

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

ROBERT SPENCER
12915 Christine Ave.
Garfield Heights, OH 44105

Plaintiff,

v.

KENNETH FALZINI
5555 Turney Road
Garfield Heights, Ohio 44125

DAVID SIMIA
5555 Turney Road
Garfield Heights, Ohio 44125

KEVIN PRICE
5555 Turney Road
Garfield Heights, Ohio 44125

MATTHEW BERDYSZ
5555 Turney Road
Garfield Heights, Ohio 44125

JOHN DOE
5555 Turney Road
Garfield Heights, Ohio 44125

JANE DOE
5555 Turney Road
Garfield Heights, Ohio 44125

CITY OF GARFIELD HEIGHTS
5555 Turney Road
Garfield Heights, Ohio 44125

Defendants.

Case No.:

Judge

Magistrate Judge

COMPLAINT WITH JURY DEMAND

NATURE OF THE ACTION

“The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.”¹

1. Robert Spencer was arrested and prosecuted for laughing while black.
2. “All you had to do was shut the fuck up,” one officer said. “We weren’t even going to arrest you.” Armed patrolmen told Mr. Spencer that “saying stuff to us when we drive by” justifies investigation, arrest, detention, beatings, and prosecution—all of which he suffered, and all of which, they declared, he would have avoided if he had “ke[pt] his mouth shut when we came out.”
3. The First Amendment “prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out.”² This right is “well-established and supported by ample case law,” and it is “well-established that a public official’s retaliation against an individual exercising his or her First Amendment rights is a violation of § 1983.”³
4. But the city of Garfield Heights (the “City”) never trained its officers on First Amendment protections, even though the right to criticize public officials has been clear “[s]ince the day the ink dried on the Bill of Rights,”⁴ signaling its official disdain for its citizens’ First Amendment rights.
5. Even so, Mr. Spencer’s arresting officers knew their acts were wrong. So they ordered his girlfriend not to record his arrest, conveniently “lost” body-camera footage, and manufactured false reports to justify arrest and prosecution. And though they perjured themselves at trial to hide the retaliation they performed and confessed on video, Mr. Spencer’s prosecutors had to dismiss other sham charges to keep footage of their beatings and threats from a jury that still acquitted him.

¹ *City of Houston v. Hill*, 482 U.S. 451, 462–63 (1987).

² *Everson v. Calhoun County*, 407 Fed. App’x 885, 887 (6th Cir. 2011).

³ *Barrett v. Harrington*, 130 F.3d 246, 264 (1997).

⁴ *McCurdy v. Montgomery County*, 240 F.3d 512, 520 (6th Cir. 2001).

6. The City also did not train its penal employees that forcing unconvicted detainees into involuntary servitude with threats of violence violates constitutional protections against slavery. But those employees knew (and confirmed, also on video) that Mr. Spencer had been arrested for insulting police officers, so they compounded the City's retaliation by threatening to assault him with Mace if he did not punch in for its paid custodial staff and clean human waste from holding cells.

7. Mr. Spencer brings this action under 42 U.S.C. § 1983 to vindicate his rights under the First, Fourth, Thirteenth, and Fourteenth Amendments to the U.S. Constitution.

PARTIES

8. Plaintiff Robert Spencer is a Cleveland resident and a former resident of Garfield Heights.

9. Defendant City of Garfield Heights is a municipal corporation under Article XVIII of the Ohio Constitution and a "person" subject to suit within the meaning of 42 U.S.C. § 1983. The City controls, operates, and supervises the Garfield Heights Police Department (the "Department").

10. Forty-seven percent of the City's residents are black. Its police force is almost entirely white.

11. Kenneth Falzini, David Simia, Kevin Price, and Matthew Berdysz are white police officers employed by the City. John Doe is a police detective employed by the City. Jane Doe is a corrections officer employed by the City.

12. At all times relevant to the complaint, the Defendants acted under color of state law.

JURISDICTION AND VENUE

13. Under 28 U.S.C. §§ 1331, 1343, and 2201, Mr. Spencer asserts jurisdiction over federal claims under 42 U.S.C. §§ 1983, 1985, and 1988, which provide attorneys' fees in civil-rights claims. 28 U.S.C. § 1367 provides this Court with supplemental jurisdiction over his state-law claims.

14. This Court has personal jurisdiction over the Defendants, who reside in and conduct business in this District. Venue is proper under 28 U.S.C. § 1391 because the events giving rise to Mr. Spencer's claims took place within this District.

FACTUAL BACKGROUND

The First Amendment forbids police officers from punishing protected speech.

15. Long before July 7, 2017, but also on that date, the “right to be free from retaliatory arrest after insulting an officer was clearly established” in the Sixth Circuit.⁵ Rather, as a matter of equally clearly established law, “the First Amendment requires that police officers tolerate coarse criticism” and “prohibits states from criminalizing conduct that disturbs solely police officers.”⁶ And subjective ignorance does not excuse police officers’ violations of First Amendment rights.⁷

16. On July 7, 2017, no reasonable police officer was ignorant of distinctions between protected criticism and unprotected “true threats,” or would disregard constitutional protections for insulting, profane, and even belligerent, but still protected, speech.⁸

17. On July 7, 2017, it was clearly established in this Circuit that police officers “may not base . . . probable-cause determination on speech protected by the First Amendment.”⁹ Instead, “the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers,”¹⁰ which is protected even if it is “provocative and challenging.”¹¹

⁵ *Kennedy v. Villa Hills*, 635 F.3d 210, 219 (6th Cir. 2011); *Bloch v. Ribar*, 156 F.3d 673, 682 (6th Cir. 1998) (“police officers . . . may not exercise their authority for personal motives, particularly in response to real or perceived slights to their dignity.”); *Greene v. Barber*, 310 F.3d 889, 897 (6th Cir. 2002) (officer “should have known that an arrest undertaken at least in part as retaliation for a constitutionally protected insult to the officer’s dignity would be impermissible.”).

⁶ *Kennedy*, 635 F.3d at 216.

⁷ *Harlow v. Fitzgerald*, 457 U.S. 800, 618–19 (1982) (“A reasonably competent public official should know the law governing his conduct Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate. . .”).

⁸ Only narrowly defined categories of speech, like true threats or fighting words, are unprotected by the First Amendment, and neither false, confusing, misleading, critical, juvenile, insulting, nor offensive speech are among them. *U.S. v. Alvarez*, 567 U.S. 709, 717–18 (2012).

⁹ *Swiecicki v. Delgado*, 463 F.3d 489, 498 (6th Cir. 2006).

¹⁰ *Hill*, 482 U.S. at 461.

¹¹ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

The City flouts clearly established protections for public criticism.

18. The City knows that its citizens criticize its employees. The City also knows that the First Amendment limits its ability to retaliate against citizens for criticizing its employees.
19. Nonetheless, the City has sued and prosecuted citizens for criticizing its employees.
20. Three decades ago, the Ohio Supreme Court rejected an attempt by the City's law director to extract damages from a local newspaper for publishing criticisms about a franchise award to a cable company. One Justice wrote separately to highlight the meritless, censorial claim: "Can there really be any question that such reporting is protected by the First Amendment as a matter of law?"¹²
21. Two decades ago, the Sixth Circuit denied qualified immunity to city officials who threatened a city councilmember who regularly criticized police-department policies. One of the City's police officers, called to investigate the shooting of the councilmember's car, issued the threat it executed against Mr. Spencer: "these . . . things would stop if he would merely stop his criticisms and allegations against the mayor and the law department."¹³
22. Soon afterwards, a state appellate court repudiated the City's attempt to prosecute a woman for the same reasons they prosecuted Mr. Spencer: she "spoke in loud tones and in fragmented sentences," told a police officer that "this is bullshit," and resisted a police officer's attempt to grab her arm when she refused to provide identification.¹⁴
23. Just last year, the Sixth Circuit repudiated the City's use of police power to force a resident to remove a sign criticizing its traffic-enforcement policies as "hopelessly" unconstitutional.¹⁵

¹² *Grau v. Kleinschmidt*, 31 Ohio St. 3d 84, 96, 509 N.E.2d 399, 409 (1987) (Douglas, J., concurring).

¹³ *Zilich v. Longo*, 34 F.3d 359, 361 (6th Cir. 1994) (denying qualified immunity for city officials who threatened and harassed plaintiff who challenged Garfield Heights Police Department policies).

¹⁴ *City of Garfield Heights v. Yaro*, No. 75096, 1999 WL 1084255, at *2 (Ohio Ct. App. Dec. 2, 1999).

¹⁵ *Wagner v. City of Garfield Heights*, 675 F. App'x 599, 607 (6th Cir. 2017)

24. Even after this recent rebuke, the City has not bothered to train its police officers on First Amendment constraints on policing.

25. In response to a public-records request, the City has recently confirmed that it has no records of any training for police officers on the First Amendment. None.

A black man laughs. The police investigate.

26. July 7, 2017 should have been a good day for Mr. Spencer. He had just finished a long overnight shift at Heidelberg Importers, and it was pay day. So he came home, paid his phone bill, visited his aunt, took her boyfriend to Rite-Aid to pick up a prescription, picked up his girlfriend from work at Delmonico's, picked up their kids from school at Adlai Stevenson Elementary, went out for a family dinner, and came home.

27. As he pulled down Christine Avenue toward his home, neighborhood children saw Mr. Spencer and his family arriving, and came to greet him. Mr. Spencer was a friendly face in the neighborhood, always willing to talk to the local kids, offer advice, play basketball and help out however he could. Mr. Spencer, his children, and their friends in the neighborhood frequently engage in "ranking," or the good-natured ribbing of each other.¹⁶ This usually takes the form of "yo mama" jokes and mild insults about each other's hair, shoes, clothing, and the like, which lubricates social interactions and often defuses, not exacerbates, problems.

28. When Mr. Spencer got out of the car, he saw that the ranking was going too far, and was becoming hurtful for the younger children.

29. Mr. Spencer reassured one child, reminding him that growing up means learning not to react to bullies, and that laughing off an offense shows greater maturity than responding with force.

¹⁶ *Ranking*, UrbanDictionary.com (Dec. 22, 2004) <https://www.urbandictionary.com/define.php?term=ranking> [perma.cc/4RV6-7G7W] (defining "ranking" as "To cut or dis[.] Making fun of someone or yelling insults at them. Used everywhere including New England.").

30. Police officers must behave better than children. They are “expected to ‘exercise a higher degree of restraint’ than the average citizen, and thus be less likely to respond belligerently.”¹⁷

31. Mr. Spencer’s message was well received by the children he instructed, who resumed their play, continuing to joke with Mr. Spencer and his neighbors in the front yard.

32. At this point, Defendants Falzini and Simia drove past the house. Their windows were up.

33. One of the children pointed out the police car, and Mr. Spencer offered more practical wisdom to the black youth: don’t attract police attention, even if you’re doing nothing wrong.

34. This unfortunate lesson came too late.

35. Falzini and Simia stopped their car, turned around, drove back to Mr. Spencer’s house, pulled to a stop, and activated their body-worn cameras.

36. Mr. Spencer’s girlfriend, Kathleen Rochester, cautioned everyone to get into their houses to avoid being harassed, but Mr. Spencer remained outside, assuming the police had been called for something else.

37. Falzini and Simia had not been called by anyone, for anything.

38. Their investigation of Mr. Spencer was based only on the (supposed) content of his speech.

39. But their patrol-car windows had been up when they drove by. They could not have, and did not hear anything he said before they turned around.

40. So the officers began by asking Mr. Spencer what he was saying when they drove past.

41. Mr. Spencer explained that he had said nothing to them and that he and the children were outside cracking jokes.

42. Falzini disagreed. Now, he said they had turned around because it sounded like someone had threatened them.

¹⁷ *Lewis v. City of New Orleans*, 415 U.S. 130, 135 (1974) (vacating appellant’s conviction where appellant yelled obscenities and verbal threats at an officer who asked her husband to produce his driver’s license).

43. Falzini did not indicate any basis for any such belief, any supposedly threatening words or acts, or any circumstances that could cause a pair of armed policemen in a patrol car driving in the opposite direction to be threatened by a group of children in a yard.

Mr. Spencer protests the retaliatory investigation.

44. Mr. Spencer reiterated that no one had threatened anyone or said anything to the police.

45. Falzini continued to insist that an unspecified person had threatened him, so Mr. Spencer continued to explain that no one had threatened anyone. He explained that he and the children were not threatening the police officers, and were only ranking each other. Faced with two police officers accusing him and his friends of a non-existent crime, Mr. Spencer stated that he would rank the police as well.

46. Falzini was not amused. Falzini changed his story again, insisting that he had heard Mr. Spencer in particular threatening him. He asked Mr. Spencer to show identification.

47. Mr. Spencer asked the officers leave his property. The officers refused and continued to ask for his identification.

48. Knowing the police department's reputation for racism, and seeing that the situation was beginning to get out of hand, Mr. Spencer asked Rochester to begin recording the interaction.

49. Falzini attempted to dissuade Rochester from recording the encounter, stating: "I've got my camera on my chest." Mr. Spencer knew—now from personal experience—that police officers frequently "lose" footage of interactions with unarmed black men and are rarely held accountable without video footage. As he told Falzini: "That's good for you, but I know how these things go."

50. Rochester began recording. She had a First Amendment right to record officers in public.

51. As the recording began, children were still laughing, but the interaction grew more tense.

Mr. Spencer insults the officers, so they arrest him.

52. Falzini demanded Mr. Spencer's identification again.

53. Mr. Spencer objected and returned to ranking the officers. Focusing on the officers' haircuts, he referred to Falzini as "Beavis & Butthead," and to Simia as "Elvis."

54. The statements that the officers' visages and haircuts resembled these counterparts were substantially true.

55. The statements that the officers' visages and haircuts resembled these counterparts were constitutionally protected statements of opinion.

56. Falzini felt personally insulted.

57. Falzini became motivated to retaliate against Mr. Spencer's digs at his dignity.

58. So motivated, Falzini threatened Mr. Spencer with arrest: "Provide an ID or you're going to go to jail."

59. Mr. Spencer reiterated that he had done nothing wrong, and that there was no basis for the stop, the investigation, or the show of force. He did not mince words in speaking truth to power: "Motherfucker, for what? I'm on private-ass property and you ain't got no reason to sit here and talk that bullshit to me."

60. He did not, however, act threateningly. No reasonable person would believe his speech to constitute a true threat. No reasonable person would believe his gestures to threaten violence.

61. Falzini told Mr. Spencer to put his hands behind his back.

62. To create a self-defensive record, Simia embellished the story further, and falsely accused Mr. Spencer of threatening him and his partner: "We turned back around and you threatened to assault us."

63. Mr. Spencer's girlfriend protested, reiterating that no one had threatened anyone.

64. The officers escalated the encounter to physical violence without physical provocation or situational justification.

65. Falzini shoved Mr. Spencer. Officer Simia, no stranger to profanity himself, though better-paid for it, told Mr. Spencer, “You’re going to get fucking tazed.”

66. Children nearby cried and screamed.

67. Mr. Spencer’s girlfriend continued to protest that no one had threatened anyone, and reiterated that the speech under investigation was mere jive, and pure speech: “Y’all pulled up on some bullshit. He out here talking shit with the kids.”

68. The police officers began to Mirandize Mr. Spencer. Mr. Spencer continued to rank the officers in protest, asserting his right to talk jive in public: “Y’all got the motherfuckin’ right to remain ranked with your little ugly ass.”

69. His language was insulting, but his speech was not a crime.

70. As Simia forced him against the police vehicle, Mr. Spencer continued to insult the officers. His language was inflected with profanity, but unthreatening. He called the officers “fucked up.” He promised to “keep rankin’ y’all.” He called them “bitch-ass niggas.” He called Falzini a “racist-ass, big-ass motherfucker” with a “bald-ass head.”

71. Within the wide ambit of protected speech, Mr. Spencer’s speech was downright restrained.¹⁸

72. Falzini forced Mr. Spencer into the back seat of his police vehicle.

73. After arresting Mr. Spencer, Simia confirmed to a police dispatcher that he and Falzini had filmed the incident on their body-worn cameras.

74. Mr. Spencer’s girlfriend approached Simia, who seemed more level-headed than Falzini, and asked why they were arresting Mr. Spencer. Simia now claimed that Mr. Spencer had menaced him

¹⁸ See *Snyder v. Phelps*, 562 U.S. 443, 454 (2011) (signs at soldier’s funeral reading “Thank God [f]or Dead Soldiers,” “Priests Rape Boys,” and “God Hates Fags” were fully protected: “While these messages may fall short of refined social or political commentary, the issues they highlight . . . are matters of public import.”).

and Falzini. Mr. Spencer's girlfriend asked how Mr. Spencer had menaced them. Simia's story changed again: "He said we're not effing Cleveland. He's going to assault us."

75. Mr. Spencer's girlfriend continued to correct Simia: "He did not threaten you. He said, he said he's going to *rank* you. He said he's going to *rank* you."

76. The officers knew the local idiom of the community they policed.

77. They did not express confusion or any lack of understanding at Rochester's clarification.

78. Nor did they ask what "rank" meant—either then, or when Mr. Spencer first used the term.

79. Instead, Simia confirmed that Mr. Spencer's arrest was motivated by Mr. Spencer's speech: "Well, you know, it is what it is. You know, he needs to watch what he says to police. He can't threaten to assault us, and then he can't talk and act like this. All he had to do was keep his mouth shut when we came out here. He threatened to assault us. He's saying stuff to us when we drive by."

80. Mr. Spencer believed the officers had arrested him because he was black, and continued his criticisms in the car: "You a Nazi. You a Nazi. Know what I'm saying, dog? You a Nazi."

81. The police searched Mr. Spencer and found his aunt's boyfriend's prescription, and a taped-up crayon and pencil Mr. Spencer used for inventory at the Heidelberg Importers warehouse.

82. Mr. Spencer had the prescription bottle on his person because it had been left in the car after the trip to Rite-Aid, and one of the children in the car found it. Mr. Spencer had taken it to keep it from the children and return to his aunt's boyfriend.

83. As the officers pulled away from Mr. Spencer's home, Falzini lightened up, confirming his retaliatory motivation and proclaiming victory in the war of words.

84. "Who gets the last laugh," he bragged to Mr. Spencer. "Look who's funny now!"

85. Simia reiterated that the arrest was based solely on the content of Mr. Spencer's speech.

86. "All you had to do was shut the fuck up," Simia said. "We weren't even going to arrest you."

87. Back at the police station, Falzini reaffirmed his retaliatory motivation: to vindicate his pride.

88. Falzini explained the arrest to assembled officers: “This asshole thinks he’s funny.”

Mr. Spencer reports Falzini and Simia’s crimes to the police. They retaliate.

89. As Falzini took Mr. Spencer to jail, they encountered Berdysz, the officer in charge.

90. Mr. Spencer reported the arresting officers’ misconduct to Berdysz: “You want to talk about some assault, nigga? You got me fucked up, nigga. You gonna come in my—They came in my yard, harassing me.” Berdysz took no action in response to Mr. Spencer’s report.

91. Falzini put Mr. Spencer in a chair. Officer Price told Mr. Spencer, “Don’t be an ass to start.” He told Mr. Spencer, “I’ll treat you like a man if you treat me like a man.”

92. Mr. Spencer called Price a Nazi.

93. Price left his seat and threatened Mr. Spencer with violence and evidence-destruction.

94. Price stated: “I’m going to pick you up and I’m going to throw you in that cell. I’m going to throw you in there and end the video.”

95. Mr. Spencer said he would file charges against Price, Falzini, and Simia. Again, Berdysz took no action in response to Mr. Spencer’s report.

96. Price grabbed Mr. Spencer by his shirt, seized his arm, and drove him into a wall.

97. Mr. Spencer complained about the injury: “You got me fucked up, nigga.” Price threatened further violence: “You’re about to be.”

98. Berdysz pitched in, aggressively manhandling Mr. Spencer with Price.

99. With Mr. Spencer’s hands still cuffed behind his back, Price forced Mr. Spencer into a holding cell and threw him down onto a bench.

100. Price began to choke Mr. Spencer.

101. Berdysz eventually intervened, pulling Price off of Mr. Spencer and separating them.

102. Joined by Simia, Berdysz then pulled Mr. Spencer off the bench and to the ground.

103. The officers’ force caused bruises and swelling in Mr. Spencer’s head.

104. The force was excessive and unjustified. Mr. Spencer had been handcuffed throughout.

The officers file false reports to conceal their civil-rights violations.

105. After Mr. Spencer was locked away, Falzini, Simia, and Price spoke with each other and formed an agreement to falsify charges against Mr. Spencer in retaliation for his protected, albeit insulting, speech.

106. They were motivated to retaliate, and to conceal their unlawful retaliation by cloaking it in falsehoods.

107. Falzini drafted and submitted an affidavit saying that Mr. Spencer threatened “to cause physical harm to officers,” that Mr. Spencer “again threatened to harm officers,” that Mr. Spencer “took a fighting stance,” that Mr. Spencer shoved Falzini, and that Mr. Spencer resisted arrest. None of those statements are true.

108. Falzini submitted another affidavit saying that “while Patrolman Falzini was speaking with Mr. Spencer in regards to a menacing complaint, [Spencer] pushed Ptl. Falzini in the chest in an aggressive manner.” There was no menacing complaint, and Spencer never pushed Falzini.

109. Falzini submitted another affidavit saying that “Mr. Spencer attempted to pull away from Ptl. Falzini” while being handcuffed. Mr. Spencer never tried to pull away from Ptl. Falzini.

110. Falzini submitted a third affidavit saying that while Falzini was driving by, Spencer shouted, “If you drive down this street you’re gonna get your ass kicked.” Spencer never said this. The affidavit also says that Spencer told Falzini, “Step out of your car and you’ll get your ass whooped.” Spencer never said this, either.

111. Simia submitted an affidavit saying that while Falzini was driving by, Spencer shouted, “If you drive down this street you’re gonna get your ass kicked.” Spencer never said this. The affidavit also says that Spencer told Falzini, “Step out of your car and you’ll get your ass whooped.” Spencer never said this.

112. Price submitted an affidavit stating that Spencer “did strike Correctional Officer Price by kicking Correctional Officer Price’s right shin.” Spencer never kicked Price’s shin.

113. Berdysz procured and signed all those affidavits, knowing them to be false, or recklessly disregarding their evident falsity with the purpose of concealing his employees’ misdeeds and his supervisory role in continuing them.

114. Falzini, Simia, or Berdysz drafted a complaint summary, with the intent to induce prosecution. That summary states that Mr. Spencer threatened and assaulted both Falzini and Simia. Mr. Spencer neither threatened nor assaulted either officer.

115. Simia drafted a narrative report of the arrest filled with false statements. His story grew further in the telling, and invented words in a poor imitation of Mr. Spencer’s idiom that he could not have heard through plate-glass barriers as his patrol-car disappeared down Mr. Spencer’s street.

116. Now Simia claimed to have heard Mr. Spencer shout, “Look at these fucking faggots driving around here like they’re Cleveland. They drive down this street and they about to get they ass whooped.” Mr. Spencer never said this.

117. Simia reported that after he got out of the car, Mr. Spencer said, “Step out that car and get your ass whooped!” Mr. Spencer never said this.

118. Simia reported that he believed Mr. Spencer was under the influence of narcotics because he was “excessively sweaty” and “aggressive.” Mr. Spencer was jovial and not particularly sweaty.

119. Simia reported that Mr. Spencer shoved Falzini in the chest. Mr. Spencer never shoved Falzini.

120. Simia reported that he and Falzini repeatedly told Mr. Spencer to get on the ground and that Mr. Spencer refused. Mr. Spencer never refused because neither Simia nor Falzini ever told Mr. Spencer to get on the ground.

121. Simia reported that during booking, Mr. Spencer kicked Price in the right shin. Mr. Spencer never kicked Price in either shin.

122. Simia reported on numerous occasions that he and Falzini recorded the entire arrest on their body-worn cameras: “At this time, Officers activated their BWC’s”; “Once the transport was complete and Officers reached the Sally Port, Officers deactivated their BWC’s”; “Officers felt the BWC’s were no longer needed”; “The female was advised several times that Officers were recording the incident with their BWC’s.” Simia also reported that his and Falzini’s camera footage was logged and assigned identification numbers.

123. Berdysz reviewed and approved Simia’s report.

124. Price also completed a report with false statements.

125. Price reported that while Falzini was escorting Mr. Spencer into the jail, Mr. Spencer was “verbally abusive.” Mr. Spencer was never verbally abusive while Falzini escorted him into the booking room.

126. Price reported that after forcing Mr. Spencer into a jail cell, he asked Mr. Spencer to go the ground, that Mr. Spencer refused, that Price then forced Mr. Spencer to the ground, and that Mr. Spencer kicked him in the shin. Price never asked Mr. Spencer to go to the ground. Mr. Spencer never refused to go to the ground. Price never forced Mr. Spencer to the ground. Mr. Spencer never kicked Price in the shin.

127. Defendant John Doe also completed a report with false statements in a case synopsis for the Cuyahoga County grand jury.

128. John Doe reported that Mr. Spencer threatened “to cause physical harm to police officers,” that he shoved Falzini, and that Mr. Spencer kicked Price in the leg. Mr. Spencer never threatened to cause physical harm to police officers, never shoved Falzini, and never kicked Price in the leg.

129. Based on these false reports, Simia and Falzini charged Mr. Spencer with two counts of assault on a police officer, two counts of aggravated menacing, one count of possessing dangerous drugs, and resisting arrest.

The City forces Mr. Spencer into involuntary servitude.

130. Mr. Spencer remained in the city jail for three days before bonding out.

131. While Mr. Spencer was in jail, Defendant Jane Doe forced him to clean his and other cells: cleaning someone else's urine from a cell, scrubbing toilets, wiping down cots, cleaning tables, sweeping, and mopping floors.

132. Mr. Spencer objected to being forced to work without pay. He acquiesced to Jane Doe's orders only after she threatened to attack him with pepper spray if he refused to labor. He would not have agreed to perform this work for free if he were not detained and facing the threat of physical violence.

133. Mr. Spencer's work benefitted Jane Doe by relieving her of the need to perform or procure custodial work from paid employees in the jail. It benefitted the City by leaving employees free to do other work and providing valuable services free of charge.

134. Jane Doe was also motivated to retaliate against Mr. Spencer's protected criticisms, and knew the retaliatory arrest and charges were based on nothing more than the content of his speech. She told him so: "You shouldn't have been talking all crazy to them."

The police continue to harass Mr. Spencer after his release.

135. After Mr. Spencer bonded out, Falzini and Simia began stalking him. They would show up almost daily around the same time and park their car several houses down the street from his house. Mr. Spencer saw them there repeatedly when he would leave the house.

136. Because of the arrest and the subsequent harassment, Mr. Spencer has suffered emotional and psychological distress. Once jovial, he has suffered from depression and has begun avoiding the

outdoors, trying to stay in the house as much as possible and avoiding whatever circumstances might take him outside.

137. The problems grew so severe that Mr. Spencer had to move his family out of Garfield Heights to alleviate the stress associated with constant police surveillance.

138. Mr. Spencer's arrest also led to his termination from his job at Heidelberg Importers.

Falzini and Simia are discredited at trial; Mr. Spencer is vindicated.

139. Based on the officers's reports, as they intended, a grand jury indicted Mr. Spencer on two counts of felonious assault,¹⁹ one count of obstructing official business,²⁰ two counts of aggravated menacing,²¹ and one count of drug possession.²²

140. Mr. Spencer refused every plea bargain offered to him. He insisted on being vindicated at trial.

141. A judge ordered the state to provide open-file discovery. The State did not turn over Falzini or Simia's body-camera footage or dash-camera footage.

142. The State subpoenaed footage from the officers' body cameras and dashboard camera on September 6, 2017. The officers failed to produce it.

143. The State subpoenaed footage from the officers' body cameras and dashboard camera on October 24, 2017. The officers failed to produce it.

144. Mr. Spencer's criminal-defense attorney specifically demanded that the City turn over the body-camera footage. The City did not turn over the body-camera footage.

145. As Mr. Spencer had predicted, the City claimed to have "lost" its footage of the incident.

¹⁹ Ohio Rev. Code § 2903.13(A).

²⁰ *Id.* at § 2921.31(A).

²¹ *Id.* at § 2903.21(A).

²² *Id.* at § 2925.11(A).

146. The day before trial, the state dismissed Count 2 of the indictment, which charged that Mr. Spencer had assaulted Price.

147. The case proceeded to trial on the remaining counts. The City still did not produce body-camera or dashboard-camera footage of Mr. Spencer's arrest.

148. Falzini and Simia gave false testimony about the events leading up to and after the arrest.

149. The jury saw through their lies. After Mr. Spencer took the stand and introduced his girlfriend's footage of the arrest, the jury rejected the officers' accounts of what had happened before and after the recording, and acquitted Mr. Spencer on all five remaining counts.

CLAIM 1
FIRST AMENDMENT RETALIATION, 42 U.S.C. § 1983—TALKING JIVE WHILE BLACK
(AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR
OFFICIAL AND PERSONAL CAPACITIES)

150. Mr. Spencer incorporates all previous allegations.

151. Mr. Spencer engaged in speech protected by the First Amendment when he jested with neighbors and talked jive, or “ranked” police officers on July 7, 2017.

152. No reasonable officer would believe that “ranking” police officers constitutes a true threat, which is only conveyed “where the speaker *means to communicate a serious expression of an intent to commit an act of unlawful violence.*”²³ To the contrary, any reasonable officer would know that “the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.”²⁴

153. Even threatening statements are protected without conclusive proof of a threatening context.²⁵ Mr. Spencer was unarmed, surrounded by neighborhood children, jested with police

²³ *Virginia v. Black*, 538 U.S. 343, 359 (2003) (emphasis added).

²⁴ *Greene v. Barber*, 310 F.3d 889, 896 (6th Cir. 2002).

²⁵ *Watts v. United States*, 394 U.S. 705, 706–08 (1969) (“What is a threat must be distinguished from what is constitutionally protected speech”: “If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.” was protected speech).

officers, and complied with his arrest. No reasonable person would understand Mr. Spencer's statements about "ranking" or about the officers' haircuts to reflect a subjective intention to inflict serious harm on armed police officers.²⁶ Rather, reasonable police officers understand, or make an effort to understand, the idioms of the communities they police, and have a duty to exercise restraint and diligent inquiry. And in this Circuit, "novel factual circumstances" are not enough to eviscerate constitutional protections, particularly in cases "involving less than outrageous conduct."²⁷

154. No reasonable officer would believe Mr. Spencer's speech or conduct was "likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience."²⁸ None of Mr. Spencer's statements rose to the level of "fighting words" which "by their very utterance inflict injury or tend to incite an immediate breach of the peace."²⁹

155. No reasonable officer would have believed at any time, from the initial drive-by to the encounter in the yard, that there was probable cause to arrest Mr. Spencer.

156. Defendants' acts, including Mr. Spencer's arrest and detention, and the investigation, charges, and searches, and their ensuing threats of physical violence, actual physical violence, and compelled labor, as well as their unlawful destruction and removal of public records to conceal

²⁶ *Wells v. City of Grosse Pointe Farms*, 581 F. App'x 469, 474 (6th Cir. 2014) (nurse's statement during traffic stop "I had better not see you at the hospital where I work" was not a true threat and was protected speech).

²⁷ *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 684 (6th Cir. 2013).

²⁸ *Hill*, 482 U.S. at 461 (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949)); see also *Palma v. Atl. Cty.*, 53 F. Supp. 2d 743, 753 (D.N.J. 1999) (joking about being the Unabomber in courthouse security, on the heels of the arrest of the actual Unabomber, did not permit police officer to arrest speaker for "talking like that"); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 383–84 (1992) (listing categories of unprotected speech); *United States v. Kosma*, 951 F.2d 549, 553 (3d Cir. 1991) (distinguishing true threats and protected speech).

²⁹ *Chaplinsky*, 315 U.S. at 572; see also *Sandul v. Larion*, 119 F.3d 1250, 1255 (6th Cir. 1997) (words expressed while passing by a vehicle would not incite violence); *Greene v. Barber*, 310 F.3d 889, 895–98 (6th Cir. 2002) (calling an officer an "asshole" did not trigger the "fighting words" exception to the First Amendment); *Perkins v. Gabanna*, 2000 U.S. Dist. LEXIS 23209, *2–3 (S.D. Ohio Sept. 21, 2000) (granting §1983 plaintiff's summary-judgment motion following arrest for telling officer to "have a nice day" and raising middle finger).

exculpatory information and Defendants' misdeeds,³⁰ and their willful noncompliance with Ohio's public-records law,³¹ were substantially motivated by his exercise of his First Amendment rights.

CLAIM 2
FIRST AMENDMENT RETALIATION, 42 U.S.C. § 1983—CRITICIZING POLICE OFFICERS
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ IN THEIR OFFICIAL AND
PERSONAL CAPACITIES)

157. Mr. Spencer incorporates all previous allegations.

158. Mr. Spencer was exercising his clearly established First Amendment rights when he criticized the City's police officers.

159. Defendants retaliated against Mr. Spencer's protected activity through a series of adverse actions, including: entering his property to investigate his jokes; threatening to arrest him; arresting him; threatening to taze him; threatening to assault him; threatening to destroy evidence; destroying, removing, or withholding public records, falsifying charges against him; forcing him into involuntary servitude; and lying about his conduct in police reports, complaint summaries, and at trial.

160. Mr. Spencer's arrest, detention, and other adverse acts taken by Defendants, including investigating, charging, obtaining, and effectuating search warrants, and arresting Mr. Spencer, were substantially motivated or caused by his protected activity.

161. Defendants acted throughout in the absence of probable cause that Mr. Spencer had committed a crime, and in violation of clearly established law. No reasonable person would have

³⁰ Under Ohio Rev. Code § 149.351, "[a]ll records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code." Defendants removed, destroyed, or otherwise disposed of video from Falzini and Simia's dashboard camera and body-worn cameras. The disposal of those videos was not permitted by law or under the rules adopted by the City's records commission.

³¹ Under Ohio Rev. Code § 149.43(B)(1), "[u]pon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." Spencer submitted a request to the City for access to video from Falzini and Simia's dashboard camera and body-worn cameras on January 4, 2018. The City never provided those records.

believed otherwise, given the state of the law and Defendants' motivations, and Defendants are liable for First Amendment retaliation under 42 U.S.C. § 1983.

162. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

163. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 3
42 U.S.C. § 1983—PRIOR RESTRAINT
(AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR
OFFICIAL AND PERSONAL CAPACITIES)

164. Mr. Spencer incorporates all previous allegations.

165. At all material times, Mr. Spencer was engaged in constitutionally protected activity, exercising his First Amendment rights to object to conduct that he believed to be racially motivated and exercising his right to have the interaction video-recorded.

166. Defendants sought to effect unlawful prior restraints on Mr. Spencer's lawful speech through a series of adverse actions, including their initial stop, the arrest, the falsification of charges against Mr. Spencer, the interference with his girlfriend's right to record police officers in public, and the attempted interference with his right to receive the footage she captured.

167. Defendants' actions would chill a person of ordinary firmness from propounding further lawful speech.³² No reasonable person would have believed otherwise, given the state of the law and Defendants' motivations.

³² *Reno v. ACLU*, 521 U.S. 844, 872 (1997) ("The severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images."). It is well-settled that threat of legal action or prosecution is a prior restraint on speech. *Bantam Books, Inc. v. Sullivan*, 372 US 58, 66–67 (1963); *ACLU v. City of Pittsburgh*, 586 F. Supp. 417, 423 (W.D. Pa. 1984) (mayor's letter threatening prosecution for display of *Hustler* was unconstitutional prior restraint); *Pilchesky v. Miller*, 2006 WL 2884445 (M.D. Pa. Oct. 10, 2006) (First Amendment was violated when District Attorney and police officer told webhost its customer was being criminally investigated and court order would be sought).

168. Defendants' actions violate the First and Fourteenth Amendments via 42 U.S.C. § 1983.

169. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer irreparable harm, as well as economic and non-economic damages for which Defendants are liable.

170. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 4
FIRST AMENDMENT RETALIATION, 42 U.S.C. § 1983—RETALIATORY ARREST
(AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR
OFFICIAL AND PERSONAL CAPACITIES)

171. Mr. Spencer incorporates all previous allegations.

172. At all material times, Mr. Spencer was engaged in constitutionally protected activity, exercising his clearly established First Amendment rights to criticize the police.

173. Defendants arrested Mr. Spencer without probable cause in retaliation for exercising his clearly established right to criticize the Department.

174. Mr. Spencer was peacefully and gleefully playing with his children when Defendant Officers, of their own volition, turned their vehicle around and retreated down the street to interrogate Mr. Spencer solely because of his speech.³³

175. Mr. Spencer has the right to engage in protected expression on his private property when surrounded by his family. A reasonable officer would have understood that he could not arrest Mr. Spencer merely on the basis of verbal abuse and insult.³⁴ And an arrest motivated even in part to

³³ See *Brown v. City of Warren*, No. 4:05 CV 2439, 2007 WL 188360 (Jan. 22, 2007 N.D. Ohio) (finding that - officers who were otherwise engaged, wrongfully arrested defendant when, by their own volition, broke off their engagement when they heard a black male yelling "fuck the police" and "you guys ain't shit," mounted their bikes to interrogate the defendant based solely because of the profanities, and when defendant refused to give his identification to the officers, wrongfully arrested defendant for disorderly conduct).

³⁴ *Kaylor v. Rankin*, 356 F.Supp.2d 839, 849 (N.D. Ohio 2005) (citing *Greene*, 310 F.2d at 897).

retaliate against constitutionally protected speech “would be impermissible unless it could be shown that the officer would have made the arrest even in the absence of any retaliatory motive.”³⁵

176. Defendant Officers had absolutely no lawful reason to turn their vehicle around, confront, and arrest Mr. Spencer except to harass and violate Mr. Spencer’s rights based on his First Amendment expressions

177. Defendants’ retaliatory arrest injured Mr. Spencer by restraining, preventing, and impairing his right to criticize the Department and did so in a way likely to chill a person of ordinary firmness from propounding further lawful criticisms.

178. Defendants were motivated to execute the wrongful arrest by Mr. Spencer’s criticism.

179. Defendants’ adverse actions violated Mr. Spencer’s clearly established First and Fourteenth Amendment rights, and were unlawful in light of clearly established law. No reasonable person would have believed otherwise, given the state of the law and Defendants’ motivations, and Defendants are liable for retaliatory arrest under 42 U.S.C. § 1983.

180. As a direct and proximate result of Defendants’ unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

181. Defendants’ acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 5
FOURTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—WRONGFUL ARREST
(AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR
OFFICIAL AND PERSONAL CAPACITIES)

182. Mr. Spencer incorporates all previous allegations.

³⁵ *Greene*, 310 F.3d, at 897.

183. “It is a well-settled principle of constitutional jurisprudence that an arrest without probable cause constitutes an unreasonable seizure in violation of the Fourth Amendment.”³⁶

184. Defendants arrested Mr. Spencer because he insulted them.

185. Mr. Spencer had a Fourth and Fourteenth Amendment right to be free from wrongful arrest under the circumstances in which he was arrested.

186. Mr. Spencer was playing in the front yard with his children when the police stopped him. He never threatened to do anything but “rank” Falzini and Simia, that is, insult them. No officer could have reasonably believed there was probable cause to arrest Mr. Spencer for ranking them.

187. As a direct and proximate result of Defendants’ unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

188. Defendants’ acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 6
FOURTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—UNLAWFUL SEARCH
(AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR
OFFICIAL AND PERSONAL CAPACITIES)

189. Mr. Spencer incorporates all previous allegations.

190. Mr. Spencer had a reasonable expectation of privacy in the territorial integrity of his front yard and in the contents of his pockets. Defendants’ entry onto his land and search of his pockets constituted searches within the meaning of the Fourth Amendment, as applied to the states by the Fourteenth Amendment.

191. Defendants’ actions were unreasonable in light of the surrounding circumstances.

192. No probable cause existed to search Mr. Spencer’s home or person.

³⁶ *Patrizi v. Huff*, 690 F.3d 459, 464 (6th Cir. 2012) (quoting *Ingram v. City of Columbus*, 185 F.3d 579, 592–93 (6th Cir. 1999)) (no qualified immunity where police officers arrested § 1983 plaintiff for intemperate speech on charges of obstructing official business).

193. Mr. Spencer suffered humiliation and personal damage from Defendants' unlawful search.

194. Defendants' actions violate the Fourth and Fourteenth Amendments via 42 U.S.C. § 1983.

195. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

196. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 7

FOURTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—WRONGFUL DETENTION (AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

197. Mr. Spencer incorporates all previous allegations.

198. Defendants deprived Mr. Spencer of his Fourth Amendment right to be free from unreasonable seizure by detaining him without probable cause.³⁷

199. Upon detaining Mr. Spencer in their patrol car, they bombarded their captive with obscenities until he arrived at the station, where they declared that he was "in [their] house now." Defendants instructed Mr. Spencer to sit in a chair and then immediately threw him from the chair to the ground where multiple officers jumped on top of Mr. Spencer—jabbing their knees and elbows, unjustifiably, into a compliant and non-threatening Mr. Spencer.

200. Defendant Price threatened Mr. Spencer that he was going to slam him into the wall and continued assaulting Mr. Spencer until a female police officer entered the room. The assault dissipated when that officer rebuked Price for his behavior.

201. Mr. Spencer was continually and unlawfully detained for another three days.

202. As a direct and proximate result of this unlawful detention, which the City endorsed and adopted as its own unwritten municipal policy, Mr. Spencer has suffered and will continue to suffer

³⁷ *Manuel v. Joliet*, 137 S. Ct. 911 (2017).

damages for which Defendants are liable, including, but not limited to, loss of liberty and freedom, loss of enjoyment of life, loss of reputation, physical detention against his will, physical injury, pain and suffering, mental anguish, emotional distress, embarrassment, humiliation, and legal fees and expenses in connection with their criminal defense.

203. Defendants' actions violate the Fourth and Fourteenth Amendments via 42 U.S.C. § 1983.

204. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

205. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

206. The individual Defendants intentionally, wantonly, recklessly, and maliciously violated the Fourth Amendment of the United States Constitution and thus are liable for punitive or exemplary damages.

207. In addition to Mr. Spencer's compensatory damages, Defendants are also liable for attorneys' fees and costs, witness fees, expert fees, and any additional legal or equitable relief that this Court deems appropriate.

CLAIM 8
FOURTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—EXCESSIVE FORCE
(AGAINST ALL DEFENDANTS AND AGAINST FALZINI, SIMIA, BERDYSZ, AND PRICE
IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

208. Mr. Spencer incorporates all previous allegations.

209. Falzini and Simia used force to take Mr. Spencer into custody. They, along with Price and Berdysz, used force in placing him in a jail cell.

210. There was no probable cause to arrest Mr. Spencer. Any force used against him was therefore unreasonable. Even if "ranking" them gave rise to probable cause, it was still not reasonable for Falzini to shove Mr. Spencer or draw his Tazer on him. Calling Price a Nazi did not make it reasonable for him to grab Mr. Spencer, force him into a wall, and throw him down onto a

bench while still handcuffed. Nor did Mr. Spencer's name-calling make it reasonable for Simia and Berdysz to twist Mr. Spencer's head, manipulate his arms, or force him to the ground.

211. Falzini, Simia, Berdysz, and Price knew from their training on the constitutional use of force that their use of force presented a risk of harm to Mr. Spencer but disregarded that risk, taking no reasonable measures to minimize it.

212. Defendants' use of force injured Mr. Spencer, causing bruising and swelling in his head.

213. Falzini, Simia, Berdysz, and Price used excessive force against Mr. Spencer.

214. Berdysz supervised Falzini, Simia, and Price in their use of force against Mr. Spencer, and ratified it.

215. Falzini, Simia, Berdysz, and Price each had a duty to protect Mr. Spencer from the use of excessive force. Each knew that there was no probable cause to arrest Mr. Spencer and that any force used against him was excessive.

216. Defendants' actions violate the Fourth and Fourteenth Amendments via 42 U.S.C. § 1983.

217. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

218. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 9
EIGHTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—UNLAWFUL DETENTION
(AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR
OFFICIAL AND PERSONAL CAPACITIES)

219. Mr. Spencer incorporates all previous allegations.

220. The government may only incarcerate people when incarceration is supported by a legitimate penological justification.³⁸

³⁸ Demonstrating liability for unlawful detention requires proof of three elements: "(1) a prison official had knowledge of the prisoner's problem and thus of the risk that unwarranted punishment was being, or would

221. Price and Jane Doe knew that Mr. Spencer was being detained without probable cause and in retaliation for exercising his First Amendment rights.

222. Price and Jane Doe took no action whatsoever in response to Mr. Spencer's plight. Rather, they taunted him, physically abused him, and required him to perform slave labor. Their response amounts to deliberate indifference to the violation of Mr. Spencer's rights.

223. Price and Jane Doe's refusals to take any action to address the violations leading to Mr. Spencer's detention were causally connected to the his continued detention and the intolerable conditions under which he was detained.

224. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

225. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

226. Defendants' actions violate the Eighth and Fourteenth Amendments via 42 U.S.C. § 1983.

227. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

228. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 10

THIRTEENTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—INVOLUNTARY SERVITUDE (AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

229. Mr. Spencer incorporates all previous allegations.

be, inflicted; (2) the official either failed to act or took only ineffectual action under the circumstances, indicating that his response to the problem was a product of deliberate indifference to the prisoner's plight; and (3) a causal connection between the official's response to the problem and the unjustified detention." *Montanez v. Thompson*, 603 F.3d 243, 252 (3d Cir. 2010).

230. Defendant Jane Doe's threats to attack Mr. Spencer with pepper spray if he refused to perform slave labor constituted physical and legal coercion.

231. Because of those threats, Mr. Spencer believed he he had no viable alternative but to perform the work she had ordered. He would not have agreed to clean the City jail in the absence of those threats.

232. The Thirteenth Amendment clearly established that the government may not force people into involuntary servitude. There is no exception for people who mock the police or have been accused of a crime.³⁹

233. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

234. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

235. Defendants' actions violate the Thirteenth and Fourteenth Amendments via 42 U.S.C. § 1983.

236. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

237. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 11
MONELL LIABILITY, 42 U.S.C. § 1983—UNCONSTITUTIONAL POLICY
(AGAINST THE CITY OF GARFIELD HEIGHTS)

238. Mr. Spencer incorporates all previous allegations.

³⁹ *McGarry v. Pallito*, 687 F.3d 505, 511 (2d Cir. 2012) (A plaintiff may “state a claim under the Thirteenth Amendment” when he alleges that jailers compelled him to work through actual or threatened physical coercion.)

239. Chief of Police Robert Byrne authorized and implemented an unconstitutional custom, policy, or practice of requiring pretrial detainees in his jail to perform uncompensated labor.

240. Byrne was authorized to make official policy for the City on these issues.

241. As a direct and proximate result of the City's unlawful policy, Plaintiff has suffered and continues to suffer economic and non-economic damages for which the City is liable.

242. The City's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter the City and others from engaging in this type of unlawful conduct.

243. The City's authorized actions, policies, and practices violate the Thirteenth and Fourteenth Amendments via 42 U.S.C. § 1983.

244. As a direct and proximate result of the City's policies and practices, Plaintiff has suffered and continues to suffer economic and non-economic damages for which the City is liable.

CLAIM 12

FIFTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—DESTRUCTION OF EVIDENCE (AGAINST FALZINI, SIMIA, AND BERDYSZ IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

245. Mr. Spencer incorporates all previous allegations.

246. Falzini, Simia, and Berdysz failed to preserve dash-camera and body-camera footage that would have exonerated Mr. Spencer.

247. The Defendants destroyed those videos in bad faith. The Defendants knew that those videos had exculpatory value and destroyed them for that reason.

248. Because they were irrefutable proof that Mr. Spencer had not threatened or assaulted anyone, those videos provided exculpatory evidence that Mr. Spencer would not be able to obtain by other means.

249. Mr. Spencer had a due process right under the Fifth Amendment to access all exculpatory evidence. At the time of his arrest, he had a clearly established right to evidence that is materially exculpatory evidence and to evidence that might have been exculpatory.⁴⁰

250. Defendants' actions violate the Fifth and Fourteenth Amendments via 42 U.S.C. § 1983.

251. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

252. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 13
18 U.S.C. §§ 1589 AND 1595—FORCED LABOR
(AGAINST JANE DOE AND THE CITY OF GARFIELD HEIGHTS)

253. Mr. Spencer incorporates all previous allegations.

254. Under 18 U.S.C. § 1595, parties who violate § 1589's prohibition on forced labor are subject to civil suit and may be required to pay damages and attorneys' fees.

255. The City's program of forcing pretrial detainees into unpaid labor violates § 1589.

256. Jane Doe knowingly obtained labor and services from Mr. Spencer through threats of force, physical restraints, threats of serious physical harm, and abuse of law or legal process.

257. Jane Doe intended to cause Mr. Spencer to believe that she would harm him if he refused to perform slave labor. Her threat was wanton and malicious.

258. Under these circumstances, a reasonable person of Mr. Spencer's background and circumstances would acquiesce to Jane Doe's threats, to avoid physical violence.

⁴⁰ *Salter v. Hoffner*, No. 16-2448, 2017 WL 4844451, at *3 (6th Cir. July 3, 2017) (“The destruction of evidence can reach the level of constitutional materiality if it ‘both possess[es] an exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.’ A showing of bad faith is required to establish a constitutional violation where the state fails to preserve evidentiary material that *might* have been exculpatory.” (citations omitted)).

259. Jane Doe and the City benefitted from their participation in the scheme to force pretrial detainees to perform unpaid labor.

CLAIM 14
FOURTH AMENDMENT VIOLATION, 42 U.S.C. § 1983—MALICIOUS PROSECUTION
(AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR
OFFICIAL AND PERSONAL CAPACITIES)

260. Mr. Spencer incorporates all previous allegations.

261. “[T]he constitutional tort of malicious prosecution . . . is actionable in our circuit as a Fourth Amendment violation under § 1983.”⁴¹

262. Absolute immunity does not bar Mr. Spencer’s suit against law-enforcement officers, even where they have testified before a grand jury and an indictment has been returned.⁴² Their actions began long before any grand jury was impaneled, and continued after he was indicted.

263. Mr. Spencer was criminally prosecuted for ranking Falzini and Simia.

264. Defendants made, influenced, or participated in the decision to prosecute Mr. Spencer, including by falsifying evidence, drafting and submitting misleading investigative reports and affidavits, and omitting key and material facts.

265. There was no probable cause for the criminal prosecution of Mr. Spencer.

266. Mr. Spencer suffered a deprivation of his liberty and irreparable harm.

⁴¹ *King v. Harwood*, 852 F.3d 568, 584 (6th Cir. 2017).

⁴² *Rehberg v. Paulk*, 132 S. Ct. 1497, 1507 n.1 (2012) (“we do not suggest that absolute immunity extends to all activity that a witness conducts outside the grand jury room.”). “Crucially,” as the Sixth Circuit has since clarified, “*Rehberg* does not affect the thin but conspicuous line between, on the one hand, law-enforcement officers who only provide grand-jury testimony . . . [and] law-enforcement officers who either (1) ‘set the wheels of government in motion by instigating a legal action,’ or (2) ‘falsify affidavits’ or ‘fabricate evidence.’” *Harwood*, 852 F.3d at 584. Rather, “where (1) a law-enforcement officer, in the course of setting a prosecution in motion, either knowingly or recklessly makes false statements (such as in affidavits or investigative reports) or falsifies and fabricates evidence; (2) the false statements and evidence, together with any concomitant misleading omissions, are material to the ultimate prosecution of the plaintiff; and (3) the false statements, evidence, and omissions do not consist solely of grand-jury testimony or preparation for that testimony. . . the presumption that the grand-jury indictment is evidence of probable cause is rebuttable and not conclusive.” *Harwood*, 852 F.3d at 587–88. This Court correctly applied *Harwood* as recently as August 22, 2017. *Wheatt v. City of East Cleveland*, 2017 WL 3599187, at *2 (N.D. Ohio Aug. 22, 2017).

267. The prosecution was resolved in his favor when the State dropped one charge and a jury acquitted him of all others.

268. Defendants' conduct violated the Fourth and Fourteenth Amendments via 42 U.S.C. § 1983.

269. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

270. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 15

MONELL LIABILITY, 42 U.S.C. § 1983—UNCONSTITUTIONAL CUSTOM, POLICY, OR PRACTICE (AGAINST THE CITY OF GARFIELD HEIGHTS)

271. Mr. Spencer incorporates all previous allegations.

272. Chief of Police Robert Byrne authorized and implemented an unconstitutional custom, policy, or practice of refusing to distinguish between protected and unprotected speech in criminal investigations and prosecutions. Byrne also authorized and implemented an unconstitutional custom, policy, or practice of seeking criminal sanctions on the basis of perceived offenses to police officers' dignity.

273. Byrne was authorized to make official policy for the City on these issues.

274. The City is liable under the First, Fourth, and Fourteenth Amendments via 42 U.S.C. § 1983.

275. As a direct and proximate result of the City's unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which the City is liable.

276. The City's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter the City and others from engaging in this type of unlawful conduct.

CLAIM 16

MONELL LIABILITY, 42 U.S.C. § 1983—FAILURE TO TRAIN (AGAINST THE CITY OF GARFIELD HEIGHTS)

277. Mr. Spencer incorporates all previous allegations.

278. “[A] city can be liable under § 1983 for inadequate training of its employees.”⁴³

279. The City failed to provide adequate training to its officers on clearly established First Amendment rights, including basic distinctions between protected and unprotected speech.

280. Given clearly established law requiring police officers to tolerate coarse criticism, as well as the City’s direct experience, the City’s failure to train its officers displays deliberate indifference to the rights of persons they may encounter.

281. The City has never trained its police officers on First Amendment standards, despite repeated warnings from the courts that those officers have been acting unconstitutionally.

282. The City is liable under the First, Fourth, and Fourteenth Amendments via 42 U.S.C. § 1983.

283. Defendants’ failures with respect to individuals’ First Amendment rights amounts to deliberate indifference to the constitutional violation committed by Defendants against Mr. Spencer.

284. Defendants should have anticipated that individuals would attempt to record police performing their official duties on Mr. Spencer’s private property, given the ubiquity of smartphones.

285. The City knew, or should have known, that its the Defendant Officers mishandle situations and commit constitutional violations where a member of the public attempts to record police activity.

286. Nevertheless, Defendants failed to train the Defendant Officers not to interfere with such constitutional activity.

287. Defendant’s practice of interfering with individuals who, without interfering with police activity, record or attempt to record police officers is so persistent, widespread, and pervasive as to

⁴³ *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1969).

constitute a custom and imply the constructive knowledge or acquiescence of the City and its policymakers.

288. Defendant's deliberate indifference to Defendant Officers' deprivation of constitutional rights may be considered a policy, practice, or custom of the Defendant City.

289. As a direct and proximate result of Defendant's failure to train and supervise, which the City endorsed and adopted as its own unwritten municipal policy, Mr. Spencer has suffered and will continue to suffer damages for which Defendant is liable, including, but not limited to, loss of liberty and freedom, loss of enjoyment of life, loss of reputation, physical detention against his will, physical injury, pain and suffering, mental anguish, emotional distress, embarrassment, humiliation, and legal fees and expenses in connection with their criminal defense.

290. In addition to Mr. Spencer's compensatory damages, Defendant is also liable for attorneys' fees and costs, witness fees, expert fees, and any additional legal or equitable relief that this Court deems appropriate.

CLAIM 17
42 U.S.C. § 1983—SUPERVISORY LIABILITY
(AGAINST DEFENDANT BERDYSZ)

291. Mr. Spencer incorporates all previous allegations.

292. Defendant Berdysz played an active role in Defendants' unconstitutional actions, including Defendant Connor's First and Fourth Amendment retaliation. He encouraged and condoned Falzini, Simia, and Price's actions, including their drafting and filing of false reports and affidavits.

CLAIM 18
OHIO REV. CODE § 2921.03(A) AND (C)—FALSE WRITINGS
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

293. Mr. Spencer incorporates all previous allegations.

294. Under Ohio Rev. Code § 2921.03(A) “[n]o person shall attempt to influence . . . a public servant . . . by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner.”

295. Ohio Rev. Code § 2921.03(C) provides a civil cause of action for violations of § 2921.03(A), and for the recovery of attorneys’ fees and other expenses in bringing the civil claim.

296. Defendant Falzini, at the instruction and under the supervision of Defendant Berdysz, filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included the complaints against Mr. Spencer for assault, resisting arrest, and menacing, and the probable cause affidavit.

297. Defendant Simia, at the instruction and under the supervision of Defendant Berdysz, filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included the initial incident report, its attached narrative, its investigative report supplement, and the complaint against Mr. Spencer menacing.

298. Defendant Price, at the instruction and under the supervision of Defendant Berdysz, filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included his narrative statement of Mr. Spencer’s booking and the complaint for assault.

299. Defendant John Doe filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included the complaint summary and the grand jury case synopsis.

300. Defendant Berdysz filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included Simia’s incident report, the attached investigative supplement, and the complaints.

301. Defendants caused damage to Mr. Spencer, including forcing him to incur expenses to bond out of jail, defend himself from prosecution, and lose time at work.

302. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

303. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 19
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND
2913.42—TAMPERING WITH RECORDS
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

304. Mr. Spencer incorporates all previous allegations.

305. Under Ohio Rev. Code § 2913.42, “[n]o person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following: (1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record; (2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.”

306. Defendants tampered with records when they falsified, destroyed, removed, concealed, altered, defaced, or mutilated writings, computer software, data, or records with purpose to defraud or knowing that they were facilitating a fraud. Defendants falsified reports, warrants, and affidavits; Defendants also destroyed or concealed video data.

307. Defendants uttered writings and records that they knew to have been tampered with when they signed and delivered their falsified reports, complaints, and affidavits.

308. Defendants took these actions knowing they had no privilege to do so.

309. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

310. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 20
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND
2917.12—DISTURBING A LAWFUL MEETING
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

311. Mr. Spencer incorporates all previous allegations.

312. Under Ohio Rev. Code § 2917.12, “[n]o person, with purpose to prevent or disrupt a lawful meeting, procession, or gathering, shall do either of the following: (1) Do any act which obstructs or interferes with the due conduct of such meeting, procession, or gathering; (2) Make any utterance, gesture, or display which outrages the sensibilities of the group.”

313. Before Falzini and Simia arrived, Mr. Spencer's family and neighbors were lawfully gathered.

314. Falzini and Simia obstructed or interfered with that gathering by launching an investigation into their discussions, and by interrogating, attacking, and arresting Mr. Spencer.

315. Falzini and Simia outraged the sensibilities of the gathered group by uttering false accusations, threatening to arrest him, drawing a weapon, and arresting Mr. Spencer.

316. Falzini and Simia took these actions with purpose to disrupt the gathering.

317. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

318. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 21
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE § 2307.60 (A)(1) AND
2921.03(A)—FALSE WRITINGS
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

319. Mr. Spencer incorporates all previous allegations.

320. Under Ohio Rev. Code § 2307.60 (A)(1), “Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action,” including attorneys’ fees and punitive damages.

321. Criminal statute Ohio Rev. Code § 2921.03(A) provides that no person “shall attempt to influence ... a public servant ... by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner.”

322. Defendant Falzini, at the instruction and under the supervision of Defendant Berdysz, filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included the complaints against Mr. Spencer for assault, resisting arrest, and menacing, and the probable cause affidavit.

323. Defendant Simia, at the instruction and under the supervision of Defendant Berdysz, filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included the initial incident report, its attached narrative, its investigative report supplement, and the complaint against Mr. Spencer menacing.

324. Defendant Price, at the instruction and under the supervision of Defendant Berdysz, filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included his narrative statement of Mr. Spencer’s booking and the complaint for assault.

325. Defendant John Doe filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included the complaint summary and the grand jury case synopsis.

326. Defendant Berdysz filed or submitted false writings in a reckless manner in an attempt to influence public servants to prosecute and convict Mr. Spencer. Those writings included Simia’s incident report, the attached investigative supplement, and the complaints.

327. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

328. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 22

CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND 2921.04—INTIMIDATION OF AN ATTORNEY, VICTIM, OR WITNESS IN A CRIMINAL CASE (AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, BERDYSZ, AND JOHN DOE)

329. Mr. Spencer incorporates all previous allegations.

330. From the time he was arrested through the time he was thrown into a jail cell, Mr. Spencer repeatedly threatened to bring criminal charges against the Defendants for their unlawful conduct.

331. The Defendants falsified charges, falsified documents, and destroyed evidence in a knowing attempt to hinder Mr. Spencer from pursuing or successfully prosecuting those charges.

332. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

333. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 23

CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND 2921.11—PERJURY (AGAINST DEFENDANTS FALZINI, SIMIA, AND PRICE)

334. Mr. Spencer incorporates all previous allegations.

335. Under criminal statute Ohio Rev. Code § 2921.11(A), “[n]o person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.”

336. Defendants Falzini, Simia, and Price knowingly made false statements under oath or affirmation, including in affidavits in support of complaints.

337. Those false statements were material to the prosecution of Mr. Spencer.

338. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

339. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 24
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1)
AND 2921.12—TAMPERING WITH EVIDENCE
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

340. Mr. Spencer incorporates all previous allegations.

341. Criminal statute Ohio Rev. Code § 2921.12 provides that no person, knowing official proceedings are likely to be initiated, shall (1) “[a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation,” or (2) “[m]ake, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.”

342. Defendants knew official proceedings were imminent, including the prosecution of Mr. Spencer for his protected speech.

343. Defendants knowingly presented false and misleading records to mislead public officials and corrupt the outcome of their sham investigation, including by presenting false and misleading reports and affidavits to initiate the criminal prosecution.

344. Defendants knowingly altered, destroyed, concealed, or removed video footage of their interactions with Mr. Spencer to mislead the court into believing their allegations and to corrupt the outcome of the prosecution.

345. Defendants' purpose was to procure an unlawful criminal verdict against Mr. Spencer for his protected speech.

346. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

347. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 25
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND
2921.13—FALSIFICATION
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

348. Mr. Spencer incorporates all previous allegations.

349. Criminal statute Ohio Rev. Code § 2921.13 prohibits any person from making or swearing to false statements.

350. Defendants knowingly made false statements in official proceedings, including their perjured affidavits, with the purpose to incriminate Mr. Spencer, and with a purpose to mislead public officials in the course of their official duties.

351. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

352. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 26
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND
2921.44(E)—DERELICTION OF DUTY
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

353. Mr. Spencer incorporates all previous allegations.

354. Under Ohio Rev. Code § 2921.44(E), “[n]o public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant’s office, or recklessly do any act expressly forbidden by law with respect to the public servant’s office.”

355. Defendants recklessly failed to perform duties expressly imposed on them by law, including providing full and complete information in their reports and affidavits, adequately establishing legal grounds for stopping, questioning, arresting, searching, and detaining Mr. Spencer, providing full and accurate information to judicial officers, preserving records of their interactions with Mr. Spencer, and abstaining from violating constitutional rights.

356. Defendants recklessly performed acts expressly forbidden by law, including imposing unlawful prior restraints on Mr. Spencer's speech and retaliating against Mr. Spencer for criticizing the Department.

357. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

358. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM 27
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND
2921.45—INTERFERENCE WITH CIVIL RIGHTS
(AGAINST DEFENDANTS FALZINI, SIMIA, PRICE, AND BERDYSZ)

359. Mr. Spencer incorporates all previous allegations.

360. Criminal statute Ohio Rev. Code § 2921.45 forbids public servants from depriving any person of a constitutional or statutory right.

361. Defendants acted under color of office, employment, and authority to knowingly deprive Mr. Spencer of his civil rights, including his constitutional rights under the First, Fourth, Thirteenth, and Fourteenth Amendments to the U.S. Constitution.

362. As a direct and proximate result of Defendants' unlawful activity, Plaintiff has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

363. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

PRAYER FOR RELIEF

For the foregoing reasons, Mr. Spencer respectfully requests that the Court

- A. Enter judgment in Mr. Spencer's favor on all claims for relief;
- B. Declare that Defendants' acts and conduct constitute violations of the First, Fourth, Thirteenth and Fourteenth Amendments to the United States Constitution, as well as of 42 U.S.C. § 1983.
- C. Award injunctive relief requiring Defendants to provide First, Fourth, and Thirteenth Amendment training to all police officers in the Department;
- D. Award full compensatory damages, including but not limited to damages for pain and suffering, mental anguish, emotional distress, humiliation, embarrassment, and inconvenience that Mr. Spencer has suffered and is reasonably certain to suffer;
- E. Award punitive and exemplary damages for the individual Defendants' intentional, malicious, and egregious acts and callous and reckless disregard of Mr. Spencer's constitutional rights;
- F. Award pre- and post-judgment interest at the highest lawful rate;
- G. Award Mr. Spencer his reasonable attorneys' fees and all other costs of suit available under 42 U.S.C. §§ 1988 and 18 U.S.C. § 1595(a), and Ohio Rev. Code § 2921.03(C);
- H. Award all other relief in law or equity, including injunctive relief, to which Mr. Spencer is entitled and that the Court deems equitable, just, or proper.

JURY DEMAND

Mr. Spencer demands a trial by jury on all issues within this Complaint.

Respectfully submitted,

THE CHANDRA LAW FIRM LLC

/s/ Subodh Chandra

Subodh Chandra (Ohio Bar No. 0069233)

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