

AMERICAN CIVIL LIBERTIES UNION
OF HAWAII FOUNDATION

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SIUEA UTULOA LANGI, an individual,
and JULIA MATSUI ESTRELLA, an
individual,

Plaintiffs,

v.

CITY AND COUNTY OF HONOLULU,
a municipal corporation; GEORGE
KEOKI MIYAMOTO, Deputy Director of
the Facility Maintenance Department, in
his individual capacity; DANA LYNNE
TAKAHARA-DIAS, Deputy Director of
the Parks and Recreation Department, in
her individual capacity; DOE B.
TANIGUICHI, Honolulu Police
Department ("HPD") Sergeant, in his
individual capacity; DOE E. PERKINS,
HPD Officer, in his individual capacity;
JON YOSHIOKA, HPD Officer, in his
individual capacity; DOE M. KAJIWARA,
HPD Lieutenant, in his individual
capacity; DOE G. NAKAMA, HPD
Sergeant, in his individual capacity; DOE

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 08 2006

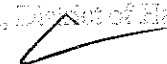
at 11 o'clock and 20 min. 4
SUE BEITIA, CLERK

CIVIL NO. CV 06 00428

DAE
LEK

**COMPLAINT FOR MONETARY
DAMAGES; EXHIBITS 1-4;
SUMMONS IN A CIVIL CASE**

JURY TRIAL DEMANDED

ATTENTION: A True Copy
SUE BEITIA
Clerk, United States District
Court, District of Hawaii
By:  Deputy

A. LEE, HPD Sergeant, in his individual capacity; and DOES 1 through 20, in their individual capacities,

Defendants.

COMPLAINT FOR MONETARY DAMAGES

I. INTRODUCTION

1. The freedom to peacefully assemble and to protest the government is a central democratic ideal upon which this country was founded. It is beyond dispute that the founders intended for this freedom to apply equally to all, regardless of content, viewpoint or socioeconomic or other status. It is this freedom that allows for a robust public debate of social and political issues.

2. The core ideals of freedom and democracy are reflected in the renowned inscription on the base of the Statue of Liberty, which provides:

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tossed to me.
I lift my lamp beside the golden door.

The New Colossus, by Emma Lazarus

3. Unfortunately, these words and their underlying ideals now ring hollow for Plaintiffs Langi and Matsui Estrella and the homeless population for whom they advocate.

4. This civil damages action stems from Plaintiffs' lawful conduct in protesting the City and County of Honolulu's ("CCH") decision to begin nightly closure of Ala Moana Beach Park. The CCH's decision resulted in the callous eviction of over 200 homeless individuals from the Park and was made without providing for adequate living alternatives.

5. The homeless population has reached crisis proportions in Hawaii. On any given night there are an estimated 6000 homeless people on Oahu alone, including employed individuals, families, children, elderly, veterans and people with physical and/or mental disabilities.

6. Recent policy and legislative decisions, combined with or exacerbated by the increased rousting of the homeless from public spaces, has cooked the issues surrounding Oahu's homeless to a near-boiling point.

7. On March 27, 2006, the CCH began enforcing the 10:00 p.m. nightly closure of Ala Moana Beach Park. In response, Plaintiffs Siuea Utulua Langi and Julia Matsui Estrella, supporters of the homeless, alongside at least 50-60 others (including other supporters and advocates for the homeless, church leaders and homeless persons) marched to the grounds of Honolulu Hale ("City Hall") to protest the closure and express their discontent over the CCH's repeated failure to address the homeless crisis on Oahu.

8. As more fully set forth below, Defendants, including the CCH, responded to the protesters' lawful exercise of their constitutional rights *not* by engaging in a meaningful dialogue or by allowing them to peacefully air their grievances, but rather by taking affirmative steps to silence their dissent.

9. CCH representatives were already on the grounds when the protesters arrived at City Hall in the late hours of the night. Only minutes later, the CCH deployed at least a dozen officers from the Honolulu Police Department ("HPD"), including officers in full gear from the Specialized Weapons and Tactics Division ("SWAT") unit, to the site of the protest for the purpose of intimidating and harassing the protesters and interfering with the delivery of their message.

10. Thereafter, Defendants George Miyamoto and Dana Lynne Takahara-Dias unlawfully directed the HPD officers on the scene to remove all of the protesters from the grounds of City Hall, including the public walkways.

11. In an attempt to disperse the crowd and to dilute their message, Defendant Miyamoto, the individual HPD officer Defendants and other Doe Defendants made their way through the crowd and demanded that the protesters leave the grounds of City Hall.

12. Although all of the protesters initially complied with this unlawful request — four protesters, including the Plaintiffs, were brave enough to return

to the grounds. For their courage, Defendants responded by issuing them citations for Simple Trespass, H.R.S. §708-815, and ultimately arresting them for Criminal Trespass in the Second Degree, H.R.S. §708-814 (“Trespass II”).

13. Despite the inapplicability of either statute to Plaintiffs’ lawful conduct, each of the supervisory HPD officer Defendants merely rubber-stamped the citations and arrests and allowed for the Plaintiffs to be booked and ultimately charged.

14. Defendants’ acts, which were pursuant to a policy and custom of the CCH, unlawfully interfered with Plaintiffs’ First Amendment right to free expression and assembly and subjected them to, *inter alia*, unlawful arrest.

15. In sum, Defendants’ blatant disregard of the federal and state constitutions, as well as other governing laws resulted in a host of constitutional and tortious violations to Plaintiffs (and others) and caused damages to the Plaintiffs in an amount to be proven at trial.

II. JURISDICTION AND VENUE

16. This Court has jurisdiction over the federal constitutional and statutory claims pursuant to 28 U.S.C. §1331 and §1343.

17. Certain causes of action herein are brought pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of law, of rights secured by the United States Constitution.

18. This Court may exercise supplemental jurisdiction over the state constitutional and state law claims pursuant to 28 U.S.C. §1367(a).

19. Venue is proper before this Court under 28 U.S.C. §1391(b). Defendants all reside in this district and the act or omissions giving rise to Plaintiffs' claims have occurred in this district.

III. PARTIES

20. Plaintiff Siuea Utuloa Langi is a lawful permanent resident of the United States and a resident of the State of Hawaii. Mr. Langi regularly participates in political protests related to poverty, homelessness and other social issues. Mr. Langi is the manager of the Next Step Shelter, a temporary emergency shelter, and the founder and director of the H-5 Project (Hawaii Helping the Hungry Have Hope), a faith-based charity group that provides services and delivers hot meals to homeless individuals on Oahu daily. In 2005, the American Red Cross awarded Mr. Langi the "True Blue Hero" Award for founding the H-5 meals on wheels program. In addition to providing over 3000 meals to the homeless each month, Mr. Langi also delivers donated blankets and clothing to homeless individuals. He is currently a student at Hawaii Pacific University and will be attending seminary school to become an ordained minister.

21. Plaintiff Julia Matsui Estrella is a citizen of the United States and a resident of the State of Hawaii. She is a dedicated social activist and spends a substantial amount of time supporting and assisting homeless individuals on Oahu. Ms. Matsui Estrella is a 1964 graduate of the Claremont School of Theology and was Director of the Pacific and Asian American Center for Theology and Strategies (PACTS) at the Graduate Theological Union in Berkeley from 1987-1995. She is currently an active member in the United Church of Christ, Pacific Islander and Asian American Ministries and the Hawaii People's Fund. Ms. Matsui Estrella is also a supporter of Island Tenants on the Rise, a statewide coalition of residents seeking equal treatment in public housing projects. In addition, Ms. Matsui Estrella volunteers for Micronesians United and attends Kawaiaha'o Church.

22. Defendant CCH is a municipal corporation in Hawaii and the local governing body for the City and County of Honolulu, Hawaii.

23. On information and belief, Defendant George Keoki Miyamoto is a citizen of the United States and a resident of the State of Hawaii. Defendant Miyamoto is the Deputy Director for Facilities Maintenance Department ("FMD") of the CCH. Pursuant to article VI, chapters 1 and 9, of the Revised Charter of the CCH, the FMD is under the supervision of the managing director of the CCH. Furthermore, on information and belief, Defendant Miyamoto has

or has been delegated final decision-making authority over the maintenance of public buildings and their adjoining parking facilities, as well as the maintenance of public streets, roads, bridges and walkways. He is sued in his individual capacity only. At all times relevant herein, Defendant Miyamoto was acting under color of state law.

24. On information and belief, Defendant Dana Lynne Takahara-Dias is a citizen of the United States and a resident of the State of Hawaii. Defendant Takahara-Dias is the Deputy Director of the Parks and Recreation Department (“DPR”) for the CCH. Pursuant to article VI, chapters 1 and 14, of the Revised Charter of the CCH, the DPR is under the supervision of the managing director of the CCH. Furthermore, on information and belief, Defendant Takahara-Dias has or has been delegated final decision-making authority over some aspects of the CCH parks, streets and recreational facilities. She is sued in her individual capacity only. At all times relevant herein, Defendant Takahara-Dias was acting under color of state law.

25. On information and belief, Doe Defendant Sergeant B. Taniguichi is a citizen of the United States and a resident of the State of Hawaii. Doe Defendant Sgt. B. Taniguichi is employed as a sergeant with the HPD. Doe Defendant Sgt. B. Taniguichi directed at least some HPD officers responding to the City Hall protest to clear the premises, cite the protesters and to arrest those

protesters who refused to leave. He is sued in his individual capacity only. At all times relevant herein, Doe Defendant Sgt. B. Taniguichi was acting under color of state law. Plaintiffs will seek leave of Court to amend this Complaint to add the full name of Doe Defendant Sgt. B. Taniguichi once it becomes known.

26. On information and belief, Doe Defendant Officer E. Perkins is a citizen of the United States and a resident of the State of Hawaii. Doe Defendant Officer E. Perkins is employed as an officer with the HPD, ID Number 101990. Doe Defendant Officer E. Perkins cited and effectuated the arrest of Plaintiff Langi. He is sued in his individual capacity only. At all times relevant herein, Doe Defendant Officer E. Perkins was acting under color of state law. Plaintiffs will seek leave of Court to amend this Complaint to add the full name of Doe Defendant Officer E. Perkins once it becomes known.

27. On information and belief, Defendant Officer Jon Yoshioka is a citizen of the United States and a resident of the State of Hawaii. Defendant Officer Yoshioka is employed as an officer with the HPD, ID Number 102001. Defendant Officer Yoshioka cited and effectuated the arrest of Plaintiff Matsui Estrella. He is sued in his individual capacity only. At all times relevant herein, Defendant Officer Yoshioka was acting under color of state law.

28. On information and belief, Doe Defendant Lieutenant (“Lt.”) M. Kajiwara is a citizen of the United States and a resident of the State of Hawaii.

Doe Defendant Lt. M. Kajiwara is employed as a lieutenant with the HPD. In his capacity as desk commander, Defendant Lt. M. Kajiwara was apprised of the facts and circumstances surrounding Plaintiffs' citations and arrests and approved of them. He is sued in his individual capacity only. At all times relevant herein, Doe Defendant Lt. M. Kajiwara was acting under color of state law. Plaintiffs will seek leave of Court to amend this Complaint to add the full name of Doe Defendant Lt. M. Kajiwara once it becomes known.

29. On information and belief, Doe Defendant Sergeant G. Nakama is a citizen of the United States and a resident of the State of Hawaii. Doe Sgt. G. Nakama is employed as a sergeant with the HPD, ID Number 615770. Doe Defendant Sgt. G. Nakama reviewed and approved Doe Defendant Officer E. Perkins' incident report detailing Plaintiff Langi's citation and arrest. He is sued in his individual capacity only. At all times relevant herein, Doe Defendant Sgt. G. Nakama was acting under color of state law. Plaintiffs will seek leave of Court to amend this Complaint to add the full name of Doe Defendant Sgt. G. Nakama once it becomes known.

30. On information and belief, Doe Defendant Sergeant A. Lee is a citizen of the United States and a resident of the State of Hawaii. Doe Defendant Sgt. A. Lee is employed as a sergeant with the HPD, ID Number 100366. Doe Defendant Sgt. A. Lee reviewed and approved Defendant Officer

Yoshioka's incident report detailing Plaintiff Matsui Estrella's citation and arrest. He is sued in his individual capacity only. At all times relevant herein, Doe Defendant Sgt. A. Lee was acting under color of state law. Plaintiffs will seek leave of Court to amend this Complaint to add the full name of Doe Defendant Sgt. A. Lee once it becomes known.

31. On information and belief, each of the Defendants, including DOES 1 through 20, performed, participated in, aided and/or abetted or was deliberately indifferent to the acts averred herein and thereby proximately caused the injuries averred below. The true names and capacities of Defendants designated as DOES 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs will seek leave of Court to amend this Complaint to show the true names and capacities of these Defendants once they become known.

32. At all times relevant herein, all CCH officials, employees and agents were acting pursuant to authority delegated or conferred by Defendant CCH and, in doing or failing to do the things complained of herein, were acting within the scope of that authority.

33. At all times relevant herein, Defendants and other HPD officers, employees, and agents were acting pursuant to the official policies and customs

of the CCH, which have been approved of, ratified, and/or enforced by the persons and/or entities with final decision-making authority.

34. At all times relevant herein, the officials, employees and agents of the CCH were acting under color of state law.

IV. RELEVANT FACTUAL BACKGROUND

A. The Statutes at Issue

1. Trespass II, H.R.S. §708-814

35. H.R.S. §708-814 codifies the offense of criminal trespass in the second degree, a petty misdemeanor.

36. H.R.S. §708-814(1)(a) applies to a person who “knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced.”

37. The grounds of City Hall are neither fenced nor enclosed in any manner. Therefore, H.R.S. §708-814(1)(a) does not apply to the grounds of City Hall.

38. H.R.S. §708-814(1)(b) currently provides:

A person commits the offense of criminal trespass in the second degree if: The person enters or remains unlawfully in or upon *commercial premises* after a reasonable warning or request to leave by the owner or lessee of the *commercial premises*, the owner’s or lessee’s authorized agent, or a police officer ... For the purposes of this paragraph, ‘reasonable warning or request’ means a *warning or request communicated in*

writing at any time within a one-year period inclusive of the date the incident occurred...

(emphasis added).

39. By its plain and unambiguous terms, H.R.S. §708-814(1)(b) applies to private commercial property only — *not* public property such as the grounds of City Hall.

2. Simple Trespass, H.R.S. §708-815

40. Pursuant to H.R.S. §708-815, “[a] person commits the offense of simple trespass if the person knowingly enters or remains unlawfully in or upon premises.”

41. The essence of a Simple Trespass violation is “enter[ing] or remain[ing] unlawfully,” defined as:

A person ‘enters or remains unlawfully’ in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person’s intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain . . .

H.R.S. §708-800 (emphasis added).

42. The requirement of a “lawful order” to depart is an element of the offense that is subsumed within the “enters or remains unlawfully” element. *Id.*

B. The Grounds of City Hall Are Public Property and a Traditional Public Forum

43. The grounds of City Hall, which encompass, *inter alia*, public walkways and thoroughfares, are public property and a traditional public forum.

44. As the symbol of the seat of City government, the grounds of City Hall historically have been used as the site of numerous activities and events, including protests, demonstrations, marches, and rallies. Organizers of First Amendment events do not need a permit or lease to demonstrate on the grounds of City Hall.

45. By way of example, in the last month alone, two different groups have held late-afternoon or evening demonstrations on the grounds of City Hall. On July 11, 2006, the Hawaii State Coalition Against Domestic Violence organized a march and vigil on the grounds of City Hall in memory of a Hawaii murder victim. In order to symbolize the frequency of domestic violence abuse, the group rang the Honolulu Hale bell every 7.5 seconds. Additionally, on July 25, 2006, the Domestic Violence Clearing House marched to the grounds of City Hall and gathered on the steps to raise awareness about domestic violence. These groups and scores of others in the past have engaged in speech and/or conduct protected by the First Amendment on City Hall grounds without interference or intimidation by the CCH or HPD.

46. On information and belief, there are no valid and/or enforceable time, place or manner restrictions governing the use of City Hall grounds for

First Amendment purposes. In the alternative, Defendants, without any legitimate basis, selectively enforce any such restrictions against people and/or groups based on the content or viewpoint of their message or their status, thus intentionally treating them differently from others similarly situated.

47. The public forum nature of the grounds of City Hall subjects the property to the highest degree of protection that our federal and state constitutions bestow on any physical place.

C. Defendants' Unlawful Application of the Statutes to Plaintiffs and Plaintiffs' Subsequent Arrest

48. On March 27, 2006, the CCH began enforcing its 10:00 p.m. nightly closure of Ala Moana Beach Park and asked that all homeless individuals leave the Park. (HPD Incident Report 06-124237, Narrative of Officer Kelikipi ("Kelikipi Narrative"), a true and correct copy of which is attached as Ex. 1 to this Complaint, at 1.)

49. In response, Plaintiffs, alongside at least 50-60 others marched to City Hall to protest the closure and their outrage over the CCH's repeated failure to address the homelessness crisis in Oahu.

50. On information and belief, William Brennan, the press secretary for Mayor Hannemann's office, and Jeff Coelho, Executive Advisor to the Mayor and Director of the CCH Customer Services Department, were already on City Hall grounds when the protesters arrived.

51. As Defendant Yoshioka recognized, the protesters were peaceful. (HPD Incident Report 06-124237, Narrative of Defendant Jon Yoshioka (“Yoshioka Narrative”), a true and correct copy of which is attached as Ex. 2 to this Complaint, at 2.)

52. Shortly after the protesters arrived, HPD assigned officers to “assist with a possible protest at Honolulu Hale, 530 S. King Street.” (*Id.*) In fact, more than 12 uniformed HPD officers, including officers from the SWAT unit in full gear, organized in a staging area in a parking lot diagonally across from City Hall, on King Street near the Kamehameha statue. At least three HPD cars and a paddy wagon were parked nearby with their lights flashing.

53. When the protesters at City Hall saw the officers assembling, many were afraid. Approximately half of the people gathered dispersed immediately because they feared harassment or arrest.

54. On information and belief, CCH Representatives Defendant Miyamoto, Defendant Takahara-Dias, Doe Defendant Sgt. Taniguichi and one or more of the Doe Defendants directed the on-site HPD officers to cite and/or arrest all protesters refusing to leave the grounds of City Hall. (*Id.*; *see also* Kelikipi Narrative, Ex. 1, at 1; HPD Incident Report 06-124237, Narrative of Doe Defendant E. Perkins (“Perkins Narrative”), a true and correct copy of which is attached as Ex. 3 to this Complaint, at 2.)

55. On information and belief, Defendants' directives were for the purpose of intimidating and harassing the Plaintiffs and silencing their message.

56. Shortly after midnight, at the direction of CCH Representatives, the on-site HPD officers instructed all of the protesters to leave the public walkways near the fountain on the grounds of City Hall and move to the sidewalk.

(Kelikipi Narrative, Ex. 1, at 1; Perkins Narrative, Ex. 3, at 1.) All of the protestors initially complied with the orders. (Yoshioka Narrative, Ex. 2, at 2.)

57. A few minutes later, Plaintiffs Langi and Matsui Estrella, along with two other individuals, returned to the grounds of City Hall to continue their lawful protest on the public walkways near the City Hall fountain.

58. Plaintiff Langi sat down next to the fountain on the public walkway and Plaintiff Matsui Estrella sat next to him. Neither Plaintiff was speaking loudly or engaging in disruptive behavior. Nevertheless, at least four HPD officers surrounded Plaintiffs.

59. Doe Defendant Officer E. Perkins requested that Plaintiff Langi leave the grounds of City Hall and told him that he would be cited for trespassing if he refused. (Perkins Narrative, Ex. 3, at 2.) Langi refused to leave the grounds. (*Id.*) Doe Defendant Officer E. Perkins cited Langi for Simple Trespass. (*Id.*; *see also* Citation #6075684MO, a true and correct copy of which is attached as Ex. 4 to this Complaint.)

60. Doe Defendant Officer E. Perkins knew or should have known that Plaintiff Langi was engaged in constitutionally protected speech and/or conduct and that the order to depart and subsequent citation were thus unlawful.

61. Doe Defendant Officer E. Perkins then told Plaintiff Langi that if he refused to leave then he would be arrested for Trespass II. (Perkins Narrative, Ex. 3, at 2.) Plaintiff Langi responded, "I'm gonna stay here. No one is fighting for these people." (*Id.*) Shortly after, without a written warning or request to leave, Doe Defendant Officer E. Perkins arrested Plaintiff Langi for Trespass II without a warrant. (*Id.* at 1-2.)

62. Doe Defendant Officer E. Perkins knew or should have known that the search, seizure and arrest were without probable cause or reasonable suspicion, were not in compliance with statutory requirements and interfered with Plaintiff Langi's constitutionally protected speech and/or conduct.

63. Defendant Officer Yoshioka verbally requested that Plaintiff Matsui Estrella leave the grounds of City Hall and she refused. (Perkins Narrative, Ex. 3, at 2) Defendant Officer Yoshioka informed Plaintiff Matsui Estrella that if she did not depart, then he would issue her a citation. (*Id.*) Plaintiff Matsui Estrella refused to leave and was issued a citation for Simple Trespass, H.R.S. §708-815. (*Id.*)

64. Defendant Officer Yoshioka knew or should have known that Plaintiff Matsui Estrella was engaged in constitutionally protected speech and/or conduct and that the order to depart and subsequent citation were thus unlawful.

65. One minute later and without a written warning or request to leave, Defendant Officer Yoshioka arrested Plaintiff Matsui Estrella for Trespass II.

(Id. at 1, 3.)

66. Doe Defendant Officer Yoshioka knew or should have known that the search, seizure and arrest were without probable cause or reasonable suspicion, were not in compliance with statutory requirements and interfered with Plaintiff Matsui Estrella's constitutionally protected speech and/or conduct.

67. Both Plaintiffs Langi and Matsui Estrella were handcuffed, with their arms behind their back and were thus unlawfully restrained.

68. Doe Defendant Officer E. Perkins transported Plaintiff Langi to the HPD station on Beretania Street. Upon arrival at the station, Doe Defendant Lt. M. Kajiwara was apprised of the facts and circumstances surrounding Plaintiff Langi's citation and arrest and, in his capacity as desk commander, erroneously accepted them as lawful. (Perkins Narrative, Ex. 3, at 3.)

69. Thereafter, Doe Defendant Sgt. G. Nakama reviewed and erroneously approved of Doe Defendant Officer E. Perkins' incident report detailing Plaintiff Langi's citation and arrest. *(Id. at 1-3).*

70. On information and belief, Doe Defendant Officer E. Perkins' superiors, including at least Doe Defendant Lt. M. Kajiwara and Doe Defendant Sgt. G. Nakama, had the authority to request that the citation be expunged and further had the discretionary authority to decline to formally book Plaintiff Langi pursuant to an unlawful arrest.

71. Plaintiff Langi was then processed at the station, which entailed a pat down search of his person, as well as the taking of his mug shot and fingerprints.

72. Plaintiff Langi was placed into a jail cell and detained there for approximately two hours until a pastor from his church arrived and posted his \$100 bail.

73. Defendant Yoshioka transported Plaintiff Matsui Estrella and another arrested protester to the HPD station on Beretania Street.

74. Upon arrival at the station, Doe Defendant Lt. M. Kajiwara was apprised of the facts and circumstances surrounding Plaintiff Matsui Estrella's citation and arrest and, in his capacity as desk commander, erroneously accepted them as lawful. (Yoshioka Narrative, Ex. 2, at 3.)

75. Thereafter, Doe Defendant Sgt. A. Lee reviewed and erroneously approved of Defendant Officer Yoshioka's incident report detailing Plaintiff Matsui Estrella's citation and arrest. (*Id.* at 1-3).

76. On information and belief, Defendant Officer Yoshioka's superiors, including at least Doe Defendant Lt. M. Kajiwara and Doe Defendant Sgt. A. Lee, had the authority to request that the citation be expunged and further had the discretionary authority to decline to formally book Plaintiff Matsui Estrella pursuant to an unlawful arrest.

77. Plaintiff Matsui Estrella was then processed at the station, which entailed a pat down search of her person, as well as the taking of her mug shot and fingerprints.

78. Plaintiff Matsui Estrella, who suffers from claustrophobia, was placed into a jail cell and detained for approximately two hours until her son posted her \$100 bail.

79. Since the time that Plaintiffs Langi and Matsui Estrella posted bail on March 28, 2006, each has been subject to bailment conditions, which include, *inter alia*, a prohibition against leaving the State without prior approval of the court. These conditions have posed additional burdens of the Plaintiffs. For example, in planning a vacation to Northern California, Plaintiff Matsui Estrella was required to request and obtain permission of the court.

80. The arrest and continued prosecution of Plaintiffs has burdened them and has caused them to suffer damages including but not limited to emotional distress.

81. On July 5, 10 and 27, 2006, the ACLU of Hawaii Foundation wrote to the Department of the Prosecuting Attorney (“DPA”) requesting dismissal with prejudice of all charges against Plaintiffs. As of the date of filing, the DPA failed to respond in writing or to initiate the requested dismissals.

82. Accordingly, pre-trial motions to dismiss were filed in the State of Hawaii District Court for the First Circuit. A hearing on pre-trial motions to dismiss the charges is currently scheduled for August 22, 2006.

83. The DPA, including but not limited to Deputy Prosecuting Attorneys Abigail Mayers and Renee Sonobe Hong and the CCH Prosecuting Attorney Peter Carlisle, are proceeding with the charges of Trespass II against Plaintiffs without any reasonable expectation of a valid conviction given that the Trespass II statute applies only to private commercial premises and not public property such as the grounds of City Hall.

84. The DPA, including but not limited to Deputy Prosecuting Attorneys Abigail Mayers and Renee Sonobe Hong and the CCH Prosecuting Attorney Peter Carlisle, are proceeding with the charges of Simple Trespass against Plaintiffs without any reasonable expectation of a valid conviction given that Plaintiffs were lawfully exercising their First Amendment rights when they were cited.

85. The criminal trial for both Plaintiffs is scheduled for August 29, 2006, in the District Court for the State of Hawaii.

FIRST CAUSE OF ACTION

Violation of the First Amendment of the U.S. Constitution (As Incorporated by the Fourteenth Amendment), Actionable Pursuant to 42 U.S.C. §1983 (Freedom of Speech and Assembly)

***(Plaintiff Langi against all Defendants excepting Yoshioka and A. Lee)
(Plaintiff Matsui Estrella against all Defendants excepting E. Perkins and G. Nakama)***

86. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 85 above.

87. Defendants have and enforce a policy and custom of interfering with speech and/or conduct that are protected by the First Amendment to the United States Constitution. This policy and custom includes, but is not limited to, the unlawful intimidation, harassment, citation, arrest and/or dispersal of those engaged in First Amendment activities.

88. By not allowing Plaintiffs to engage in a peaceful protest in a traditional public forum, in this case the grounds of City Hall, Defendants have deprived Plaintiffs of rights secured by the speech and assembly clauses of the First Amendment (as incorporated by the Fourteenth Amendment).

89. In taking the actions set forth herein, Defendants have engaged in content-discrimination and viewpoint-discrimination. Defendants' actions have

been motivated and influenced by the political content, message and viewpoint of Plaintiffs. Defendants have treated Plaintiffs less favorably than other speakers whose speech has a different content, message and viewpoint.

90. Defendants' acts complained of herein were directed toward intimidating Plaintiffs and chilling the exercise of their protected expressive rights by, among other means, silencing or diluting their message and by deterring persons from joining with Plaintiffs in the lawful exercise of their constitutional rights.

91. As a result of Defendants' acts, Plaintiffs have suffered damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION

***Violation of the Fourth Amendment of the U.S. Constitution (As Incorporated by the Fourteenth Amendment), Actionable Pursuant to 42 U.S.C. §1983, and of Article I, §7 of the Hawaii Constitution
(Unlawful Seizure and Arrest)***

***(Plaintiff Langi against all Defendants excepting Yoshioka and A. Lee)
(Plaintiff Matsui Estrella against all Defendants excepting
E. Perkins and G. Nakama)***

92. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 91, above.

93. Defendants have and enforce a policy and custom of unlawfully arresting individuals without probable cause or reasonable suspicion that a criminal offense has been or will be imminently committed.

94. By searching, seizing, arresting and detaining Plaintiffs without probable cause or reasonable suspicion Defendants have deprived Plaintiffs of rights secured by Fourth Amendment (as incorporated by the Fourteenth Amendment) and by Article I, §7 of the Hawaii Constitution.

95. As a result of Defendants' acts, Plaintiffs have suffered damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

***Violation of the Fourteenth Amendment of the U.S. Constitution,
Actionable Pursuant to 42 U.S.C. §1983
(Equal Protection)***

***(Plaintiff Langi against all Defendants excepting Yoshioka and A. Lee)
(Plaintiff Matsui Estrella against all Defendants excepting
E. Perkins and G. Nakama)***

96. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 95, above.

97. Defendants have and enforce a policy and custom of intentionally and selectively applying restrictions (whether valid or not) only to certain individuals or groups thus treating them differently than those similarly situated.

98. Defendants' intentional and selective enforcement against Plaintiffs based on their status as supporters of the homeless deprived Plaintiffs of rights secured by Fourteenth Amendment.

99. As a result of Defendants' acts, Plaintiffs have suffered damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
False Arrest/False Imprisonment

(Plaintiff Langi against all Defendants excepting Yoshioka and A. Lee)
(Plaintiff Matsui Estrella against all Defendants excepting
E. Perkins and G. Nakama)

100. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 99, above.

101. By searching, seizing, arresting and detaining Plaintiffs without probable cause or reasonable suspicion that they had committed a crime, Defendants unlawfully restrained Plaintiffs against their will.

102. As a result of Defendants' acts, Plaintiffs have suffered damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
Battery

(Plaintiff Langi against all Defendants excepting Yoshioka and A. Lee)
(Plaintiff Matsui Estrella against all Defendants excepting
E. Perkins and G. Nakama)

103. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 102, above.

104. By searching, seizing, arresting and processing Plaintiffs without probable cause or reasonable suspicion, Defendants unlawfully touched Plaintiffs against their will.

105. As a result of Defendants' acts, Plaintiffs have suffered damages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

(Plaintiff Langi against all Defendants excepting Yoshioka and A. Lee)
(Plaintiff Matsui Estrella against all Defendants excepting
E. Perkins and G. Nakama)

106. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 105, above.

107. Defendants' acts as described herein constituted a breach of Defendants' duty of care to Plaintiffs to ensure that Defendants did not cause unnecessary or unjustified emotional distress to Plaintiffs.

108. It was reasonably foreseeable that a breach of that duty would cause Plaintiffs emotional distress.

109. As a result of Defendants' acts, Plaintiffs have suffered damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs pray that this Court:

- a) Assume jurisdiction over the action;
- b) Exercise supplemental jurisdiction over the state constitutional and state law claims pursuant to 28 U.S.C. §1367(a);
- c) Award compensatory and nominal damages to compensate Plaintiffs for the damage done to them according to proof;

d) Award reasonable attorneys' fees, costs, and other expenditures incurred as a result of bringing this action, pursuant to 42 U.S.C. §1988, 28 U.S.C. §1920, and other applicable laws; and

e) Order such other relief as this Court deems just and proper.

V. JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable herein.

Dated: Honolulu, Hawaii, August 8, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LOIS K. PERRIN", written over a horizontal line.

LOIS K. PERRIN
ACLU of Hawaii Foundation
Counsel for Plaintiffs