



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Massachusetts

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April 3, 2019

Via Overnight Mail

Marc Santos, Esq.
Clerk of Courts
Bristol County Superior Court
441 County Street, 1st Floor
New Bedford, MA 02740

Re: Massachusetts Coalition for the Homeless and others v. City of
Fall River and others – 1973-cv-00299 – Emergency Motion for
Temporary Restraining Order or Preliminary Injunction

Dear Mr. Santos:

In light of the hearing scheduled in this matter for Tuesday, April 9 at
10:00 a.m., enclosed for filing please find Plaintiffs' Emergency Motion for
Temporary Restraining Order and/or Preliminary Injunction, the
Memorandum in support thereof, the Affidavit of Jennifer Magaw, and the
Affidavit of Jessica Lewis.

Thank you for your assistance and attention.

Sincerely,

Ruth A. Bourquin

cc: Joseph Macy, Fall River Corporation Counsel and First Assistant
District Attorney Patrick O. Bomberg (via email and First Class mail)
Assistant Attorneys General Shafaz Islam and William Porter (via
email and First Class mail)
David Himelfarb, Michelle Mohaved and Stesha Emmanuel, McCarter
& English, LLP and Matthew Segal and Jessica Lewis, ACLUM (by
email)

Encl.



COMMONWEALTH OF MASSACHUSETTS

Bristol, SS.

Superior Court

MASSACHUSETTS COALITION FOR THE
HOMELESS, JOHN CORREIRA, and
JOSEPH TREEFUL,

Plaintiffs,

v.

THE CITY OF FALL RIVER, et. al,

Defendants

Civil Action No. 1973-CV-00299

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION**

Pursuant to Massachusetts Rule of Civil Procedure 65 and Superior Court Rule 9A(d), Plaintiffs Massachusetts Coalition for the Homeless, John Correia, and Joseph Treeful hereby move for a temporary restraining order and/or preliminary injunction against further enforcement actions being taken by Defendants pursuant to M.G.L., c. 85, § 17A ("Statute"). Specifically, Plaintiffs request the Court restrain and/or enjoin Defendants from making arrests, threatening arrests, applying for criminal complaints, filing criminal charges, and prosecuting criminal charges brought pursuant to the Statute. Plaintiffs primarily make this request on the grounds that the Statute is facially unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution and Article 16 of the Massachusetts Declaration of Rights, as amended.

Plaintiffs have made a good faith effort to contact and confer with the defendants regarding the subject of this motion, including by holding a telephone

conference on April 3, 2019 and asking defendants' counsel to agree not to enforce the statute until a ruling on the merits of this case. Based on current representations, defendants are expected to oppose this motion. Superior Court Rule 9A(d)(1).

In support of the Motion, Plaintiffs rely on their Verified Complaint, the Memorandum submitted herewith, the Affidavit of Jennifer Magaw, and the Affidavit of Jessica Lewis and the Exhibits attached thereto.

Respectfully Submitted,

Plaintiffs Massachusetts Coalition for
the Homeless, John Correia, and
Joseph Treeful,

By their Attorneys,

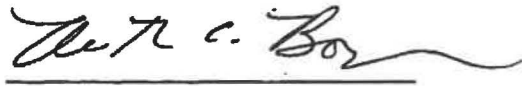


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CERTIFICATE OF SERVICE

I, Ruth A. Bourquin, hereby certify that on this 3rd day of April, 2019, I caused a copy of Plaintiffs' Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction, along with a Memorandum in Support and the Affidavits of Jennifer Magaw and Jessica Lewis to be served by email and overnight U.S. mail service on Joseph Macy, Corporation Counsel, City of Fall River, One Government Center, Room 627, Fall River, MA 02722 and Patrick Bomberg, First Assistant District Attorney, 888 Purchase Street, New Bedford, MA 02740.



Ruth A. Bourquin

Dated: April 3, 2019

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS.

Superior Court

MASSACHUSETTS COALITION FOR THE
HOMELESS, JOHN CORREIRA and JOSEPH
TREEFUL,

Plaintiffs,

v.

THE CITY OF FALL RIVER MASSACHUSETTS,
ALBERT F. DUPERE, in his individual capacity
and in his official capacity as a Chief of Police,
Fall River Massachusetts Police Department,
PAUL BERNIER, in his individual capacity and
in his official capacity as Lieutenant in the Fall
River Massachusetts Police Department, DAVID
GOUVEIA, in his individual capacity and in his
official capacity as Lieutenant within the Fall
River Police Department, JAMES SMITH, in his
individual capacity and in his official capacity as
Police Sergeant in the Fall River Massachusetts
Police Department, MICHAEL PAVAO, in his
individual capacity and in his official capacity as
an officer within the Fall River Police
Department, DEREK AMARAL, in his individual
capacity and in his official capacity as an officer
within the Fall River Police Department, and
THOMAS QUINN, in his official capacity as the
District Attorney for Bristol County,
Massachusetts,

Defendants.

Civil Action No.
1973CV00299

MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY
INJUNCTION

Plaintiffs John Correia, Joseph Treeful, and the Massachusetts Coalition for the Homeless ("MCH") respectfully seek a temporary restraining order or preliminary injunction against any arrests, threats of arrest, criminal charges, threats of further criminal charges, or prosecutions arising from alleged violations of M.G.L. c. 85, § 17A ("the Statute" or "Section 17A") against plaintiffs Correia and Treeful and other members of MCH due to their solicitation of funds for their own support from persons in motor vehicles.¹ Section 17A, entitled "Soliciting from vehicles on public ways," bans *certain* solicitations for *certain* purposes by *certain* speakers, with a focus on criminalizing speech by individuals requesting charity for themselves. This selective restriction is, on its face (and as applied to Plaintiffs Correia and Treeful), a textbook content-based violation of the First Amendment to the U.S. Constitution and of Article 16 of the Massachusetts Declaration of Rights. Preliminary injunctive relief is needed and warranted because the Statute facially violates the essential right of free speech, because the defendants have secured and continue to secure criminal charges based on this unconstitutional statute, and because therefore the liberty of Mr. Correia, Mr. Treeful and other members of MCH is at risk at the same time that their fundamental constitutional rights are being violated.

¹ The Complaint was filed on March 29, 2019. The Court scheduled a hearing for Tuesday, April 9, 2019, on Plaintiffs' prayer for relief for a short order of notice for a preliminary injunction hearing. Plaintiffs are filing and serving this motion now to inform the discussion on April 9. Because the time for defendants to respond prior to April 9 will be short, a temporary restraining order may be appropriate before the issuance of a preliminary injunction.

Factual Background²

Mr. Correira and Mr. Treeful are both low-income residents of Fall River, Massachusetts who are experiencing homelessness. They both depend on contributions from members of the public to assist with their economic survival. They each periodically stand near public ways in Fall River with signs indicating they are experiencing homelessness, and they accept donations from motorists stopped behind traffic signals who indicate that they desire financially to assist. They are also both members of Plaintiff MCH, a Massachusetts statewide, non-profit, membership organization dedicated to ending homelessness in the Commonwealth and protecting the rights of individuals and families experiencing homelessness.

Since mid-2018, Plaintiffs Correira and Treeful have been the subject of numerous criminal complaints filed by Fall River Police officers, including named individual defendants, charging them with violating M.G.L. c. 85, § 17A. Section 17A, entitled "Soliciting from vehicles on public ways," provides:

Whoever, for the purpose of soliciting any alms, contribution or subscription or of selling any merchandise, *except newspapers*, or ticket of admission to any game, show, exhibition, fair, ball, entertainment or public gathering, signals a moving vehicle on any public way or causes the stopping of a vehicle thereon, or accosts any occupant of a vehicle stopped thereon at the direction of a police officer or signal man, or of a signal or device for regulating traffic, shall be punished by a fine of not more than fifty dollars. Whoever sells or offers for sale any item *except newspapers* within the limits of a state highway boundary without a permit issued by the department shall for the first offense be punished by

² The following facts are supported by the Verified Complaint for Declaratory and Injunctive Relief and the Affidavit of Jennifer Magaw dated March 27, 2019, submitted in support of this Motion.

a fine of fifty dollars and for each subsequent offense shall be punished by a fine of one hundred dollars. Notwithstanding the provisions of the first sentence of this section, on any city or town way which is not under jurisdiction of the department, the chief of police of a city or town may issue a permit to nonprofit organizations to solicit on said ways in conformity with the rules and regulations established by the police department of said city or town. (emphases added).

Each individual plaintiff has been incarcerated at least once in connection with these charges: Mr. Correira for failing to receive and therefore respond to a summons related to issuance of criminal charges and Mr. Treeful for alleged probation violations based in part on having been charged under the Statute. Most of the past charges were dismissed with the consent of the Bristol County District Attorney's office. However, the District Attorney's office recently changed its policy at the request of the Fall River Police Department and will no longer consent to dismissal of the charges prior to arraignment.

Plaintiffs Correira and Treeful intend to continue pursuing their economic survival by soliciting donations from people in vehicles on public ways. But they wish to do so without having to fear, or in fact suffering, future criminal complaints and charges.

Legal Background

The First Amendment to the United States Constitution, made applicable to states and localities by virtue of the Fourteenth Amendment, prohibits government from "abridging freedom of speech." *See, e.g., Cutting v. City of Portland*, 802 F.3d 79, 81 (1st Cir. 2015). Article 16 of the Massachusetts Declaration of Rights, as amended by Amendment Article 77, provides "[t]he right of free speech shall not be

abridged.” The Supreme Judicial Court has recognized that Article 16, as amended, provides at least as much and sometimes more protection for freedom of speech as the First Amendment. *See, e.g., Lyons v. Globe Newspaper Co.*, 415 Mass. 258, 266–67 (1993) (explaining that Article 16 generally extends at least the same level of protection to speech as the First Amendment); *Opinions of the Justices to the House of Representatives*, 387 Mass. 1201, 1202 (1982) (explaining that the criteria which have been established by the United States Supreme Court for judging claims arising under the First Amendment . . . are equally appropriate to claims brought under cognate provisions of the Massachusetts Constitution”) (quoting *Colo. v. Treasurer & Receiver Gen.*, 378 Mass. 550, 558 (1979)); *Mendoza v. Licensing Bd. of Fall River*, 444 Mass. 188, 196 (2005) (explaining that Article 16 provides greater protection to certain forms of protected speech, such as nude dancing, than the First Amendment); *Commonwealth v. Sees*, 374 Mass. 532 (1978) (finding a violation of Article 16 where First Amendment not violated).

Argument

In determining whether to issue preliminary injunctive relief, courts evaluate: 1) the plaintiff’s reasonable likelihood of success on the merits; 2) the potential for irreparable harm to the plaintiff if the injunction is denied; 3) the balance of relevant harms, i.e., the hardship to the defendants if enjoined as contrasted with the hardship to the plaintiff if no injunction issued; and 4) the public interest. *Siemens Bldg Techs., Inc. v. Div. α/Capital Asset Mgmt.*, 439 Mass. 759, 762 (2003); *see also Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 617

(1980) (“What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party’s chance of success on the merits.”). The same standards govern a request for a temporary restraining order. *See, e.g., G6 Hospitality Property LLC v. Town of Braintree Bd. of Health*, 34 Mass. L. Rptr. 325, 2017 WL 3573659 *4 (Mass. Supr. Ct. July 25, 2017) (citing *Quincy Cable Systems, Inc. v. Sully’s Bar, Inc.*, 640 F. Supp. 1159, 1160 (D. Mass. 1986)). These standards are satisfied here.

I. Plaintiffs have a strong likelihood of success on the merits.

Plaintiffs have a strong likelihood of success on their claim seeking declaratory and injunctive relief, pursuant to M.G.L. c. 231A and c. 214, § 1, based on violations of the First Amendment and Article 16 of the Declaration of Rights. And, while the Court need not reach this in order to grant relief on Count 1 of the Complaint, Plaintiffs also have a strong likelihood of success on their claim that defendants, specifically the City and the defendants named in their individual capacities, are violating the Massachusetts Civil Rights Act, M.G.L. c. 12, § 11I.

A. The Statute facially interferes with free speech rights secured by the state and federal constitutions.

A content-based restriction on speech is subject to strict scrutiny, under which the restriction is unconstitutional unless it is narrowly tailored to serve a compelling government interest. *Benefit v. City of Cambridge*, 424 Mass. 918, 925 (1997); *see also Commonwealth v. Lucas*, 472 Mass. 387, 397 (2015). Here, “[i]t is beyond question that soliciting contributions is expressive activity that is protected by the First Amendment.” 424 Mass. at 922. Section 17A is a facially

unconstitutional restriction of constitutionally protected activity because it discriminates based on the content and purpose of the speech and the identity of the speaker, and it is not narrowly tailored to serve a compelling governmental interest.

1. *The Statute is a content-based restriction on speech.*

In Massachusetts, it has long been clear that a statute that targets begging for disapprobation is a content-based restriction on speech. In *Benefit*, the Supreme Judicial Court considered a state law that prohibited “wandering” or going door to door “for the purpose of begging or to receive alms.” *Benefit*, 424 Mass. at 919 (citing M.G.L. c. 272, § 66).³ The Court struck down the statute at issue, holding that it was “necessarily content based” because, “[b]y prohibiting peaceful requests by poor people for personal financial aid, the statute directly targets the content of their communications, punishing requests by an individual for help with his or her basic human needs[.]” *Id.* at 924. More recently, and consistent with *Benefit*, the U.S. Supreme Court held in *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015), that a law is facially content-based when, by its terms, it “draws distinctions based on the message a speaker conveys.” The Court held that, regardless of the lawmakers’ intent, a law that treats differently temporary signs directing someone to an event, those intended to influence the outcome of an election, and those expressing some other ideological message “[o]n its face, . . . is a content-based

³ See M.G.L., c. 272, § 66 (providing that “[p]ersons wandering abroad and begging, or who go about from door to door or in public or private ways, areas to which the general public is invited, or in other places for the purpose of begging or to receive alms, and who are not licensed” may be imprisoned for up to six months).

regulation of speech.” *Id.* The Court also ruled that laws that treat different speakers differently are content-based and subject to strict scrutiny. *Id.* at 2230-31. Under these principles, Section 17A’s criminalization of “[s]oliciting from vehicles on public ways” is content-based for several reasons.

First, like the statute in *Benefit*, Section 17A criminalizes expressive conduct undertaken for the purpose of soliciting “direct, charitable aid” for one’s own support, *see Benefit*, 424 Mass. at 924, but not for any reason unrelated to solicitation of funds or selling of items. For example, if one holds a sign saying “God is Great: Get the Good Word,” and hands out flyers to motorists, the Statute is not violated; but if one holds a sign saying “God is Great: Please Help” and accepts a donation, the Statute says a crime has been committed.

Second, Section 17A makes additional distinctions based on the content or purpose of the message conveyed. It prohibits the speech or expressive conduct of people seeking to solicit from or sell to motorists but expressly permits speech and expressive conduct related to selling *newspapers*. Additionally, the Statute allows for permits to be issued to authorize the sale to motorists of items in addition to newspapers on state highways, and the solicitation of funds by nonprofits on local public ways, while categorically and strictly criminalizing solicitation of funds for one’s own support. For example, if an individual holds up a sign next to a roadway soliciting donations from motorists, whether that individual has violated the Statute depends on what the sign says and who the speaker is. If the sign says “Newspapers For Sale,” the solicitation is permitted by the Statute. If a sign says

“Save The Whales,” the solicitation’s legality under the Statute depends on whether the person holding the sign seeks money for a whale-saving organization that has secured a permit from the chief of police. And if the sign says “Homeless – Anything Helps,” the solicitation is criminalized by the Statute.

Third, Section 17A also hinges on the identity of the speaker. It criminalizes the expressive conduct of seeking funds for one’s own support, but does not criminalize the very same conduct undertaken by a permitted nonprofit, a distinction the Court in *Benefit* called “illogical.” *Id.* at 923. The Statute also criminalizes requests for self-support, but not the actions of a motorist engaging in the expressive conduct of *making* a contribution.

Thus, to enforce the Statute, an officer must review the content of speech or expressive conduct, as well as the identity of the person undertaking it. That is the quintessential definition of a content-based law. *See Reed*, 135 S. Ct. at 2227 (reiterating impermissibility of laws distinguishing between speech based on its “subject matter . . . function or purposes”); *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412-13 (7th Cir. 2015) (“Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.”).

Indeed, Section 17A could also be characterized as view-point based, a categorical violation of the First Amendment. In *R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992), the Supreme Court dealt with a local ordinance that punished speech intended to cause alarm on the basis of race and other attributes but allowed similar speech for different purposes. The Court found that the ordinance was not

only content-discriminatory but, in fact, viewpoint-discriminatory and held that “[t]he First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects.” *See also Benefit*, 424 Mass. at 924 (“The statute may also be fairly characterized as viewpoint based because it favors the view that poor people should be helped by organized groups and should not be making public requests for their necessities.”).

For all these reasons, Section 17A is a content-based and even view-point based restriction on speech and, accordingly, is presumptively unconstitutional.

2. *The Statute is not narrowly tailored to any compelling state interest.*

Because the Statute discriminates on the basis of the content of the speech as well as the identity of the speaker, it is presumptively unconstitutional and cannot be upheld unless it is narrowly tailored to serve a compelling state interest. *Reed*, 135 S. Ct. at 2232; *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). It cannot survive this test.

In striking down the law at issue in *Benefit*, the Supreme Judicial Court made clear that the Commonwealth has no compelling interest in preventing peaceful requests for funds for one’s own support in public places. 424 Mass. at 926. Specifically, the Court explained that any argument that a statute is justified because prohibiting requests for funds “create an atmosphere where citizens may go about their way free from being accused, intimidated, or harassed” is not compelling. *Id.* at 926. “A listener’s annoyance or offense at a particular type of communicative activity does not provide a basis for a law burdening that activity.”

Id. (citing *Texas v. Johnson*, 491 U.S. 397, 408-409 (1989)). See also *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015); (“The First Amendment does not permit a city to cater to the preference of one group, in this case tourists or downtown shoppers, to avoid the expressive acts of others, in this case panhandlers, simply on the basis that the privileged group does not like what is being expressed.”). The *Benefit* Court, therefore, issued a declaratory judgment pursuant to G.L. c. 231A that the state statute at issue in that case violated the First Amendment. 424 Mass. at 927.⁴

Similarly, in *Reed*, the Supreme Court held that a sign code was not narrowly tailored to serve a compelling governmental interest and thus could not satisfy strict scrutiny because the defendant town could not show that the different categories of signs had different impacts on the state interests involved, including traffic safety. *Id.* at 2232. The Court therefore found that the statute at issue was “hopelessly underinclusive.” *Id.* at 2231.

Here, too, there can be no argument that soliciting funds from motorists for one’s own support is any more a threat to traffic or public safety than is solicitation related to selling newspapers or other merchandise, solicitation by nonprofits, or interference with traffic for reasons unrelated to solicitation or sales. The Statute’s selective application to only some speech, and to only some speakers, makes it “hopelessly underinclusive”— and therefore not narrowly tailored to serve a

⁴ See also *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 232-233 (D. Mass. 2015); see also generally *Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015).

compelling government interest. *Id.* at 2231-32. *See Rodgers v. Stachey*, 2019 WL 1447497 at *9 (W.D. Ark. April 1, 2019) (“By singling out only certain persons with certain types of messages, the City has fashioned a ‘fit’ that is too small to cover its legitimate and compelling interest in promoting the safety of all pedestrians in authorized portions of the roadway.”).

Plaintiffs therefore have a very strong likelihood of success on their claim that the statute is unconstitutional and should be declared so by this Court, pursuant to M.G.L. c. 231A.

B. Plaintiffs have a strong likelihood of success of showing that actual and threatened criminal complaints and arrests under Section 17A constitute “threats, intimidation or coercion” under M.G.L. c. 12, § 11I, the Massachusetts Civil Rights Act (MCRA).

For the reasons set forth above, Plaintiffs have a very strong likelihood of success on their claims that the statute unconstitutionally interferes with the individual Plaintiffs’ rights to free speech secured by the First Amendment and Article 16. And, although the Court need not reach this issue to grant a temporary restraining order or preliminary injunction here, Plaintiffs also have a strong likelihood of success that the ongoing threat of criminal complaints and resulting arrests for alleged violations of the statute constitute “threats, intimidation or coercion” under M.G.L. c. 12, § 11I and that the actions of the individual defendants violate the state civil rights act.

Section 11I, through incorporation of M.G.L. c. 12, § 11H, creates a private cause of action for violations of constitutional rights through means of “threats,

intimidation or coercion.”⁵ The threat of arrest constitutes “threats, intimidation or coercion” under the statute. *See, e.g., Batchelder*, 393 Mass. 819, 823 (1985) (“A uniformed security officer ordered Batchelder to stop soliciting and distributing his political handbills. Though Batchelder objected, he complied. This was sufficient intimidation or coercion to satisfy the statute.”); *Sarvis v. Boston Safe Deposit & Tr. Co.*, 47 Mass. App. Ct. 86, 93 (1999) (“The arrests and detention of the plaintiffs by police were intrinsically coercive and, thus, sufficient to meet the plaintiffs’ burden on that prong.”); *Reproductive Rights Network v. President of Univ. of Mass.*, 45 Mass. App. Ct. 495, 505 (1998) (“denying access to a University building (by locking it and posting guards outside to turn away visitors) constitutes ‘threats,

⁵ Section 11I provides:

Any person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with, or attempted to be interfered with, as described in section 11H, may institute and prosecute in his own name and on his own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section, including the award of compensatory money damages. Any aggrieved person or persons who prevail in an action authorized by this section shall be entitled to an award of the costs of the litigation and reasonable attorneys’ fees in an amount to be fixed by the court.

M.G.L. c. 12, § 11H, which is cross-referenced in section 11I, provides that MCRA actions can be stated against “persons” and requires that interference or attempted interference with secured rights must be through “threats, intimidation or coercion.” The individual defendants are “persons” subject to suit under this law. In addition, the City of Fall River is a corporate body and qualifies as a “person” pursuant to the statutory definition of “person” in M.G.L. c. 4, § 7, twenty-third, which defines “person” to include “corporations.” *But see Howcroft v. City of Peabody*, 51 Mass. App. Ct. 573, 591-593 (2001) (disagreeing that municipalities and employees in their official capacities are “persons” subject to suit under the MCRA).

intimidation, or coercion' under the MCRA.").

Here, the individual defendants repeatedly have threatened to and have actually obtained criminal charges against Mr. Correira and Mr. Treeful under the Statute. This reflects *the defendants'* choices and prerogatives. On information and belief, the individual defendants are targeting individuals experiencing homelessness who seek monetary support in the City of Fall River. *See* Aff. of Jessica Lewis, April 3, 2019. And, certainly, City leadership is not preventing officers from continuing to engage in such conduct. Plaintiffs therefore have a strong likelihood of success on their claims under the MCRA.

C. This Court has broad authority to enjoin ongoing and future enforcement of Section 17A.

Because Plaintiffs can likely show that Section 17A violates the First Amendment and Article 16, at the very least this Court should enjoin future arrests, complaints, or charges by any of the defendants under the challenged statute. But the Court also can and should enjoin further proceedings in *ongoing* matters on which arrest warrants under Section 17A have already issued.

With regard to these pending matters, the equitable doctrine concerning enjoining criminal prosecutions might be relevant, but is no bar to the relief Plaintiffs seek:

It is the general rule that the prosecution and punishment of crimes will not be restrained by a court of chancery. But there is an exception to this comprehensive statement. Jurisdiction in equity to restrain the institution of prosecutions under unconstitutional or void statutes or local ordinances has been upheld by this court when property rights would be injured irreparably, and when other elements necessary to support cognizance by equity are present.

Shuman v. Gilbert, 229 Mass. 225, 227 (1918) (and cases cited). Subsequently, the Court recognized that the same exception applies when an unconstitutional statute is causing irreparable injury to personal rights, including constitutional free speech rights. *Kenyon v. City of Chicopee*, 320 Mass. 528 (1946). In *Kenyon*, the Court ruled that an injunction action was an appropriate means to address repeated arrests and prosecution of Jehovah's Witnesses for distributing handbills advertising religious lectures under a city ordinance that was alleged to be (and ultimately found to be) in violation of constitutional free speech protections. *Kenyon*, 320 Mass. at 531. Contrast *Bunker Hill Distributing, Inc. v. District Attorney for Suffolk County*, 376 Mass. 142 (1978) (action for injunction against criminal prosecution dismissed where no prosecution even threatened and underlying statute previously found not unconstitutional on its face); *Norcisa v. Bd. of Selectman of Provincetown*, 368 Mass. 161 (1975) (injunction action not appropriate to enjoin a single pending prosecution in a case where there was no apparent risk of multiple charges and the plaintiff's primary argument was that the statute under which criminal proceedings were brought did not apply to her situation).

This matter clearly falls under the ambit of *Shuman* and *Kenyon*; Plaintiffs are repeatedly subjected to charges and threats of arrest due to the actions of members of the Fall River Police Department and now face prosecution by the District Attorney based on a statute that, on its face, violates the First Amendment and Article 16. Accordingly, this Court should enjoin not only future arrest,

complaints, and charges, but also pending matters arising from such enforcement actions.⁶

II. Plaintiffs are suffering irreparable harm and will continue to suffer irreparable harm in the absence of injunctive relief.

“[I]rreparable injury is presumed upon a determination that the movants are likely to prevail on [a] First Amendment claim.” *Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 11 (1st Cir. 2012). *See also Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008). That conclusion flows from the well-established rule that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Such irreparable harm is particularly established where a plaintiff can show “a chilling effect on free expression.” *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965).

This harm is not only irreparable, it is persistent and ongoing. The individual Plaintiffs are living under constant threat of criminal process because of the simple act of requesting charity. In the last weeks of March 2019, alone, eight new charges were issued against Mr. Correia and one new charge was issued against Mr. Treeful. *See* Aff. of Jennifer Magaw, ¶ 13. These enforcement actions “intrude[] not only on the[ir] right of free communication,” but also “an even broader right -- the

⁶ There is no limitation on this Court’s authority to issue declaratory relief. *See Sun Oil Co. v. Director of Division on Necessaries of Life*, 340 Mass. 235, 240 (1960) (chapter 231A relief does not implicate the doctrine of equity intervening to prevent prosecution of a crime). Thus, no matter this Court’s approach to injunctive relief, Plaintiffs would request that partial summary judgment promptly issue declaring that the Statute is unconstitutional on its face.

right to engage fellow human beings with the hope of receiving aid and compassion." *Benefit*, 424 Mass. at 926.

Here, the irreparable harm is further exacerbated because Mr. Correira and Mr. Treeful are persistently told to move along and therefore are interrupted and deterred from receiving funds important for survival. Although financial injury that eventually can be compensated through monetary damages may not qualify as irreparable harm, financial injury to very low-income individuals whose economic condition would be seriously threatened pending a final judgment may constitute irreparable harm. See, e.g., *Woods v. Executive Office of Communities and Dev.*, 411 Mass. 599 (1992) (affirming preliminary injunction in part based on finding of irreparable harm to low-income tenants whose subsidies otherwise would be reduced); *Bloodworth v. Oxford Village Townhouses*, 377 F. Supp. 709, 719 (N.D. Ga. 1974) ("If plaintiffs were in a more favorable economic position, then the impact of defendants' action would not be as great and the court would be reluctant to find the injury to plaintiffs to be irreparable. Such is not the case here. Accordingly, we find that the irreparable injury test has been satisfied"). See also *Benefit*, 424 Mass. at 926 ("At the least, for some panhandlers, begging is a way to augment their meager sources. For a few, it may be their only source of income.").

III. Defendants will suffer no cognizable harm if an injunction is granted that can outweigh the harm to the Plaintiffs from the lack of an injunction, and, by vindicating free speech rights, an injunction will serve the public interest.

Defendants will suffer no cognizable harm from entry of a temporary restraining order or preliminary injunction, and certainly no harm that can outweigh the harm to the Plaintiffs if an order is not entered.

Even if there were some real threat to traffic safety from Plaintiffs' conduct, the defendants have means at their disposal, other than reliance on the unconstitutional statute at issue here, to mitigate risks to traffic safety as a result of pedestrian conduct. For instance, they can use whatever means they currently use to ensure that those selling "newspapers" do not cause undue harm. Further, pursuant to M.G.L. c. 90, § 18A, the Commonwealth and municipalities are authorized to control pedestrian activity in public ways through means "not repugnant to law." This statute thus authorizes regulations of pedestrians in public ways, so long as those regulations do not impermissibly hinge on or unnecessarily curtail the speech or expressive conduct of the pedestrian. Hence, even if enforcement of the Statute is temporarily restrained or preliminarily enjoined, the City can seek to adopt regulations that protect traffic safety that do not violate free speech principles.

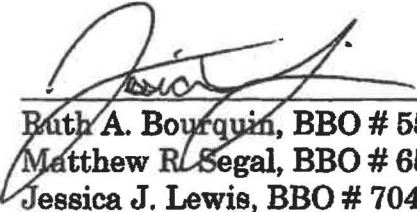
Moreover, even if the defendants will suffer some harm from a temporary restraining order or preliminary injunction, that harm pales in comparison to the unconstitutional and financial harm, as well as the continued threats to their liberty, that Mr. Correira and Mr. Treeful are suffering in the absence of injunctive

relief. Vindication of the right to free speech is a constitutional value that transcends the defendants' desires to keep Plaintiffs' from exercising those rights and is clearly in the public interest. Indeed, "[i]njunctive protection of First Amendment freedoms 'are always in the public interest.'" *Pan American v. Municipality of San Juan, Puerto Rico*, 2018 WL 6503215 *25 (D.P.R. 2018) (quoting *Texans for Free Enterprise v. Texas Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013); cf. *Jean v. Massachusetts State Police*, 492 F.3d 24 (1st Cir. 2007) (public interest in protecting speech outweighs interest in deterring distribution of illegally intercepted material)).

Conclusion

Plaintiffs respectfully ask this Court to enter a temporary restraining order or preliminary injunction preventing the defendants from enforcing M.G.L. c. 85, § 17A against Mr. Correia, Mr. Treeful and other members of MCH during the pendency of this action.

On behalf of Plaintiffs
Massachusetts Coalition for the Homeless,
John Correia and Joseph Treeful,



Ruth A. Bourquin, BBO # 552985
Matthew R. Segal, BBO # 654489
Jessica J. Lewis, BBO # 704229
American Civil Liberties Union
Foundation of Massachusetts
211 Congress Street
Boston, MA 02110
rbourquin@aclum.org
617-482-3170



David Himelfarb, BBO # 649596
Stesha Emmanuel, BBO # 682293
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617-449-6511

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS.

Superior Court

MASSACHUSETTS COALITION FOR THE
HOMELESS, JOHN CORREIRA and JOSEPH
TREEFUL,

Plaintiffs,

v.

THE CITY OF FALL RIVER, et. al.,

Defendants.

Civil Action No. 1973CV00299

AFFIDAVIT OF JENNIFER MAGAW

I, Jennifer Magaw, hereby depose and state as follows:

1. I am an attorney with the Committee for Public Counsel Services in the Public Defender Division at Fall River and New Bedford, Massachusetts.
2. In my capacity as a public defender, I have been appointed by the Fall River District court to represent Mr. Joseph Treeful, including in matters arising from complaints filed against him by Fall River police for alleged violations of M.G.L., c. 85, § 17A, as well as a probation violation matter.
3. Mr. Treeful is a low-income resident of Fall River, Massachusetts. Mr. Treeful has no fixed address or residence; he is currently experiencing homelessness.
4. Between November 15, 2018 and January 30, 2019, at least eleven (11) criminal complaints were filed against Mr. Treeful by members of the Fall River Police Department, including the individually named defendants, under

M.G.L., c. 85, § 17A for allegedly committing the crime of soliciting contributions for his own support from motorists sitting in stopped vehicles. All but one of these complaints were dismissed by or with the consent of the Bristol County District Attorney's Office.

5. Between January 17 and February 14, 2019, Mr. Treeful was incarcerated for allegedly violating the conditions of his probation, which included allegedly soliciting contributions for his own support in violation of M.G.L., c. 85, § 17A. The court found that Mr. Treeful did violate probation and sentenced him to time served, but did not cite M.G.L., c. 85, § 17A as grounds for the probation violation.

6. In February 2019 alone, at least another three criminal complaints were filed against Mr. Treeful under M.G.L., c. 85, § 17A by Fall River police officers based on his having allegedly solicited funds for his own support from motorists lawfully stopped in their vehicles behind traffic control signals. As of March 1, 2019, and as result of these complaints, there were outstanding warrants for Mr. Treeful's arrest. The court, however, over the objection of the District Attorney's office, dismissed the charges on March 15, 2019.

7. In the last week or two of March 2019, alone, eight new charges were issued against Mr. Correira and one new charge was issued against Mr. Treeful. As of this writing, arrests warrants have issued based on these charges.

8. On February 14, 2019, I asked an Assistant District Attorney to dismiss a pending charge against Mr. Treeful alleging a violation of M.G.L. c. 85, §

17A. This charge was based on a complaint that had been filed by Fall River police in January. On February 14, the Assistant District Attorney told me and also told the court on the record that the District Attorney's Office has instated a new policy, based on a request from the Fall River Police Department, that solicitation charges will no longer voluntarily be dismissed prior to arraignment.

9. My office has also represented Mr. John Correia, including in matters involving complaints filed against him for alleged violations of M.G.L., c. 85, § 17A. I have personally reviewed many of these complaints and records relating to them.

10. Mr. Correia is a low-income resident of Fall River, Massachusetts. Mr. Correia has no fixed address or residence; he is currently experiencing homelessness.

11. Since the summer of 2018, Mr. Correia has had no fewer than 37 criminal complaints filed against him under M.G.L., c. 85, § 17A by members of the Fall River Police Department, including the individually named defendants, for allegedly committing the crime of soliciting contributions for his own support from motorists sitting in stopped vehicles. All complaints issued against Mr. Correia prior to February 19, 2019 were dismissed by the Court at the request of the Bristol County District Attorney's Office.

12. In connection with criminal complaints filed against him by members of the Fall River Police Department under M.G.L., c. 85, § 17A, Mr. Correia has been arrested at least once for failure to respond to a summons that he did not

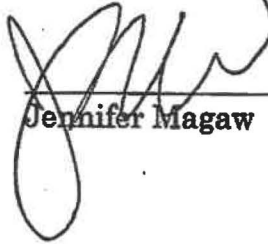
receive due to the lack of a fixed address. This arrest resulting in his having to spend at least one night in jail.

13. On February 11, 2019, yet another criminal complaint was filed against Mr. Correira under M.G.L., c. 85, § 17A by Defendant Derek Amaral based on his having allegedly solicited funds for his own support from motorists lawfully stopped in their vehicles behind traffic control signs. An arrest warrant was issued based on this complaint, but the charge was dismissed on February 19, 2019. Court records indicated that Mr. Correira may have been arraigned on the charge before the dismissal.

14. Each of the members of the Fall River Police Department named as defendants in this action, other than Police Chief Dupere, has filed at least one criminal complaint against one or both of the named plaintiffs, Mr. Treeful and Mr. Correira.

15. Based on my personal observations and review of court records, it appears that, since the summer of 2018, there has been an increase in the number of complaints being filed in Fall River District Court under M.G.L. c. 18, § 17A by members of the Fall River Police Department against individuals who are experiencing homelessness and are seeking funds for their own support.

Signed under the pains and penalties of perjury this 27th day of March, 2019.



Jennifer Magaw

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS.

Superior Court

MASSACHUSETTS COALITION FOR THE
HOMELESS, JOHN CORREIRA and JOSEPH
TREEFUL,

Plaintiffs,

v.

THE CITY OF FALL RIVER, et. al.,

Defendants.

Civil Action No. 1973-CV-00299

AFFIDAVIT OF JESSICA LEWIS

I, Jessica Lewis, hereby depose and state and follows:

1. I am an attorney with the American Civil Liberties Union Foundation of Massachusetts (“ACLUFM”) at Boston, Massachusetts.

2. On January 22, 2019, ACLUFM sent a public records request pursuant to M.G.L., c. 66, § 10 to the Fall River Police Department requesting, *inter alia*, “[a]ll records reflecting or containing all criminal complaints filed by members of the Department on or after January 1, 2018, that cite or refer to M.G.L. c. 85, § 17A.”

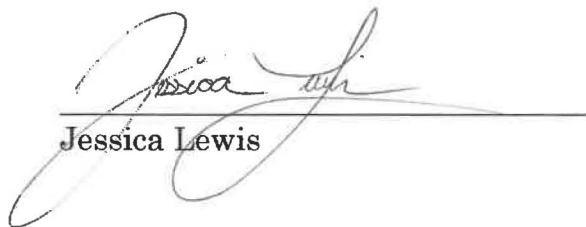
3. The Fall River Police Department (“Department”) responded to the public records request on February 27, 2019, by providing, in part, an Excel spreadsheet which lists case numbers, locations of incidents, and reporting officer names and alpha numbers for all requests for criminal complaints filed pursuant to M.G.L., c. 85, § 17A (“Statute”) on and after January 1, 2018. Based on that spreadsheet, which I have personally viewed, the Department filed 169 reports

recommending for criminal action, including prosecution, individuals who were alleged to have violated the Statute between January 1, 2018 and February 27, 2019.

4. The Department also provided copies of the “Summons Reports” for the relevant police activity conducted in 2019, which I reviewed. I have also reviewed some of the Summons Reports issued in 2018 against Plaintiffs John Correia and Joseph Treeful, which were provided to me by Plaintiffs through their defense counsel.

5. According to the Summons Reports, officers of the Department’s Special Operations Division “specifically concentrate [their] patrols in response to the chronic and numerous complaints regarding the pan handlers.” *See* Exhibit A, Defendant Sgt. James Smith Summons Report, Ref. Nos. 18-5009-AR, 18-4272-AR, 18-4229-AR. Based on the location information provided in the Excel spreadsheet identified in paragraph 3 as well as the Summons Reports, these officers patrol the area of Plymouth Ave which “is a public way in a designated CDA area and is a site for homeless people that solicit from motor vehicles.” *See* Exhibit B, Defendant Officer Michael Paavo Summons Report, Ref. Nos. 18-3522-AR, 19-528-AR, 19-79-AR. These officers purportedly concentrate their patrols in this manner in order to address alleged complaints expressed in neighborhood community meetings that “[m]any citizens fear the individuals who walk up to their vehicles” or “are annoyed by panhandlers blocking traffic and soliciting money.” *See* Exhibit C, Defendant Officer Derek Amaral Summons Report, Ref. No. 19-203-AR.

Signed under the pains and penalties of perjury this 3rd day of April, 2019.



A handwritten signature in cursive script, appearing to read "Jessica Lewis", is written over a horizontal line. The signature is fluid and stylized, with a large initial "J" and a long, sweeping underline that extends to the right.

Jessica Lewis

Exhibit A



Fall River Police Department
Summons Report

Page: 1
12/17/2018

Summons #: 18-5009-AR
Call #: 18-88923

Date/Time Reported: 12/17/2018 @ 1244
Arrest Date/Time: 12/17/2018 @ 1652

OBTN: TFAL201805009
Reporting Officer: Sergeant James Smith

Signature: _____

DEFENDANT(S) SEX RACE AGE SSN PHONE

1 CORREIRA, JOHN
HOMELESS ST
FALL RIVER MA

M W 53

Military Active Duty: N

HEIGHT: 510

WEIGHT: 145 - 150

HAIR: BROWN

EYES: BROWN

BODY: SKINNY

COMPLEXION: FAIR

DOB: [REDACTED]

PLACE OF BIRTH: FALL RIVER, MA

STATE ID: [REDACTED]

FBI ID: [REDACTED]

LICENSE NUMBER: [REDACTED]

ETHNICITY: NOT HISPANIC

PCF #: [REDACTED]

[CONTACT INFORMATION]

Home Phone

(Primary) [REDACTED]

[APPEARANCE]

GLASSES WORN: YES

ALIAS LAST NAME

FIRST NAME

MIDDLE NAME

SSN

DOB

CORREIRA

JOHN

NOT AVAIL

NOT AVAIL

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED]

MOTHER'S NAME: [REDACTED]

EMPLOYER/SCHOOL: UNEM

OCCUPATION: UNEMP.

OFFENSE(S) ATTEMPTED TYPE

LOCATION TYPE: Highway/Road/Alley/Street
PLYMOUTH AVE ONTO RT 195W
300 RT 195W HWY
FALL RIVER MA 02721

Zone: Zone 202, Sec 4

1 SOLICIT FROM PERSONS IN MOTOR VEHICLES
85/17A/A 85 17A

N

Ordinance

OCCURRED: 12/17/2018 1244

Fall River Police Department
NARRATIVE FOR SERGEANT JAMES SMITH

Page: 1

Ref: 18-5009-AR

On Monday, December 17, 2018, I, Sergeant James Smith, was assigned to the Fall River Police Department's Special Operations Division. I was specifically concentrating my patrols in response to the chronic and numerous complaints regarding the pan handlers aggressively pan-handling by walking out in front of traffic, which creates a dangerous situation. Some of them also intimidate lone females, and the elderly for money.

At 12:44 PM, my attention was drawn to a male that I know from multiple, past police related encounters as John Correia, DOB [REDACTED]. Correia was standing out in the middle of the highway and collecting money from the driver of a small, black car, which was possibly a Hyundai. This was at the intersection of the Route 195 West bound off-ramp, and Plymouth Avenue. Due to the Hyundai that was stopped, no cars could proceed down the on-ramp, even though they had the green light. There were multiple cars behind the vehicle, which created traffic congestion, but no one was beeping their horn. This was a result of Correia and the driver of the Hyundai had effectively stopped traffic flow in the roadway.

Correia appeared to have collected the money and walked back to the side of the highway again. When he stepped out of the highway, vehicle traffic began to flow again. Correia was now standing back on the median and still holding a make-shift cardboard, homeless sign. I activated my air-horn in order to get Correia's attention and called out to him. I told him that he needed to cease his actions and that we would be summoned into court again.

It should be noted that Correia has been charged and warned multiple times about pan-handling, but he continually and willfully flouts the law. Based on the above mentioned facts and circumstances, I would like to respectfully request that John Correia, DOB [REDACTED] be summoned into court for pan-handling. This report is being submitted under the pains and penalties of perjury.

Investigating Officer: _____
Sgt. James Smith



Fall River Police Department
Summons Report

Page: 1
10/26/2018

Summons #: 18-4272-AR
Call #: 18-76233

Date/Time Reported: 10/26/2018 @ 1333
Arrest Date/Time: 10/26/2018 @ 1806

OBTN: TFAL201804272

Reporting Officer: Sergeant James Smith
Assisting Officer: Officer Matthew Mendes

Signature: _____

#	DEPENDENT(S)	SEX	RACE	AGE	SSN	PHONE
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1	CORREIRA, JOHN 359 DIVISION ST FALL RIVER MA 02721	M	W	53		
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Military Active Duty: N

HEIGHT: 510

WEIGHT: 145 - 150

HAIR: BROWN

EYES: BROWN

BODY: SKINNY

COMPLEXION: FAIR

DOB: 03/15/1965

PLACE OF BIRTH: FALL RIVER, MA

STATE ID: [REDACTED]

FBI ID: [REDACTED]

LICENSE NUMBER: [REDACTED]

ETHNICITY: NOT HISPANIC

PCF #: [REDACTED]

[CONTACT INFORMATION]

Home Phone

(Primary) [REDACTED]

[APPEARANCE]

GLASSES WORN: YES

ALIAS LAST NAME	FIRST NAME	MIDDLE NAME	SSN	DOB
CORREIRA	JOHN		NOT AVAIL	NOT AVAIL

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED]

MOTHER'S NAME: [REDACTED]

EMPLOYER/SCHOOL: UNEM

OCCUPATION: UNEMP.

#	OFFENSE(S)	ATTEMPTED	TYPE
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1	LOCATION TYPE: Highway/Road/Alley/Street EXIT 7 RT 195W 205 PLYMOUTH AVE FALL RIVER MA 02721	Zone: Zone 202, Sec 4
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1	SOLICIT FROM PERSONS IN MOTOR VEHICLES 85/17A/A	85 17A	N	Ordinance
OCCURRED: 10/26/2018 1333				

On Friday, October 26, 2018, Officer Matthew Mendes, and I, Sergeant James Smith, were assigned to the Fall River Police Department's Special Operations Division. We were specifically concentrating our patrols in response to the chronic and numerous complaints regarding the panhandlers aggressively pan-handling by walking out in front of traffic, which creates a dangerous situation. Some of them also intimidate lone females, and the elderly for money.

Around 1:33 PM, while we were travelling north on Plymouth Avenue, we observed a male that was known to us from past police related encounters, as John Correia, DOB [REDACTED]. Correia walked directly out into on-coming traffic, coming off of Route 195 westbound. He took money from the driver of a black SUV, and these vehicles had the green light. As a result, all of the vehicles located directly behind said vehicle, had to stop and couldn't drive forward unless they drove around the SUV. Correia took the money from inside the motor vehicle and then walked back off of the ramp. Officer Mendes and I confirmed it was in fact Correia, and we informed him that he couldn't stay there.

I am aware that Correia is homeless, but refuses to go to the homeless shelter. He was still holding a make-shift, cardboard, homeless sign again. It should be noted that Correia has been charged and warned multiple times about pan-handling, but he continually and willfully flouts the law.

Based on the above mentioned facts and circumstances, I would like to respectfully request that John Correia, DOB [REDACTED] be summoned into court for pan-handling. This report is being submitted under the pains and penalties of perjury.

Investigating Officer: _____

Sgt. James Smith



Fall River Police Department
Summons Report

Page: 1
10/24/2018

Summons #: 18-4229-AR.
Call #: 18-75706

Date/Time Reported: 10/24/2018 @ 1354
Arrest Date/Time: 10/24/2018 @ 2204

OBTN: TFAL201804229
Reporting Officer: Sergeant James Smith

Signature: _____

#	DEPENDANT(S)	SEX	RACE	AGE	SSN	PHONE
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1	CORREIRA, JOHN 359 DIVISION ST FALL RIVER MA 02721	M	W	53		
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Military Active Duty: N

HEIGHT: 510

WEIGHT: 145 - 150

HAIR: BROWN

EYES: BROWN

BODY: SKINNY

COMPLEXION: FAIR

DOB: [REDACTED]

PLACE OF BIRTH: FALL RIVER, MA

STATE ID: [REDACTED]

FBI ID: [REDACTED]

LICENSE NUMBER: [REDACTED]

ETHNICITY: NOT HISPANIC

PCF #: [REDACTED]

[CONTACT INFORMATION]

Home Phone

(Primary) [REDACTED]

[APPEARANCE]

GLASSES WORN: YES

ALIAS LAST NAME	FIRST NAME	MIDDLE NAME	SSN	DOB
CORREIRA	JOHN		NOT AVAIL	NOT AVAIL

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED]

MOTHER'S NAME: [REDACTED]

EMPLOYER/SCHOOL: UNEM

OCCUPATION: UNEMP.

#	OFFENSE(S)	ATTEMPTED	TYPE
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1	LOCATION TYPE: Highway/Road/Alley/Street PLYMOUTH AVE ONTO RT 195W 201 RT 195W HWY FALL RIVER MA 02721	Zone: Zone 202; Sec 4	
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1	SOLICIT FROM PERSONS IN MOTOR VEHICLES 85/17A/A	85 17A	N	Ordinance
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OCCURRED: 10/24/2018 1354

Fall River Police Department
NARRATIVE FOR SERGEANT JAMES SMITH

Page: 1.

Ref: 18-4229-AR

On Wednesday, October 24, 2018, I, Sergeant James Smith, was assigned to the Fall River Police Department's Special Operations Division. I was specifically concentrating my patrols in response to the chronic and numerous complaints regarding the panhandlers aggressively pan-handling by walking out in front of traffic, which creates a dangerous situation. Some of them also intimidate lone females, and the elderly for money.

Around 1:54 PM, I was travelling South on Plymouth Avenue. As I got closer to the Route 195 West-bound intersection, I observed a male that was known to me from past police related encounters, as John Correia, DOB [REDACTED]. Correia had just walked back off of the off-ramp and traffic began to flow regularly after he got out of the roadway, as the driver's had the green light.

Upon reaching his destination, he was back standing off the side of the highway. I confirmed it was in fact Correia, and informed him that he couldn't stay here. I told him once again that it was not only illegal to pan-handle, which he already knew, as he has been charged numerous times, but also was not safe.

I am aware that Correia is homeless, but refuses to go to the homeless shelter. He was still holding a make-shift, cardboard, homeless sign again. It should be noted that Correia has been charged and warned multiple times about pan-handling, but he continually and willfully flouts the law.

Based on the above mentioned facts and circumstances, I would like to respectfully request that John Correia, DOB [REDACTED], be summoned into court for pan-handling. This report is being submitted under the pains and penalties of perjury.

Investigating Officer: _____

Sgt. James Smith

Exhibit B



Fall River Police Department
Summons Report

Page: 1
09/14/2018

Summons #: 18-3522-AR
Call #: 18-64803

Date/Time Reported: 09/13/2018 @ 1309
Arrest Date/Time: 09/13/2018 @ 1311

OBTN: TFAL201803522

Reporting Officer: Officer Michael Pavao

Signature: _____

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
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1	TREEFOL, JOSEPH E JR HOMELESS ST FALL RIVER MA 02721	M	W	48		
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Military Active Duty: N

HEIGHT: 602 - 602

WEIGHT: 238

HAIR: BROWN

EYES: BLUE

BODY: SKINNY

COMPLEXION: MEDIUM

DOB: [REDACTED]

PLACE OF BIRTH: FALL RIVER, MA

STATE ID: [REDACTED]

FBI ID: [REDACTED]

LICENSE NUMBER: [REDACTED]

ETHNICITY: NOT HISPANIC

PCF #: [REDACTED]

[CONTACT INFORMATION]

Home Phone

(Primary) [REDACTED]

[APPEARANCE]

GLASSES WORN: NO

SCARS: SC ARM(DRAGON)

TATTOOS: TAT ARM(HEART), TAT ARM(WIZARD), TAT ARM(TRIBAL DRAGON)
TAT R CHK(2 BLK DOTS(SIDE RIGHT EYE))

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED]

MOTHER'S NAME: [REDACTED]

OCCUPATION: UNEMPLOYED

#	OFFENSE(S)	ATTEMPTED	TYPE
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	LOCATION TYPE: Restaurant/Cafeteria APPLEBEE'S NEIGHBORHOOD GRILL AND BAR 311 PLYMOUTH AVE FALL RIVER MA		
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Zone: Zone 157, Sec 11

1	SOLICIT FROM PERSONS IN MOTOR VEHICLES 85/17A/A	N	Ordinance
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OCCURRED: 09/13/2018 1309

Fall River Police Department
NARRATIVE FOR OFFICER MICHAEL PAVAO

Page: 1

Ref: 18-3522-AR

On Thursday, September 13, 2018, I Officer Michael Pavao was assigned to the Fall River Police Department Special Operations Division. At approximately 9:30 a.m., Officer Michael Hadaya (Walking beat 11A) and I (Walking beat 4A) were on patrol in an unmarked police cruiser traveling south on Plymouth Ave. near the route 195 east off ramp to Plymouth Ave. This area of Plymouth Ave is a public way in a designated CDA area #4 and is a site for homeless people that constantly solicit from motor vehicles.

While stopped at a red traffic signal, I observed a male standing against a posted traffic sign holding a cardboard sign saying that he was "Homeless". This is common behavior when someone is asking for monetary donations from motorists that are passing by. I exited my cruiser and approached this male who is known to me as Joseph Treeful, D.O.B. [REDACTED] Mr. Treeful told me that he recently chose this area to solicit from people because he was homeless. Mr. Treeful stepped into the roadway several times approaching motorists for money as they pass by. At one point he was talking to a motorist who handed him money while the traffic signal was green holding up traffic briefly. Mr. Treeful confirmed that he was homeless but claimed that he was trying to register himself into a local homeless shelter, however, because he is frequently under the influence of alcohol he has been unsuccessful getting assistance. Mr. Treeful told me that he was fully aware the police were enforcing this offense but said he would continue his business of solicitation even if it meant relocating to another area of the city. Mr. Treeful has been known to become violent toward police but on this day he left the area without incident. Mr. Treeful has been charged with solicitation in the past but despite numerous warnings he continues to solicit from persons in motor vehicles on a daily basis.

Based on the incident described above, I respectfully request a Summons be issued to Joseph Treeful to appear in Court for *Soliciting From Persons in Motor Vehicles*.

Officer Michael Pavao
Requesting Officer

Date



Fall River Police Department
Summons Report

Page: 1
02/11/2019

Summons #: 19-528-AR
Call #: 19-9950

Date/Time Reported: 02/10/2019 @ 1037
Arrest Date/Time: 02/11/2019 @ 1553

OBTN: TFAL201900528
Reporting Officer: Officer Michael Pavao

Signature: _____

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
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1	CORREIRA, JOHN HOMELESS ST FALL RIVER MA	M	W	53	[REDACTED]	[REDACTED]
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Military Active Duty: N
HEIGHT: 510 WEIGHT: 145 - 150 HAIR: BROWN EYES: BROWN
BODY: SKINNY COMPLEXION: FAIR
DOB: 03/15/1965 PLACE OF BIRTH: FALL RIVER, MA
STATE ID: [REDACTED] FBI ID: [REDACTED]
LICENSE NUMBER: [REDACTED] ETHNICITY: NOT HISPANIC
PCF #: [REDACTED]

[CONTACT INFORMATION]

Home Phone (Primary) [REDACTED]

[APPEARANCE]

GLASSES WORN: YES

ALIAS LAST NAME	FIRST NAME	MIDDLE NAME	SSN	DOB
CORREIRA	JOHN		NOT AVAIL	NOT AVAIL

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED]
MOTHER'S NAME: [REDACTED]

EMPLOYER/SCHOOL: UNEM

OCCUPATION: UNEMP.

#	OFFENSE(S)	ATTEMPTED	TYPE
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LOCATION TYPE: Highway/Road/Alley/Street Zone: Zone 106, Sec 5
SUPPLY NEW ENGLAND
186 PLYMOUTH AVE
FALL RIVER MA

1	SOLICIT FROM PERSONS IN MOTOR VEHICLES 85/17A/A 85 17A	N	Ordinance
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OCCURRED: 02/10/2019 1037

Fall River Police Department
NARRATIVE FOR OFFICER MICHAEL PAVAO

Page: 1

Ref: 19-528-AR

On Sunday, February 10, 2019, I Officer Michael Pavao was assigned to the Fall River Police Department Special Operations Division. At approximately 10:37 a.m., I was on patrol in an unmarked police cruiser traveling north on Plymouth Ave. near the route 195 west off ramp to Plymouth Ave. This area of Plymouth Ave is a public way in a designated CDA area and is a site for homeless people that constantly solicit from motor vehicles.

While stopped at a red traffic signal, I observed a male standing against a posted traffic sign holding a cardboard sign saying that he was "Homeless". This is common behavior when someone is asking for monetary donations from motorists that are passing by. I exited my cruiser and approached this male who is known to me as John Correia, D.O.B. [REDACTED]. On April 22, 2018, I arrested Mr. Correia for outstanding arrest warrants which also included the offense of Soliciting From Persons in A Motor Vehicle according to Massachusetts General Law C. 85 S. 17A. Since that day, Mr. Correia has been charged with the repeated offense of solicitation which he has also been arrested for. Mr. Correia has been warned numerous times not to approach motorists for money as they pass by, however, he continues to return to the same location on a daily basis. Mr. Correia confirmed that he was homeless but claimed he was trying to register himself into a local homeless shelter, however, because he is frequently under the influence of alcohol he has been unsuccessful getting assistance. Mr. Correia told me that he was fully aware the police were enforcing this offense but said he would continue his business of solicitation even if it meant relocating to another area of Plymouth Ave. On this day, Mr. Correia left the area without incident upon first warning but then returned to the same location a short time later.

Based on the incident described above, I respectfully request a Summons be issued to John Correia to appear in Court for Soliciting From Persons in Motor Vehicles.

Michael Pavao
Officer Michael Pavao
Requesting Officer

2/11/19
Date



Fall River Police Department
Summons Report

Page: 1
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Summons #: 19-79-AR
Call #: 19-1510

Date/Time Reported: 01/07/2019 @ 1107
Arrest Date/Time: 01/10/2019 @ 1531

OBTN: TFAL201900079
Reporting Officer: Officer Michael Pavao

Signature: _____

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
1	[REDACTED] FALL RIVER MA 02723	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Military Active Duty: N
HEIGHT: 511 WEIGHT: 140 - 150 HAIR: BROWN EYES: BROWN
BODY: SKINNY COMPLEXION: LIGHT
DOB: _____ PLACE OF BIRTH: FALL RIVER MA
STATE ID: _____ FBI ID: _____
LICENSE NUMBER: MA _____ ETHNICITY: NOT HISPANIC
PCF #: _____

[CONTACT INFORMATION]

Home Phone (Primary) [REDACTED]

[APPEARANCE]

GLASSES WORN: NO

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED]
MOTHER'S NAME: [REDACTED]

EMPLOYER/SCHOOL: UNEMPLOYED
FALL RIVER

OCCUPATION: UNEMPLOYED

#	OFFENSE(S)	ATTEMPTED	TYPE
	LOCATION TYPE: Highway/Road/Alley/Street Zone: Zone 106, Sec 5 SUPPLY NEW ENGLAND 186 PLYMOUTH AVE FALL RIVER MA		
1	SOLICIT FROM PERSONS IN MOTOR VEHICLES 95/17A/A 85 17A OCCURRED: 01/07/2019 1107	N	Ordinance

Ref: 19-79-AR

On Monday, January 7 2019, I Officer Michael Pavao was assigned to the Fall River Police Department Special Operations Division. Around 11:07 a.m., Officer Derek Amaral (Walking beat 4B) and I (Walking beat 4A) were on patrol in an unmarked police cruiser traveling north on Plymouth Ave. near the route 195 east off ramp to Plymouth Ave. This area of Plymouth Ave is a public way in a designated CDA area #4 and is a site for homeless people that constantly solicit from motor vehicles.

While stopped at a red traffic signal, I observed a male standing against a posted traffic sign holding a cardboard sign saying that he was "Homeless". This is common behavior when someone is asking for monetary donations from motorists that are passing by. I exited my cruiser and approached this male who identified himself as [REDACTED]. [REDACTED] told me that he recently chose this area to solicit from people because he was homeless after being discharged from the SSTAR Treatment Center. [REDACTED] remained in the roadway approaching motorists for money as they passed by. At one point he was talking to a motorist who handed him money while the traffic signal was green holding up traffic briefly. [REDACTED] confirmed that he was from Taunton but is living on the streets of Fall River claiming that he was trying to register himself into a local homeless shelter but has been unsuccessful. Boudria said that he had recently been warned by the police not to solicit on Plymouth Ave. however despite that warning he returned to collect donations from motorists.

Based on the incident described above, I respectfully request a Summons be issued to [REDACTED] to appear in Court for *Soliciting From Persons in Motor Vehicles*.

Officer Michael Pavao
Requesting Officer

Date

Exhibit C



Fall River Police Department
Summons Report

Page: 1
03/06/2019

Summons #: 19-203-AR
Call #: 19-3773

Date/Time Reported: 01/16/2019 @ 1659
Arrest Date/Time: 01/16/2019 @ 1928

OBTN: TFAL201900203
Reporting Officer: Officer Michael Pavao

Signature: _____

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
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1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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FALL RIVER MA 02720

Military Active Duty: N
HEIGHT: 508 WEIGHT: 170 HAIR: SANDY EYES: BROWN
BODY: MEDIUM COMPLEXION: LIGHT
DOB: _____ PLACE OF BIRTH: FALL RIVER, MA
STATE ID: _____ FBI ID: _____
LICENSE NUMBER: MA _____ ETHNICITY: NOT HISPANIC
PCF #: _____

[CONTACT INFORMATION]

Home Phone (Primary) _____

[APPEARANCE]

GLASSES WORN: NO

TATTOOS: TAT L HND(B), TAT R HND(BUNNY), TAT LEG(RIGHT LEG PLANET)

ALIAS LAST NAME	FIRST NAME	MIDDLE NAME	SSN	DOB
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[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED]
MOTHER'S NAME: [REDACTED]

EMPLOYER/SCHOOL: WILLIAMS VINYL SIDING

OCCUPATION: UNEMPLOYED

#	OFFENSE(S)	ATTEMPTED	TYPE
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LOCATION TYPE: Highway/Road/Alley/Street Zone: Zone 083, Sec 8
250 JEFFERSON ST @ 756 BRAYTON AVE
FALL RIVER MA

1	SOLICIT FROM PERSONS IN MOTOR VEHICLES 85/17A/a 85 17A	N	Ordinance
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OCCURRED: 01/16/2019 1659

Ref: 19-203-AR

On Wednesday, January 2019, Officer Derek Amaral (Walking Beat 4B) and I, Officer Michael Pavao (4A) were assigned to the Fall River Police Special Operation Division. During my assigned shift I was patrolling in an unmarked cruiser in the area of Brayton Ave and Rt 24. It should be noted that this is a public way in a known CDA area (CDA area #3). While traveling east on Brayton Avenue, I observed a male known to me as [REDACTED] standing on the median at the Rt.24 South on/off ramp. This male was holding a cardboard sign stating, "Homeless Anything Will Help." It should be noted that the Special Operation Division attends neighborhood community meetings throughout the city. One common complaint from all the neighborhood groups is regarding pan handling at the city's off ramps and traffic lights. Many citizens fear the individuals who walk up to their vehicles; others are annoyed by panhandlers blocking traffic and soliciting money.

[REDACTED] was walking by vehicles stopped at the red light waving to the operators. However, I observed [REDACTED] walk up to a vehicle during a green light and obtain monies from the operator. After that he stopped and talked to the motorist for approximately one minute. Due to the operator stopping during a green light, it forced vehicles behind them to stop causing unnecessary traffic congestion. I approached [REDACTED] whom has been charged with soliciting in the past and explained to him that he would be charged again. [REDACTED] stated that he knew he wasn't supposed to be soliciting and said he would leave to which he did without further incident.

Based on the facts and circumstances in regard to this incident, I, respectfully request that [REDACTED] (Homeless) be summoned into court for the charge of: *Soliciting from Persons in Motor Vehicles.*

Reporting Officer: _____ Date: 1/16/19
Officer Michael Pavao

Approving Supervisor: _____ Date: 1/16/19