

**AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF ARIZONA**

Jared G. Keenan, State Bar No. 027068  
Christine K. Wee, State Bar No. 028535  
2712 N. 7th Street  
Phoenix, Arizona 85006  
Telephone: (602) 650-1854  
E-Mail: jkeenana@acluaz.org  
cwee@acluaz.org

**ZWILLINGER WULKAN PLC**

Benjamin L. Rundall, State Bar No. 031661  
Alexis Eisa, State Bar No. 038702  
Lisa Bivens, State Bar No. 034075  
2020 North Central Avenue, Suite 675  
Phoenix, Arizona 85004  
Telephone: (602) 962-2969  
E-Mail: ben.rundall@zwfirm.com  
alexis.eisa@zwfirm.com  
lisa.bivens@zwfirm.com

*Attorneys for Plaintiffs*

**AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION**

Leah Watson, admitted *pro hac vice*  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: (212) 549-2500  
E-mail: lwatson@aclu.org

Scout Katovich, admitted *pro hac vice*  
425 California Street, Suite 700  
San Francisco, CA 94104  
Telephone: (212) 549-2500  
E-Mail: skatovich@aclu.org

**GOODWIN PROCTER LLP**

Andrew Kim, admitted *pro hac vice*  
Collin M. Grier, admitted *pro hac vice*  
Madeline Fuller, admitted *pro hac vice*  
1900 N Street, N.W.  
Washington, D.C. 20036  
Telephone: 202-346-4000  
E-Mail: AndrewKim@goodwinlaw.com  
CGrier@goodwinlaw.com  
MFuller@goodwinlaw.com

Courtney L. Hayden, admitted *pro hac vice*  
100 Northern Avenue  
Boston, MA 02210  
Telephone: (617) 570-1000  
E-mail: CHayden@goodwinlaw.com

**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

Fund for Empowerment, *et al.*,

Plaintiffs,

v.

City of Phoenix, *et al.*,

Defendant.

No. CV-22-02041-PHX-GMS

**SECOND JOINT RULE 26(F) CASE  
MANAGEMENT REPORT**

Pursuant to Federal Rule of Civil Procedure 26(f) and the Court's Order Setting Rule 16 Case Management Conference (Doc. 174), Plaintiffs Fund for Empowerment ("FFE"), a nonprofit corporation in its individual capacity, Ronnie Massingille, Mohamed Sissoho,

Dyrwood Moore, Faith Kearns, Frank Urban, Timothy James, Sherdina Carr, Papy Abdul Idrissa, and Jason Rich (“Plaintiffs”), and Defendant City of Phoenix, a political subdivision of the state of Arizona (“Defendant”) (with Plaintiffs, the “Parties”), hereby submit this Joint Case Management Report.<sup>1</sup>

**1. Parties who attended the Rule 26(f) Meeting and assisted in developing the Plan.**

The Parties conferred on May 1, 2025 regarding a proposed plan. Ben Rundall for Plaintiffs and Aaron Arnson for the Defendant conferred and assisted in developing the Joint Case Management Report.

**2. A list of the Parties in the case, including any parent corporations or entities (for recusal purposes).**

Plaintiffs: Fund for Empowerment, Ronnie Massingille, Mohamed Sissoho, Dyrwood Moore, Faith Kearns, Frank Urban, Timothy James, Sherdina Carr, Papy Abdul Idrissa, and Jason Rich.

Defendant: City of Phoenix.

**3. A short statement of the nature of the case (3 pages or less), including a description of each claim and defense.**

**a. Plaintiffs’ statement**

Plaintiffs’ Third Amended Complaint asserts claims against Defendant for (1) violation of the Fourth Amendment’s right against unlawful seizures; and (2) violation of the Fourteenth Amendment’s right against deprivation of property without due process.<sup>2</sup>

Fourth Amendment. Plaintiffs allege that Defendant violated the Fourth Amendment by engaging in raids of areas occupied by the unsheltered community, and seizing and destroying Plaintiffs’ property without warrants. Pursuant to the Fourth Amendment, as

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<sup>1</sup> The Parties’ initial Joint Case Management Report was filed on March 22, 2023. *See* Dkt. No. 52.

<sup>2</sup> The Court’s March 31, 2025 Order on Defendants’ Motion to Dismiss dismissed Plaintiffs’ excessive fines claim brought under the Eighth Amendment and state-created-danger claim brought under the Fourteenth Amendment. *See* Dkt. No. 171.

1 incorporated against the states by the Fourteenth Amendment, Plaintiffs have the right to  
2 be secure in their persons against unreasonable seizures. An unreasonable seizure occurs  
3 when there is meaningful interference, including destruction, with a person's possessory  
4 interest in that property. *See Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir.  
5 2012). Here, during its raids, the City has stripped Plaintiffs of photographs, identification  
6 papers, camping equipment, and other unabandoned personal items, thereafter, destroying  
7 Plaintiffs' property, sometimes directly in front of Plaintiffs. Defendant's actions have thus  
8 resulted in meaningful and permanent interference with Plaintiffs' possessory interests in  
9 their property, constituting unlawful seizures. *See United States v. Jacobsen*, 466 U.S. 109,  
10 113 (1984). Moreover, Defendant failed to demonstrate that its agents had warrants to effect  
11 these seizures lawfully, making them presumptively unconstitutional, and no exception to  
12 the warrant requirement applies.

13 Plaintiffs further allege that Defendant's actions were intentional, depriving  
14 Plaintiffs and individuals served by FFE of their constitutional rights, and were executed  
15 under Defendant's policies, procedures, customs, and/or protocols. Plaintiffs allege that  
16 Defendant's actions were authorized and ratified by final policymakers for the City of  
17 Phoenix, and that Defendant directed every action of its agents, causing the violation of  
18 Plaintiffs' rights. *See Monell v. Dep't of Soc. Servs of N.Y.*, 436 U.S. 658, 694 (1978).  
19 Defendant's customs, policies, and practices, motivated by malice or reckless indifference,  
20 resulted in the unreasonable seizure and destruction of property. As a direct result,  
21 Plaintiffs, FFE members, and individuals served by FFE suffered and continue to face  
22 deprivation of constitutional rights and are entitled to damages and injunctive relief.

23 Fourteenth Amendment. Plaintiffs also allege that Defendant seized and destroyed  
24 Plaintiffs' property without affording them adequate notice and an opportunity to retrieve  
25 the property, as required under the Fourteenth Amendment. The Fourteenth Amendment  
26 requires that a government entity provide adequate notice before seizing an individual's  
27 property and give the property owner an opportunity to be heard regarding the taking. The  
28 property of those experiencing homelessness is considered "property" within the meaning

1 of the Fourteenth Amendment and thus a government entity must comply with the due  
2 process clause if it wishes to take and destroy such property. *Lavan*, 693 F.3d at 1030.

3 Here, Defendant, pursuant to its policies, procedures, customs, and/or protocols,  
4 conducted raids without adequate notice to Plaintiffs, resulting in the seizure and destruction  
5 of Plaintiffs' property (including the property of other individuals served by FFE and FFE  
6 members). Plaintiffs and those served by FFE rely on this property for survival, and the  
7 administrative burden on Defendant to provide additional process is low compared to the  
8 high interest in their property. Defendant did not provide a post-deprivation process for  
9 challenging the seizure. Plaintiffs and individuals served by FFE have a right to due process  
10 and post-deprivation hearings when their property is unlawfully seized and destroyed.  
11 Defendant's unconstitutional acts were the direct and proximate cause of the seizure,  
12 destruction, and loss of Plaintiffs' property and the property of individuals served by FFE  
13 and FFE members.

#### 14 **Defendant's statement**

15 Although under the Fourth and Fourteenth Amendments, Defendant cannot seize  
16 and dispose of unsheltered individuals' property without adequate process, Defendant can  
17 exercise its police powers to engage in ordinary cleaning activities to abate hazards and  
18 threats to public health and safety. *See Berman v. Parker*, 348 U.S. 26, 32 (1954). In the  
19 context of homeless encampment cleanups, Defendant must provide both notice and  
20 procedural safeguards to protect against unreasonable property deprivation. *See Lavan v.*  
21 *City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012). Courts have affirmed the necessity of  
22 municipal public health and sanitation operations. *See Shipp v. Schaaf*, 379 F. Supp.3d  
23 1033 (N.D. CA. 2019) (finding no constitutional violations when City of Oakland  
24 required unsheltered population to temporarily relocate to allow city to clean public  
25 property, especially when notice was provided and closure was temporary); *see also*  
26 *Murray v. City of Philadelphia*, 481 F.Supp.3d 461 (E.D. Pa. 2020) (finding in the course  
27 of encampment dissolution, when city provided notice and instituted safeguards to protect  
28 against property loss—including storing personal property for 30 days prior to disposal—

1 the unsheltered plaintiffs did not demonstrate a likelihood of success on the merits).

2 Defendant disputes that it conducts what Plaintiffs call “raids” or “sweeps”; that it  
3 disposes of property without adequate notice or safeguarding of property; and that when  
4 property is disposed of, that there is not a health, safety, or nuisance-abatement  
5 justification for the disposal. Defendant also disputes the alleged factual bases for  
6 Plaintiffs’ Fourth and Fourteenth Amendment claims. Among other legal and factual  
7 defenses, Defendant asserts or may assert any of the affirmative defenses stated in  
8 Defendant’s Answer to Plaintiffs’ Third Amended Complaint (Doc. 173).

9 **4. The jurisdictional basis for the case describing the basis for the**  
10 **jurisdiction and citing specific jurisdictional statutes.**

11 Plaintiffs bring this action for declaratory, injunctive, and monetary relief pursuant  
12 to 42 U.S.C. § 1983 for violations of civil rights under the Fourth and Fourteenth  
13 Amendments to the United States Constitution. This Court has jurisdiction pursuant to 28  
14 U.S.C. § 1331, which gives district courts original jurisdiction over civil actions arising  
15 under the Constitution, laws, or treaties of the United States. The Court also has jurisdiction  
16 under 28 U.S.C. § 1343(a), which gives district courts jurisdiction over actions to secure  
17 civil rights extended by the United States Government. Declaratory relief is authorized by  
18 28 U.S.C. §§ 2201-02.

19 **5. Any parties which have not been served and an explanation of why they**  
20 **have not been served; and any parties which have been served but have not answered**  
21 **or otherwise appeared.**

22 Defendant City of Phoenix has been served. Defendant City of Phoenix has filed an  
23 answer to Plaintiffs’ Third Amended Complaint. The Parties are working to clarify the  
24 Intervenor’s status and continued participation in this case.

25 **6. A statement of whether any party expects to add additional parties to the**  
26 **case or otherwise to amend or supplement pleadings.**

27 Plaintiffs state that it is possible that additional parties to the case and amendments  
28 may be necessary as additional facts are uncovered about the City’s practices as they relate

1 to the unsheltered population. Plaintiffs have not identified additional parties or necessary  
2 amendments to pleadings at this time.

3 **7. A listing of contemplated motions and a statement of the issues to be**  
4 **decided by those motions.**

5 Neither party anticipates the filing of a case dispositive motion prior to the initiation  
6 of discovery, but reserves the right to do so. The Parties do not presently anticipate filing  
7 any additional sort of motion.

8 **8. Whether the case is suitable for reference to a United States Magistrate**  
9 **Judge for a settlement conference or trial.**

10 The Parties do not believe the matter is suitable for reference to a United States  
11 Magistrate Judge for settlement conference. The Parties do not agree to a magistrate judge  
12 for the purposes of trial.

13 **9. The status of related cases pending.**

14 None.

15 **10. A statement of when the Parties exchanged Initial Disclosures.**

16 The Parties exchanged initial Rule 26(a) disclosures in 2023 (Plaintiffs on April 3,  
17 2023, and Defendants on June 2 and 14, 2023). Should updates be required, the Parties  
18 will exchange supplemental Rule 26(a) disclosures by May 16, 2025.

19 **11. Requests under Rule 34.**

20 Plaintiffs served expedited document requests on the Defendants in their Motion  
21 for Expedited Discovery on May 16, 2023.

22 **12. A discussion of any issues relating to disclosure or discovery of**  
23 **electronically stored information, including the form or forms in which it should be**  
24 **produced.**

25 The Parties agree to produce electronically stored information, through disclosure or  
26 discovery, in a manner that does not degrade the searchability of documents or alter such  
27 document's metadata, with each page consecutively Bates numbered.

28 **13. A discussion of any issues relating to claims of privilege or work product.**

1 The Parties do not anticipate any issues related to claims of privilege or work  
2 product at this time. The parties are aware of their obligations as to claims of privilege and  
3 protection under the Federal Rules.

4 **14. A discussion of whether an order under Federal Rule of Evidence 502(d)**  
5 **is warranted in this case.**

6 At this time, the Parties do not believe such an order is warranted.

7 **15. A discussion of necessary discovery. This discussion should take into**  
8 **account the December 1, 2015 amendments to Rule 26(b)(1), and should include:**

9 **a. The extent, nature and location of discovery anticipated by the**  
10 **Parties.**

11 The Parties intend to exchange written discovery (document requests,  
12 interrogatories, and requests for admission), take depositions of the parties and their Rule  
13 30(b)(6) designees, and subpoena documents from and take depositions of certain third  
14 parties. The Parties further anticipate taking depositions of each side's expert witnesses, if  
15 any. The Parties' positions and proposed schedule for doing so are set forth below.

16 **b. Suggested changes, if any, to the discovery limitations imposed by**  
17 **the Federal Rules of Civil Procedure and Local Rule of Civil Procedure 16.2.**

18 The Parties do not have any suggested changes to the limitations on discovery  
19 imposed by the Federal Rules of Civil Procedure or Local Rule of Civil Procedure 16.2 at  
20 this time. The Parties agree that depositions may occur remotely where both Parties agree  
21 to or request a remote deposition.

22 **c. The number of hours permitted for each deposition, unless**  
23 **extended by agreement of the Parties.**

24 Seven hours.

25 **16. Proposed specific dates for each of the following (deadline should fall on**  
26 **Friday unless impracticable):**

27 **a. A deadline for the completion of fact discovery: January 16, 2026**

28 **b. Dates for full and complete expert disclosures:**



1 Plaintiffs' and Defendant's Expert Witness Disclosure: March 6, 2026

2 Plaintiffs' and Defendant's Rebuttal Expert Witness Disclosures: April 3, 2026

3 c. A deadline for completion of all expert depositions: May 8, 2026

4 d. A deadline for filing dispositive motions: June 12, 2026

5 e. A date by which the Parties shall have engaged in good faith  
6 settlement talks: March 27, 2026

7 f. Date by which initial written discovery requests and initial  
8 deposition notices pursuant to Rules 33 and 34 shall be served: December 13, 2025

9 g. A date by which initial discovery requests pursuant to Rule 30 or  
10 31 shall be noticed: December 13, 2025

11 h. A date by which any Rule 35 examination will be noticed if such  
12 an examination is required by any issues in the case: February 27, 2026

13 17. Whether a jury trial has been requested.

14 Plaintiffs have requested a jury trial.

15 18. The estimated length of trial and any suggestions for shortening the trial

16 Plaintiffs estimate that the trial will take 4 – 5 days. Defendant estimates that the trial  
17 will take 2 – 3 days.

18 19. The prospects for settlement, including any request of the Court for  
19 assistance in settlement efforts.

20 The Parties have made efforts during mediation to settle this matter, which took  
21 place on March 29, 2023. The Parties were unable to settle this matter at mediation but  
22 continue to discuss a resolution.

23 20. Any other matters.

24 **Electronic Service of Discovery:** The Parties agree that pursuant to Rule 5(b)(2)(E)  
25 of the Federal Rules of Civil Procedure, any documents, including pleadings, discovery  
26 requests, discovery responses, or other papers, may be served by email. The Parties agree  
27 to serve opposing counsel at their email addresses registered with Electronic Case Filing  
28 and at any other email address requested in writing by counsel of record. The Parties also



1 agree, upon request, to promptly (no later than two (2) business days after service) provide  
2 the sending party with confirmation of receipt of the service by email. If an error or delayed  
3 delivery message is received by the sending party, the sending party shall promptly (within  
4 one (1) business day of receipt of such message) notify the intended recipient of the message  
5 and serve the pleading or other paper by other authorized means. The Parties agree to send  
6 by mail or other authorized means a hardcopy, if requested, of any document served by  
7 email.

8 **Electronic Copies of Discovery:** The Parties agree to produce all written discovery  
9 requests in their native file format (e.g., Microsoft Word or other processing program)  
10 within five (5) business days upon reasonable request by counsel of record. Electronic  
11 copies of all written discovery may be transmitted by email, secured link, cloud storage  
12 software, flash drive, or any other commonly accepted means of transmission.

13 **Production of Documents Identified in Disclosure Statement:** The Parties agree  
14 to produce copies of all documents identified in their disclosure statements.

15 **Protective Order:** The Parties agree that there may arise a need for discovery in this  
16 case to be governed by a protective order. If the Parties agree concerning the need for and  
17 scope and form of such a protective order, their counsel will confer and then submit a jointly  
18 proposed protective order to the Court at such time. Such jointly proposed protective orders  
19 must include, in the first paragraph, a concise but sufficiently specific recitation of the  
20 particular facts in this case that would provide the Court with an adequate basis upon which  
21 to make the required finding of good cause pursuant to Federal Rule of Civil Procedure  
22 26(c). If the Parties disagree concerning the need for and/or the scope or form of a protective  
23 order, the party or parties seeking such an order shall file an appropriate motion and  
24 supporting memorandum. The Parties agree that a protective order will not be necessary for  
25 documents already subject to disclosure pursuant to Arizona's Public Records Laws.  
26  
27  
28

1 DATED this 9<sup>th</sup> day of May, 2025.

2  
3 By: /s/ Jared Keenan

4 Jared G. Keenan  
Christine K. Wee  
2712 N. 7th Street  
5 Phoenix, Arizona 85006

6 AMERICAN CIVIL LIBERTIES  
UNION OF ARIZONA

7 By: /s/ Benjamin Rundall

8 Benjamin L. Rundall  
Alexis Eisa  
Lisa Bivens  
9 2020 North Central Avenue, Suite 675  
Phoenix, Arizona 85004

10 ZWILLINGER WULKAN

11 By: /s/ Leah Watson

12 Leah Watson, *pro hac vice*  
13 125 Broad Street, 18th Floor  
New York, New York 10004

14 Scout Katovich, *pro hac vice*  
15 425 California Street, Suite 700  
San Francisco, CA 94104

16 AMERICAN CIVIL LIBERTIES  
17 UNION FOUNDATION

18 By: /s/ Andrew Kim

19 Andrew Kim, *pro hac vice*  
Collin M. Grier, *pro hac vice*  
Madeline Fuller, *pro hac vice*  
20 1900 N Street, N.W.  
Washington, D.C. 20036

21 Courtney L. Hayden, *pro hac vice*  
22 100 Northern Avenue  
Boston, MA 02210

23 GOODWIN PROCTER LLP

24 *Attorneys for Plaintiffs*  
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26  
27  
28

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By: /s/Aaron D. Arnson (with permission)

Justin S. Pierce  
Aaron D. Arnson  
Trish Stuhan  
Stephen B. Coleman  
7730 East Greenway Road, Suite 105  
Scottsdale, Arizona 85260  
PIERCE COLEMAN PLLC

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2025, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the District of Arizona by using the CM/ECF System. All participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Angela Castillo