

**IN THE CIRCUIT COURT
FOR BALTIMORE CITY, MARYLAND**

MARYLAND STATE CONFERENCE OF NAACP BRANCHES, *c/o Jenkins Odoms, Jr., President, 4301 Garden City Drive, Room 301, Hyattsville, MD 20785,*

BALTIMORE CITY BRANCH OF THE NAACP, *c/o Marvin L. Cheatham, Sr., President, 8 West 26th St., Baltimore, MD 21218-4501,*

EVAN HOWARD, for himself and on behalf of a class of similarly situated persons, *1314 Poplar Grove St., Baltimore, MD 21216,*

TYRONE BRAXTON, for himself and on behalf of the class, *2816 W. Mosher St., Baltimore, MD 21216,*

DONALD WILSON, for himself and on behalf of the class, *902 Montpelier, Baltimore, MD 21218,*

ROBERT LOWERY, for himself and on behalf of the class, *786 Essex Circle, Greencastle, PA 17225,*
and

AARON STONER, for himself and on behalf of the class, *538 Kraiss Ave., Chambersburg, PA 17201,*

Plaintiffs,

v.

BALTIMORE CITY POLICE DEPARTMENT, *601 East Fayette St., Baltimore, MD 21202,*

MAYOR AND CITY COUNCIL OF THE CITY OF BALTIMORE, *100 North Holliday St., Baltimore, MD 21202,*

MARTIN O'MALLEY, individually, and in his official capacity as Mayor, City of Baltimore, *100 North Holliday St., Baltimore, MD 21202,*

LEONARD HAMM, individually, and in his official capacity as Commissioner, Baltimore City Police

Civil Case No. 24-C-06-005088

Department, *601 East Fayette St., Baltimore, MD 21202,*

MARCUS L. BROWN, individually, and in his official capacity as Deputy Commissioner, Baltimore City Police Department, *601 East Fayette St., Baltimore, MD 21202,*

KEVIN CLARK, individually, *321 Union Ave., Mount Vernon, NY 10550,*

EDWARD T. NORRIS, individually, *1621 East 51st St., Brooklyn, NY 11234,*

JEMINI JONES, individually, and in his official capacity as a Police Officer, Baltimore City Police Department, *601 East Fayette St., Baltimore, MD 21202,*

DAVID A. CRITES, JR., individually, and in his official capacity as a Police Officer, Baltimore City Police Department, *601 East Fayette St., Baltimore, MD 21202,*

SGT. PECHA, individually, and in his official capacity as a Police Officer, Baltimore City Police Department, *601 East Fayette St., Baltimore, MD 21202,*

B. NEWKIRK, individually, and in his official capacity as a Police Officer, Baltimore City Police Department, *601 East Fayette St., Baltimore, MD 21202,*

ARNOLD JONES, individually, and in his official capacity as a Police Officer, Baltimore City Police Department, *601 East Fayette St., Baltimore, MD 21202,*

JOHN DOES 1-100, individually, and in their official capacities as Police Officers, Baltimore City Police Department, *601 East Fayette St., Baltimore, MD 21202,*

STATE OF MARYLAND, Baltimore Central Booking and Intake Center, *400 East Madison St.,*

Baltimore, MD 21202,

MARY ANN SAAR, individually, and in her official capacity as Secretary, Department of Public Safety and Correctional Services, *c/o J. Joseph Curran, Jr., Attorney General of Maryland, 200 St. Paul Place, Baltimore, MD 21202,*

WILLIAM J. SMITH, individually, and in his official capacity as Commissioner, Division of Pretrial Detention and Services, *400 East Madison St., Baltimore, MD 21202,*

MITCHELL FRANKS, individually, and in his official capacity as Warden, Baltimore Central Booking and Intake Center, *400 East Madison St., Baltimore, MD 21202,*

SUSAN MURPHY, individually, *Last Known Address: 400 East Madison St., Baltimore, MD 21202,* and

JOHN DOES A-F, individually, and in their official capacity as Corrections Officers, Central Booking and Intake Center, *400 East Madison St., Baltimore, MD 21202,*

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs Maryland State Conference of NAACP Branches and Baltimore City Branch of the NAACP (collectively, “NAACP”) and Evan Howard, Tyrone Braxton, Donald Wilson, Robert Lowery, and Aaron Stoner, for themselves and on behalf of a class of similarly situated individuals, sue various state and local entities and individuals for violations of federal and state law and seek declaratory, injunctive, monetary, equitable, and all other relief to which they are entitled.

I. INTRODUCTION

1. Under a pattern and practice set and enforced by city officials, Baltimore police officers arrest individuals without probable cause, in violation of the U.S. Constitution and the Maryland Declaration of Rights.

2. To encourage this pattern and practice, the Baltimore City Police Department (“Police Department”) rewards police officers with more arrests and punishes officers with fewer arrests, regardless of the number or success of resulting prosecutions.

3. As a consequence, Baltimore prosecutors decided to drop the charges against approximately 30 percent of those arrested without a warrant in 2005 prior to any involvement by a defense attorney, and prior to review of the charges by a Court Commissioner.

4. The Maryland Central Booking and Intake Center (“CBIC”) receives these arrestees for processing, and compounds the problem by conducting strip searches of male arrestees without probable cause or individualized suspicion that they are carrying weapons or contraband, in violation of the U.S. Constitution and the Maryland Declaration of Rights.

5. The volume of arrests by the Police Department has caused CBIC to detain many arrestees beyond the statutory time limit of 24 hours before presentment or release, in violation of Maryland Rule 4-212(f) and the Maryland Declaration of Rights. In some cases, the detentions have exceeded 48 hours, in violation of the U.S. Constitution.

6. These unconstitutional and illegal acts degrade, humiliate, and cause grave harm to their victims. Individuals who are arrested suffer unwarranted deprivation of personal liberty, sometimes for days. They may lose their jobs or be denied job opportunities in the future as a result of the permanent stigma of having a criminal charge on their record. They suffer the humiliation of being hauled away in handcuffs in front of friends, family, or neighbors. At CBIC, they are subjected to the degradation of strip searches—in many cases, visual body cavity searches—in front of other detainees. They are detained, sometimes for days at a time, in filthy, overcrowded conditions. Then, when the States' Attorney declines to prosecute, they are Released Without Charge (RWOC'd), though they have technically already been charged by the police—often because the police had no right to arrest them in the first place.

7. Despite the patently unconstitutional and illegal nature of this conduct and its detrimental effects on the Baltimore residents whom the laws are supposed to protect, city officials have refused to reform their practices. The time has come to rein in this abuse of power and stop these unconstitutional and illegal acts.

II. JURISDICTION

8. This Circuit Court has exclusive subject matter jurisdiction over this case because each individual Plaintiff claims damages in excess of \$25,000.

9. This Court has personal jurisdiction over Defendants State of Maryland ("State"), the Mayor and City Council of the City of Baltimore ("City"), and the Police Department because they are entities consisting of or located within Maryland.

10. This Court also has personal jurisdiction over individual Defendants Saar, Smith, Franks, Murphy, O'Malley, Hamm, Brown, Clark, Norris, Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, Does A-F, and Does 1-100. Upon information and belief, Saar, Smith, Franks, Murphy, O'Malley, Hamm, Brown, Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, Does A-F, and Does 1-100 maintain domiciles within the State of Maryland. In addition, this Court has personal jurisdiction over all of the individual Defendants under Maryland's long-arm statute because (a) their tortious actions and omissions occurred and caused injury within Maryland and (b) they are (or were at the time of the illegal acts) all employed within Maryland, thus performing a character of work or service within Maryland.

III. PRE-SUIT REQUIREMENTS

11. Plaintiffs Howard, Lowery, Braxton, and Stoner have satisfied the necessary pre-suit prerequisites under the Maryland Tort Claims Act and the Local Government Tort Claims Act for each of the pertinent claims listed below in Section VIII.

12. Evan Howard submitted notice of his claims to the Baltimore City Solicitor and the Maryland State Treasurer via certified mail, return receipt requested, on September 23, 2005. On September 29, 2005, the City notified Mr. Howard's counsel that the claim against the City had been referred to Michael Fry of the Baltimore City Police Department for attention and disposition. On October 4, 2005, the Maryland State Treasurer acknowledged receipt of Mr. Howard's claim. The Maryland Treasurer failed to give Mr. Howard notice of a final decision within six months after the filing of his claim.

13. Tyrone Braxton submitted notice of his claims to the Baltimore City Solicitor and the Maryland State Treasurer via certified mail, return receipt requested, on September 23, 2005. On September 29, 2005, the City notified Mr. Braxton's counsel that the claim against the City had been referred to Michael Fry of the Baltimore City Police Department for attention and disposition. On October 11, 2005, the Maryland State Treasurer acknowledged receipt of Mr. Braxton's claim. The Maryland Treasurer failed to give Mr. Braxton notice of a final decision within six months after the filing of his claim.

14. Robert Lowery submitted notice of his claims to the Baltimore City Solicitor and the Maryland State Treasurer via certified mail, return receipt requested, on September 29, 2005. On October 5, 2005, the City notified Mr. Lowery's counsel that the claim against the City had been referred to Michael Fry of the Baltimore City Police Department for attention and disposition. On October 6, 2005, the Maryland State Treasurer acknowledged receipt of Mr. Lowery's claim. The Maryland Treasurer failed to give Mr. Lowery notice of a final decision within six months after the filing of his claim.

15. Aaron Stoner submitted notice of his claims to the Baltimore City Solicitor and the Maryland State Treasurer via certified mail, return receipt requested, on September 29, 2005. On October 5, 2005, the City notified Mr. Stoner's counsel that the claim against the City had been referred to Michael Fry of the Baltimore City Police Department for attention and disposition. On October 6, 2005, the Maryland State Treasurer acknowledged receipt of Mr. Howard's claim. The Maryland Treasurer

failed to give Mr. Stoner notice of a final decision within six months after the filing of his claim.

16. Donald Wilson is in the process of submitting notice of his claims to the Baltimore City Solicitor and the Maryland State Treasurer via certified mail, return receipt requested. While his notice is pending, Mr. Wilson at this time asserts state causes of action for (a) damages only against city and state officials in their individual capacities and (b) injunctive and declaratory relief.

IV. VENUE

17. Venue is proper in this Court because the causes of action arose in the City of Baltimore.

V. THE PARTIES

A. The Plaintiffs

18. Plaintiff Evan Howard is a 19-year-old student in the engineering program at Morgan State University and a resident of the City of Baltimore. He is and always has been a person and a citizen of the United States and the State of Maryland within the meaning of the constitutions of the United States and the State of Maryland. With the exception of the arrest described below, Mr. Howard has never been arrested or convicted of a crime. As explained below, Mr. Howard has been injured and risks further harm as a result of the defendants' illegal acts and omissions. He also seeks to represent a class of individuals described below.

19. Plaintiff Tyrone Braxton is a 19-year-old graduate of Carver Vocational Technical High School and a resident of the City of Baltimore. He is and always has been a person and a citizen of the United States and the State of Maryland within the

meaning of the constitutions of the United States and the State of Maryland. With the exception of the arrest described below, Mr. Braxton has never been arrested or convicted of a crime. As explained below, Mr. Braxton has been injured and risks further harm as a result of the defendants' illegal acts and omissions. He also seeks to represent a class of individuals described below.

20. Plaintiff Donald Wilson is a 21-year-old resident of Baltimore, Maryland. He is and always has been a person and a citizen of the United States and the State of Maryland within the meaning of the constitutions of the United States and the State of Maryland. With the exception of the arrest described below, and a juvenile detention for disturbing the peace (which was never prosecuted), Mr. Wilson has not been arrested or convicted of a crime. As explained below, Mr. Wilson has been injured and risks further harm as a result of the defendants' illegal acts and omissions. He also seeks to represent a class of individuals described below.

21. Plaintiff Robert Lowery is a 27-year-old resident of Greencastle, Pennsylvania. He is and always has been a person and a citizen of the United States and the Commonwealth of Pennsylvania within the meaning of the constitutions of the United States and the Commonwealth of Pennsylvania. With the exception of the arrest described below, Mr. Lowery has never been arrested or convicted of a crime. As explained below, Mr. Lowery has been injured and risks further harm as a result of the defendants' illegal acts and omissions. He also seeks to represent a class of individuals described below.

22. Plaintiff Aaron Stoner is a 26-year-old resident of Chambersburg, Pennsylvania. He is and always has been a person and a citizen of the United States

and the Commonwealth of Pennsylvania within the meaning of the constitutions of the United States and the Commonwealth of Pennsylvania. With the exception of the arrest described below, Mr. Stoner has never been arrested or convicted of a crime. As explained below, Mr. Stoner has been injured and risks further harm as a result of the defendants' illegal acts and omissions. He also seeks to represent a class of individuals described below.

23. Plaintiffs Maryland State Conference of NAACP Branches and Baltimore City Branch of the NAACP (collectively, "NAACP") are 501(c)(4) non-profit, membership organizations that advocate for civil rights, equality, and social justice. The NAACP sues for declaratory and injunctive relief on behalf of its Maryland resident members, who are likely to be subjected to future unconstitutional and illegal arrests, strip searches, and detentions under the policies and practices described herein.

B. Defendants

1. Entities

24. Defendant State of Maryland ("State") is a state government. The State has statutorily created, and is legally responsible for, the Department of Public Safety and Correctional Services ("Department"). The Division of Pretrial Detention and Services ("Pretrial Detention") is a division of the Department.

25. Defendant Mayor and City Council of the City of Baltimore ("City"), a municipal corporation, is a governmental entity within the meaning of the federal and state constitutions.

26. Defendant Baltimore City Police Department ("Police Department") is a government agency. The Mayor appoints the Commissioner of the Police Department

with the advice and consent of the City Council. The City Council holds hearings on Police Department policy and sets the Police Department budget.

27. By virtue of being local governmental entities exercising power delegated by the State of Maryland, the City and the Police Department were acting under color of state law during all relevant times.

2. Officials

28. Defendant Mary Ann Saar is, and was at all times relevant hereto, Secretary of the Department. As Secretary, she acts under color of state law and exercises authority over the policies and practices of the Pretrial Division. She ultimately is responsible for the actions and policies of CBIC. Ms. Saar is sued in her individual and official capacities.

29. Defendant William J. Smith is, and was at all times relevant hereto, Commissioner of Pretrial Detention. As such, Mr. Smith is responsible for the duties, discipline, and conduct of officers and other employees of units in the division, such as CBIC. Mr. Smith also is responsible for establishing policies regarding screening, hiring, training, monitoring, and supervision of subordinate employees at CBIC. As Commissioner, he acts and has acted under color of state law. Mr. Smith is sued in his individual and official capacities.

30. Defendant Mitchell Franks is, and has been since July 6, 2005, the Warden of CBIC. As Warden, he acts and has acted under color of state law by screening, hiring, training, monitoring, and supervising subordinate employees at CBIC. Mr. Franks is sued in his individual and official capacities.

31. Defendant Susan Murphy was, from July 23, 2004, until her retirement on June 23, 2005, the Warden of CBIC. As Warden, Ms. Murphy acted under color of state law by screening, hiring, training, monitoring, and supervising subordinate employees at CBIC. Ms. Murphy is sued in her individual capacity.

32. Defendants John Does A-F were, at times relevant hereto, corrections officers employed by CBIC. Does A and B conducted strip searches of Plaintiffs Howard and Braxton. Does C and D conducted the strip search of Plaintiff Donald Wilson. Does E and F conducted strip searches of Plaintiffs Stoner and Lowery. As corrections officers, Does A-F acted within the scope of their duties and under color of state law. These defendants are sued in their individual and official capacities.

33. Defendant Martin O'Malley is, and was at all times relevant hereto, the Mayor of the City of Baltimore. As Mayor, he acts and has acted under color of state law by appointing the Commissioner of the Police Department, overseeing the operation of the Police Department, and introducing "The Mayor's Plan to Drastically Reduce Crime in Baltimore" and other policies that encourage the unconstitutional police practices. Mr. O'Malley is sued in his individual and official capacities.

34. Defendant Leonard Hamm is, and has been since March 14, 2005, the Commissioner of the Police Department. Mr. Hamm also served as Interim Commissioner of the Police Department from November 10, 2004, until March 14, 2005. In each position, Mr. Hamm has acted and continues to act under color of state law by exercising final policy-making authority for the Police Department, establishing the duties, conduct, and discipline of officers and other employees, and establishing

policies regarding screening, hiring, training, monitoring, and supervision of subordinates. Mr. Hamm is sued in his individual and official capacities.

35. Defendant Marcus L. Brown is, and has been since January 21, 2006, the Deputy Commissioner of the Police Department. In that position, Mr. Brown has acted and continues to act under color of state law by exercising policy-making authority for the Police Department, establishing the duties, conduct, and discipline of officers and other employees, and establishing policies regarding screening, hiring, training, monitoring, and supervision of subordinates. Mr. Brown is sued in his individual and official capacities.

36. Defendant Kevin Clark was, from January 23, 2003, until November 10, 2004, the Commissioner of the Police Department. As Commissioner, Mr. Clark acted under color of state law by exercising final policy-making authority for the Police Department, establishing the duties, conduct, and discipline of officers and other employees, and establishing policies regarding screening, hiring, training, monitoring, and supervision of subordinates. Mr. Clark is sued in his individual capacity.

37. Defendant Edward T. Norris was, from May 2002 until January 23, 2003, the Commissioner of the Police Department. As Commissioner, Mr. Norris acted under color of state law by exercising final policy-making authority for the Police Department, establishing the duties, conduct, and discipline of officers and other employees, and establishing policies regarding screening, hiring, training, monitoring, and supervision of subordinates. Mr. Norris is sued in his individual capacity.

38. Defendant Jemini Jones is, and was at times relevant hereto, a Police Department police officer. As a police officer, he acts and has acted within the scope of his employment and under color of state law. Mr. Jones is sued in his individual and official capacities.

39. Defendant David A. Crites, Jr., is, and was at times relevant hereto, a Police Department police officer. As a police officer, he acts and has acted within the scope of his employment and under color of state law. Mr. Crites is sued in his individual and official capacities.

40. Defendant Sgt. Pecha is, and was at times relevant hereto, a Police Department police officer wearing Badge No. F327. As a police officer, he acts and has acted within the scope of his employment and under color of state law. Mr. Pecha is sued in his individual and official capacities.

41. Defendant B. Newkirk is, and was at times relevant hereto, a Police Department police officer wearing Badge No. F110. As a police officer, he acts and has acted within the scope of his employment and under color of state law. Mr. Newkirk is sued in his individual and official capacities.

42. Defendant Arnold Jones is, and was at times relevant hereto, a Police Department police officer. As a police officer, he acts and has acted within the scope of his employment and under color of state law. Mr. Jones is sued in both his individual and official capacities.

43. Defendants John Does 1-100 are, and were at times relevant hereto, Police Department police officers. Doe 1, along with Officer Jemini Jones, illegally arrested Plaintiffs Howard and Braxton. Does 2-100 are other police officers who

illegally arrested other class members. As police officers, Does 1-100 act and have acted within the scope of their employment and under color of state law. These defendants are sued in their individual and official capacities.

44. By virtue of their employment by Maryland state or local agencies, all of the individual Defendants were acting under color of state law during all relevant times.

VI. ALLEGATIONS OF FACT

A. The Experiences of the Individual Plaintiffs

1. The Illegal Arrests and Searches of Plaintiffs Howard and Braxton

45. At approximately 8:30 p.m. on Friday, April 15, 2005, Plaintiff Evan Howard was standing on the sidewalk that runs past his home on Poplar Grove Street in Baltimore, about a block away from his front door, engaging in conversation with Plaintiff Tyrone Braxton and another friend, Correy Alexander.

46. After a few minutes, Defendant Officers Jemini Jones and Doe 1 pulled up behind Braxton's car in an unmarked police cruiser. The plainclothes officers approached the three friends and asked if they had any information about a recent homicide.

47. The officers then asked Howard, Braxton, and Alexander their ages. After revealing that he was a minor, Alexander was ordered to go home, which he did.

48. Then, without explanation, probable cause, or any legal justification, the officers conducted pat-down searches of Howard and Braxton and placed them under arrest. The arrests were purportedly for loitering and impeding the flow of pedestrian

traffic, even though neither Howard nor Braxton had been loitering and the officers had not ordered them to disperse.

49. Officer Jemini Jones tightly bound the young men's hands with plastic handcuffs and placed Howard and Braxton in a vehicle for transport to CBIC.

50. Howard and Braxton arrived at CBIC at about 10:00 p.m., where they waited for approximately an hour to begin the booking process. Upon entering CBIC, they were screened with a metal detector, which showed that neither carried any weapons.

51. At approximately 11:00 p.m., Howard and Braxton were subjected to humiliating public strip-searches by Defendant Officers Doe A and Doe B. Howard, Braxton, and two other detainees were placed in a holding cell, ordered to remove all of their clothing down to their underpants, face the wall, pull their underpants down to expose their buttocks, and submit to a visual body cavity search.

52. The searches were conducted without probable cause or individualized suspicion that either Howard or Braxton was carrying weapons, drugs, or contraband.

53. Indeed, no contraband was found in the possession of either Howard or Braxton during the search.

54. After the strip search, Howard and Braxton were taken to a small, filthy, and overcrowded cell, where they stayed with about ten other detainees through the night. The cell had no bathroom and was so overcrowded that both Howard and Braxton were forced to sit in uncomfortable positions on filthy floors for long periods of time.

55. At approximately 8:00 a.m. on Saturday, April 16, Howard and Braxton were taken to a slightly larger cell containing about fifteen other detainees. This cell was also filthy and unsanitary. Throughout the day, the number of people in the cell fluctuated, frequently swelling to nearly twenty. Once again, both Howard and Braxton were forced to sit in uncomfortable positions on filthy floors for long periods of time.

56. During their confinement, Howard and Braxton were provided “meals” in their cells three times each day. The meals principally consisted of two slices of bread covering shiny and slimy meat, which Howard and Braxton believed to be spoiled bologna.

57. Braxton was finally released on Sunday, April 17, at 10:00 a.m., after being held at CBIC for 36 hours.

58. Howard was finally released on Monday, April 18, at 4:00 a.m., after being held at CBIC for 54 hours. Howard, far from home and unable to contact anyone to pick him up from CBIC, was forced to walk back to his home in the dark at a dangerous hour of night through unfamiliar streets.

59. Neither Howard nor Braxton was ever prosecuted for any crime or ever brought before a court commissioner.

2. The Illegal Arrest and Search of Plaintiff Wilson

60. On April 10, 2006, Plaintiff Donald Wilson was sitting on the front steps of a residence in which his girlfriend and toddler son live. He was visiting them and waiting for his younger brother, Darrell.

61. While Mr. Wilson was sitting on the steps with two friends, an unmarked police Subaru raced down the street in pursuit of a dirt bike. A crowd of approximately 15 neighbors gathered along the block to watch the chase.

62. Failing to catch the bicyclist, the maroon police Subaru pulled up to the residence and Officer Crites and Sergeant Pecha exited the vehicle. Officer Crites, yelled, "Everybody sit the f**k down!" Everyone in the area obeyed. Wilson, at the time, was already sitting down.

63. The officers began questioning the group of people, asking them where they lived and what they were doing there. Most were patted down and asked to show identification. Wilson provided his identification when requested.

64. Crites questioned Wilson and asked whether Wilson lived there. When Wilson firmly responded in the affirmative, Crites took offense and, in a low tone of voice, threatened to "f**k [him] up."

65. When Wilson responded to this threat, by observing that Crites had whispered his threat rather than stating it aloud in front of witnesses, Crites immediately ordered Wilson to stand up. Wilson asked why, and Crites responded, "Don't f**king say nothing to me," and ordered Wilson to stand up and put his hands behind his back.

66. Wilson complied and asked why he was being arrested. Crites responded, "Don't worry about it. You're going to jail."

67. Wilson asked Crites for his name and badge number. Crites replied, "911."

68. Crites placed metal handcuffs on Wilson and ordered him to sit on the ground. At that time, two marked police cruisers arrived at the scene, and two additional officers exited those vehicles.

69. Wilson asked his girlfriend to call his mother, and then he remained calm and quiet.

70. The police began to tell people to leave. After about 15 minutes, Wilson's mother arrived. She politely asked who the officer in charge was. Sgt. Pecha responded that he was in charge. Wilson's mother asked what her son was being detained for. Pecha asked for Wilson's age, and when his mother said, "21," Pecha stated that he did not have to give her any information because Wilson was not a minor. Upon further questioning, Pecha continued to refuse to explain why Wilson was arrested.

71. She therefore went to talk with her son, who explained what had happened. After about two minutes, Pecha came over and told her that she had to leave or she would be arrested. When she asked for Pecha's name and badge number, Pecha ignored her.

72. Crites and Pecha did not have nametags on and their badges were tucked inside their shirts to hide identifying information.

73. Crites put Wilson in the police car and transported him to CBIC at approximately 9:15 p.m.

74. At CBIC, Wilson was taken to a waiting room, where he was ordered to strip down to his boxers and searched by Does C-D. A Latino man next to him in the same room was completely naked.

75. The search was conducted without probable cause or individualized suspicion that Wilson was carrying weapons, drugs, or contraband. Indeed, no contraband was found in his possession.

76. Wilson was finally released from CBIC at around 2:00 a.m. the next morning. He was not allowed to use a phone at CBIC, so he walked to the nearest pay phone to call his mother.

77. Wilson was never prosecuted for any crime or brought before a court commissioner.

3. The Illegal Arrests and Searches of Plaintiffs Stoner and Lowery

78. On May 7, 2005, Plaintiff Aaron Stoner, Plaintiff Robert Lowery, Walter Medina, Jr., and four other friends and co-workers visited the city of Baltimore to celebrate Stoner's upcoming wedding. After visiting the Inner Harbor, the group of friends left on foot in the early morning hours of May 8 to return to their hotel.

79. While walking back to their hotel, a marked police car containing Defendant Officers Newkirk and Arnold Jones drove past. Newkirk instructed the group to "keep moving," even though the group had not actually paused during the journey. They obeyed and continued to walk back to their hotel.

80. About two minutes later, the same patrol car drove past the group. Medina was the first to see the approaching car, and remarked to Stoner, "Here comes that cop again."

81. Officer Newkirk pulled the car to the side, stopped the car, and exited. Newkirk confronted Medina, the only African-American in the group, demanding, "What did you say, boy?" Before Medina could answer, Newkirk pushed him against a wall.

82. After Newkirk pushed Medina against the wall and began to aggressively question him, Stoner verbally protested. Newkirk then turned toward Stoner and ran at him with his baton fortifying his raised forearm. Defendant Newkirk hit Stoner with such force as to knock Stoner off of his feet.

83. Newkirk then instructed Stoner and the other five men to “keep walking.” Stoner obeyed by getting up and walking to the rest of the group.

84. Newkirk then issued a warning citation for loitering to Medina.

85. Lowery, upset at the police harassment and brutality he had witnessed, then left the group, approached Officers Newkirk and Arnold Jones, and asked for Newkirk’s name and badge number.

86. Newkirk refused to answer Lowery’s question, but Defendant Arnold Jones responded by placing Lowery under arrest, purportedly for “failure to obey” an order to cease loitering. This arrest was made without probable cause or legal justification.

87. Officers Newkirk and Arnold Jones then drove Lowery down the block to where Stoner, having obeyed Newkirk’s earlier order to “keep walking,” was walking with his party. The officers then arrested Stoner as well.

88. Stoner’s arrest was also purportedly for “failure to obey” an order to cease loitering. This arrest was made without probable cause or legal justification.

89. Stoner and Lowery were both subjected to pat-down searches, which revealed they were carrying no contraband or weapons.

90. Medina, who had been issued a warning citation for loitering, and the other four members of the original group were permitted to continue walking back to the hotel.

91. Stoner and Lowery were transported to CBIC, where they were processed and subjected to another pat-down search that revealed them to be free of contraband and weapons.

92. Despite the negative results of the searches, Defendant Corrections Officers Doe E and Doe F subjected Stoner and Lowery to humiliating public strip searches at CBIC.

93. Stoner and Lowery, along with two other detainees, were ordered to strip to their underpants while the officers conducted the search.

94. The searches were conducted without probable cause or individualized suspicion that either Stoner or Lowery was carrying weapons, drugs, or contraband.

95. Indeed, no contraband was found in the possession of either Stoner or Lowery during the search.

96. Both Stoner and Lowery were held in small, filthy, and overcrowded cells that were packed with other detainees. Both Stoner and Lowery were forced to sit or crouch in uncomfortable positions on filthy floors for long periods of time because of the overcrowded conditions.

97. Stoner and Lowery were released from CBIC at approximately 8:00 p.m. on May 8, after being detained for 17 hours.

98. Neither Stoner nor Lowery was ever prosecuted for any crime or brought before a court commissioner.

B. The Police Department's Illegal Practices

99. The experiences of these individual plaintiffs are not unique. They stem from a broader policy and practice by the Police Department of arresting persons without probable cause in order to satisfy performance goals and to show progress in fighting crime by means of high arrest numbers.

100. Under the direction and oversight of the Commissioner and Deputy Commissioner, the Police Department has used a "performance evaluation system" that demands that officers make a large number of arrests, regardless of the number or success of resulting prosecutions. Each patrol officer is required to tally his enforcement statistics, including citations and arrests. These numbers are then compared to averages from that officer's squad and shift. The three officers in each district with the lowest scores are subject to reassignment to other districts.

101. Police officers generally disfavor reassignment because it can greatly disrupt their personal and professional lives.

102. Upon information and belief, the Police Department has a policy by which no automatic disciplinary action is taken against a police officer if a plaintiff succeeds in a civil case challenging the conduct of the officer.

103. Upon information and belief the Police Department has no practice of reviewing arrests to see whether they result in successful prosecutions, nor of reviewing arrest reports in those cases that are not prosecuted to determine whether officers had sufficient probable cause for the arrest or charge.

104. These policies create perverse incentives for police officers by rewarding those officers who arrest innocent bystanders and punishing those who respect their obligations to the City and the public.

105. These perverse incentives are unavoidable because, under the “performance evaluation system,” all arrests are counted—***even those made with no basis for probable cause.***

106. Thus, under this system, an officer will not be reassigned even if every single one of his arrests is made without probable cause, so long as his volume of arrests is not among the three lowest in his district. By contrast, a different officer whose volume of arrests is the third lowest in his district will be reassigned even if all of his arrestees were convicted.

107. The system therefore encourages all officers to make as many arrests as possible, regardless of their justification, to avoid transfer.

108. As confirmation, State’s Attorney Patricia Jessamy stated at a public legislative hearing on January 4, 2006, that the Police Department routinely and increasingly arrests people without probable cause.

109. To exacerbate matters, the Police Department, its Commissioner, its Deputy Commissioner, the Mayor, and the City, which all are (and were, at all times relevant to this lawsuit) aware of the Police Department’s pattern and practice of illegal arrests, have failed to take adequate steps to abate the pattern and practice, despite their authority to do so. They have failed to train and supervise police officers adequately. They have not properly encouraged arrests based on probable cause. They have affirmatively encouraged overly aggressive and unlawful police tactics, by

directing supervisors to ensure that officers keep arrest numbers up, in the belief that a high number of arrests will keep the crime rate down, regardless of the quality of those arrests. In short, they have made the unconstitutional and illegal conduct worse.

C. Grading the Police Department

110. Due to the policies and practices described above, the Baltimore Police Department has severe police accountability problems.

111. Baltimore City State's Attorney's Office Annual Statistical Reports indicate that, in 2005, the Police Department arrested 76,497 individuals without warrants. Prosecutors declined to charge 25,293 of the arrestees. Thus, during 2005, ***three out of every ten people arrested without warrants in Baltimore City were not prosecuted***, based solely on a review of the charging documents by the State's Attorney, prior to any involvement by a defense attorney or any decision by a court commissioner or judge. The State's Attorney has publicly stated that prosecutors declined to charge about 30% of the arrestees in 2005 because, in the State's view, the case was "legally insufficient."

112. In 2005, prosecutors indicated that they could not prove charges against 7,510 people arrested for loitering, impeding, or obstructing pedestrian traffic during that year. Those arrests account for nearly 10% of ***all*** warrantless arrests in Baltimore for that year.

113. During 2005, prosecutors indicated that they could not prove charges against 1,832 persons arrested for trespassing and 1,650 persons arrested for

disorderly conduct/failure to obey/disturbing the peace. Together, these arrests account for nearly another 5% of all warrantless arrests in Baltimore for that year.

114. Thus, prosecutors indicated that they could not prove charges against those persons arrested for often vague “quality of life” offenses in 2005, which amounted to nearly 15% of the persons arrested without a warrant during that year.

D. The Effects of the Police Department’s Arrest Policy on CBIC

115. The Police Department’s pattern and practice of encouraging large numbers of illegal arrests causes a backlog at CBIC that leads CBIC to perform unconstitutional strip searches and to subject arrestees to overcrowded conditions and extended detentions.

116. CBIC was designed to handle about 60,000 bookings each year and to accommodate 895 arrestees at any one time. Because of the Police Department’s arrest policies, it now handles more than 100,000 bookings each year and regularly holds more than 1,200 arrestees at any one time. Defendant Smith has characterized the problems at CBIC as a “systems overload.” The overcrowding at CBIC has led to two distinct problems.

117. First, CBIC regularly subjects all male arrestees to public strip searches, without individualized suspicion and regardless of the arrestees’ charges. Often, these strip searches are humiliating, non-private body cavity searches. Most of these searches are not reasonably related to any legitimate security interest or to any reasonable suspicion of concealed contraband.

118. Second, the backlog causes CBIC to delay, in some cases, presentment of arrestees beyond the twenty-four hour maximum established in Maryland Rule 4-

212(f). In some cases, detainees have been held at CBIC more than forty-eight hours before presentment. CBIC makes no adequate effort to structure its systems so that it can timely process all detainees even though CBIC officials are aware of its deficiencies. Indeed, a consultant's report to the State in October 2005 stated that "no one [is] in charge" of ensuring the prompt processing of detainees at CBIC.

119. The Warden, Commissioner of Pretrial Services, Secretary, and State condone, affirmatively encourage, or knowingly fail to address these two policies and practices at CBIC, despite their responsibility to address them through proper training, supervising, monitoring, and disciplining of staff or through the formulating, implementing, and executing of appropriate policies.

E. The Effects of the Police Department's Arrest Policy on the Arrestees.

120. These illegal arrests, searches, and detentions traumatize arrestees.

121. Individuals who are illegally arrested suffer humiliation and degradation when they are being dragged away in handcuffs in front of their friends, family, or neighbors. The stigma of being illegally arrested can follow an arrestee for years, in part because those who know an arrestee are unlikely to forget the sight of the arrestee being hauled away in handcuffs in the back of a police car.

122. At CBIC, innocent arrestees are subjected to dehumanizing and humiliating public strip searches that involve stripping down to underwear, pulling down the underwear, and—often—submitting to a visual body cavity search. The searches are performed in public view and alongside other detainees. The victims of such unwarranted invasions of privacy are humiliated, degraded, and stigmatized.

123. An individual who is arrested is often physically harmed or threatened while detained at CBIC. And the threat does not just come from other arrestees. In May 2005, a detainee was beaten to death by guards at the CBIC. In the wake of that incident, eight CBIC guards were fired and the FBI has opened an investigation. The detainee's death was classified as a homicide.

124. While detained at CBIC, an arrestee is held in filthy and overcrowded conditions with numerous other arrestees. Cells are often so crowded that arrestees are forced to sleep on the floor. In some cases, the cells are so crowded that inmates must sit or crouch in uncomfortable positions on unsanitary floors for hours at a time. The "meals" are inedible.

125. An individual who is illegally arrested also suffers the loss of his liberty for hours or days. Such detention can result in a detainee losing his job when he fails to appear at work and may also harm relations with family if an individual is unable to meet family obligations while illegally detained.

126. The presence of an arrest record, even if the arrestee is "released without charge," can follow an individual for years, making it difficult to obtain jobs, housing, or any other opportunity that may require a criminal background check.

127. Moreover, it is virtually impossible for an arrestee to get the record of his arrest expunged unless he either (a) waives his right to sue the City or State entities responsible for his arrest and detention or (b) brings a lawsuit against the City or State—a process that can take years and can cost thousands of dollars. Thus, these illegal arrests force arrestees into a Hobson's choice of either submitting to the illegal

arrest or being saddled with an arrest record that can eliminate professional opportunities for years.

128. For confirmed criminals, the prospect of spending hours or days in Central Booking, while unpleasant, is a cost of doing business, and does nothing to deter them from their unlawful behavior or to make Baltimore safer. For innocent victims of these arrest practices, however, being unlawfully arrested can be a life-changing event.

F. The City's and the Police Department's Response

129. Despite these stories and statistics, the City and Police Department make no apologies.

130. In response to repeated and persistent complaints by public officials, Baltimore community leaders, and community groups with regard to this ongoing pattern of unlawful arrests, the City and the Police Department have consistently refused to acknowledge that a problem exists.

131. Moreover, Mayor and Defendant O'Malley has consistently refused to acknowledge that such a problem exists.

132. At a community forum designed to address police practices on January 4, 2006, Mayor and Defendant O'Malley proposed eliminating oversight by the State's Attorney's Office of individuals arrested by the Police Department.

133. Eliminating the oversight by the State's Attorney's Office would obviously fail to have any effect on the number of illegal arrests. Such a proposal would succeed at one thing, however – it would hide from the public the thousands of illegal arrests made by the Police Department without probable cause.

VII. CLASS ALLEGATIONS

134. Pursuant to Rule 2-231 of the Maryland Rules of Procedure, Plaintiffs Howard, Braxton, Wilson, Stoner, and Lowery move the Court to declare and certify a class of individuals, as described below.

135. The class is composed of arrestees who were (1) arrested by the Police Department without probable cause and (2) released without charges after being booked at CBIC. The class seeks injunctive, declaratory, and other equitable relief only.

136. The class is so numerous that joinder of all members would be impracticable. More than 21,000 individuals were arrested and released without charges after booking in Baltimore during the period from April 2004 to March 2005 alone. Upon information and belief, most of these 21,000 individuals were arrested without probable cause. Joinder of thousands of class members would be impracticable.

137. Numerous questions of law and fact are common to the class, including the following:

- a. Whether the Police Department has a policy and practice of arresting persons without probable cause
- b. Whether such a policy and practice violates the Fourth and Fourteenth Amendments to the U.S. Constitution, and Articles 24 and 26 of the Maryland Declaration of Rights;
- c. Whether the Police Department encourages illegal arrests by punishing officers who make fewer arrests than their colleagues or by rewarding officers who make more arrests than their colleagues, regardless of the outcome of those arrests;

- d. Whether such policy violates the Fourth and Fourteenth Amendments to the U.S. Constitution, and Articles 24 and 26 of the Maryland Declaration of Rights;
- e. Whether Defendants were deliberately indifferent to the rights of arrestees; and
- f. What nature and scope of equitable relief is warranted by Defendants' conduct.

138. The claims of the individual Plaintiffs are typical of the claims of the class. Each of the individual Plaintiffs was (1) arrested by the Police Department without probable cause and (2) released without charges after being booked at CBIC.

139. The individual Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel who are competent and experienced in complex class action and civil rights litigation. The Plaintiffs have no interests that are contrary to or that conflict with those of the class.

140. Defendants the State, Secretary Saar, Commissioner Smith, Warden Franks, the City, the Police Department, Mayor O'Malley, Commissioner Hamm, and Deputy Commissioner Brown have acted or refused to act on grounds that are generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

141. The Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action, and the class action is superior to any other available means to resolve the issues raised on behalf of the class.

VIII. CAUSES OF ACTION

A. Count I: Facial and As Applied Challenge to the Loitering Ordinance under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution and Articles 19, 26, and 40 of the Maryland Declaration of Rights

142. This Count incorporates all of the other allegations in this Complaint.

143. This Count is brought by the individual Plaintiffs Howard, Braxton, Wilson, Lowery, and Stoner and the NAACP against the City.

144. This is an “as applied” challenge to the enforcement of the Loitering Ordinance, Baltimore, Md., Police Ordinances art. 19, § 25-1 (2005). In the alternative, it is a facial challenge to the Loitering Ordinance itself.

145. The Police Department has interpreted the Loitering Ordinance incorrectly to allow arrests of persons engaged in no wrongdoing merely for standing on the public sidewalks. By arresting persons merely for standing, the Police Department has effectuated a policy of arrests without probable cause that a violation of the Loitering Ordinance has occurred in violation of the Fourth Amendment to the U.S. Constitution and Article 26 of the Maryland Declaration of Rights.

146. In the alternative, if the Police Department correctly interprets the Loitering Ordinance to permit an arrest when an innocent bystander merely is standing on a public sidewalk, the Loitering Ordinance is unconstitutional on its face as a violation of the First and Fourteenth Amendments to the U.S. Constitution, and Articles 19 and 40 of the Maryland Declaration of Rights.

B. Count II: Fourth and Fourteenth Amendment Violations for Unconstitutional Arrests under Section 1983

147. This Count incorporates all of the other allegations in this Complaint.

148. This Count is brought by the individual Plaintiffs, the class, and the NAACP against the City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, Norris, and Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100.

149. Defendants O'Malley, Hamm, Brown, Clark, Norris, Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 are "persons" within the meaning of 42 U.S.C. § 1983.

150. The Defendants violated or caused the violation of the constitutional rights of the individual Plaintiffs and of the class members.

151. Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 directly violated the constitutional rights of the individual Plaintiffs by arresting them without probable cause and under an illegal pattern and practice.

152. The City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, and Norris caused these and other similar constitutional violations by implementing, following, or failing to remedy the illegal pattern or practice.

153. The City, Mayor O'Malley, the Police Department, Commissioner Hamm, and Deputy Commissioner Brown will continue to cause similar constitutional violations by implementing, following, or failing to remedy the illegal pattern or practice in the future.

154. It is clearly established now and was clearly established at the time of their actions that the conduct, patterns, and practices of the Defendants violate the Fourth and Fourteenth Amendments to the U.S. Constitution.

155. As an actual and proximate result of Defendants' conduct, patterns, and practices, Plaintiffs and the class members suffered damages.

156. In addition, because the conduct, patterns, and practices are ongoing, it is likely that Plaintiffs, class members, and NAACP members will suffer damages as an actual and proximate result of similar unconstitutional conduct, patterns, and practices in the future.

C. Count III: Fourth and Fourteenth Amendment Violations for Unconstitutional Strip Searches under Section 1983

157. This Count incorporates all of the other allegations in this Complaint.

158. This Count is brought by the individual Plaintiffs and the NAACP against Secretary Saar, Commissioner Smith, Warden Franks, Murphy, and Officer Does A-F in their individual capacities. In addition, Defendants Saar, Smith, and Franks are sued in their official capacity for declaratory and prospective injunctive relief. These defendants are therefore "persons" within the meaning of 42 U.S.C. § 1983.

159. The Defendants violated or caused the violation of the constitutional rights of the individual Plaintiffs.

160. Officer Does A-F directly violated the constitutional rights of the individual Plaintiffs by conducting indiscriminate, non-private, visual strip searches of them, without probable cause or individualized suspicion to believe they possessed weapons or contraband.

161. The policy of strip searching, without individualized suspicion, every person arrested for loitering or other "quality of life" offenses is not necessary to protect officer safety, to preserve evidence, or to ensure prison security.

162. Secretary Saar, Commissioner Smith, Warden Franks, and Murphy, with deliberate indifference to the individual Plaintiffs' legal rights, established, implemented, enforced, or failed to remedy an illegal and unconstitutional policy and practice at CBIC of conducting indiscriminate, non-private, visual strip searches of persons temporarily detained at the center, without probable cause or individualized suspicion to believe the detainees possessed weapons or contraband.

163. It is clearly established now and was clearly established at the time of their actions that the conduct, patterns, and practices of the Defendants violate the Fourth and Fourteenth Amendments to the U.S. Constitution.

164. As an actual and proximate result of Defendants' conduct, patterns, and practices, the individual Plaintiffs suffered damages.

165. In addition, because the conduct, patterns, and practices are ongoing, it is likely that the individual Plaintiffs and NAACP members will suffer damages as an actual and proximate result of similar unconstitutional conduct, patterns, and practices in the future.

D. Count IV: Fourth and Fourteenth Amendment Violations for Unconstitutional Overdetentions under Section 1983

166. This Count incorporates all of the other allegations in this Complaint.

167. This Count is brought by Plaintiffs Howard and Braxton against Secretary Saar, Commissioner Smith, Warden Franks, and Murphy. In this Count, these Defendants are sued in their individual capacities only. They are therefore "persons" within the meaning of 42 U.S.C. § 1983.

168. The Defendants violated or caused the violation of the constitutional rights of Plaintiffs Howard and Braxton.

169. Secretary Saar, Commissioner Smith, Warden Franks, and Murphy, with deliberate indifference to Howard's and Braxton's legal rights, established, implemented, enforced, condoned, and failed to remedy the conduct, pattern, and practice at CBIC of holding detainees for more than twenty-four hours without charges, presentment, or release.

170. It was clearly established at the time of their actions that such conduct, patterns, and practices violated the Fourth and Fourteenth Amendments to the U.S. Constitution.

171. As an actual and proximate result of Defendants' conduct, pattern, and practice, Plaintiffs Howard and Braxton suffered damages.

E. Court V: Common Law Claim for Violations of Article 26 of the Maryland Declaration of Rights for Unconstitutional Arrests

172. This Count incorporates all of the other allegations in this Complaint.

173. This Count is brought by the individual Plaintiffs, the class, and the NAACP against the City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, Norris, and Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100.

174. A common-law private cause of action exists to remedy Maryland constitutional violations through both injunctive relief and money damages.

175. Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 directly violated the constitutional rights of the individual Plaintiffs and the class members by arresting them without probable cause and under an illegal pattern and practice.

176. The City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, and Norris caused these and other similar constitutional violations by implementing, following, or failing to remedy the illegal pattern or practice.

177. The City, Mayor O'Malley, the Police Department, Commissioner Hamm, and Deputy Commissioner Brown will continue to cause similar constitutional violations by implementing, following, or failing to remedy the illegal pattern or practice in the future.

178. The Defendants' conduct, patterns, and practices violate Article 26 of the Maryland Declaration of Rights.

179. Their conduct, patterns, and practices were made with malice, ill will, improper motive, and gross negligence.

180. As an actual and proximate result of Defendants' conduct, patterns, and practices, the individual Plaintiffs and the class members suffered damages.

181. In addition, because the conduct, patterns, and practices are ongoing, it is likely that the individual Plaintiffs, the class members, and NAACP members will suffer harm as an actual and proximate result of similar unconstitutional conduct, patterns, and practices in the future.

F. Count VI: Common Law Claim for Violations of Article 26 of the Maryland Declaration of Rights for Unconstitutional Strip Searches

182. This Count incorporates all of the other allegations in this Complaint.

183. This Count is brought by individual Plaintiffs Howard, Braxton, Wilson, Stoner, Lowery, and the NAACP against the State, Secretary Saar, Commissioner Smith, Warden Franks, Murphy, and Officer Does A-F.

184. Officer Does A-F directly violated the constitutional rights of the individual Plaintiffs by conducting indiscriminate, non-private, visual strip searches of them, without probable cause or individualized suspicion to believe they possessed weapons or contraband.

185. The State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy, with deliberate indifference to the legal rights of Plaintiffs Howard, Braxton, Stoner, and Lowery, established, implemented, enforced, or failed to remedy an illegal and unconstitutional policy and practice at CBIC of conducting indiscriminate, non-private, visual strip searches of persons temporarily detained at the center, without probable cause or individualized suspicion to believe the detainees possessed weapons or contraband.

186. The conduct, patterns, and practices of strip searching without individualized suspicion every arrestee brought to CBIC is not necessary to protect officer safety, to preserve evidence, or to ensure prison security.

187. The Defendants' conduct, patterns, and practices were made with malice, ill will, improper motive, and gross negligence.

188. Such conduct, patterns, and practices violate Article 26 of the Maryland Declaration of Rights.

189. As an actual and proximate result of Defendants' conduct, patterns, and practices, the individual Plaintiffs suffered damages.

190. In addition, because the conduct, patterns, and practices are ongoing, it is likely that the Plaintiffs and NAACP members will suffer harm as an actual and

proximate result of similar unconstitutional conduct, patterns, and practices in the future.

G. Count VII: Common Law Claim for Violations of Article 24 of the Maryland Declaration of Rights for Unconstitutional Overdetentions

191. This Count incorporates all of the other allegations in this Complaint.

192. This Count is brought by Plaintiffs Howard and Braxton against the State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy.

193. A common-law private cause of action exists to remedy Maryland constitutional violations through both injunctive relief and money damages.

194. The Defendants violated or caused the violation of the constitutional rights of Plaintiffs Howard and Braxton.

195. The State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy, with deliberate indifference to Howard's and Braxton's legal rights, established, implemented, enforced, or failed to remedy the illegal and unconstitutional conduct of holding detainees for more than 24 hours at CBIC without charges, presentment, or release.

196. The Defendants acted with malice, ill will, improper motive, and gross negligence.

197. Such conduct violated Rule 4-212(f) and Article 24 of the Maryland Declaration of Rights.

198. As an actual and proximate result of Defendants' conduct, Plaintiffs Howard and Braxton suffered damages.

H. Count VIII: Common Law Claim for False Imprisonment and False Arrest

199. This Count incorporates all of the other allegations in this Complaint.

200. This Count is brought by the individual Plaintiffs Howard, Braxton, Stoner, and Lowery, the class, and the NAACP against the State, Secretary Saar, Commissioner Smith, Warden Franks, Murphy, the City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, Norris, and Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100.

201. The City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, Norris, and Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 have deprived these individual Plaintiffs and the class members of liberty without consent or legal justification by causing them to be arrested without probable cause.

202. In addition, the State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy have deprived Plaintiffs Howard and Braxton of liberty without consent or legal justification by causing them to be detained at CBIC for longer than 24 hours without presentment, charges, or release.

203. The individual Defendants acted with actual malice, ill will, improper motive, and gross negligence.

204. As an actual and proximate result of Defendants' conduct, the individual Plaintiffs and the class members suffered damages.

205. In addition, because the conduct, patterns, and practices of illegal arrests are ongoing, it is likely that the individual Plaintiffs, the class members, and

NAACP members will suffer damages as an actual and proximate result of similar conduct, patterns, and practices in the future.

I. Count IX: Assault and Battery for the Illegal Arrests

206. This Count incorporates all of the other allegations in this Complaint.

207. This Count is brought by the individual Plaintiffs Howard, Braxton, Wilson, Stoner, and Lowery, the NAACP, and the class against the City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, Norris, and Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100.

208. Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 unlawfully attempted to cause, and succeeded in causing, harmful or offensive contacts with the individual Plaintiffs and class members by using physical force to illegally arrest them.

209. Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 acted with actual malice, ill will, and improper motive towards the individual Plaintiffs and class members.

210. The City, Mayor O'Malley, the Police Department, Commissioner Hamm, Deputy Commissioner Brown, Clark, and Norris are vicariously liable for the officers' tortious conduct.

211. In addition, by facilitating or failing to abate the known pattern and practice of illegal arrests without probable cause, the City, Mayor O'Malley, the Police Department, Commissioners Hamm, Deputy Commissioner Brown, and Clark have attempted to cause, and succeeded in causing, a harmful or offensive contact with the

individual Plaintiffs, the class members, and NAACP members, namely, the use of physical force to illegally arrest them.

212. O'Malley's, Hamm's, Brown's, Clark's, and Norris's actions or omissions were made with malice, ill-will, improper motive, and gross negligence.

213. As an actual and proximate result of Defendants' conduct, the individual Plaintiffs and the class members suffered damages.

214. In addition, because the conduct, patterns, and practices of illegal arrests are ongoing, it is likely that the individual Plaintiffs, the class members, and NAACP members will suffer damages as an actual and proximate result of similar conduct, patterns, and practices in the future.

J. Count X: Assault and Battery for Illegal Strip Searches

215. This Count incorporates all of the other allegations in this Complaint.

216. This Count is brought by individual Plaintiffs Howard, Braxton, Wilson, Stoner, and Lowery against the State, Secretary Saar, Commissioner Smith, Warden Franks, Murphy, and Does A-F.

217. Officer Does A-F unlawfully attempted to cause, and succeeded in causing, harmful or offensive contacts with the individual Plaintiffs by using physical force to conduct suspicionless strip searches of them at CBIC.

218. Does A-F acted with actual malice, ill will, and improper motive towards the individual Plaintiffs.

219. The State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy are vicariously liable for the acts and omissions of their employees.

220. In addition, by facilitating or failing to abate the known pattern and practice of illegal arrests without probable cause, the State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy have attempted to cause, and succeeded in causing, harmful or offensive contacts with the individual Plaintiffs, namely, the use of physical force to conduct suspicionless strip searches of them at CBIC.

221. Saar's, Smith's, Franks's, and Murphy's actions or omissions were made with malice, ill will, improper motive, and gross negligence.

222. As an actual and proximate result of Defendants' conduct, patterns, and practices, the individual Plaintiffs suffered damages.

K. Count XI: Negligence for Illegal Strip Searches

223. This Count incorporates all of the other allegations in this Complaint.

224. This Count is brought by the individual Plaintiffs Howard, Braxton, Wilson, Stoner, and Lowery against the State, Secretary Saar, Commissioner Smith, Warden Franks, Murphy, and Does A-F.

225. Officer Does A-B owed a duty of care to Plaintiffs Howard and Braxton. Officer Does C-D owes a duty of care to Plaintiff Wilson. Officer Does E-F owed a duty of care to Plaintiffs Stoner and Lowery.

226. Officer Does A-F breached their duty of care by conducting suspicionless strip searches of the individual Plaintiffs at CBIC.

227. Does A-F also acted with gross negligence towards the individual Plaintiffs.

228. The State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy are vicariously liable for the negligence or gross negligence of their employees.

229. In addition, by facilitating or failing to abate the known pattern and practice of illegal strip searches without individualized suspicion at CBIC, the State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy have breached a duty of care, which they owed to the individual Plaintiffs.

230. As an actual and proximate result of Defendants' negligence, the individual Plaintiffs suffered damages.

L. Count XII: Invasion of Privacy for the Illegal Arrests

231. This Count incorporates all of the other allegations in this Complaint.

232. This Count is brought by the individual Plaintiffs Howard, Braxton, Wilson, Stoner, and Lowery, the class, and the NAACP against the Police Department, the City, O'Malley, Hamm, Brown, Clark, Norris, Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100.

233. Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 intentionally and unreasonably intruded upon the seclusion of the individual Plaintiffs and the class members by illegally arresting them and using physical force against them without probable cause.

234. Officers Jemini Jones, Crites, Pecha, Newkirk, Arnold Jones, and Does 1-100 also acted with actual malice, ill will, improper motive, and gross negligence towards the individual Plaintiffs and class members.

235. The Police Department, City, O'Malley, Hamm, Brown, Clark, and Norris are vicariously liable for the tortious conduct of their employees.

236. In addition, by purposefully facilitating or failing to abate the known pattern and practice of illegal arrests without probable cause, the Police Department, City, O'Malley, Hamm, Brown, Clark, and Norris have intentionally and unreasonably intruded upon the seclusion of the individual Plaintiffs and class members.

237. O'Malley's, Hamm's, Brown's, Clark's, and Norris's actions or omissions were made with malice, ill-will, improper motive, and gross negligence.

238. As an actual and proximate result of Defendants' tortious conduct, the individual Plaintiffs suffered damages.

239. In addition, because the conduct, patterns, and practices of illegal arrests are ongoing, it is likely that the individual Plaintiffs, the class members, and NAACP members will suffer damages as an actual and proximate result of similar conduct, patterns, and practices in the future.

M. Count XIII: Invasion of Privacy for the Illegal Strip Searches

240. This Count incorporates all of the other allegations in this Complaint.

241. This Count is brought by the individual Plaintiffs Howard, Braxton, Wilson, Stoner, and Lowery against the State, Secretary Saar, Commissioner Smith, Warden Franks, Murphy, and Does A-F.

242. Officer Does A-F intentionally and unreasonably intruded upon the seclusion of the individual Plaintiffs by conducting suspicionless strip searches of them at CBIC.

243. Does A-F also acted with actual malice, ill will, improper motive, and gross negligence towards the individual Plaintiffs.

244. The State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy are vicariously liable for the tortious conduct of their employees.

245. In addition, by purposefully facilitating or failing to abate the known pattern and practice of illegal strip searches without individualized suspicion at CBIC, the State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy have intentionally and unreasonably intruded upon the seclusion of the individual Plaintiffs.

246. Saar's, Smith's, Franks's, and Murphy's actions or omissions were made with malice, ill will, improper motive, and gross negligence.

247. As an actual and proximate result of Defendants' tortious conduct, the individual Plaintiffs suffered damages.

N. Count XIV: Negligent Supervision and Training for the Illegal Strip Searches

248. This Count incorporates all of the other allegations in this Complaint.

249. This Count is brought by the individual Plaintiffs Howard, Braxton, Wilson, Stoner, and Lowery against the State, Secretary Saar, Commissioner Smith, Warden Franks, and Murphy.

250. The State, Saar, Smith, Franks, and Murphy owed a duty to the individual Plaintiffs to properly supervise and train their employee corrections officers not to strip search detainees without individualized suspicion.

251. However, by purposefully facilitating or failing to abate the known pattern and practice of routine strip searches of male detainees, the State, Saar, Smith,

Franks, and Murphy knew or should have known that their employee corrections officers would conduct such strip searches without individualized suspicion.

252. This conduct constituted and continues to constitute negligence or gross negligence.

253. As an actual and proximate result of Defendants' negligence, the individual Plaintiffs suffered damages.

IX. JURY DEMAND

254. Plaintiffs demand a jury trial on all such triable issues.

X. RELIEF

WHEREFORE, on Counts I through XIV, the Plaintiffs respectfully request that this Court grant the following relief:

- A. Declare that the action brought as a class action may be maintained as a class action pursuant to Maryland Rule 2-231 and certify the class with the named Plaintiffs as the class representatives and with current counsel as class counsel;
- B. Declare that Defendants' acts alleged above violate the Fourth and the Fourteenth Amendments to the U.S. Constitution;
- C. Declare that the Baltimore anti-loitering ordinance is unconstitutional on its face and as applied, pursuant to the First, Fourth, and Fourteenth Amendments to the U.S. Constitution and Articles 24, 26, and 40 of the Maryland Declaration of Rights;
- D. Declare that Defendants' acts alleged above violate Articles 24 and 26 of the Maryland Declaration of Rights;
- E. Permanently enjoin Defendants from pursuing the course of conduct complained herein;
- F. Award the individual Plaintiffs compensatory and consequential damages in an amount to be determined by a jury;

- G. Award the individual Plaintiffs punitive damages against the individual defendants in their individual capacities only in an amount to be determined by a jury;
- H. Order the expungement of arrest records for the individual Plaintiffs;
- I. Award all Plaintiffs attorneys' fees and costs incurred in bringing this action pursuant to 42 U.S.C. § 1988; and
- J. Grant such other relief as this Court deems just and proper.

Respectfully Submitted,

Dated: June 14, 2006

Deborah A. Jeon
David R. Rocah

AMERICAN CIVIL LIBERTIES UNION
OF MARYLAND FOUNDATION
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
Phone: (410) 889-8555
Fax: (410) 366-7838

Mitchell A. Karlan
Wayne A. Schrader
Daniel A. Cantu
Scott Dodson
Jan M. Geht
Jason E. Morrow

GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, District of Columbia 20036
Telephone: (202) 955-8500
Facsimile: (202) 467-0539

Attorneys for Plaintiffs

