long messages called “tweets.”
4. To find the tweets attached to this declaration, I searched through archived tweets made by certain individuals and organizations that generally post about protests in Cleveland or, according to tweets made by them, were present at the May 23 protests.
5. I then saved each tweet attached to this declaration using Adobe Acrobat, a program that allows one to turn internet content into portable document format.

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

Executed on July 13, 2015.

A handwritten signature in cursive script, appearing to read "Ellen Kubit", written over a horizontal line.

Ellen Kubit

7/10/2015 Sam Allard on Twitter: "Asked young woman if she planned to join potential protests downtown tonight. "No," she said. "I can't get arrested. I've gotta grad..."

Home Notifications Messages

Search Twitter

 **Sam Allard**  
@SceneSallard  

Asked young woman if she planned to join potential protests downtown tonight. "No," she said. "I can't get arrested. I've gotta graduate."

RETWEETS 8 FAVORITES 10

4:12 PM - 24 May 2015

Reply to @SceneSallard

**Trends**

#DescribeTwitterIn3Words Murray #USWNTParade #NewMusicFriday Omar Sharif  
#VoteMoose My Love Dylann Roof #Hot100Fest Katherine Archuleta

© 2015 Twitter About Help Ads info

7/10/2015 Nick Castele on Twitter: "I've heard similar from a few folks, too. Sympathizing w/ protest, but not wanting to join for fear of consequences. https://t.co/1K...

Home Notifications Messages

Search Twitter

 **Nick Castele**  
@NickCastele  

I've heard similar from a few folks, too.  
Sympathizing w/ protest, but not wanting to  
join for fear of consequences.

**Sam Allard** @SceneSallard  
Asked young woman if she planned to join potential protests downtown tonight.  
"No," she said. "I can't get arrested. I've gotta graduate."

RETWEETS 2 FAVORITES 8

4:20 PM - 24 May 2015

Reply to @NickCastele

 **ELECT PAVARINI** @ELECTPAVARINI · May 24  
@NickCastele @SceneSallard old news turn the page,

Search Twitter



Mvmt 4 Black Lives

@mvmt4bl



Follow

Registration is now open for the Movement for Black Lives Convening! M4bl.org



RETWEETS  
112

FAVORITES  
52



6:58 AM - 17 Jun 2015

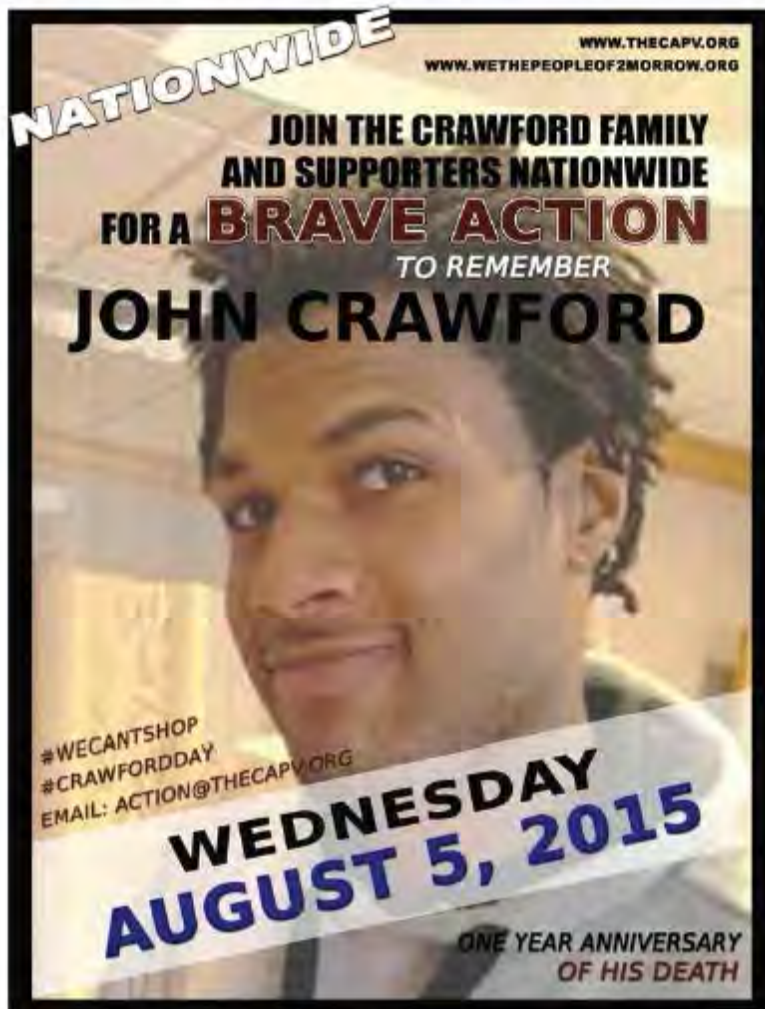


#ScarsandStripes

@thecapv



Join Crawford family & Supporters nationwide on #CrawfordDay 8/5/15  
#WeCantShop #JohnCrawford  
thecapv.org/#!/john-crawfor...







7/10/2015 Rachelle Smith on Twitter: "CLEVELAND! Are you awake yet? We need people outside the justice center protesting these arrests & demanding their rele..."

Home Notifications Messages

Search Twitter

 **Rachelle Smith**  
@rachology216

 Following


CLEVELAND! Are you awake yet? We need people outside the justice center protesting these arrests & demanding their release.  
#organizeCLE

RETWEETS 12 FAVORITES 6



11:40 AM - 24 May 2015



 Reply to @rachology216

 **RadWitchyTransBitchy** @Fyrebrd · May 24  
@rachology216 Y'all have a number I can call?




 **Rachelle Smith** @rachology216 · May 24  
@Fyrebrd [pic.twitter.com/T4LI8Tkt33](https://pic.twitter.com/T4LI8Tkt33)



 **Art** @ArtDigbySellers · May 24  
@rachology216 why arent YOU there? Why are you trying get others to take the risk to support your agenda?



[View other replies](#)

 **Rachelle Smith** @rachology216 · May 24  
@ArtDigbySellers I've been working jail support all day, been here for hours. I never ask anyone to take a risk I wouldn't take myself.

**DECLARATION OF RACHELLE SMITH**  
**(pursuant to 28 U.S.C. Section 1746)**

My name is Rachelle Smith, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am a commuter student at The University of Akron, Cleveland resident, and social justice advocate. I, with other local activists, organize demonstrations using the hashtag #organizeCLE throughout the City of Cleveland, Ohio. One of the main reasons the group was formed was to find justice for victims of police brutality. With a focus on collaboration, we work to organize protests, provide court observers, research issues and disseminate information for other activists.
2. Organize CLE's efforts began on Twitter on November 26, 2014, and our first protest was held that Saturday in response to the video of Tamir Rice being shot by a Cleveland police officer. Since Organize CLE's founding last year, we have organized and participated in a number of other social justice efforts. We demonstrated at Winterfest on November 29, 2015, helped organize a Ferguson to Cleveland event in December of 2014, and collaborated with others to organize two marches on Martin Luther King Day 2015.
3. On May 23, 2015, individuals affiliated with Organize CLE and other activists demonstrated in protest of the Brelo verdict that was announced that morning. We gathered downtown after the announcement and then marched and held rallies throughout Cleveland during the day. Later in the evening, most of the individuals affiliated with the Organize CLE group had left. However, many other protesters remained and were marching through downtown Cleveland. I fell back when the group of protesters began to march down Johnson Court, a one-block alley off of West 6<sup>th</sup> Street, because I was

familiar with the “kettle-ing” tactic of local police from previous protests. While they were entering into Johnson Court, I heard come across the radio of someone who looked like a police commander say, to the best of my recollection, “don’t let them out of the alley” and “just grab the closest one to you.” I hung back and did not enter Johnson Court myself, but I never lost sight of the group as it marched into Johnson Court. At that point, an entire formation of officers marched into Johnson Court in riot gear. A second formation of officers in riot gear, with face shields down, marched into Johnson Court, followed by a third formation with riot gear, face shields down, and body shields up. I believe there were three formations of officers that ran into Johnson Court.

4. Police blocked our access to Johnson Court from West 6<sup>th</sup> Street, so members of the media and I were unable to see what was happening in Johnson Court. Although I wanted to see what was happening, the police would not let me. Four people were brought out of Johnson Court by the police on the West 6<sup>th</sup> Street side of Johnson Court. They were taken in police cars. Everyone else was taken out the West 9<sup>th</sup> Street side of Johnson Court, and many were taken in buses. I waited for a while and watched the Sheriff’s bus filled with arrested protesters pull pass me.
5. The May 23, 2015 arrests have had a substantial impact on Organize CLE’s work and on activism in Cleveland as a whole. The immediate impact was to shut down the large rally scheduled for the very next day. Specifically, Organize CLE had organized a demonstration to take place outside of the Quicken Loans Arena where a Cleveland Cavaliers game was to be played Sunday evening, May 24, 2015. More than 100 people were anticipated to attend the event, and many people knew about it, including members of the press. I have no doubt that the police also knew in advance about the



demonstration because of their presence in very large numbers from its beginning.

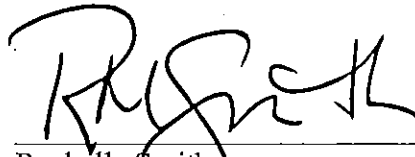
6. We were not able to hold the demonstration as we had organized to take place at the Quicken Loans Arena on Sunday, May 24, 2015 because, out of the 100 individuals that had committed to attend, only five people showed up. Many of the people that previously committed to attend the rally or who would have attended the rally, had been arrested the previous day during the Brelo verdict protests, and they were sitting in jail at the time that the May 24, 2015 demonstration was scheduled to occur. Many others who had committed to attend were spooked and afraid to demonstrate out of fear of being arrested like the protestors the night before.
7. Although there were only five of us at the demonstration at the Quicken Loans Arena in the evening on Sunday May 24, 2015, when we got there, there were about 60 to 90 police officers, standing in formation. They surrounded us the entire time, and when we were done with the demonstration about 10:15 pm or so, as the four other demonstrators and I walked back to our cars parked near the Justice Center, 50 to 60 officers marched right next to us. When we reached the Justice Center, about 30 officers remained in formation in the street monitoring us. We were not doing anything or planning to do anything. I did not feel it was safe for the group to break off into individuals or pairs, as required for us to leave, because of the intimidating police presence, so we sat in the grass and ate pizza until the officers left.
8. Organize CLE has not been able to rally the same level of community and activist support as we could before the arrest and detention of the Brelo verdict protestors. Organizers are not contributing new ideas as much anymore. People are hesitant to participate and organize. It is obvious to everyone involved in our network that this

hesitancy is due to the Cleveland Division of Police's treatment of protestors on May 23, 2015.

9. The few events that Organize CLE has been able to conduct since May 23, 2015 have been significantly smaller than our events prior to the arrests of that night. Our group has been fractured and stifled by the actions of the police. Attendance at our events has been lower because people fear arrest. We do not expect to have significant attendance at any events until the decisions of the Grand Jury in the deaths of Tamir Rice and Tanisha Anderson are announced. Even then, we are not sure if people will be willing to participate due to the fear of violence and arrest at the hands of the Cleveland Division of Police.

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

Executed on July 13, 2015.

  
\_\_\_\_\_  
Rachelle Smith