

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF ARIZONA**

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Fund for Empowerment, a nonprofit
corporation, in its individual capacity;
Faith Kearns, individually; and,
Frank Urban, individually,

Plaintiffs,

vs.

City of Phoenix, a political subdivision of
the state of Arizona; Chief Jeri Williams, in
her official capacity; Interim Chief Michael
Sullivan, in his official capacity; Entities I-
X, political subdivisions of the state of
Arizona; and, Officers John and Jane Does
1-75, in their individual capacities,

Defendants.

Case No. _____

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION,
REQUEST FOR EXPEDITED
HEARING, AND MEMORANDUM
OF POINTS AND AUTHORITIES**

(Expedited Oral Argument Requested)

1 Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs move for a preliminary
2 injunction restraining Defendants from enforcing Phoenix City Code Section 23-30 (A),
3 Phoenix City Code Section 23-48.01 and conducting any raids or sweeps of the
4 unsheltered community (which commonly result in the destruction of personal property).
5 This Motion is supported by the Complaint, the following Memorandum of Points and
6 Authorities, and the accompanying exhibits. Given that Defendants intend to conduct
7 sweeps in December 2022, Plaintiffs respectfully request that this Court schedule an
8 expedited hearing on this Motion as soon as possible.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **Preliminary Statement**

11 For at least the past two years, Defendants have destroyed the personal property of
12 unsheltered Phoenix residents under the guise of “clean sweeps.” During these sweeps,
13 Defendants also use two city ordinances to criminally cite unsheltered residents simply
14 because they are sleeping in public spaces. Both the sweeps and criminal citations run
15 afoul of the constitutional safeguards afforded to Plaintiffs by the Fourth, Eighth, and
16 Fourteenth Amendments to the United States Constitution. Because these violations are
17 ongoing, Plaintiffs respectfully request that this Court provide immediate injunctive relief.

18 **Statement of Facts**

19 In the pre-dawn hours around Thanksgiving Day 2020, Plaintiffs Faith Kearns and
20 Frank Urban are abruptly awakened by loud voices demanding they get up and form a
21 line. *See Ex. 1 – Kearns Decl.; Ex. 2 – Urban Decl.* As unsheltered residents living in
22 the City of Phoenix, this is a scene they were accustomed to as it has unfolded so many
23 times since 2018 that they have lost count. *Id.* By now, they know what will happen next.
24 As police perform warrant checks on unsheltered individuals that have been roused from
25 slumber, city employees will begin to prepare a “sweep” of the encampment where they
26 are staying (located on or within public spaces). *Id.*; *see also Ex. 3 – Venable Decl.; Ex.*
27 **4 – Brickley Decl.** Ms. Kearns and Mr. Urban will have just minutes to collect their
28 belongings. *Id.* Any belongings they are unable to collect in time will be destroyed. *Id.* As

1 a result of this process, which they experienced directly on numerous occasions, Ms.
2 Kearns and Mr. Urban saw Defendants inexplicably confiscate and destroy the following
3 items of theirs: Arizona IDs, bank cards, tents, blankets and bedding, medications,
4 clothing, and even a birth certificate. *See Ex. 1; Ex. 2.*

5 For at least the past two years, Defendants have engaged in “sweeps”¹ like those
6 experienced by Plaintiffs which target the unsheltered community and result in the
7 indiscriminate destruction of their property. *See Ex. 3; Ex. 4.* In conjunction with these
8 sweeps, Defendants actively criminalize homelessness using two ordinances which
9 prohibit camping and sleeping outside.

10 **A. The Unsheltered Community in Phoenix, Arizona.**

11 Since 2010, the number of residents experiencing homelessness in Phoenix has
12 nearly doubled from about 1,750 unsheltered individuals to around 3,096 today. *See Ex.*
13 **5 – Maricopa Ass’n of Gov’ts Point-in-Time Comm’n.**² The increase in the number of
14 residents who find themselves unsheltered can be linked to a lack of affordable housing
15 within the city which has been exacerbated by the COVID-19 pandemic. Individuals often
16 become unsheltered through job loss, medical bankruptcy, mental illness, or domestic
17 violence. *See Ex. 1; Ex. 2; Ex. 3.*

18 Despite an unsheltered population exceeding 3,000 residents, Phoenix only has
19 approximately 1,788 shelter beds available for those experiencing homelessness. *See Ex.*
20 **6 – News Update from City re Shelter Beds.**

21 And problematically, obtaining one of these beds can be extremely difficult. For
22 example, Central Arizona Shelter Services commonly has so many people waiting in line
23 for beds that they cutoff admission by 2:30 PM. *See Ex. 4.* Many shelters are also selective
24

25 ¹ Plaintiffs refer to these sweeps as “raids” in the Complaint because a sweep refers to
26 cleaning whereas a raid is “a surprise visit by police” commonly to arrest suspects or seize
goods (which is what happens here).

27 ² Plaintiffs believe this Point-in-Time Commission woefully undercounts the true number
28 of residents experiencing homelessness. Plaintiffs intend to commission their own Point-
in-Time study for comparison.

1 in who they admit. *Id.* Shelter spaces are determined using a sliding scale which turns on
2 age, general housing insecurity, and medical disability. *Id.* This means that even if an
3 unsheltered individual able to reach a shelter, there is no guarantee they will end up with
4 a bed.

5 **B. Defendants Use Raids and Criminal Citations to Punish the Unsheltered**
6 **Community Based on their Unsheltered Status.**

7 Despite there being insufficient shelter spaces in Phoenix to accommodate the
8 city's unsheltered population, for at least the past two years the city has punished those
9 who find themselves unsheltered by destroying their property during sweeps and stacking
10 criminal charges against them via city ordinances and Arizona trespass law. Defendants
11 refer to these raids as "clean sweeps" but use them as a pretense to arrest those who are
12 unsheltered, move them to an area of the city known as the Zone, and destroy their
13 property.

14 As Plaintiffs have pled in their Complaint, these raids typically occur under the
15 cover of darkness before dawn and without notice. *See Exs. 1–4.* During these raids, the
16 police and city employees will indiscriminately destroy unsheltered individuals' property.
17 *Id.* Additionally, Defendants commonly cite unsheltered individuals for violations of city
18 ordinances regarding camping and sleeping in public spaces. **Ex. 1–3.** Defendants also
19 use these sweeps as an opportunity to push people into an encampment in Phoenix known
20 as "the Zone"—an area which offers no protection from the blazing Arizona heat and sun.
21 *Id.*; *see also Ex. 4.* Defendants' actions raise serious concerns regarding their commitment
22 to the unsheltered community in Phoenix. By conducting these surprise raids, destroying
23 unsheltered individuals' personal property, pushing them into the "Zone", and increasing
24 the challenges faced by the unsheltered community via criminal citations, Defendants are
25 actively making the lives of Plaintiffs, and those similarly situated, worse.

26 **C. "The Zone."**

27 "The Zone" is an area in downtown Phoenix around 12th Avenue and Madison
28 Street. Since the Covid-19 pandemic, the Zone has become the largest homeless

1 encampment in Phoenix with perhaps over a thousand unsheltered residents. Both the
2 Human Services Campus and Central Arizona Shelter Services are located in this area and
3 provide direct services to the unsheltered community. The Zone itself is a couple blocks
4 (approximately 500 feet) of concrete, asphalt, and rocks and is entirely unprotected from
5 the sun. Because of this, it is believed hundreds of unsheltered individuals died from heat
6 related exposure this past summer alone.

7 Many unsheltered residents in Phoenix do not sleep or stay in the Zone because it
8 is unprotected from the sun and overcrowded. Nevertheless, when Defendants encounter
9 unsheltered residents in other parts of Phoenix during their raids, they routinely try to push
10 them into the Zone. *See Exs. 1–4*. One declarant has even seen police officers working for
11 Defendants drop people off in the Zone without any support or resources. *See Ex. 4*.³

12 **D. The City’s Planned Sweeps in December.**

13 Defendants have continued to engage in the raids described above throughout 2022
14 but ceased targeting the Zone for a brief period. *See Ex. 3-4*. Alarming, however, on
15 November 15, 2022, a local newspaper reported Defendants planned to restart their “clean
16 sweeps,” targeting the Zone. *See Compl. ¶ 107*. These sweeps have been labeled
17 “enhanced” sweeps. *See Id. ¶ 108; Ex. 7 – HSC Enhanced Cleanup Doc*. Given
18 Defendants’ prior treatment of the unsheltered community during such sweeps,
19 particularly during the holidays, Plaintiffs believe that time is of the essence to ensure the
20 constitutional rights of those who are unsheltered are protected.

21 **Legal Standard**

22 To obtain a preliminary injunction, the moving party must show: (1) that there is a
23 likelihood of success on the merits; (2) that irreparable harm will result if the preliminary
24 injunction is not issued; (3) that the balance of hardships favors the moving party; and (4)
25 that ordering a preliminary injunction would be in the public interest. *Winter v. Nat. Res.*

26
27 ³ Plaintiffs also know that CBI marked van sometimes shows up during raids. Defendants
28 offer unsheltered residents an opportunity to get in the van. It is unclear where those
unsheltered individuals who choose to get in the van end up (though it is suspected they
are offered services at Community Bridges). *See Ex. 4*.

1 *Def. Council Inc.*, 555 U.S. 7, 20 (2008); *Nationwide v. Biweekly Admin., Inc. v. Owen*,
2 873 F.3d 716, 730 (9th Cir. 2017). The Ninth Circuit employs a “sliding scale” approach
3 to analyze the *Winter* factors, where “the elements of the preliminary injunction test are
4 balanced, so that a stronger showing of one element may offset a weaker showing of
5 another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

6 **Legal Argument**

7 Plaintiffs satisfy all four *Winter* factors in both their request to prevent Defendants
8 from conducting raids/sweeps and to enjoin Defendants from enforcing ordinances that
9 criminalize basic the human right to sleep. Defendants’ ongoing conduct—destroying
10 Plaintiffs’ personal property and criminalizing the basic human need for sleep—is a direct
11 violation of Plaintiffs’ constitutional rights. Therefore, Plaintiffs have a high likelihood of
12 success on the merits of their constitutional claims pled in Counts One and Two of their
13 Complaint. Plaintiffs also have a high likelihood of success on the merits of Count Three
14 of their Complaint because Defendants’ ordinances unconstitutionally criminalize the basic,
15 unavoidable human activity of sleeping. At the very least, Plaintiffs show “that serious
16 questions going to the merits [are] raised” for both their destruction of property claim as
17 well as the criminalization of sleeping. *All. for the Wild Rockies*, 632 F.3d at 1134–35
18 (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (2008)). This violation of
19 Plaintiffs’ constitutional rights plainly constitutes irreparable injury. And it is beyond
20 question that Defendants would be unharmed by a preliminary injunction requiring
21 compliance with the U.S. Constitution. Such is unquestionably in the public interest.

22 **A. The Court Should Enjoin Defendants from Conducting Raids that Result** 23 **in the Destruction of Plaintiffs’ Personal Property Because Such Raids** 24 **Violate the Fourth and Fourteenth Amendments.**

25 By engaging in raids that culminate in the destruction of their personal property,
26 Defendants have violated the constitutional rights of Plaintiffs (and the unsheltered
27 community) protected by the Fourth and Fourteenth Amendments.

28 **1. Plaintiffs Fourth and Fourteenth Amendment Claims Have a High** **Likelihood of Success on the Merits.**

1 **a. Defendants’ Destruction of the Property Belonging to**
2 **Unsheltered Persons Is a Seizure that Violates the Fourth**
3 **Amendment.**

4 The Fourth Amendment to the United States Constitution provides that “[t]he right
5 of the people to be secure in their persons, houses, papers, and effects, against unreasonable
6 searches and seizures, shall not be violated.” U.S. Const. amend. IV. A seizure under the
7 Fourth Amendment occurs “where there is some meaningful interference with an
8 individual’s possessory interests in that property.” *Soldal v. Cook County III*, 506 U.S. 56,
9 62– 64 (1992) (quoting *Unites States v. Jacobsen*, 466 U.S. 109, 113 (1984)). A seizure is
10 unreasonable where the intrusion on the individuals’ Fourth Amendment rights is greater
11 than the government interest alleged to justify the intrusion. *See San Jose Charter of the*
12 *Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9th Cir. 2005).

13 The Fourth Amendment rights of unsheltered individuals are violated when state
14 actors destroy their personal property without any accompanying Fourth Amendment
15 justification for the seizure. *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1024 (9th Cir.
16 2012); *Kincaid v. City of Fresno*, No. 06-CV-1445, 2006 WL 3542732, at *37 (E.D. Cal.
17 Dec. 8, 2006); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1573 (S.D. Fla. 1992); *Garcia*
18 *v. City of Los Angeles*, 11 F.4th 1113, 1119 (9th Cir. 2021) (affirming preliminary injunction
19 on likelihood of success on Fourth Amendment claim); *Proctor v. District of Columbia*,
20 No. 18-CV-00701, 2018 WL 6181739, at *3 (D.D.C. Nov. 27, 2018) (finding homeless
21 residents adequately alleged “facts to show that the District has a custom of destroying
22 unattended—but not abandoned—property.”).

23 Seizures are more intrusive than necessary where an individual’s property is seized
24 *solely* because it is located in a public place. *Soldal*, 506 U.S. at 68 (“[A]n officer who
25 happens to come across an individual’s property in a public area could seize it only if Fourth
26 Amendment standards are satisfied—for example, if the items are evidence of a crime or
27 contraband.”).⁴ Indeed, it is only where property left in public is abandoned—which is

28 ⁴ Note that it is immaterial whether the placement of the property violates a city ordinance
because such a violation “does not vitiate the Fourth Amendment’s protection of one’s

1 different from property that is temporarily unattended or in the attendance of another
2 person—that the property is subject to proper seizure. *Lavan*, 693 F.3d at 1025; *Cooper v.*
3 *Gray*, CV 12-208, 2015 WL 13119400, at *8 (D. Ariz. Feb. 13, 2015). Raids like those
4 conducted by Defendants are particularly troubling under a Fourth Amendment analysis
5 because “[t]he interference with Plaintiffs’ possessory interests is more than just
6 ‘meaningful;’ it is total and irrevocable, since the City seizes and then immediately destroys
7 all of the property that it seizes in its sweeps.” *Kincaid*, 2006 WL 3542732, at *36.

8 In *Lavan*, the Ninth Circuit examined the exact issue before this Court and affirmed
9 that the City of Los Angeles violated the unsheltered plaintiffs’ Fourth Amendment rights
10 when it seized and immediately destroyed their personal property including “personal
11 identification documents, birth certificates, medications, family memorabilia, toiletries, cell
12 phones, sleeping bags and blankets.” 693 F.3d at 1024–25, 1027. Similarly, the *Pottinger*
13 court unequivocally held state actors, city employees, and police officers were violating the
14 plaintiffs’ Fourth Amendment rights through routine seizure of personal property which
15 included setting ablaze personal possessions such as identification, medicine, and clothing,
16 loading such property into dump trucks, and threatening to arrest an unsheltered person who
17 attempted to retrieve their belongings from city workers for obstruction of justice. 810 F.
18 Supp. at 1555–56, 1570, *cited with approval in United States v. Gooch*, 6 F.3d 673, 677
19 (9th Cir. 1993).

20 Like the plaintiffs in *Lavan* and *Pottinger*, Plaintiffs here have watched as
21 Defendants loaded their property into dump trucks for destruction including their personal
22 identification, medications, sleeping bags, and blankets. *See Exs. 1–2*. All the while,
23 Defendants’ agents stood guard and prevented Plaintiffs from retrieving their belongings.
24 *Id.* Like the city defendants in *Lavan* and *Pottinger*, Defendants here have targeted “clean
25 sweeps” of areas occupied by unsheltered individuals *solely* because they and their
26 belongings are in a public place. These sweeps have occurred, and continue to occur, at

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property.” *Lavan* 693 F.3d at 1029.

1 irregular hours—sometimes in the middle of the night—without any Fourth Amendment
2 justification. Given the striking similarity between the facts in *Lavan* and *Pottinger* and the
3 facts alleged by Plaintiffs here, there is a high likelihood Plaintiffs will succeed on the merits
4 of their Fourth Amendment claim.

5 **b. Defendants’ Destruction of the Property Belonging to**
6 **Unsheltered Persons is a Due Process Deprivation that**
7 **Violates the Fourteenth Amendment.**

8 The Fourteenth Amendment provides that “[N]o State shall . . .deprive any person
9 of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. “Any
10 significant taking of property by the State is within the purview of the Due Process Clause.”
11 *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972). In assessing this claim, courts inquire as to
12 whether the Fourteenth Amendment’s protection of “life, liberty or property” encompasses
13 the individual interests and, if so, what procedures constitute “due process of law.”
14 *Ingraham v. Wright*, 430 U.S. 651, 672 (1977). One of the most basic property interests the
15 due process clause encompasses is the interest in continued ownership of personal
16 possessions. *Lavan*, 693 F.3d at 1031.⁵ Where the government seeks to take such property,
17 it cannot do so “like a thief in the night; rather, it must announce its intentions and give the
18 property owner a chance to argue against the taking.” *Clement v. City of Glendale*, 518 F.3d
19 1090, 1093 (9th Cir. 2008).

20 In this context, “due process of law requires law enforcement ‘to take reasonable
21 steps to give notice that the property has been taken so the owner can pursue available
22 remedies for its return.’” *Lavan*, 693 F.3d at 1032 (quoting *City of West Covina v. Perkins*,
23 525 U.S. 234, 240 (1999)). The *Lavan* court declined to create an exception to the
24 requirements of due process for the belongings of unsheltered persons; instead, it affirmed
25 that the plaintiffs had a high likelihood of success on the merits of their Fourteenth
26 Amendment claim where the city permanently deprived them of their property by

27 ⁵ Arizona law also recognizes the right of ownership in of personal property. Ariz. Rev. Stat.
28 Ann. § 1-215(30) (defining “Personal Property” to include “money, goods, chattels, things
in action and evidences of debt”); *Cooper*, 2015 WL 13119400, at *8

1 destroying possessions pursuant to a sweep of a zone where homeless individuals sheltered
2 without any notice, opportunity to be heard, or meaningful safeguard. *Id.* at 1033.

3 Here, Plaintiffs are also likely to prevail on their Fourteenth Amendment claim
4 because Defendants' conduct deprives them and other unsheltered individuals of their
5 property without due process of law. The taking of property here is significant in that the
6 items destroyed are typically all these individuals possess and survival gear (e.g., gear used
7 to protect them from the elements such as tents). Additionally, when the items are things
8 like medicine, identification, and documents required to access benefits, the deprivation
9 takes away the very tools unsheltered individuals need to protect their health and secure
10 benefits, while significantly increasing the likelihood they will remain unsheltered. Because
11 Plaintiffs and those similarly situated to Plaintiffs have a valid personal property interest in
12 their possessions that is protected by the Fourteenth Amendment, the court should enjoin
13 Defendants from conducting such sweeps.

14 **2. Plaintiffs Will Suffer Irreparable Harm Without a Preliminary**
15 **Injunction.**

16 In the Ninth Circuit, irreparable injury occurs whenever a government entity's
17 actions violate the Constitution, even for minimal periods of time. *Sammartano v. First*
18 *Judicial District Court ex rel. Carson City*, 303 F.3d 959, 973 (9th Cir. 2002). Plaintiffs
19 need not prove a constitutional violation; "[a]n alleged constitutional infringement will
20 often alone constitute irreparable harm." *Goldie's Bookstore v. Superior Court*, 739 F.2d
21 466, 472 (9th Cir. 1984). As discussed above, Defendants' conduct plainly violates the
22 constitutional rights of Plaintiffs and those living in the Zone, and at the very least, raises
23 serious Fourth and Fourteenth Amendment questions. Therefore, there is a presumption of
24 irreparable harm warranting an injunction be granted.

25 **3. The Balance of Hardships Weighs Heavily in Plaintiffs' Favor.**

26 Plaintiffs' interest in protecting their personal property is particularly significant.
27 The raids destroy essentially all the belongings Plaintiffs own at the time. Sweeps occur
28 with increasing frequency during the holiday season. Defendants destroy Plaintiffs'

1 clothing, shoes, blankets, and other essentials; these are particularly valuable during the
2 colder winter months. Defendants' have a real interest in maintaining clean and orderly
3 streets. This interest, however, cannot justify the destruction of property inflicted, and that
4 interest could be achieved by less devastating means. It would not cause the Defendants any
5 disadvantage, economic or otherwise, to cease the destruction of unsheltered persons
6 personal property. Finally, Plaintiffs have demonstrated Defendants plan to conduct
7 additional enhanced sweeps which heighten the risk of constitutional injury described in the
8 Complaint. Thus, the balance of hardships weighs significantly in Plaintiffs' favor.

9 **4. A Preliminary Injunction Is in the Public Interest.**

10 The fourth *Winter* factor also weighs in Plaintiffs' favor because "it is always in the
11 public interest to prevent the violation of a party's constitutional rights." *Melendres v.*
12 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). It is in the public interest to issue a preliminary
13 injunction to require the Defendants to comply with the U.S. Constitution and in the process,
14 protect homeless individuals from unreasonable seizures. Therefore, this Court should find
15 that Plaintiffs have made the adequate showing to warrant issuance of a preliminary
16 injunction to stop the Defendants from conducting sweeps and unconstitutionally
17 destroying the personal property of Plaintiffs and that of similarly situated unsheltered
18 Phoenix residents.

19 **B. The Eighth Amendment Protects Plaintiffs from Defendants' Ordinance Which Criminalize Their Status as Homeless or Unsheltered.**

20 Despite a lack of sufficient shelter spaces within the city of Phoenix, Defendants
21 have criminalized Plaintiffs' status as "unsheltered" by using ordinances to prohibit
22 sleeping in public spaces in violation of the Eighth Amendment.

23 **1. Plaintiffs Are likely to Prevail on the Merits of their Eighth Amendment Claim.**

24 The Eighth Amendment prohibits the government from inflicting "cruel and unusual
25 punishments" and includes a "substantive limit[] on what [behavior] the government may
26 criminalize." U.S. Const. amend. VIII; *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019).
27 Importantly, the protections under the Eighth Amendment include "imposition of criminal
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1 penalties for sitting, sleeping, or lying outside on public property for homeless individuals
2 who cannot obtain shelter.” *Martin*, 920 F.3d at 616. Any such penalties are unconstitutional
3 because “the Eighth Amendment prohibits the state from punishing an involuntary act or
4 condition if it is the unavoidable consequence of one’s status or being.” *Id.* at 616 (quoting
5 *Jones v. City of Los Angeles*, 444 F.3d 1118, 1135 (9th Cir. 2006)). In other words, the
6 Eighth Amendment only permits punishments of acts, rather than statuses. And in the case
7 of those who find themselves unsheltered, the Eighth Amendment prohibits municipal
8 entities such as Defendants from employing or enacting ordinances which “punish a person
9 for lacking the means to live out the ‘universal and unavoidable consequences of being
10 human.’” *Id.* at 617 n.8 (quoting *Jones*, 444 F.3d at 1123).

11 In *Martin*, the unsheltered plaintiffs challenged two ordinances the City of Boise
12 Police Department cited them for violating which criminalized both camping and sleeping
13 in public spaces. *Martin*, 902 F.3d at 1035. These ordinances were commonly applied to
14 the unsheltered community despite a deficit in shelter beds leading to misdemeanors,
15 criminal fines, and even incarceration. *Id.* at 1037–38. In reviewing the plaintiffs’ claims,
16 the Ninth Circuit unambiguously confirmed “an ordinance violates the Eighth Amendment
17 insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors,
18 on public property, when no alternative shelter is available to them.” *Id.* at 1035.

19 Here, Defendants employ two ordinances similar to those referenced in *Martin* to
20 criminalize Plaintiffs’ status of being homeless: Phoenix City Code Section 23-30(A) (the
21 “Camping Ban”) and Phoenix City Code Section 23-48.01 (the “Sleeping Ban”).

22 The City’s Camping Ban provides: “It shall be unlawful for any person to camp in
23 any park or preserve, or in any building, facility, or parking lot or structure, or on any
24 property adjacent thereto, that is owned, possessed and controlled by the City....” Phoenix,
25 Ariz., CITY CODE § 23-30(A). According to the City of Phoenix Code, camping means

26 “to use real property of the City for living accommodation purposes such as
27 sleeping activities, or making preparations to sleep, including the laying
28 down of bedding for the purpose of sleeping, or storing personal belongings,
or making any fire, or using any tents or shelter or other structure or vehicle

1 for sleeping or doing any digging or earth breaking or carrying on cooking
2 activities.”

3 *Id.* at § 23-30(B). As indicated in this definition, the Camping Ban punishes and
4 criminalizes the act of sleeping by unsheltered individuals within the Phoenix. Defendants
5 commonly cite Plaintiffs and similarly situated unsheltered individuals under this section
6 during raids to discourage basic human activities such as sleeping.

7 This is precisely the conduct *Martin* found unconstitutional.

8 The Phoenix Sleeping Ban provides that unless there is a medical necessity, “[i]t
9 shall be unlawful for any person to use a public street, highway, alley, lane, parkway,
10 sidewalk or other right-of-way, whether such right-of-way has been dedicated to the public
11 in fee or by easement, for lying, sleeping or otherwise remaining in a sitting position
12 thereon.” *Id.* at § 23-48.01. The Sleeping Ban is so broad that it even prohibits sleeping on
13 areas of Phoenix property otherwise unused by pedestrians. Like the Camping ban,
14 Defendants also commonly issue citations for violations of the Sleeping Ban, Plaintiffs and
15 similarly situated unsheltered individuals are often cited under this section during raids to
16 discourage basic human activities such as sleeping. Again, this conduct is violative of the
17 Ninth Circuit’s holding in *Martin*.

18 Accordingly, Plaintiffs have a strong likelihood of prevailing on the merits here
19 because of the similarity of the statutes at issue and because *Martin* is exactly on point and
20 dictates a similar outcome here. Just as Boise’s Camping Ordinance and Disorderly Conduct
21 Ordinance violated the Eighth Amendment, so too does the Defendants’ enforcement of the
22 Camping Ban and the Sleeping Ban. Both ordinances prohibit sleeping on public property,
23 an unavoidable occurrence for unsheltered individuals who cannot access other shelter. And
24 because the ordinances punish members of the homeless population for “the universal and
25 unavoidable consequences of being human”—needing to sleep—they are unconstitutional
26 violations of the Eighth Amendment. *Martin*, 920 F.3d at 617 n.8 (quoting *Jones*, 444 F.3d
27 at 1123).⁶

28 ⁶ Additionally, neighboring municipalities have amended their policies and halted enforcement under ordinances similar to those of the City of Phoenix. The City of Tempe,

1 **2. Plaintiffs Have Shown That They Will Suffer Irreparable Harm**
2 **Without a Preliminary Injunction.**

3 Injunctive relief is appropriate when a party shows ““that irreparable injury is likely
4 in the absence of an injunction.”” *M.R. v. Dreyfus*, 697 F.3d 706, 728 (9th Cir. 2012)
5 (quoting *Winter*, 555 U.S. at 22 (emphasis omitted)). And “[i]t is well established that the
6 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”
7 *Melendres*, 695 F.3d at 1002 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Isaacson*
8 *v. Brnovich*, CV-21-01417-PHX, 2022 WL 2665932, at *9 (D. Ariz. July 11, 2022) (same).

9 In *Melendres*, the Ninth Circuit upheld the lower court’s finding of irreparable injury
10 where the plaintiffs demonstrated the defendant Sheriff could invoke a statute to ratify
11 unconstitutional profiling of Hispanic drivers during traffic stops. *Id.* The court reasoned “it
12 was reasonable for the district court to conclude that the Plaintiffs faced a real possibility
13 that they would again be stopped or detained and subjected to unlawful detention on the
14 basis of their unlawful presence alone.” *Id.* So, “there was no abuse of discretion in
15 concluding that the Plaintiffs faced irreparable harm in the form of a deprivation of
16 constitutional rights absent a preliminary injunction.” *Id.*

17 The same “real possibility” of constitutional injury in *Melendres* also exists here
18 where the Phoenix ordinances facially allow Defendants to criminalize the status of the
19 unsheltered community. Defendants’ actions in actively enforcing the Camping Ban and
20 Sleeping Ban against the unsheltered community further elevate the risk of constitutional
21 injury and run afoul of holding in *Martin* finding similar actions by the City of Boise in
22 violation the Eighth Amendment. Permitting the City of Phoenix to employ the Camping
23 Ban and Sleeping Ban against the unsheltered population has and will continue to result in
24 irreparable injury to Plaintiffs in the form of a violation of their constitutional rights. Thus,
25 this Court should enjoin the practice.

26
27 _____ for example, admitted enforcement of its Camping Ban would be unconstitutional. The
28 City of Glendale amended its ordinance to prevent imposing criminal sanctions on
 camping “when no alternative shelter is available.” Glendale, Ariz., CODE § 25-90.

1 **3. Plaintiffs Have Shown That the Balance of Hardships Weighs**
2 **Heavily in Plaintiffs' Favor.**

3 In weighing the equities, courts “must balance the competing claims of injury and
4 must consider the effect on each party of the granting or withholding of the requested relief.”
5 *Winter*, 555 U.S. at 24 (internal quotation marks and citation omitted). Here, the scales
6 weigh in favor of Plaintiffs. Perhaps most important, Defendants will experience no harm
7 if these ordinances are enjoined because the ordinances are unconstitutional and do not
8 serve any purpose in redressing the underlying causes of homelessness in the Phoenix. The
9 ordinances merely serve to unconstitutionally criminalize the “status” of homelessness and
10 push residents out of the city and into surrounding municipalities. This is exactly the type
11 of conduct the Court in *Martin* sought to redress.⁷

12 In contrast, Plaintiffs have already suffered irreparable injuries and will continue to
13 do so unless and until the Defendants are prohibited from following their current course of
14 action. Plaintiffs, and other members of the unsheltered population, have suffered multiple
15 and repeated citations under the ordinances. As a result of the Defendants’ practices,
16 Plaintiffs have criminal records they would not have otherwise had for the simple acts of
17 sleeping or engaging in other human activities in public spaces when they had nowhere else
18 to go. More fundamentally, Plaintiffs have been deprived of their universal human right to
19 sleep. Accordingly, the balance of equities for the issuance of a preliminary injunction
20 barring the Defendants from enforcing the Sleeping Ban and the Camping Ban ordinances
21 weighs heavily in favor of Plaintiffs.

22 **4. Plaintiffs Have Shown That a Preliminary Injunction Is in the**
23 **Public Interest.**

24 “Generally, public interest concerns are implicated when a constitutional right has
25 been violated, because all citizens have a stake in upholding the Constitution.” *Hernandez*

26 ⁷ If Defendants contend they do not enforce the ordinances then there will similarly be no
27 harm from being prevented from doing something it claims it is not doing. *Melendres*,
28 695 F.3d at 1002 (upholding the finding that the balance of hardships tipped in favor of
 issuing injunctive relief where the Defendants claimed they did not enforce the statute at
 issue).

1 v. *Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Preminger v. Principi*, 422 F.3d
2 815, 826 (9th Cir. 2005)). Furthermore, “it is always in the public interest to prevent the
3 violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (quoting
4 *Sammartano*, 303 F.3d at 974). Because the Defendants’ course of conduct is violative of
5 Plaintiffs’ Eighth Amendment rights, the public interest favors the granting of a preliminary
6 injunction. See *Ms. L. v. U.S Immigr. & Customs Enf’t*, 310 F. Supp. 3d 1133, 1147 (S.D.
7 Cal. 2018) (“[W]hen a plaintiff establishes ‘a likelihood that Defendants’ policy violates
8 the U.S. Constitution, Plaintiffs have also established that both the public interest and the
9 balance of the equities favor a preliminary injunction.” (quoting *Ariz. Dream Act Coal. v.*
10 *Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014))).

11 Here, there is no conceivable public interest served by allowing the City of Phoenix
12 to continue to engage in violating the constitutional rights of Plaintiffs and other members
13 of the unsheltered homeless population by using these ordinances. So, the Court should
14 issue a preliminary injunction barring Defendants from taking further action to enforce the
15 Camping Ban and Sleeping Ban pending resolution of this case.

16 **C. Because Defendants will not suffer damages from the injunction, the**
17 **bond amount should be waived.**

18 Plaintiffs respectfully request that any bond amount be waived because Defendants
19 will suffer no damages from the issuance of an injunction in this case. *Conn. Gen. Life Ins.*
20 *v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003) (“[T]he bond amount
21 may be zero if there is no evidence the party will suffer damages from the injunction.”).

22 **Conclusion**

23 Based on the foregoing, Plaintiffs respectfully request that the Court grant their
24 motion for preliminary injunction.

25 RESPECTFULLY SUBMITTED this 30th day of November, 2022.
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