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IN THE COURT OF APPEALS OF THE STATE OF OREGON

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STATE OF OREGON,

Plaintiff-Respondent,

v.

ALEXANDRA CHANEL BARRETT,  
Alexandra Barrett, Alexandra C. Barrett,

Defendant-Appellant.

Multnomah County Circuit Court  
Case Nos. 14CR10631, 14CR14443,  
14CR16019, 14CR17841, 14CR20088,  
14CR32814, 15CR00103

CA A159139 (Control), A159140,  
A159141, A159142, A159143, A159144,  
A159145

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APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD

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Appeal from the Judgment of the Circuit Court  
for Multnomah County  
Honorable Stephen K. Bushong, Judge

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# APPELLANT'S OPENING BRIEF

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## STATEMENT OF THE CASE

### Nature of the Proceeding

This is a consolidated criminal appeal in which defendant, Alexandra Barrett, seeks reversal of her convictions for interfering with a public safety officer (IPO), criminal trespass, and violating Portland's public camping ordinance. The state charged defendant by information with 20 counts in eight cases:

14CR10631/A159139 (control)	Counts 1 and 3: IPO, ORS 162.247 Counts 2 and 4: camping in public, PCC 14A.50.020 Count 5: unlawful possession of methamphetamine, ORS 475.894 (dismissed before trial)
14CR14443/A159140	Count 1: IPO Count 2: public camping Count 3: resisting arrest, ORS 162.315
14CR16019/A159141	Count 1: IPO (judgment of acquittal) Count 2: criminal trespass in the second degree, ORS 164.245
14CR17841/A159142	Counts 1-5: IPO
14CR20088/A159143	Count 1: criminal trespass in the second degree
14CR24192	Count 1: criminal trespass in the second degree (acquitted)
14CR32814/A159144	Count 1: criminal trespass in the second degree Count 2: criminal mischief in the third degree, ORS 164.345
15CR00103/A159145	Count 1: offensive littering, 164.805

### **Nature of the Judgment**

The state dismissed the unlawful possession of methamphetamine count before trial, and the trial court granted defendant's motion for judgment of acquittal on Count 1 of Case 14CR16019 (IPO). A jury found defendant not guilty of the sole count in Case 14CR24192 (criminal trespass) and guilty of the remaining counts.

The trial court sentenced defendant to 60 days of jail on the IPO counts and the resisting arrest count and 15 days of jail on the public camping, criminal trespass, criminal mischief, and offensive littering counts. *Judgments*, ER-84-102.

### **Jurisdiction**

This court has jurisdiction under ORS 138.040.

### **Notice of Appeal**

Defendant filed timely notice of appeal on April 7, 2015, from the judgments entered in Multnomah County Circuit Court on March 11, 2015.

### **Questions Presented**

1. Does a city ordinance prohibiting persons from camping in public violate Article I, section 16, and the Eighth Amendment as applied against a homeless person because the ordinance prohibits the status of homelessness?

2. Does a state law that prohibits police officers from citing persons for violating a city's public camping ordinance without posting public notice preempt a city ordinance that allows the city to prosecute persons for camping in public without posting notice?
3. Does an ordinance that prohibits persons from camping in any public place in Portland violate a homeless person's fundamental right to travel?
4. If the public camping ordinance was unlawfully enforced against defendant, are her IPO and criminal trespass convictions also invalid?

### **Summary of Argument**

1. Article I, section 16, of the Oregon Constitution and the Eighth Amendment to the United States Constitution protect persons from criminal punishment for a "status." A law criminalizes a status both when it expressly prohibits a condition—like homelessness—and when it prohibits an involuntary act that is integral to that condition—like sleeping.

Portland Ordinance 14A-50-020 prohibits persons from camping in public. But Portland has inadequate shelter space to house its homeless population indoors. Accordingly, those who experience homelessness in Portland must sleep outdoors. Because the ordinance effectively prohibits that involuntary action, it criminalizes a status in violation of Article I, section 16, and the Eighth Amendment.

2. Oregon law requires cities to enact policies that meet certain minimum criteria to address camping in public by homeless persons. Pursuant to Oregon law, a city's public camping policy must require police to post 24 hours' notice before citing a homeless person for camping in public. State law also prohibits police officers from issuing a citation for camping in public "if the citation would be issued within 200 feet of the notice described in this section and within two hours before or after the notice was posted." ORS 203.079(3). Because state law permits certain conduct (camping in public until the posting of written notice) that the ordinance prohibits (camping in public at any time), state law preempts the ordinance.

3. The fundamental right to travel includes the right to the right to move from one place to another according to one's inclination. Due to lack of available shelter space, a homeless person residing or passing through Portland has no choice but to sleep outside. By criminalizing that activity, the ordinance prevents homeless persons from residing in or visiting Portland, in violation of their constitutional right to travel.

4. In order to obtain a conviction for IPO as charged in this case, the state must prove that the defendant failed to comply with an officer's "lawful order." Similarly, to prove criminal trespass, the state must prove that the defendant entered or remained on premises after being "lawfully directed" not to do so. In this case, the orders with which defendant failed to comply were issued

pursuant to the public camping ordinance. If the ordinance was unlawfully enforced against defendant, the officers lacked a legal basis for their orders, and the state's evidence was insufficient to prove IPO and criminal trespass.

## **Summary of Facts**

### State's Case

On May 22, 2014, Portland Police Officer David McCormick received citizen complaints that homeless persons were “hanging out” and littering at Chapman Park. Tr 104. Chapman Park is located in downtown Portland, next to the police station. Tr 102. McCormick arrived at the park and noticed three to six campsites lined up along the curb. Tr 105. The campsites consisted of a bed roll—usually five to six layers of cardboard, a sleeping bag or blanket, and pillows—and possessions, including a water jug, food, boxes, and sometimes a small cart. Tr 107.

One campsite was covered by a tarp, and defendant and another person were inside. Tr 108-09. As McCormick approached the site, defendant told him that he should not touch her belongings, that she knew her constitutional rights, and that McCormick should leave her alone. Tr 107. McCormick told defendant that “camping in the City of Portland [is] illegal” and he ordered her “not to camp in the City of Portland at any place, any time.” Tr 115, 143.

McCormick referred defendant to JOIN, an organization that partners with the

Portland Police Bureau and offers “outreach and potential avenues for folks to get off the street into a more formalized housing situation.” Tr 107. Defendant told him that she knew about JOIN, but that “all they do is try to rip off” people. Tr 108. Defendant gathered her belongings and told McCormick that she was going to “uncamp” to avoid a ticket. Tr 108.

The next day, May 23, 2014, McCormick returned to Chapman Park. Tr 112. McCormick saw defendant’s campsite in the same location as the day before. Tr 112. As McCormick walked toward her, defendant stood up and began to organize her possessions before picking up her tarp and dragging it away. Tr 114. McCormick told defendant that she was under arrest for interfering with a police officer. Tr 115-16. Defendant was compliant, and she said that a friend could take her possessions. Tr 116. McCormick handcuffed her and said, “No, we’re going to put your stuff into the property evidence room for safekeeping.” Tr 116. When she heard that, defendant screamed loudly and stiffened her legs. Tr 116. Another officer “bagged up” defendant’s possessions and took them to the station. Tr 116.

On June 20, 2014, Portland Police Officer David Sanders went to Chapman Park in response to citizen complaints. Tr 192-93. Sanders saw a campsite with a brown tarp that was covering about half of the sidewalk. Tr 194. Sanders lifted the tarp to look inside, and defendant approached him from behind, saying, “Davey, why you touching my stuff?” Tr 195. Sanders asked

defendant why she thought the items were hers, and defendant said, “This is all my stuff, I live here, this is where I sleep. I have slept here since last winter, this is my home. My underwear is under there. I have bags of food under there.” Tr 195. Sanders asked defendant if she had recently been arrested for camping, and she said that she had. Tr 197. He asked whether she knew that she was not supposed to camp at the park, and defendant told him that she did not care and would remain. Tr 199. Sanders arrested defendant and collected her belongings. Tr 199. After the arrest, Sanders issued defendant an exclusion notice. Tr 255. The notice stated, “Starting today you cannot remain in or upon or enter in or upon the City of Portland Park known as Chapman Square for a period of \* \* \* 90 days.” Tr 259.

On July 24, 2014, Sanders returned to Chapman Park. Tr 202. He and another officer saw defendant sleeping under a tarp on the sidewalk. Tr 203. The other officer tried to wake defendant, and he lifted the tarp. Tr 203. Defendant grabbed the tarp out of his hand and wrapped it around herself. Tr 204. Sanders told the other officer that he and other officers had given defendant multiple orders not to camp at the park. Tr 205. Sanders told defendant that she was under arrest. Tr 206. He directed her not to resist, not to pull away or tense her arms, and not to prevent him from handcuffing her. Tr 206. Defendant tucked herself tighter into her sleeping bag, and Sanders pulled down the sleeping bag to reveal her arms. Tr 206. Sanders tried to grab

defendant's arm, but she twisted away. Tr 206. Sanders tried to grab defendant's other arm, but she pulled it out of his grasp and tucked it under her body. Tr 206. Sanders was concerned that defendant had something that she could use as a weapon, so he pressed his right thumb into the pressure point below her left ear. Tr 207. Defendant screamed loudly and then was compliant. Tr 272.

On August 7, 2014, Sergeant James Crooker saw defendant camping in Chapman Park at 12:45 a.m. Tr 292-93. The park closed at midnight. Tr 292. Crooker asked defendant for her name, and defendant yelled, "Fuck you." Tr 295. Cooker told defendant that she was not free to leave, and defendant left. Tr 295. Defendant returned a few minutes later and was arrested. Tr 295.

On August 19, 2014, Officer McCormick returned to Chapman Park and saw defendant interacting with another officer. Tr 117. McCormick noticed that defendant was camped on a sidewalk in a different location. Tr 118. McCormick told defendant that it is illegal to camp on the sidewalk in Portland, and he tried to hand defendant a resource pamphlet. Tr 119. Defendant refused to take it, so he dropped the pamphlet on her belongings. Tr 119, 140. Defendant picked up the pamphlet and threw it about five feet away. Tr 119. McCormick told defendant that camping in Portland is illegal, and he ordered her not to camp within the city. Tr 120. Defendant told him to "leave her the

fuck alone,” and McCormick left. Tr 120. McCormick did not issue defendant a written order or post anything at the campsite. Tr 140.

The next day, August 20, 2014, McCormick returned to the park and saw defendant’s campsite in the same location. Tr 121. Defendant was sleeping, and she was tucked in to stay warm. Tr 122. McCormick issued defendant a citation for camping in public, and he told her that if she was there the next day he would arrest her. Tr 123.

Two days later, on August 22, 2014, McCormick returned to the park. Tr 123. McCormick saw a person whisper something to someone in a campsite. Tr 125. When the person stood up, McCormick recognized defendant. Tr 125. Defendant began to walk away. Tr 126. McCormick told her to stop, and defendant turned around, smiled, and said, “You didn’t get me yesterday.” Tr 126. McCormick arrested defendant. Tr 127.

Around 3:30 p.m. on September 9, 2014, Portland Police Officer Todd Engstrom went to Chapman Park to assist officers responding to a fight. Tr 281. When he arrived, the parties had been separated. Tr 283. Defendant was involved. Tr 283. Defendant knew Engstrom, and when she saw him, she went to the sidewalk outside the park where her bedding was and covered herself with a blanket. Tr 283. Engstrom yelled, “I see you, you’re trespassing,” and defendant said, “Yeah, Engstrom, I’m excluded, go ahead and fucking arrest

me, you pig.” Tr 284. Engstrom verified that defendant had been excluded from the park, and he arrested her. Tr 284.

On October 9, 2014, Portland Police Officer Brent Taylor saw defendant sitting on a bench inside Chapman Park at 12:05 a.m. Tr 151. Taylor was responding to a call at the time, so he did not contact defendant. Tr 152. He returned to the park 15-20 minutes later, and defendant was no longer there. Tr 152. Two days later, Taylor found defendant underneath the Burnside Bridge, and he arrested her for being in Chapman Park five minutes after closing on October 9. Tr 153.

On December 12, 2014, security guard Catherine Hager patrolled the downtown area, asking those sleeping on the sidewalk to move and clean up their belongings. Tr 238. She found defendant sleeping on a sidewalk at 10:00 a.m., and she said, “Wake up, please.” Tr 241. Defendant responded, “Leave me the fuck alone, Clean and Safe lady.” Tr 242. Defendant refused to move, so Hager called the police. Tr 242. When police arrived, defendant got up and left, but she left behind the cardboard that she had been sleeping on. Tr 244. Hager asked defendant to pick up the cardboard, and defendant said, “You clean it up, bitch, you’re Clean and Safe.” Tr 244.

On December 28, 2014, Ryan Mohon was working as a security guard at the Justice Center, where the Multnomah County Detention Center is located. Tr 163. At 7:30 a.m. Mohon found defendant lying outside on the ground on

county property. Tr 165. Mohon told defendant that she could not sleep on county property, and he asked her to move along. Tr 167. Defendant told him that she would get up, but she pulled a blanket back over her head. Tr 167. Thirty seconds later, Mohon told defendant that she needed to get moving. Tr 167. Defendant said that she was slowly moving, but Mohon did not see movement. Tr 167. Mohon told defendant that if she did not move, she was trespassing, and another security guard came to assist him. Tr 168. Defendant said, “Fuck you, you’re not real cops. Leave me alone. Get the real cops and then I’ll talk,” and Mohon called the police. Tr 169.

Police officers arrived and tried to get defendant to leave, but defendant did not move. Tr 170. Several minutes later, defendant slowly began to gather her belongings. Tr 171. The officers took defendant’s property and moved it onto the wet sidewalk, which upset defendant. Tr 171-72. Defendant lunged toward one of the officers when he grabbed her property, and she brought the items that the officers moved back onto county property. Tr 172. One of the police officers then arrested defendant and placed her in a patrol car. Tr 172. Defendant urinated in the patrol car. Tr 249.

### Defense Case

Israel Bayer, the executive director of Street Roots, a Portland nonprofit which works with persons experiencing homelessness and poverty, testified as an expert on homelessness and housing in Portland. Tr 359, 365. The federal

government requires municipalities to count the number of people sleeping on the street every two years. Tr 367. The most recent count was in January of 2015, but the final numbers were not available at the time of trial. Tr 367. In January of 2013, there were 2,800 homeless persons in Portland. Tr 367. Of those 2,800, 1,900 were sleeping outside, and 900 were in shelters. Tr 367.

Services for homeless persons in Multnomah County are “overwhelmed on all arenas, whether it be housing or shelter.” Tr 370. In all of Multnomah County, there are 950 shelter spaces. Tr 369. Of those spaces, 150 are reserved for single women during summer months (May through September), and 350 spaces are reserved for single women during winter months (November through April). Tr 369-70. At the time of trial, there were 274 people on the waitlist for the winter women’s shelter. Tr 371. Multnomah County’s shelter capacity was completely full. Tr 371. If a single woman sought shelter on the day of trial, she would be told that she would be on a waiting list for two to four weeks. Tr 370-71. In some circumstances, a person could be told that she would be on a years-long waiting list to get housing. Tr 374. JOIN, the organization that Officer McCormick referred defendant to, works with private landlords to provide subsidized housing. Tr 366.

In recent years, the city attempted to push homeless persons outside the downtown areas. Tr 381-82. As a result, people moved into undeveloped areas or parks and had a difficult time accessing services. Tr 382-83. East of 82nd

Avenue, where many homeless persons were pushed, there are few social services, and service providers refer to it as “the wild west.” Tr 383.

Other issues beyond lack of shelter space affect the Portland homeless community’s ability to secure housing. Tr 372. Some of the homeless community has experienced or experiences “trauma, post-traumatic stress disorder, a traumatic brain injury, [or] a mental health issue.” Tr 372. Due to that reality, “shelters work for a lot of people, but they don’t work for other people. [It] is a case-by-case scenario.” Tr 372.

In Portland, homeless persons are “trying to navigate through a really complex system that even the smartest people in [the] community have a hard time navigating through.” Tr 373. The homeless-services system has difficulty engaging people dealing with health issues, mental health issues, and trauma. Tr 374. In addition, some shelters and services have particular requirements, like sobriety or a clean criminal record, which not all persons are able to satisfy. Tr 374, 385. In order to successfully get a person into housing, service providers must build a relationship with that person. Tr 384. The provider must understand the person’s history and the reasons that they are homeless, including issues related to debt, access to income, and criminal records. Tr 385.

### **FIRST THROUGH THIRD ASSIGNMENTS OF ERROR**

The trial court erred by failing to dismiss the public camping charges.

#### **FOURTH THROUGH SIXTH ASSIGNMENTS OF ERROR**

The trial court erred by permitting the public camping charges to go to the jury.

#### **Combined Preservation of Error**

Defendant filed a pretrial motion to dismiss, arguing, *inter alia*, that the ordinance is unconstitutional as applied to her because it criminalizes the status of homelessness under Article I, section 16, and the Eighth Amendment and restricted her fundamental right to travel. *Motion to Dismiss*, ER-13-14; *Memorandum in Support of Motion to Dismiss*, ER-15-35. In her written reply, she argued that her motion to dismiss was more properly titled a “demurrer,” and she provided a summary of facts and cited additional authorities on the merits. *Reply*, ER-36-54.

At a hearing on the motion, the parties stipulated to the facts provided in defendant’s reply. Tr 4. Defendant reiterated her arguments and responded to the court’s questions. Tr 4-40. The trial court denied the motion in a comprehensive order. *Order Denying Motion to Dismiss*, ER-55-73. Specifically, with regard to defendant’s cruel and unusual punishment argument, the court ruled that additional facts were necessary to decide the as-applied challenge, but that, even assuming the development of a factual record

supporting the claim, the availability of the statutory necessity defense would render the ordinance constitutional:

“[D]evelopment of the facts regarding enforcement of the Ordinance as to defendant would be helpful in analyzing defendant’s as-applied Eighth Amendment challenge. Even assuming, without deciding, that the Eighth Amendment prevents the City from criminalizing derivative conduct that is an unavoidable consequence of a defendant’s involuntary homeless status, dismissing the charges against this defendant is not required. If defendant presents evidence that her homelessness was involuntary and that camping in a public place was an unavoidable consequence of that status, she would be entitled to have the jury consider a ‘choice-of-evils’ defense to the charges. Because that defense is potentially available, this court concludes \* \* \* that the Ordinance, as applied, does not unconstitutionally punish defendant for her homeless status in violation of the constitutional proscriptions against cruel and unusual punishment.”

ER-65.

After the state rested, defendant filed a written motion for judgment of acquittal. ER-74-83. In her motion, defendant argued that the state failed to present evidence that the officers posted notice pursuant to ORS 203.079 before arresting her. ER-79. At trial, defendant argued that ORS 203.079 preempted the ordinance. Tr 313-16. The trial court denied the motion:

“[ORS 203.090 is] essentially saying that the person issuing the citation can’t just go up and tack up the notice and come back within two hours and say, if you have not moved, you’re in violation. I think that was the intent of that provision.

“It doesn’t otherwise limit law enforcement in the City of Portland from \* \* \* enforcing local ordinances that prohibit camping within the city. It doesn’t provide a remedy for the city’s failure to comply with the policy that ORS 203.077 requires. I’m not convinced that the policy is to invalidate any criminal charges

that follow from violations of the city ordinance that are observed by local law enforcement.

“So I’m not convinced that the legislature intended this statute to be a criminal law of the State of Oregon. I’m not convinced that the original ordinance necessarily conflicts with that law, even if it is a criminal law. So I’m not convinced that the local ordinance under the circumstances of this case that enforcement of the local ordinance is preempted by these statutes. So the motion for judgment of acquittal on that basis is also denied.”

Tr 348.

### **Combined Standard of Review**

This court reviews the denial of a motion for judgment of acquittal to determine whether, after viewing the evidence in the light most favorable to the state, a rational factfinder could find the elements of the crime beyond a reasonable doubt. *State v. Cunningham*, 320 Or 47, 63, 880 P2d 431 (1994), *cert den*, 514 US 1005 (1995).

### **Combined Argument**

Defendant was convicted of violating Portland’s public camping ordinance, PCC 14A.50.020. The ordinance provides,

“(A) As used in this Section:

“(1) ‘To camp’ means to set up, or to remain in or at a campsite, for the purpose of establishing or maintaining a temporary place to live.

“(2) ‘Campsite’ means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is

placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

“(B) It is unlawful for any person to camp in or upon any public property or public right of way, unless otherwise specifically authorized by this Code or by declaration by the Mayor in emergency circumstances.

“(C) The violation of this Section is punishable, upon conviction, by a fine of not more than \$100 or imprisonment for a period not to exceed 30 days or both.”

PCC 14A.50.020.

The ordinance was unlawfully enforced against defendant for three reasons. First, the ordinance criminalizes the status of homelessness in violation of Article I, section 16, and the Eighth Amendment. Second, the ordinance is preempted by a state law requiring police officers to post notice before arresting a person for camping in public. Finally, the ordinance violates defendant’s fundamental right to travel. For any of those reasons, this court should reverse defendant’s convictions for camping in public.

**I. Portland’s public camping ordinance violates Article I, section 16, and the Eighth Amendment as applied to defendant because it criminalizes the status of homelessness.**

Article I, section 16, of the Oregon Constitution<sup>1</sup> and the Eighth

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<sup>1</sup> Article I, section 16, provides, “Cruel and unusual punishment shall not be inflicted, but all penalties shall be proportioned to the offense.”

Amendment to the United States Constitution<sup>2</sup> prohibit the infliction of “cruel and unusual punishment.” The imposition of a criminal conviction for a status is unconstitutionally cruel and unusual. *Robinson v. California*, 370 U S 660, 666, 82 S Ct 1417, 8 L Ed 2d 758 (1962); *State v. Caughey*, 89 Or App 605, 607, 750 P2d 511 (1988).

**A. A law criminalizes a status when it prohibits an involuntary act or condition.**

In *Robinson*, the defendant challenged his conviction for violating a law that prohibited being “addicted to the use of narcotics.” 370 US at 661. The Court held that the law constituted cruel and unusual punishment in violation of the Eighth Amendment because it criminalized the “status” of drug addiction:

“It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

“We cannot but consider the statute before us as of the same category. In this Court counsel for the State recognized that narcotic addiction is an illness. Indeed, it is apparently an illness

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<sup>2</sup> The Eighth Amendment provides, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The Eighth Amendment is applicable to the states through the Fourteenth Amendment. *Robinson*, 370 U S at 667.

which may be contracted innocently or involuntarily. We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment. To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”

*Id.* at 666-67 (internal citation omitted).

The Court next addressed the issue in *Powell v. Texas*, 392 US 514, 88 S Ct 2145, 20 L Ed 2d 1254 (1968). There, the defendant challenged the constitutionality of his conviction for violating a law prohibiting public intoxication. 392 US at 517. The defendant argued that the law violated the Eighth Amendment as applied to him, because he suffered from alcoholism. *Id.* A fractured court upheld the conviction.

Four justices concluded that the public intoxication statute criminalized the “act” of being intoxicated in public, not the “status” of alcoholism. *Id.* at 532. Those justices interpreted *Robinson* as prohibiting only the criminalization of statuses, not “acts.” *Id.* at 534. Four dissenting justices would have held the opposite—that the statute violated the Eighth Amendment as applied to the defendant because it criminalized “a condition which he had no capacity to change or avoid.” *Id.* at 567-68.

Justice White cast the deciding fifth vote. White concluded that the statute did not violate the Eighth Amendment, but only because the law prohibited drinking *in public*. *Id.* at 549. White interpreted *Robinson* as prohibiting the criminalization of acts that are involuntary due to one's condition or status. *Id.* at 548 (“If it cannot be a crime to have an irresistible compulsion to use narcotics, I do not see how it can constitutionally be a crime to yield to such a compulsion.”). Under that interpretation (and notably, for purposes of the present analysis), the prohibition against drinking *in public* would only violate the Eighth Amendment if applied against a person who is both an alcoholic *and homeless*. *Id.* at 551 (“Although many chronic [alcoholics] have homes, many others do not. \* \* \* For some of these alcoholics, I think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment—the act of getting drunk.”).

The Ninth Circuit considered a homelessness-based challenge in *Jones v. City of Los Angeles*, 444 F3d 1118 (9th Cir 2006), *vacated pursuant to settlement*, 505 F3d 1006 (2007). There, the court evaluated the constitutionality of a Los Angeles ordinance that prohibited persons from sitting, lying, or sleeping in a public place. *Id.* at 1123. The record included

evidence that there were approximately 11,000-12,000 homeless individuals in Skid Row, the part of the city where the appellants resided. *Id.* at 1122. The city offered approximately 9,000-10,000 beds in temporary housing or other shelters, leaving over 1,000 people unable to find shelter each night. *Id.*

To determine whether the ordinance prohibited a status, the court closely analyzed *Robinson* and *Powell*, concluding that “five Justices in *Powell* understood *Robinson* to stand for the proposition that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the untenable consequence of one’s status or being.” *Id.* at 1135. Accordingly, “involuntariness of the act or condition the City criminalizes *is the critical factor* delineating a constitutionally cognizable status, and incidental conduct which is integral to and an unavoidable result of that status, from acts or conditions that can be criminalized consistent with the Eighth Amendment.” *Id.* at 1132 (emphasis added). Applying that analysis, the court held that *Robinson* and *Powell*, read together, “compel us to conclude” that the enforcement of the ordinance against homeless individuals constitutes cruel and unusual punishment prohibited by the Eighth Amendment. *Id.* at 1136.

*Jones* provides the proper analysis for Eighth Amendment and Article I, section 16, cruel and unusual punishment claims. No other Circuit appears to have analyzed the question of whether a law prohibiting sleeping in public violates the Eighth Amendment when applied against a homeless individual,

though at least one state has adopted the *Jones* analysis. *See State v. Adams*, 91 So3d 724 (Ala Crim App 2010) (concluding that a statute requiring a sex offender to provide proof of “an actual address at which he or she will reside” violated the Eighth Amendment as applied against a homeless defendant).

And consistent with (though before) *Jones*, the Eleventh Circuit rejected a similar challenge where the record contained evidence that “the shelter has never reached its maximum capacity and no individual has been turned away for lack of space or for inability to pay the one dollar fee.” *Joel v. City of Orlando*, 232 F3d 1353, 1357 (11th Cir 2000). The United States Department of Justice agrees that *Jones* provides the correct framework; it filed a Statement of Interest in a Boise case challenging the city’s public camping ordinances, arguing that “enforcement of the ordinances amounts to criminalization of homelessness, in violation of the Eighth Amendment.” Statement of Interest, United States Department of Justice, *Bell v. City of Boise*, Case 1:09-CV-00540-REB (filed August 6, 2015).<sup>3</sup>

**B. The Portland ordinance criminalizes defendant’s status as a homeless person because it prohibits her from performing a basic and involuntary bodily function—sleeping.**

Under *Robinson* and *Powell*, the City of Portland may neither criminalize the status of homelessness itself nor criminalize acts that are an “integral

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<sup>3</sup> A copy of the complete Statement of Interest is attached as an appendix. App-1-17.

aspect” of that status. *Jones*, 444 F3d at 1132. It is indisputable that sleeping is an integral aspect of the status of homeless (or any other human status). *See id.* at 1136 (“[T]he conduct at issue here is involuntary and inseparable from status—they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.”).

And sleeping in public is an involuntary consequence of being homeless in Portland. *See Pottinger v. City of Miami*, 810 F Supp 1551, 1564 (S D Fla 1992) (“Because of the unavailability of low-income housing or alternative shelter, plaintiffs have no choice but to conduct involuntary, life-sustaining activities in public places.”). In 2013, there were approximately 2,800 homeless persons in Portland. Tr 367. *See also* Anna Griffin, *Our Homeless Crisis: For Women, Few Services and Plenty of Danger*, *The Oregonian* (January 24, 2016)<sup>4</sup> (reporting that more than 16,000 people in Multnomah County experienced homelessness at some point in the last year).

In all of Multnomah County, there are 950 shelter spaces, and the shelter capacity was completely full at the time of trial. Tr 369-71. Of those spaces, 150 are reserved for single women during summer months, and 350 spaces are

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<sup>4</sup> Available at: [http://www.oregonlive.com/homeless/2016/01/homeless\\_women\\_on\\_the\\_rise.htm](http://www.oregonlive.com/homeless/2016/01/homeless_women_on_the_rise.htm) (last accessed February 2, 2016).

reserved for single women during winter months. Tr 369-70. At the time of trial, there were 274 people on the waitlist for the women's shelter. Tr 371.

If sleeping outside is an involuntary condition of the status of homelessness in Portland, the remaining question is whether the ordinance criminalizes that involuntary condition. The ordinance prohibits "camping" in "any public right of way." PCC 14A.50.020(B). "To camp" means to "set up, or to remain in a campsite" and a "campsite" "means any place where any bedding, sleeping bag, or other sleeping matter \* \* \* is placed, established, maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure[.]" PCC 14A.50.020(A).

A person violates the ordinance when she "remains in" any public place where any "sleeping matter" is placed. *Id.* The ordinance does not define "sleeping matter," but the term appears to refer to "something" "having to do with" sleeping. *See Webster's Third New Int'l Dictionary* 1394 (unabridged ed 2002) (defining "matter," among many other definitions, as "something of an indicated kind or having to do with an indicated situation").

The harmless conduct of placing "sleeping matter" in a public place is inseparable from the condition of homelessness. *See Pottinger*, 810 F Supp at 1564 ("arresting homeless people for harmless acts they are forced to perform in public effectively punishes them for being homeless."). A person violates the ordinance when she covers herself with a blanket, lays a piece of cardboard

down on the wet cement, pulls a garbage bag over her body to shield herself from the rain, or rolls a sweatshirt to place under her head; if she places *something having to do with* sleeping on the ground (including, perhaps, her body?), she violates the ordinance. Because the condition of homelessness in Portland requires a person to sleep outside, a homeless Portlander's "sleeping matter" (and every other item that she requires to live) is necessarily outside when she engages in that basic bodily act.

That is not to say that the city is unable to enact a valid ordinance that meets its justifiable goals of reducing unsightly campsites in public places. For example, the ordinance could limit *where* campsites are placed, as long as the restriction is not simply all of Portland. *See, e.g.*, Pa Mun Code § 10-611(1)(b)-(c) (Philadelphia ordinance prohibiting sleeping in particular "zones"). Or the ordinance could more stringently define a "campsite" to exclude those over a particular height or placed in public walkways. *See, e.g.*, Las Vegas Mun Code § 10.47.020 ("It is unlawful to intentionally obstruct pedestrian or vehicular traffic in an area open and available for pedestrian or vehicular traffic."). Any alternative ordinance must simply allow for the reality that, without adequate shelter space, homeless individuals require *some* public place to sleep. Because Portland's current ordinance fails to appreciate that reality, the use of it to prosecute a homeless individual is cruel and unusual.

**C. The availability of the statutory necessity defense does not render the ordinance constitutional.**

In upholding the ordinance, the trial court ruled that “[i]f defendant presents evidence that her homelessness was involuntary and that camping in a public place was an unavoidable consequence of that status, she would be entitled to have the jury consider a ‘choice of evils’ defense to the charges.” ER-65. But defendant *was* convicted of violating the unconstitutional ordinance, despite receiving an instruction on the statutory necessity defense. That alone establishes that the necessity defense fails to render the ordinance constitutional. *Cf. Jones*, 444 F 3d at 1126 (“The City also argues that Appellants lack standing because, after being arrested, jailed, and losing their belongings, Appellants could theoretically raise a necessity defense if they were prosecuted. This argument is legally, factually, and realistically untenable.”).<sup>5</sup>

Oregon’s necessity or “choice of evils” defense is codified at ORS 161.200, which provides,

“(1) [C]onduct which would otherwise constitute an offense is justifiable and not criminal when:

“(a) That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and

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<sup>5</sup> See also *Jones*, 444 F3d at 1131 (“[O]ne must question the policy of arresting, jailing, and prosecuting individuals whom the City Attorney concedes cannot be convicted due to a necessity defense. If there is no offense for which the homeless can be convicted, is the City admitting that all that comes before is merely police harassment of a vulnerable population?”).

“(b) The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.”

“[T]o show that criminal conduct was ‘necessary’ within the meaning of ORS 161.200, [the] defendant [i]s required to put forth evidence that would allow the jury to find that he had no reasonable alternative but to commit the crime[.]”  
*See State v. Freih*, 270 Or App 555, 557, 348 P3d 324 (2015). Thus, in order to have acquitted defendant under the necessity defense in this case, the jury was required to conclude that defendant’s inability to sleep was “an imminent public or private injury” and that sleeping in public was required as an “emergency measure” to avoid it.

That standard imposes an impermissibly high burden upon a litigant who has already established that the underlying criminal law criminalizes an involuntary act or condition. For example, in this case, the jury may have rejected defendant’s necessity defense on the ground that a “reasonable alternative” to avoiding the injury was to sleep somewhere outside of Portland’s city limits. While that could be a relevant consideration for the statutory defense, it is an inappropriate consideration when assessing the constitutionality of Portland’s ordinance; the necessity defense is an inadequate substitute.

Moreover, under ORS 161.200, the jury may not consider the defendant’s particular circumstances, including her mental health, when assessing the

reasonableness of her actions. *State v. O'Neill*, 256 Or App 537, 303 P3d 944, *rev den*, 313 P3d 1126 (2013) (“[T]he defendant’s belief must be objectively reasonable to a person of ordinary intelligence and understanding, not a person with the unique history or mental characteristics of any particular defendant.”). In a case like this one, the jury would assess the complex issue of homelessness, which implicates other issues related to “trauma, post-traumatic stress disorder, a traumatic brain injury, [or] a mental health issue,” tr 372, from the perspective of a “reasonable person” without those unique issues. A jury could foreseeably reject the defense on the ground that the reasonable person had other “choices” but to be homeless.

Finally, and perhaps more to the point, the availability of a statutory defense does not render an otherwise unconstitutional law constitutional. Were this court to adopt the trial court’s rationale, the availability of the necessity defense would swallow the *Robinson* rule. Any involuntary action taken pursuant to a status could be viewed as a “necessity,” regardless of whether the jury actually acquitted pursuant to the necessity defense. For example, in *Robinson*, the Court could have held that the reasonableness a drug addict’s “choice” to use drugs was a question for jury. It did not, because a defendant’s constitutional rights are not a question of fact for the jury to weigh. Here, the state prosecuted defendant for violating an unconstitutional ordinance, which

criminalized the fact that she was homeless. This court should reverse her convictions for camping in public.

**II. State law preempts the city’s ability to prosecute a homeless person for camping in public without posting notice.**

The Oregon Constitution contains two “home-rule” provisions: Article XI, section 2,<sup>6</sup> and Article IV, section 1(5),<sup>7</sup> which broadly authorize cities and municipalities to engage in self-government. *Rogue Valley Sewer Serv. v. City of Phoenix*, 357 Or 437, 450, 353 P3d 581 (2015). The city’s home-rule authority is not absolute; a city’s enactments must not violate the city’s charter or state or federal law. *Id.*

To determine whether state law preempts a city’s criminal ordinance, this court asks whether the ordinance “prohibits an act which the statute permits, or permits an act which the statute prohibits.” *City of Portland v. Dollarhide*, 300 Or 490, 501-02, 714 P2d 220 (1986). State law “permits” conduct in one of three ways: (1) it occupies an entire field so as to leave little or no room for cities to define additional offenses in that field; (2) it expressly permits certain

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<sup>6</sup> Article XI, section 2, provides, in pertinent part, “The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon[.]”

<sup>7</sup> Article IV, section 1(5), reserves initiative and referendum powers “to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district.”

conduct (for example, for persons possessing a concealed-weapons permit); or (3) it manifests intent to permit specific conduct in another way (for example, through legislative history). *City of Portland v. Jackson*, 316 Or 143, 147-48, 850 P2d 1093 (1993).

The ordinance here is an example of the second type—state law expressly permits conduct that the ordinance prohibits. The Legislature has enacted two laws relating to cities’ ability to regulate public camping by homeless persons. The first, ORS 203.077,<sup>8</sup> requires cities to create “humane” policies to address the issue; it does not preempt any municipal action. But the second, ORS 203.079, both creates minimum requirements for policies enacted pursuant to ORS 203.077 *and* imposes a specific limitation on the creation and enforcement of those policies:

“(1) A policy developed pursuant to ORS 203.077 *shall include*, but is not limited to, the following:

“(a) Prior to removing homeless individuals from an established camping site, law enforcement officials shall post a notice, written in English and Spanish, 24 hours in advance.

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<sup>8</sup> ORS 203.077 provides,

“All municipalities and counties shall:

“(1) Develop a policy that recognizes the social nature of the problem of homeless individuals camping on public property.

“(2) Implement the policy as developed, to ensure the most humane treatment for removal of homeless individuals from camping sites on public property.”

“(b) At the time that a 24-hour notice is posted, law enforcement officials shall inform the local agency that delivers social services to homeless individuals where the notice has been posted.

“\* \* \* \* \*

“(2) The 24-hour notice required under subsection (1) of this section shall not apply:

“(a) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring.

“(b) In the event of an exceptional emergency such as possible site contamination by hazardous materials or when there is immediate danger to human life or safety.

“(3) A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance *may not issue the citation if the citation would be issued within 200 feet of the notice described in this section and within two hours before or after the notice was posted.*

ORS 203.079 (emphasis added).

State law thus *permits* a person to camp on public property *until* the city posts a notice of exclusion within 200 feet of the person and for at least two hours. ORS 203.079(3). Portland’s public camping ordinance, PCC 14A.50.020, expressly conflicts with that policy. The ordinance *prohibits* persons from camping in any public place, regardless of whether the city posts written notice. That is, state law permits certain conduct (camping in public until the posting of written notice) that the ordinance prohibits (camping in public at any time). Consequently, state law preempts the ordinance.

This court considered a similar challenge in *City of Portland v. Roth*, 130 Or App 179, 880 P2d 967 (1994). There, the defendant challenged an ordinance that, among other provisions, prohibited refusing to obey a police officer's order to disperse. *Id.* at 181-82. The resisting arrest statute, ORS 162.315, permits passive resistance to arrest, including passive resistance to obey an order to disperse. *Id.* Because the resisting arrest statute permitted conduct (passive resistance) that the ordinance prohibited (refusing to obey an order), state law preempted the ordinance. *Id.* at 184. In so concluding, the court noted that there was “demonstrably very little overlap between the kinds of conduct covered by the two pieces of legislation.” *Id.* But, because a portion of the ordinance “prohibit[ed] conduct that the statute prohibit[ed],” the court was “compelled” to overturn the ordinance in its entirety and reverse the defendant's conviction.

The same result is required here. There is no evidence in the record that officers posted notice before or after arresting defendant for violating PCC 14A.50.020. State law entitled defendant to remain on public property until they did so.

### **III. The ordinance imposes an unconstitutional restriction on defendant's right to travel.**

The right to travel is a fundamental constitutional right. *Shapiro v. Thompson*, 394 US 618, 634, 89 S Ct 1322, 22 L Ed 2d 600 (1969). The

fundamental right to travel includes the “right to move from one place to another according to inclination.” *Chicago v. Morales*, 527 US 41, 47, 119 S Ct 1849, 144 L Ed 2d 67 (1999) (“Indeed, it is apparent that an individual’s decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is a part of our heritage \* \* \* or the right to move to whatsoever place one’s inclination may direct[.]”). For that reason, arresting individuals for loitering or wandering on public streets without identification “implicates consideration of the constitutional right to freedom of movement.” *Kolender v. Lawson*, 461 US 352, 358, 103 S Ct 1855, 75 L Ed 2d 903 (1983). *See also Papachristou v. City of Jacksonville*, 405 US 156, 164, 92 S Ct 839, 31 L Ed 2d 110 (1972) (“wandering and strolling” are “historically part of the amenities of life as we have known them”).

The Court has identified multiple constitutional sources for the right, including the Due Process Clause, the Equal Protection Clause, and the Privileges and Immunities Clause. *Delgado v. Souders*, 334 Or 122, 153, 46 P3d 729 (2002); *State v. Berringer*, 234 Or App 665, 671-72, 229 P3d 615 (2010), *rev den*, 348 Or 669 (2010). Regardless of its source, governmental action penalizing the exercise of the right to travel is unconstitutional without a showing that the action is necessary to promote a compelling governmental interest. *Shapiro*, 394 US at 634. That is, a law burdening the right to travel is

subject to strict scrutiny. *State v. McGuire*, 221 Or App 103, 106, 188 P3d 425 (2008).

As discussed above, a homeless person residing or passing through Portland has no choice but to sleep outside. By criminalizing that activity, the ordinance wholly prevents homeless persons from residing in or visiting Portland. Admittedly, the city has a legitimate interest in maintaining access to public places and keeping those places free of unnecessary and unsightly campsites. But that interest does not outweigh the complete deprivation of a homeless person's right move (and stay) in the city that she chooses. And the ordinance is not "narrowly tailored" to accomplish the city's legitimate interest. *See Pottinger*, 810 F Supp 1579-81 (so holding with regard to Miami public camping ordinance). Consequently, the ordinance does not survive strict scrutiny, and the public camping convictions are invalid.

#### **SEVENTH THROUGH FOURTEENTH ASSIGNMENTS OF ERROR**

The trial court erred by denying defendant's motion for judgments of acquittal on the interfering with a police officer charges.

#### **Combined Preservation of Error**

Defendant filed a written motion for judgment of acquittal on the IPO charges, arguing that the state failed to prove that the order police gave her to

leave was lawful, because it was issued pursuant to the unconstitutional city ordinance. ER-76-78. Defendant renewed that argument at trial. Tr 315-23.

The trial court denied the motion:

“[W]ith respect to the [IPO] charges, I think there is evidence from which a reasonable juror could find that the defendant on each of the occasions charged, with the exception of August 7th, which the state concedes it has not provided evidence to support that charge, \* \* \* I think the jury could conclude that the defendant refused to obey lawful orders of police officers to vacate the premises to not camp on Portland city property.”

Tr 334-36.

### **Combined Standard of Review**

This court reviews the denial of a motion for judgment of acquittal to determine whether, after viewing the evidence in the light most favorable to the state, a rational factfinder could find the elements of the crime beyond a reasonable doubt. *Cunningham*, 320 Or at 63.

### **Combined Argument**

To obtain a conviction for IPO, the state was required to prove that defendant, “knowing that another person was a peace officer \* \* \*, refuse[d] to obey a lawful order by the peace officer[.]” ORS 162.247(1)(b). A “lawful order” is an order that is authorized by, and not contrary to, substantive law. *State v. Navickas*, 271 Or App 447, 450, 351 P3d 801, *rev den*, \_\_ Or \_\_ (2015) (citing *State v. Ausmus*, 336 Or 493, 504, 85 P3d 864 (2003)). “[T]he term

‘lawful order’ in ORS 162.247(1)(b) does not create an opening for unequal or discretionary application. It leaves nothing to the ad hoc judgment of the individual police officer, judge, or jury but, instead, invokes ascertainable standards from an outside source, *i.e.*, the substantive laws of this state.” *State v. Illig-Renn*, 341 Or 228, 240, 142 P3d 62 (2006).

Here, defendant was convicted of eight counts of IPO, which the state alleged occurred on May 23, 2014, June 20, 2014, July 24, 2014, and August 19-22, 2014 (two counts alleged that defendant committed IPO on August 20). All of the counts except the July 24 count alleged that the officer who issued the “lawful order” with which defendant failed to comply was Officer McCormick.

McCormick first encountered defendant on May 22, 2014, the day before the first IPO charge. On that date, McCormick told defendant that “camping in the City of Portland [is] illegal,” and he ordered her “not to camp in the City of Portland at any place, any time.” Tr 115, 143. The following two IPO charges (May 23 and June 20) were for defendant’s failure to comply with McCormick’s May 22 order. On August 19, McCormick again encountered defendant, and he again told her that camping in Portland is illegal and ordered her not to camp within the city. Tr 120. The state later charged defendant with committing IPO on that date, presumably for failure to comply with McCormick’s May 22 order. The August 20-22 charges were all for defendant’s failure to comply with McCormick’s May 22 and August 19 order.

For all of the reasons explained with regard to defendant's First through Sixth Assignments of Error, McCormick's order was not lawful. The order directed defendant not to camp in Portland at any time or place. Because the authority for that order derived from an unconstitutional city ordinance, there was no valid substantive law authorizing it.

In *Navickas*, this court rejected a similar challenge, concluding that "a rational factfinder could have found that [the officer] had the authority to instruct defendant to move off the street, particularly in light of the safety concerns present of a protest in the street in light of heavy rain, busy traffic, and poor driving conditions." 271 Or App at 451. But here, in contrast, the order with which defendant failed to comply was not to camp *anywhere* in Portland. No safety conditions or other independent concerns could have justified that order; it was solely issued pursuant to PCC 14A.50.020. If that ordinance was invalid, so, too, were the orders issued pursuant to it.

The remaining charge alleged that defendant committed IPO on July 24 by failing to obey a lawful order from Officer Sanders. Sanders first contacted defendant on June 20, and he issued defendant an exclusion notice providing that, "Starting today you cannot remain in or upon or enter in or upon the City of Portland Park known as Chapman Square for a period of \* \* \* 90 days." Tr 259. Sanders saw defendant at Chapman Park on July 24, and he arrested her

for failing to obey “repeated orders” that Sanders and “other officers” had given to defendant not “to camp here at this location.” Tr 205.

Again, the order was unlawful for the same reasons that the ordinance was unlawful. The fact that the order was made in an exclusion notice rather than orally is immaterial. The record does not contain evidence that the officers had authority beyond PCC 14A.50.020 to exclude defendant from the park. And there was no evidence that, as in *Navickas*, there was an underlying safety concern that justified excluding defendant from the park for 90 days. Accordingly, the state’s evidence was insufficient to prove that defendant committed IPO.

#### **FIFTEENTH ASSIGNMENT OF ERROR**

The trial court erred by denying defendant’s motion for judgment of acquittal on the sole count in case 14CR20088, second-degree criminal trespass.

#### **SIXTEENTH ASSIGNMENT OF ERROR**

The trial court erred by denying defendant’s motion for judgment of acquittal on Count 1 of case 14CR32814, second-degree criminal trespass.

#### **Combined Preservation of Error**

Defendant filed a written motion for judgment of acquittal on the trespass charges, arguing that the state failed to prove that the officer’s exclusion orders

were valid. ER-82-83. Defendant renewed those arguments at trial. Tr 315-16, 320-23.

The trial court denied the motion:

“As to the trespass, I think there’s no question that based on [defendant]’s own admission that she knew she was excluded from the parks. I believe also on all of the trespass charges as they relate to Chapman Square, it was after midnight, which no one \* \* \* is permitted in the park at that point.”

Tr 334-36.

### **Combined Standard of Review**

This court reviews the denial of a motion for judgment of acquittal to determine whether, after viewing the evidence in the light most favorable to the state, a rational factfinder could find the elements of the crime beyond a reasonable doubt. *Cunningham*, 320 Or at 63.

### **Argument**

A person commits criminal trespass in the second degree when she “enters or remains unlawfully in a motor vehicle or upon premises.” ORS 164.245. “Enter or remain unlawfully” means:

“(a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the entrant is not otherwise licensed or privileged to do so;

“(b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge;

“(c) To enter premises that are open to the public after being lawfully directed not to enter the premises[.]”

ORS 164.205(3). “Open to the public” means “premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.” ORS 164.205(4).

As used in ORS 164.205(3)(b) and (c), the phrase “lawfully directed” “contemplates inquiries into the lawfulness of the direction that go beyond the delegated authority of the person to issue the direction.” *State v. Koenig*, 238 Or App 297, 209, 242 P3d 649 (2010), *rev den*, 349 Or 601 (2011). If the state fails to present evidence that an authorized person “lawfully directed” the defendant not to enter or remain in a public place, a trial court must grant a defendant’s motion for judgment of acquittal for criminal trespass. *Id.* at 310.

Defendant was convicted of three counts of second-degree trespass, which the state alleged occurred on August 7, 2014,<sup>9</sup> September 9, 2014, and December 28, 2014. The September 9 charge was based on the 90-day exclusion notice that Sanders issued on June 20, 2014. Tr 284. But the state failed to produce evidence that Sanders had the lawful authority to exclude defendant from the park for 90 days.

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<sup>9</sup> Defendant does not challenge the conviction based on the allegation that she remained in Chapman Park after closing on August 7, 2014 (Count 2 of Case 14CR16019/A159141).

As discussed above, Portland’s public camping ordinance did not provide a lawful basis for such an order. And state law expressly prohibited officers from arresting defendant for camping in public without first posting public notice. ORS 203.079(3). There is no evidence in the record that officers posted public notice. Nor is there evidence that defendant entered or remained in the park after closing. To the contrary, the record established that officers arrested defendant shortly after 3:30 p.m. that day. Tr 283. Finally, there is no evidence in the record that defendant had an opportunity or right to challenge the exclusion notice. *See Koenig*, 238 Or App at 310 (“[T]o comply with procedural due process, it was necessary that defendant be afforded some process complaint with the balancing test enunciated in [*Matthews v. Eldridge*, 424 US 319, 96 S Ct 893, 47 L Ed 2d 18 (1976)] by which defendant could have obtained timely review of the notice of exclusion in order to safeguard his liberty interest against the risk of erroneous deprivation.”). For all of those reasons, the state’s evidence was insufficient to convict defendant of the September 9 trespass charge.

The state’s evidence was similarly insufficient on the December 28 charge. That charge arose out of defendant’s failure to immediately move from the Multnomah County Justice Center when directed to do so by a security guard and police officers. Tr 170-72. But, again, the state failed to produce evidence that the security guard and police officers lawfully directed defendant

to move. If their direction do to so was pursuant to PCC 14A-50-020, the direction was not lawful for the reasons explained above. And there is no evidence in the record that the officers issued defendant an exclusion notice or afforded her any process whatsoever before summarily directing her to leave and then arresting her for failure to do so. Accordingly, the state's evidence was insufficient to prove that defendant committed criminal trespass.

### CONCLUSION

For the above reasons, this court should reverse defendant's convictions for IPO, second-degree criminal trespass, and violating Portland's public camping ordinance.

Respectfully submitted,

ERNEST G. LANNET  
CHIEF DEFENDER  
CRIMINAL APPELLATE SECTION  
OFFICE OF PUBLIC DEFENSE SERVICES

*Signed*

*By Lindsey Burrows at 6:12 pm, Feb 03, 2016*

LINDSEY BURROWS OSB #113431  
DEPUTY PUBLIC DEFENDER  
Lindsey.Burrows@opds.state.or.us

Attorneys for Defendant-Appellant  
Alexandra Chanel Barrett

**EXCERPT OF RECORD INDEX**

Information in Each Case ..... ER 1-12

Motion to Dismiss..... ER 13-14

Memorandum in Support of Motion to Dismiss..... ER 15-35

Reply to State’s Response to Motion to Dismiss ..... ER 36-54

Order Denying Motion to Dismiss ..... ER 55-73

Motion for Judgments of Acquittal..... ER 74-83

Judgment in Each Case ..... ER 84-102

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-1

Verified Correct Copy of Original 8/27/2014.

STATE OF OREGON, AND CITY OF PORTLAND

Court Nbr 14-CR-10631  
Crime Report PP 14-45063  
PP 14-41802  
PP 12-41224  
PP 14-49883  
PP 14-41065  
PP 14-41801  
PP 14-41884  
PP 13-69339  
PP 13-73941  
PP 13-101161  
PP 13-105350  
PP 13-107219  
PP 14-37656

DA 2299277-1

FILED  
14 AUG 19 PM 2:05  
FOURTH JUDICIAL DISTRICT

Plaintiff,

v.

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989

Defendant(s).

**AMENDED Information of District Attorney**

ORS 162.247 (1,3)  
ORDP 14A.50.020 ORD 176585 EFF DATE 07/05/2002 (2,4)  
ORS 475.894 (5)

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1,3 - INTERFERING WITH A PEACE, PAROLE OR PROBATION OFFICER, COUNT 2,4 - CAMPING PROHIBITED IN CERTAIN PLACES, COUNT 5 - UNLAWFUL POSSESSION OF METHAMPHETAMINE (CLASS A MISDEMEANOR), committed as follows:

**COUNT 1**  
**INTERFERING WITH A PEACE, PAROLE OR PROBATION OFFICER**

The said defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about May 23, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by David McCormick, a person known by defendant(s) to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**COUNT 2**  
**CAMPING PROHIBITED IN CERTAIN PLACES**

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about May 23, 2014, within the corporate limits of the City of Portland, Multnomah County, Oregon, did unlawfully and knowingly camp upon public property, in violation of the above ordinance of the said City of Portland, Oregon,

**COUNT 3**  
**INTERFERING WITH A PEACE, PAROLE OR PROBATION OFFICER**

The said defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about June 20, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by David McCormick, a person known by defendant(s) to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**INFORMATION OF DISTRICT ATTORNEY**

14CR10631  
IFAM  
Information - Amended  
1259126



**COUNT 4**

**CAMPING PROHIBITED IN CERTAIN PLACES**

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about June 20, 2014, within the corporate limits of the City of Portland, Multnomah County, Oregon, did unlawfully and knowingly camp upon public property, in violation of the above ordinance of the said City of Portland, Oregon,

**COUNT 5**

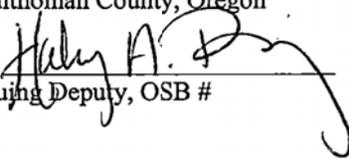
**UNLAWFUL POSSESSION OF METHAMPHETAMINE (CLASS A MISDEMEANOR)**

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about June 20, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly possess METHAMPHETAMINE, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on August 19, 2014.

BURY OSB 122894

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By   
Issuing Deputy, OSB #

Security Amount (Def - BARRETT) \$2,500 + \$2,500 + \$2,500 + \$2,500 + \$2,500

Uniform Complaint

**AFFIRMATIVE DECLARATION**

*The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.*

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

Verified Correct Copy of Original 8/27/2014.

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-3

STATE OF OREGON, AND CITY OF PORTLAND

Court Nbr 14-CR-14443  
Crime Report PP 14-59281  
PP 14-49883  
PP 14-59282  
PP 14-47357

DA 2301512-1

Plaintiff,

v.

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989  
also known as  
ALEXANDRA BARRETT  
DOB: 08/29/1989  
also known as  
ALEXANDRA C BARRETT  
DOB: 08/29/1989

*TN [unclear]  
7/25/14*

Information of District Attorney

ORS 162.247 (1)  
ORDP 14A.50.020 ORD 176585 EFF DATE 07/05/2002 (2)  
ORS 162.315 (3)

**FILED**

JUL 25 2014

Circuit Court  
Multnomah County, Oregon

Defendant(s).

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1 - INTERFERING WITH A PEACE, PAROLE OR PROBATION OFFICER, COUNT 2 - CAMPING PROHIBITED IN CERTAIN PLACES, COUNT 3 - RESISTING ARREST, committed as follows:

**COUNT 1**

**INTERFERING WITH A PEACE, PAROLE OR PROBATION OFFICER**

The said defendant(s), ALEXANDRA CHANEL BARRETT, on or about July 24, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by Officer David Sanders, a person known by defendant(s) to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**COUNT 2**

**CAMPING PROHIBITED IN CERTAIN PLACES**

The said Defendant(s), ALEXANDRA CHANEL BARRETT, on or about July 24, 2014, within the corporate limits of the City of Portland, Multnomah County, Oregon, did unlawfully and knowingly camp upon public property, in violation of the above ordinance of the said City of Portland, Oregon,

**COUNT 3**

**RESISTING ARREST**

The said Defendant(s), ALEXANDRA CHANEL BARRETT, on or about July 24, 2014, in the County of Multnomah, State of Oregon, did unlawfully and intentionally resist Officer David Sanders, a person known by the defendant(s) to be a peace officer, in making an arrest, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on July 25, 2014.

HERMANN OSB 126353

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By *[Signature]*  
Issuing Deputy, OSB #

Security Amount (Def - BARRETT) \$2,500 + \$2,500 + \$2,500

Uniform Complaint

AFFIRMATIVE DECLARATION

*The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.*

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-5

Court Nbr 14-CR-16019 DA 2302429-1  
Crime Report PP 14-63789

Verified Correct Copy of Original 8/7/2014

STATE OF OREGON,

Plaintiff,

v.

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989  
also known as  
ALEXANDRA BARRETT  
DOB: 08/29/1989  
also known as  
ALEXANDRA C BARRETT  
DOB: 08/29/1989

Defendant(s).

Information of District Attorney

ORS 162.247 (1)  
ORS 164.245 (2)

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1 - INTERFERING WITH A PEACE, PAROLE OR PROBATION OFFICER, COUNT 2 - CRIMINAL TRESPASS IN THE SECOND DEGREE, committed as follows:

**COUNT 1**

**INTERFERING WITH A PEACE, PAROLE OR PROBATION OFFICER**

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about August 07, 2014, in the County of Multnomah, State of Oregon, did unlawfully and intentionally act in a manner that prevented and attempt to prevent **LIEUTENANT GOLLIDAY**, a person known by defendant(s) to be a peace officer, from performing the officers' lawful duties with regard to another person, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**COUNT 2**

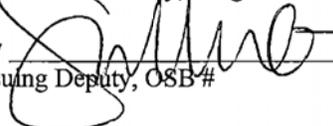
**CRIMINAL TRESPASS IN THE SECOND DEGREE**

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about August 07, 2014, in the County of Multnomah, State of Oregon, did unlawfully and intentionally, knowingly, and recklessly enter and remain in and upon the premises located at **CHAPMAN SQUARE PARK**, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on August 7, 2014.

ERSKINE OSB 101200

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By   
Issuing Deputy, OSB #

Security Amount (Def - BARRETT) \$2,500 + \$1,000

Uniform Complaint

**AFFIRMATIVE DECLARATION**

The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

**INFORMATION OF DISTRICT ATTORNEY**

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-6

Verified Correct Copy of Original 8/25/2014

STATE OF OREGON,

Court Nbr 14-CR-17841  
Crime Report PP 14-67518  
PP 14-67666  
PP 14-67711  
PP 14-66658  
PP 14-68131  
PP 14-68371

DA 2303444-1

FILED

AUG 25 2014

CIRCUIT COURT

Remain a Crime  
BCC Community Court Eligible  
Westside Community Court Eligible

Plaintiff,

v.

Information of District Attorney

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989

ORS 162.247 (1,2,3,4,5)

Defendant(s).

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1,2,3,4,5 - INTERFERING WITH A PEACE OFFICER, committed as follows:

**COUNT 1**

**INTERFERING WITH A PEACE OFFICER**

The said defendant(s), ALEXANDRA CHANEL BARRETT, on or about August 19, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by David McCormick, a person known by defendant to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**COUNT 2**

**INTERFERING WITH A PEACE OFFICER**

The said defendant(s), ALEXANDRA CHANEL BARRETT, on or about August 20, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by David McCormick, a person known by defendant to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**COUNT 3**

**INTERFERING WITH A PEACE OFFICER**

The said defendant(s), ALEXANDRA CHANEL BARRETT, on or about August 20, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by David McCormick, a person known by defendant to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**COUNT 4**

**INTERFERING WITH A PEACE OFFICER**

The said defendant(s), ALEXANDRA CHANEL BARRETT, on or about August 21, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by David McCormick, a person known by defendant to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**COUNT 5**

**INTERFERING WITH A PEACE OFFICER**

The said defendant(s), ALEXANDRA CHANEL BARRETT, on or about August 22, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly refuse to obey a lawful order by David McCormick, a person known by defendant to be a peace officer, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

**INFORMATION OF DISTRICT ATTORNEY**

Dated at Portland, Oregon, in the county aforesaid, on August 25, 2014.

ABRAHAM OSB 844430

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By   
Issuing Deputy, OSB # 844430

Security Amount (Def - BARRETT) \$2,500 + \$2,500 + \$2,500 + \$2,500 + \$2,500

Uniform Complaint

**AFFIRMATIVE DECLARATION**

The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

Verified Correct Copy of Original 8/25/2014

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-8

Court Nbr 14-CR-20088 DA 2304691-1  
Crime Report PP 14-73510

WCC ELIGIBLE

Information of District Attorney

ORS 164.245 (1)

FILED

SEP 10 2014

CIRCUIT COURT

Verified Correct Copy of Original 9/10/2014.

STATE OF OREGON,

Plaintiff,

v.

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989

Defendant(s).

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1 - CRIMINAL TRESPASS IN THE SECOND DEGREE, committed as follows:

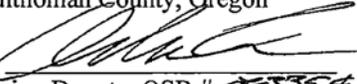
COUNT 1  
CRIMINAL TRESPASS IN THE SECOND DEGREE

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about September 09, 2014, in the County of Multnomah, State of Oregon, did unlawfully and intentionally, knowingly, and recklessly enter and remain in and upon the premises located at Chapman Square, Portland OR, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on September 10, 2014.

GIBBS OSB 083354

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By   
Issuing Deputy, OSB # 083354

Security Amount (Def - BARRETT) \$1,000

Uniform Complaint

AFFIRMATIVE DECLARATION

The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

INFORMATION OF DISTRICT ATTORNEY

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-9

STATE OF OREGON,

Court Nbr 14-CR-24192  
Crime Report PP 14-82978

DA 2306833-1

Remain a Crime  
BCC Community Court Eligible  
Westside Community Court Eligible

Plaintiff,

Information of District Attorney

v.

ORS 164.245 (1)

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989

Defendant(s).

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1 - CRIMINAL TRESPASS IN THE SECOND DEGREE, committed as follows:

COUNT 1

**CRIMINAL TRESPASS IN THE SECOND DEGREE**

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about October 09, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly and recklessly enter and remain in and upon the premises described as Chapman Square Park, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on October 13, 2014.

ABRAHAM OSB 844430

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By   
Issuing Deputy, OSB #844430

**FILED**

**OCT 13 2014**

Security Amount (Def - BARRETT) \$1,000

Uniform Complaint

4th Judicial District

**AFFIRMATIVE DECLARATION**

The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

**INFORMATION OF DISTRICT ATTORNEY**

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-10

Court Nbr 14-CR-32814 DA 2311067-1  
Crime Report PP 14-104771

Remain a Crime  
Westside Community Court Eligible

Information of District Attorney

ORS 164.245 (1)  
ORS 164.345 (2)

FILED  
DEC 29 2014  
CIRCUIT COURT

STATE OF OREGON,

Plaintiff,

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989

Defendant(s).

Verified Correct Copy of Original 12/30/2014.

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1 - CRIMINAL TRESPASS IN THE SECOND DEGREE, COUNT 2 - CRIMINAL MISCHIEF IN THE THIRD DEGREE, committed as follows:

COUNT 1

CRIMINAL TRESPASS IN THE SECOND DEGREE

The said Defendant(s), ALEXANDRA CHANEL BARRETT, on or about December 28, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly and recklessly remain in and upon the premises located at 1120 Southwest Third Avenue, Portland, also known as Multnomah County Detention Center, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 2

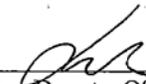
CRIMINAL MISCHIEF IN THE THIRD DEGREE

The said Defendant(s), ALEXANDRA CHANEL BARRETT, on or about December 28, 2014, in the County of Multnomah, State of Oregon, did, with intent to cause substantial inconvenience to the owner, unlawfully and knowingly tamper and interfere with the property of the City of Portland Bureau of Police, the said defendant having no right to do so nor reasonable ground to believe that she had such right, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on December 29, 2014.

ABRAHAM OSB 844430

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By   
Issuing Deputy, OSB #844430

Security Amount (Def - BARRETT) \$1,000 + \$1,000  
Uniform Complaint

AFFIRMATIVE DECLARATION

The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

INFORMATION OF DISTRICT ATTORNEY

In the Circuit Court of the State of Oregon  
For Multnomah County

ER-11

Court Nbr **15 CR 00103**  
Crime Report PP 14-100034

DA 2310569-1

BC and WE CC Eligible

Information of District Attorney

ORS 164.805 (1)

FILED

JAN 02 2015

CIRCUIT COURT

Verified Correct Copy of Original 1/2/2015.

STATE OF OREGON,

Plaintiff,

v.

ALEXANDRA CHANEL BARRETT  
DOB: 08/29/1989

Defendant(s).

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1 - OFFENSIVE LITTERING, committed as follows:

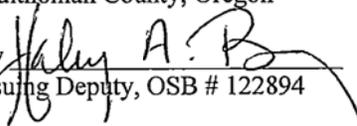
COUNT 1  
OFFENSIVE LITTERING

The said Defendant(s), **ALEXANDRA CHANEL BARRETT**, on or about December 12, 2014, in the County of Multnomah, State of Oregon, did unlawfully and knowingly create an objectionable stench, degrade the beauty and appearance of property and detract from the natural cleanliness of property by discarding and depositing rubbish, trash, garbage, debris, and other refuse upon the area on or adjacent to a public way, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid, on December 30, 2014.

BURY OSB 122894

ROD UNDERHILL (883246)  
District Attorney  
Multnomah County, Oregon

By   
Issuing Deputy, OSB # 122894

Security Amount (Def - BARRETT) \$1,000

Uniform Complaint PP ZA0241753

AFFIRMATIVE DECLARATION

The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.840(3)(a), 475.854, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.

Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.

INFORMATION OF DISTRICT ATTORNEY

14-100034

753

RESERVED FOR DA USE: 15CR00109  
 RESERVED FOR COURT USE:

**THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:**

ID TYPE:  CDL  Non-CDL ID NO.: STATE: LICENSE CLASS:

NAME: LAST FIRST MI  
**BARRETT, ALEXANDRA C**

ADDRESS: TEL. NO.:

CITY: STATE: ZIP CODE: Def. is:  Passenger  Employed to Drive

SEX: **F** RACE: **B** DOB: **8/29/89** HEIGHT: **5'7"** WEIGHT: **190** HAIR: **BLK** EYES: **BLU**

**AT THE FOLLOWING TIME AND PLACE IN THE ABOVE-MENTIONED STATE AND COUNTY:**

OFFENSE DATE MONTH DAY YEAR TIME ON OR ABOUT: **12 12 14 1000**  AM  PM  Highway  Premises open to public

AT OR NEAR LOCATION: **NAITO / BARRETT**

**INVOLVING THE FOLLOWING:**

TYPE: REGIS/VIN/ID NO.: STATE:  Accident  Injury  Property damage  Endanger Others

VEHICLE Year, Make, Model, Style, Color, OR Other, Describe:

OTHER:  Driver not Reg. Owner  Haz. Material  Comm. Veh.  Comm. Passenger Veh.

**DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):**

1. VIOLATED (Cite ORS/ORD Rule) **164 805** DESCRIBE: **OFFENSIVE LITRNING** Alleged Spd Designated Spd  Posted Limit  Radar  Pace  Laser

Intentional  Knowing  Reckless  Criminal negligence  Safety Corridor  Pstd Sch Zn  Hwy Wk Zn  No culpable mental state

2. VIOLATED (Cite ORS/ORD Rule) DESCRIBE: **PROSECUTION DECLINED**

Intentional  Knowing  Reckless  Criminal negligence  No culpable mental state

3. VIOLATED (Cite ORS/ORD Rule) DESCRIBE: **Rod Underhill, District Attorney Multnomah County OR**

Intentional  Knowing  Reckless  Criminal negligence  No culpable mental state

OTH. **July A. [Signature]** Expl.: Date:

I certify under ORS 153.045 and 153.990 and under other applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to and do believe that the above-mentioned defendant/person committed the above offense(s) and I have served the defendant/person with this complaint:

Date issued: **12/12/14** 1st Officer Signature: **[Signature]** Officer(s) Agency ID: **PPB**

Print 1st Officer Name: **D. SANDERS** 1st Officer ID No.: **4724**

2nd Officer or arresting person (if not officer): Signature: **[Signature]** Printed Name: **D. SANDERS #719** 2nd Officer ID No.:

AGENCY ID:  PPB  POP  MCSO  GREPD  DSP  OHSU  TRIMET  PSU  PBOT  OTHER

**YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE:**

MONTH / DAY / YEAR TIME:

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON,  
Plaintiff,  
  
vs.  
  
ALEXANDRA CHANEL BARRETT,  
Defendant.

) Nos.  
) 14-CR-10631  
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**DEFENDANT'S MOTION TO DISMISS**

One Hour Oral Argument Requested  
(UTCRC 4.050)

Defendants moves this court for an order dismissing the charges listed below because Portland City Code, Title 14, 14A.50.020, as applied to the homeless constitutes cruel and unusual punishment, violates the equal protection clause of the Fourteenth Amendment, and impedes the homeless' right to travel. The charges the defense moves to dismiss are as follows:

- 14-CR-10631
  - Count 1 – Interfering With A Peace, Parole Or Probation Officer
  - Count 2 – Camping Prohibited In Certain Places
  - Count 3 – Interfering With A Peace, Parole Or Probation Officer
  - Count 4 – Camping Prohibited In Certain Places
- 14-CR-14443
  - Count 1 – Interfering With A Peace, Parole Or Probation Officer
  - Count 2 – Camping Prohibited In Certain Places
- 14-CR-16019
  - Count 2 – Criminal Trespass In The Second Degree
- 14-CR-17841
  - Count 1 - Interfering With A Peace Officer
  - Count 2 – Interfering With A Peace Officer
  - Count 3 – Interfering With A Peace Officer



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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON,  
Plaintiff,  
vs.  
ALEXANDRA CHANEL BARRETT,  
Defendant.

) Nos. 14-CR-14443  
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MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS

FACTS

On May 23, 2014, Ms. Alexandra Chanel Barrett, a member of the homeless community residing in downtown Portland, was arrested at Chapman Square Park for violating the City camping ordinance and for interfering with a peace officer ("IPO").<sup>1</sup> On June 20, 2014, Ms. Barrett was again arrested at Chapman Square for the same charges as above.<sup>2</sup> On July 24, 2014, Ms. Barrett was arrested for the same charges at the same location, with the addition of a charge of resisting arrest. On August 7, 2014, Ms. Barrett was arrested for Criminal Trespass II for entering Chapman Park and again for IPO for moving towards an officer. On August 19, 2014, Ms. Barrett was given a

<sup>1</sup> Interfering with a peace officer is defined:

(1) A person commits the crime of interfering with a peace officer or parole and probation officer if the person, knowing that another person is a peace officer or a parole and probation officer . . . :

(b) Refuses to obey a lawful order by the peace officer or parole and probation officer.

ORS162.247

<sup>2</sup> Ms. Barrett was also charged with Possession of a controlled Substance, Methamphetamine, any evidence of which Ms. Barrett seeks to suppress pursuant to her motion to suppress filed on November 19, 2014.

1 citation for sidewalk obstruction. On August 20, 2014, Ms. Barrett was again cited for sidewalk  
2 obstruction and camping. On August 22, 2014, Ms. Barrett was arrested and charged with five  
3 counts of IPO, all related to camping in Portland. On September 9, 2014, Ms. Barrett was arrested  
4 and charged with Criminal Trespass II for entering Chapman Park. Finally, a month later, on  
5 October 9, 2014, Ms. Barrett was arrested again for Criminal Trespass II, again at Chapman Park.  
6

### 7 SUMMARY OF ARGUMENT

8 Portland's camping ordinance is unconstitutional as applied to the homeless under the Eighth  
9 Amendment as cruel and unusual punishment. Following the decisions in *Robinson v. California*,  
10 370 U.S. 660 (1962) and *Powell v State of Tex.*, 392 U.S. 514 (1968), it is cruel and unusual  
11 punishment for a state to punish an individual based on their status. Here, the City ordinance  
12 punishes individuals for the status of being homeless. Pursuant to the statute, if any homeless  
13 individual sets up a sleeping bag or tarp in the City of Portland to "maintain a temporary place to  
14 live," they are in violation of the ordinance. There is no distinction of places in the city where  
15 camping is acceptable or areas where it is specifically prohibited. For people who are homeless, who  
16 carry all their possessions, and who do not have shelter to go to every night, whenever they set up a  
17 sleeping bag to bed down in the confines of Portland, they are in violation of the ordinance. As  
18 applied to homelessness, the ordinance penalizes conduct based on a person's involuntary status and  
19 is thus is unconstitutional.  
20  
21

22 Furthermore, the City ordinance is also unconstitutional because it interferes with the  
23 fundamental right to travel. Because the ordinance is not narrowly tailored to meet a compelling  
24 government interest in safeguarding the safety, health, and welfare of citizens, it unconstitutionally  
25 burdens that fundamental right. Because the ordinance is unconstitutional, the subsequent charges of  
26

1 trespass and IPO that relate to Ms. Barrett's camping in Chapman Park are unlawful and should be  
2 dismissed.

3  
4 ARGUMENT

5 **I. As Applied To The Homeless, Portland's Camping Ordinance Is Cruel And Unusual Punishment**

6 Both Article I Section 16 of the Oregon Constitution and the Eighth Amendment of the  
7 Federal Constitution prohibit cruel and unusual punishment. As such, a state cannot punish an  
8 individual based on that person's status. *See Robinson v. California*, 370 U.S. 660, 666-68 (1962)  
9 (holding unconstitutional a California law criminalizing being addicted to narcotics). That is, a state  
10 may not punish a person for a state of "being." *See Powell v State of Tex.*, 392 U.S. 514, 533 (1968).  
11

12 The Court further defined what it meant by "status," in *Powell*. There, a chronic alcoholic  
13 could be punished, not for his alcoholism, but for his conduct of appearing intoxicated in public.  
14 *Powell*, 392 U.S. at 532. In a divided, 4-1-4 decision, the plurality interpreted *Robinson* to prohibit  
15 only criminalization of pure status, not associated conduct. *Powell*, 392 U.S. at 533 (Marshall, J.,  
16 plurality opinion). Yet, five justices, a majority, also made clear that *Robinson* stands for the  
17 proposition that a state cannot punish a person for conditions involuntarily inflicted upon a person or  
18 that the person is powerless to avoid. *See Powell*, 392 U.S. at 559 n.2 (Fortas, J., joined by Douglas,  
19 J., Brennan, J., Steward, J., dissenting) (stating that a state cannot punish actions that that are part of  
20 "the syndrome or disease of alcoholism," rather there must be some "independent acts or conduct  
21 that do not typically flow from" the condition); *Powell*, 392 U.S. at 550 n.2 (White, J., concurring)  
22 (endorsing Justice Fortas's reading, but only where the acts that led to the condition are remote in  
23 time).  
24

25 In a separate concurrence, Justice White followed the dissent in rejecting the plurality's  
26

1 status vs. conduct distinction, stating that:

2 [i]f it cannot be a crime to have an irresistible compulsion to use narcotics . . . I do not see how it can  
3 constitutionally be a crime to yield to such a compulsion. Punishing an addict for using drugs convicts  
4 for addiction under a different name. Distinguishing between the two crimes is like forbidding criminal  
conviction for being sick with flu or epilepsy but permitting punishment for running a fever or having  
a convulsion.

5 *Powell*, 392 U.S. at 548–49. (White, J., concurring). Rather, “[t]he proper subject of inquiry is  
6 whether volitional acts brought about the ‘condition’ and whether those acts are sufficiently  
7 proximate to the ‘condition’ for it to be permissible to impose penal sanctions on the ‘condition.’”

8 *Powell*, 392 U.S. at 550 n.2 (White, J., concurring). Because the defendant in *Powell* could have  
9 gotten drunk in the privacy of his own home, his act of going into public was sufficiently proximate  
10 to the condition to permit penal sanction. Justice White added an important caveat to his proximate  
11 cause analysis when it came to homelessness:

12  
13 for all practical purposes the public streets may be home for these unfortunates, not because their  
14 disease compels them to be there, but because, drunk or sober, they have no place else to go and no  
15 place else to be when they are drinking . . . For some of these alcoholics I would think a showing could  
be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is  
also impossible. As applied to them this statute is in effect a law which bans a single act for which they  
may not be convicted under the Eighth Amendment—the act of getting drunk.

16 *Powell*, 392 U.S. at 551. Justice White’s position is consistent with the *Powell* dissenters who quoted  
17 and agreed with his standard. See *Powell*, 392 U.S. at 568 n.31. Thus, following *Robinson* and the  
18 opinion of five justices in *Powell*, the state cannot criminalize certain conduct that results from the  
19 mere state of being. See also *Bowers v. Hardwick*, 478 U.S. 186, 202 N.2 (1986) (Blackmun, J.,  
20 dissenting) (quoting and endorsing Justice White’s test in *Powell* in discussing whether the Eighth  
21 Amendment prevents a state from criminalizing homosexual acts).

22  
23 Posterity has largely sided with Justice White’s interpretation of *Robinson* when it comes to  
24 issues of homelessness. See *Jones v. City of Los Angeles*, 444 F.3d 1118, 1137 (9th Cir.2006)  
25 (holding unconstitutional a Los Angeles statute that made it illegal to sit, lay, or sleep on the streets  
26

1 of Los Angeles, explicitly adopting Justice White's analysis) *vacated on other grounds*, 505 F.3d  
 2 1006 (2007); *Wheeler v. Goodman*, 306 F.Supp. 58, 59 n.1, 62, 66 (W.D.N.C. 1969) (holding  
 3 unconstitutional under *Robinson* a statute making it a crime to be able bodied, but having no  
 4 property or other means of livelihood), *vacated on other grounds*, 401 U.S. 987 (1971); *Goldman v.*  
 5 *Knecht*, 295 F.Supp. 897, 899 N.2, 908 (D. Colo. 1969) (striking down Colorado vagrancy law under  
 6 *Robinson*); *State v. Wicks*, No. Z711742 & Z711743, 6 (Or. Mult. Cir. Ct. Sept. 28, 2000) (adopting  
 7 Justice White's concurrence and holding that Portland's camping ordinance is unconstitutional as  
 8 applied to homelessness). What these cases establish is that a state may not make "it an offense to be  
 9 idle, indigent, or homeless in public places. Nor may the state criminalize conduct that is an  
 10 unavoidable consequence of being homeless." *See Jones*, 444 F.3d at 1137.

11  
 12 Here, criminalizing homelessness and the unavoidable consequences of being homeless is  
 13 exactly what the Portland camping ordinance does. The ordinance states:

14 A. As used in this Section:

15 1. "To camp" means to set up, or to remain in or at a campsite, for the purpose of establishing or  
 16 maintaining a temporary place to live.

17 2. "Campsite" means any place where any bedding, sleeping bag, or other sleeping matter, or any stove  
 18 or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent,  
 19 lean-to, shack, or any other structure, or any vehicle or part thereof.

20 B. It is unlawful for any person to camp in or upon any public property or public right of way, unless  
 21 otherwise specifically authorized by this Code or by declaration by the Mayor in emergency  
 22 circumstances.

23 C. The violation of this Section is punishable, upon conviction, by a fine of not more than \$100 or by  
 24 imprisonment for a period not to exceed 30 days or both.

25 PCC 14A.50.020. Under the ordinance, any person who sets up a sleeping bag, blankets, or other  
 26 "sleeping matter" that is a temporary place to live is in violation of the ordinance. Yet, it is

impossible to separate the fact of being homeless from the necessary 'acts' that go with it, such as  
 sleeping. The act of sleeping or eating in a shelter away from the elements, cannot be considered  
 intentional, avoidable conduct. This conduct is ordinary activity required to sustain life. Due to the fact  
 that they are homeless, persons seek out shelter to perform these daily routines. Yet the City considers  
 this location to be a campsite if the homeless person maintains any bedding. The homeless are being  
 punished for behavior indistinguishable from the mere fact that they are homeless.

1  
2 *Wicks*, No. Z711742 & Z711743 at 6 (where father and son were charged with violating the  
3 ordinance for camping in a camper on a public street) (attached as exhibit A). Ms. Barrett has been  
4 homeless since her arrival in Portland several years ago. She must sleep and carry on the normal  
5 functions of life somewhere, simply as a part of “being.” Simply directing Ms. Barrett to a shelter is  
6 not an answer. For the years 2012-2013 it was estimated that there were 425 year-round beds, 161  
7 additional winter beds, and 677 emergency beds available year-round. *See* Winter Shelter and  
8 Services for Persons Experiencing Homelessness in Portland & Multnomah County, Oregon 2013-  
9 2013, *available at* <https://www.portlandoregon.gov/phb/article/440980>. As of 2013, the estimated  
10 number of homeless adults who are unsheltered stands at 1,895. *See* 2013 Point-In-Time Count of  
11 Homelessness In Portland/Multnomah County, Oregon, at 15 *available at*  
12 <https://www.portlandoregon.gov/phb/article/451470>. There are far more homeless individuals than  
13 beds available. Yet, whenever those individuals set up a bedroll anywhere in the city they are in  
14 violation of the ordinance. And although it is true that at one point the actions that led Ms. Barrett to  
15 being homeless could be said to be voluntary, the same could be said for the narcotics addict in  
16 *Robinson*. Because the ordinance criminalizes conduct that is necessary for homeless individuals to  
17 simply live, it criminalizes status and is unconstitutional. As a result any order given by police, or  
18 trespass that is related to camping is unlawful and unconstitutional.

21 **II. Enforcement Of The City Ordinance Violates Equal Protection And Impedes The**  
22 **Homeless’ Constitutional Right To Travel**

23 Equal protection requires that people similarly situated be treated alike. *Tennessee v. Lane*,  
24 541 U.S. 509, 522 (2004). Although the rational basis test is general applied under an equal  
25 protection analysis, when a suspect class is involved or “there is an infringement of a fundamental  
26

1 right, strict scrutiny is the proper test.” *Wicks*, Z711742 & Z711743 at 8 (citing *City of Cleburne v.*  
 2 *Cleburne Living Center*, 473 U.S. 432, 439 (1985)).

3 The right to travel is a fundamental constitutional right. *Attorney General of New York v.*  
 4 *Soto-Lopez et al.*, 476 U.S. 898, 902–03 (1986). Oregon has extended this right to intrastate travel.  
 5 *Josephine County School District No. 7 v. Oregon School Activities Association*, 15 Or App 185, 196  
 6 (1973). Often the right to travel is impaired through an “indirect manner of burdening.” *Soto-Lopez*,  
 7 476 U.S. at 903.  
 8

9 As Judge Gallagher noted in *Wicks*, “PCC 14.08.250<sup>3</sup> effectively restricts the homeless’ right  
 10 to travel.” *Wicks*, Z711742 & Z711743 at 8. Homeless individuals carry all of their belongings with  
 11 them, including bedding, clothes, and items for food preparation, essentially “the basic necessities of  
 12 life.” *Wicks* at 8. If a homeless individual is traveling through Portland, under PCC 14.08.250 he is  
 13 not permitted to stop without being violation of the ordinance. “By denying defendant the ability to  
 14 partake in simple necessities of life, the ordinance restricts their freedom of movement.” *Wicks*,  
 15 Z711742 & Z711743 at 9.  
 16

17 Because the ordinance burdens the homeless’ fundamental right to travel, strict scrutiny  
 18 applies. There must be a compelling government interest and the regulation is narrowly tailored to  
 19

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20 <sup>3</sup> PCC 14.08.250 was the predecessor to the current camping ordinance and states:

A. As used in this Section:

1. “To camp” means to set up, or to remain in or at a campsite.

2. “Campsite” means any place where any bedding, sleeping bag, or other sleeping matter, or any stove  
 22 or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent,  
 23 lean-to, shack, or any other structure, or any vehicle or part thereof.

B. It is unlawful for any person to camp in or upon any sidewalk, street, alley, lane, public right of way,  
 24 or any other place to which the general public has access, or under any bridgeway or viaduct, unless  
 25 otherwise specifically authorized by this Code or by declaration by the Mayor in emergency  
 26 circumstances.

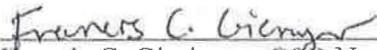
C. The violation of this Section is punishable, upon conviction, by a fine of not more than \$100 or by  
 imprisonment for a period not to exceed 30 days or both.

1 meet that interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). "Protecting  
 2 the health and safety of . . . citizens of [Portland] may very well be compelling, there are less  
 3 restrictive means to address the problem." *Wicks*, Z711742 & Z711743 at 10. Like the Wicks', who  
 4 found themselves living out of a camper, Ms. Barrett was living on the streets because she was  
 5 unable to obtain housing. Instead of charging Ms. Barrett with camping and then interfering with a  
 6 police officer for failure to comply, essentially charging an A misdemeanor for conduct that under  
 7 the ordinance would lead to C level punishment, *see* 14A.50.020 (punishment of up to \$100 or up 30  
 8 days in jail), the city and the Portland Police Bureau could have explored what other services were  
 9 available to Ms. Barrett, i.e. how long the waiting list is for certain services, what was the status of  
 10 beds in the city. Here, the officers made no such inquiries. Because the ordinance is not narrowly  
 11 tailored and burdens a fundamental right, it is unconstitutional.  
 12

#### 13 CONCLUSION

14  
 15 Because the Portland City Code ordinance on camping violates Article I, Section 16 of the  
 16 Oregon Constitution, the Eighth Amendment of the U.S. Constitution as applied to the states through  
 17 the Fourteenth Amendment, and the Due Process Clause of the Fourteenth Amendment, the  
 18 ordinance is unconstitutional. Any charges that result from the ordinance or order related to that  
 19 ordinance must be dismissed.  
 20

21 DATED this 4<sup>th</sup> day of December, 2014.

22   
 23 Francis C. Gieringer, OSB No. 143242  
 24 Attorney for Defendant

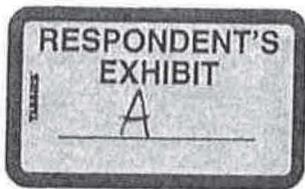
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 26 Sara S. Mulroy, OSB No. 084274  
 Attorney for Defendant

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CERTIFICATE OF SERVICE

I certify that on December 4, 2014, I or a representative of my office served the within: MOTION TO DISMISS on the attorney of record for plaintiff by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in charge thereof, at Portland, OR.

  
METROPOLITAN PUBLIC DEFENDERS

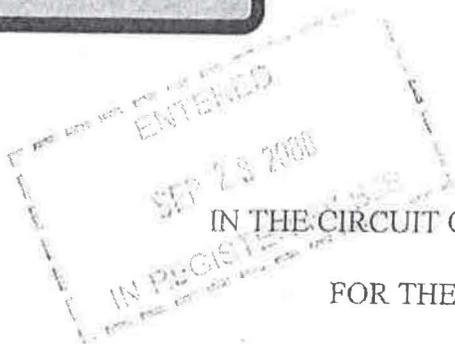


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SEP 28 2000

FILED 4th JUDICIAL DISTRICT

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON )  
 Plaintiff, )  
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 v )  
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 NORMAN D. WICKS, SR. and )  
 NORMAN D. WICKS, JR. )  
 Defendants, )  
 )  
 )

Case No. Z711742 & Z711743

**OPINION AND ORDER  
GRANTING DEFENDANTS'  
MOTION TO HOLD PORTLAND'S  
ANTI-CAMPING ORDINANCE  
UNCONSTITUTIONAL**

**INTRODUCTION**

This case came before this Court on June 14, 2000. Defendants, Norman D. Wicks, Sr. and Norman D. Wicks, Jr. were cited for a violation of the City's anti-camping ordinance, Portland City Code, Title 14, 14.08.250, on February 10, 2000. Defendants argue that enforcement of the ordinance against the homeless constitutes cruel and unusual punishment, violates the equal protection clause of the 14<sup>th</sup> Amendment, and impedes their right to travel.

**FACTS**

A resident in a NE Portland neighborhood called the police to complain about a vehicle that had been parked on a public street, in various locations, on and off for a number of days. The police arrived at the location and contacted defendants, who were located in the camper portion of their vehicle. Defendants had bedding, a stove and cooking utensils in the camper. The police did not

inquire as to how long defendants had been parked at that location. Defendants testified that they had been out conducting their business during the day and had been parked in that location only for an hour or so. Defendants do admit to parking in various locations in that area each evening and then leaving in the mornings to run their computer parts recycling business.

Defendants had maintained a place to live until sometime in 1995, when they were evicted from their home by a new owner. Norman Wicks, Sr. receives Supplemental Security Income each month due to a disability, having been diagnosed as suffering from Post Traumatic Stress Disorder (PTSD). Norman Wicks, Jr. earns some money running the computer business out of his truck. The two have been unable to obtain permanent housing and have been living out of their truck off and on since 1995. Defendants have had difficulty in locating permanent housing due to the substantial costs involved in moving into a new residence, especially given their low income, and the difficulty locating § 8 housing due to Mr. Wicks, Sr.'s past felony convictions.

Expert testimony was offered regarding the general shortage of beds available to the homeless, and the weather conditions at that time in February.

#### **APPLICATION OF THE ORDINANCE**

PCC 14.08.250 provides:

(A) As used in this Section:

- (1) "to camp" means to set up, or to remain in or at, a campsite.
- (2) "campsite" means any place where any bedding, sleeping bag, or other

2- OPINION AND ORDER GRANTING DEFENDANTS' MOTION

sleeping matter, or any stove or fire, is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

(B) It is unlawful for any person to camp in or upon any sidewalk, street, alley, lane, public right of way, or any other place to which the general public has access, or under any bridgeway or viaduct, unless otherwise specifically authorized by this Code or by declaration by the Mayor in emergency circumstances.

(C) The violation of this Section is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment for a period not to exceed 30 days or both.

The ordinance has been interpreted to include the added requirement that the defendant has “exhibited a ‘purpose of maintaining a temporary place to live.’” City of Portland v. Johnson, 59 Or App 647, 651 P2d 1384 rev den 294 Or 492 (1983). This requirement is said to “modify and limit the definition of ‘campsite’ and ‘camping.’” Id.

Despite the common understanding of what constitutes a campsite, nevertheless under the ordinance Defendants’ truck is a campsite by definition. This is so because defendants store all of their belongings in the truck and they have nowhere else to reside. The fact that defendants are homeless necessitates that they carry their property with them at all times, including that needed to conduct essential daily living requirements. This includes bedding materials and utensils to prepare meals. Anytime defendants remain in their vehicle, they are located in a campsite. If they have nowhere else to reside, they are necessarily in violation of the city ordinance.

### ENFORCEMENT OF THE ORDINANCE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT

The ordinance is unconstitutional as applied to the homeless under both Article I §16 of the

3- OPINION AND ORDER GRANTING DEFENDANTS’ MOTION

Oregon Constitution<sup>1</sup> and the 8<sup>th</sup> Amendment of the United States Constitution<sup>2</sup>.

A state may not punish a person merely for status. Robinson v State of California, 370 U.S. 660 (1962). In *Robinson*, the state of California made it a criminal offense for a person to be addicted to narcotics. The Court held that it was cruel and unusual punishment in violation of the Fourteenth Amendment to punish a person based on his/her status as a narcotics addict. *Id.* Defendants argue that Portland's ordinance similarly punishes the status of being homeless. The City argues that being homeless is a condition, not a status. The City also contends that "'homelessness' is not a status like age and gender." Brief of Amicus - City of Portland at 15. One must not confuse immutable characteristics such as age and gender, which may be considered a suspect classification, with status, which the Supreme Court has held to include such circumstances as drug addiction.

Status was clarified in Powell v State of Texas, 392 U.S. 514 (1968). In *Powell*, the defendant was convicted of being in violation of a statute making it a crime to be intoxicated in a public place. The defendant argued that he was being punished for his status of being a chronic alcoholic, claiming this was impermissible under *Robinson*. The Court upheld the statute stating

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<sup>1</sup>Article I, §16 provides "Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense . . ." Or Const Art. I, §16.

<sup>2</sup>The 8<sup>th</sup> Amendment provides "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S.C.A. Const. Amendment. VIII. The Eighth Amendment is made applicable to the states by the Fourteenth Amendment. Billings v. Gates 323 Or. 167, 169 n.6 (1996).

that the defendant was not convicted for his status as an alcoholic, but rather for his conduct after drinking -- being in public. The Court found “[t]he State of Texas thus has not sought to punish a mere status, as California did in *Robinson*; nor has it attempted to regulate appellant’s behavior in the privacy of his own home.” *Id.* at 532.

The court is influenced by Justice White’s concurrence, where he discussed that his opinion may have been different had the defendant been homeless. “The fact remains that some chronic alcoholics must drink and hence must drink somewhere. Although many chronics have homes, many others do not. . . . For some of these alcoholics I would think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment -- the act of getting drunk.” *Id.* at 551.

In Oregon, it was held that a dangerous offender statute permissibly enhanced the sentence of the defendant who had been diagnosed with a severe personality disorder. *State v. Caughey*, 89 Or App 605 (1988). The court held that the defendant was not being punished for his status of having a personality disorder, but rather “[i]t merely reflects the legislative recognition that a person who has a severe personality disorder that causes him to commit dangerous crimes is less amenable to rehabilitation.” *Id.* at 607.

In light of both Oregon and federal law, the court must determine if PCC 14.08.250 is punishing defendants for their status of being homeless, or for their conduct, distinguishable from the fact

that they are homeless.<sup>3</sup>

The court finds it impossible to separate the fact of being homeless from the necessary ‘acts’ that go with it, such as sleeping. The act of sleeping or eating in a shelter away from the elements, cannot be considered intentional, avoidable conduct. This conduct is ordinary activity required to sustain life. Due to the fact that they are homeless, persons seek out shelter to perform these daily routines. Yet the City considers this location to be a campsite if the homeless person maintains any bedding. The homeless are being punished for behavior indistinguishable from the mere fact that they are homeless. Therefore, those without homes are being punished for the status of being homeless.

There is a distinction between those homeless who have a place to maintain their possessions, such as a vehicle or a lean-to, and those homeless less fortunate who carry their bedding materials with them and choose a different spot to sleep on any given night. The court does not believe those particular homeless individuals could be found in violation of this ordinance, due to the added requirement of “exhibiting a ‘purpose of maintaining a temporary place to live.’”<sup>4</sup>

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<sup>3</sup>The court does not agree with the city’s position that it must be determined whether homelessness is a status or a condition. That appears to be a matter of semantics. Rather, the court must determine if it is the status or the *conduct* that is being punished.

<sup>4</sup>Although the ordinance does not require the use of a shelter for the location to be considered a campsite, the court believes the ordinance applies only to those ‘campsites’ that are sufficiently stationary for a period of time to display the added the requirement of *Johnson*. *Johnson* held that the requirement of “maintaining a temporary place to live” effectively excluded from violation such conduct as sleeping in line to buy concert tickets or to obtain a good location to watch the Rose Festival parade. *Johnson* at 650. If camping out over night for these purposes does not express a sufficient intent to maintain a temporary place to live, than a

The set of circumstances before us can be distinguished from *Powell* and *Caughey*. In *Powell*, the defendant was not punished for being a chronic alcoholic, but rather for choosing to place himself in a public setting after becoming intoxicated. In *Caughey*, the defendant was found to be dangerous and less amenable to rehabilitation. Here, defendants were merely found to be in possession of bedding materials in an area where they intended to sleep -- a basic requirement of sustaining life.

The City argues that status is something one has no control over. After discussing *Pottinger*,<sup>5</sup> the City footnotes the proposition that homelessness may derive from voluntary acts, suggesting that the person has put himself in the position of being homeless and therefore cannot claim it to be a status. This court does not accept the notion that the life decisions of an individual, albeit seemingly voluntary decisions, necessarily deprive that person of the status of being homeless.

Consider *Robinson*, where it was held that a person may not be punished for the status of being a drug addict. Although the Court in *Robinson* did discuss possible circumstances when drug addiction could be involuntary, such as a newborn addicted from the time of birth and a patient using medically prescribed narcotics, *Id.* at 667 n.9, it is clear that many addicts become addicted to narcotics by making voluntary decisions at the beginning of the addiction. The fact that Robinson once chose to pick up a needle did not foreclose him from attacking a statute unfairly

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homeless person sleeping in a doorway for one night as well does not express that intent.

<sup>5</sup>*Pottinger v City of Miami*, 810 F. Supp. 1551 (1992).

punishing him for the arguably inevitable result down the road -- that he is now an addict.

**ENFORCEMENT OF THE ORDINANCE VIOLATES EQUAL PROTECTION AND  
IMPEDES THE HOMELESS' CONSTITUTIONAL RIGHT TO TRAVEL**

Equal protection requires that those individuals similarly situated are treated alike. City of Cleburne v Cleburne Living Center, 473 U.S. 432, 439 (1985). The rational basis test is applied when considering laws under an equal protection analysis. However, when a suspect class is involved, or there is an infringement of a fundamental right, strict scrutiny is the proper test to be applied. Id. at 440.

The right to travel has long been considered a fundamental constitutional right. Attorney General of New York v. Soto-Lopez et al., 476 U.S. 898 (1986). Oregon extends this right to include intrastate travel in addition to interstate travel. Josephine County School District No. 7 v. Oregon School Activities Association, 15 Or. App. 185, 515 P.2d 431 (1973). It is not uncommon for the infringement on the right to travel to be an indirect impairment of that right. "Our right-to-migrate cases have principally involved . . . [an] indirect manner of burdening the right." Soto-Lopez at 903.

PCC 14.08.250 effectively restricts the homeless' right to travel. The homeless carry their belongings with them, or store them in a location to which they have access. Those belongings necessarily include the tools required to participate in the basic necessities of life -- bedding for sleeping and a stove for food preparation. If a homeless person is traveling through our city, or traveling within our city looking for work and a permanent place to reside, he is not allowed to

8- OPINION AND ORDER GRANTING DEFENDANTS' MOTION

remain in his vehicle or lean-to without being in violation of the ordinance. By denying defendants the ability to partake in simple necessities of life, the ordinance restricts their freedom of movement.<sup>6</sup> Homeless choosing to travel through our city are not allowed to stop without being in violation. Those homeless who are trying to make a life in the city are in constant violation.<sup>7</sup>

The fact that a number of the homeless in our city are in the midst of traveling was recognized at the hearings regarding passage of the ordinance. "We have found in surveying those that are involved in the camping out, that the majority of them, the preponderance of them are in transit through the City of Portland to somewhere else, or newly arrived here." Deputy Chief Gary Haines of the Portland Police Bureau, Minutes of May 28, 1981, Reel 4579, p.830-831.

The court has found that the ordinance burdens the homeless' fundamental right to travel. The court must now consider whether the ordinance is necessary to further a compelling state interest.<sup>8</sup> In *Johnson*, the court cites language from the preamble of the ordinance regarding its

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<sup>6</sup>"As the Supreme Court explained, laws penalize travel if they deny a person a 'necessity of life,' such as free medical care. [cite omitted]. Similarly, preventing homeless individuals from performing activities that are 'necessities of life,' such as sleeping, in any public place when they have nowhere else to go effectively penalizes migration." *Pottinger* at 1580.

<sup>7</sup>The court is not impressed with the City's argument that defendants' right to travel is not impaired because they are demanding a right to 'stay put.' Brief of Amicus - City of Portland at 8. Defendants' only wish is to be able to participate in ordinary actions, such as eating, sleeping, or to remain within the shelter of their vehicle, without being cited for violation of a city ordinance.

<sup>8</sup>Due to the fact that a fundamental right is implicated, the court disagrees with the city's assessment that the rational basis test should be applied. "Of course, regardless of the label we

purpose. "The Council finds . . . [t]hat such persons [remaining at campsites], by such actions, are creating unsafe and unsanitary living situations which pose a threat to the peace, health and safety of themselves and other citizens of the City." Johnson at 650.

Although protecting the health and safety of the citizens of this city may very well be compelling, there are less restrictive means to address the problem. The Wicks found themselves living out of their car due to their inability to find adequate and affordable housing. Rather than slapping a homeless person with a citation for maintaining life in a public place, the city could first explore avenues of providing sufficient housing for all individuals. Adequate services should also be in place to help individuals find housing and jobs. Expert testimony was offered at trial regarding the insufficient number of beds available to the homeless, particularly in the winter months. The safety and cleanliness of some of these shelters were also considered. "[E]ven where there is available space in a shelter, it may not be a viable alternative 'if, as is likely, the shelter is dangerous, drug infested, crime-ridden, or especially unsanitary. . . . Giving one the option of sleeping in a space where one's health and possessions are seriously endangered provides no more choice than does the option of arrest and prosecution.'" Pottinger at 1580.

There are a great number of alternatives regarding housing, job training, mental health services, etc. that should be put in place to both minimize the effect of homelessness, and eliminate homelessness altogether, before our City resorts to arresting individuals for sleeping and eating in

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place on our analysis -- right to migrate or equal protection -- once we find a burden on the right to migrate the standard of review is the same. Laws which burden that right must be necessary to further a compelling state interest." Soto-Lopez at 905 n.4.

10- OPINION AND ORDER GRANTING DEFENDANTS' MOTION

the only locations available to them.

### CONCLUSION

Individuals without a home must carry what belongings are necessary to survive, such as bedding and food, with them at all times, or store them in place to which they have access. The place where these belongings are kept is by law deemed to be a campsite. Every time a homeless person remains at that location, he is in violation. Those who carry their belongings on their person and move about day to day, however, are not in violation; they have not exhibited the required intent of 'maintaining a temporary place to live.'

The anti-camping city ordinance is unconstitutional as applied to homeless in violation of the 8<sup>th</sup> Amendment of the United States Constitution and Article I Section 16 of the Oregon Constitution. Those without homes are impermissibly punished for the status of being homeless. Performing such life sustaining acts as sleeping with bedding is a necessary action for someone without a home. This act of sleeping is not conduct that can be separated from the fact of the individual's status of being homeless. Portland's anti-camping ordinance punishes the status of being homeless.

The ordinance also violates equal protection and the fundamental right to travel. By denying homeless the opportunity to possess their belongings with them while traveling throughout the city, they are being denied the basic necessities required for daily living. This infringes on the homeless' ability to travel freely. Restrictions on a fundamental right must be necessary to

further a compelling purpose to comport with the Constitution. Although the City's purpose may very well be compelling, i.e. to protect the safety and welfare of all its citizens, there are less intrusive means available to achieve the same purpose. Therefore the ordinance violates the homeless' equal protection and constitutional right to travel.

The ordinance is hereby found to be unconstitutional and defendants are found to be not guilty.

Dated this 27<sup>th</sup> day of September, 2000.

  
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Honorable Stephen L. Gallagher, Jr.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON,	)	Nos.
	)	14-CR-10631
Plaintiff,	)	14-CR-14443
	)	14-CR-16019
vs.	)	14-CR-17841
	)	14-CR-20088
ALEXANDRA CHANEL BARRETT,	)	14-CR-24192
	)	14-CR-20918
Defendant.	)	14-CR-20285
		14-CR-20924

**DEFENDANT’S REPLY**

One Hour Oral Argument Requested  
(UTCRC 4.050)

Defendant moves this court for an order dismissing the charges listed below as they stem from Portland City Code ordinance 14A.50.020, which as applied to Ms. Barrett, is cruel and unusual punishment, violates the Equal Protection Clause of the Fourteenth Amendment, and is overbroad and vague. The charges the defense moves to dismiss are as follows:

- 14-CR-10631
  - Count 1 – Interfering With A Peace, Parole Or Probation Officer
  - Count 2 – Camping Prohibited In Certain Places
  - Count 3 – Interfering With A Peace, Parole Or Probation Officer
  - Count 4 – Camping Prohibited In Certain Places
- 14-CR-14443
  - Count 1 – Interfering With A Peace, Parole Or Probation Officer
  - Count 2 – Camping Prohibited In Certain Places
- 14-CR-16019
  - Count 2 – Criminal Trespass In The Second Degree
- 14-CR-17841
  - Count 1 – Interfering With A Peace Officer
  - Count 2 – Interfering With A Peace Officer
  - Count 3 – Interfering With A Peace Officer

- 1           ○ Count 4 – Interfering With A Peace Officer
- 2           ○ Count 5 – Interfering With A Peace Officer
- 3       • 14-CR-20088
  - 4           ○ Count 1 – Criminal Trespass In The Second Degree
- 5       • 14-CR-24192
  - 6           ○ Count 1 – Criminal Trespass In The Second Degree
- 7       • 14-CR-20918
  - 8           ○ Citation – Sidewalk Obstruction
- 9       • 14-CR-20285
  - 10           ○ Citation – Sidewalk Obstruction
- 11       • 14-CR-20924
  - 12           ○ Citation – Camping on Public Property
- 13       • 14-CR-32814
  - 14           ○ Criminal Trespass In The Second Degree
- 15       • 15-CR-00103
  - 16           ○ Offensive Littering
- 17       • 14-VI-04508
  - 18           ○ Citation – Sidewalk Obstruction

19 Pursuant to UTCR 4.050, defendant requests oral argument and official court reporting  
20 services, and anticipates this motion will take approximately one hour for argument.

#### 21 EXPECTED STIPULATED FACTS<sup>1</sup>

22 On May 23, 2014, Ms. Alexandra Chanel Barrett, a member of the homeless community  
23 residing in downtown Portland, was arrested by Portland Police Officer McCormick at Chapman

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24 <sup>1</sup> At the time the court set the briefing schedule on this issue, it instructed the parties to confer regarding whether there  
25 are facts that we could agree to for purposes of the motion only. As of the filing of this motion, DDA Sherwood has not  
26 yet agreed (or disagreed) to the following facts, but the defense expects that some version of the facts set forth below will  
be agreed upon by the time of the motion hearing on January 23, 2015. The facts are taken from the charging documents  
and police reports and are for purposes of this motion only.

1 Square Park for violating the City camping ordinance and for Interfering with a Peace Officer  
 2 (“IPO”).<sup>2</sup> The IPO charge resulted from Ms. Barrett’s alleged failure to comply with Officer  
 3 McCormick’s verbal order of 5/22/14 for her to not camp on any public sidewalk.

4  
 5 On June 20, 2014, Portland Police Officer Sanders arrested Ms. Barrett in Chapman Square  
 6 for IPO, Camping Prohibited.<sup>3</sup> Like the 5/23 IPO, the IPO charge was based on Ms. Barrett’s alleged  
 7 failure to comply with Officer McCormick’s verbal order of June 3, 2014, to not camp in the City of  
 8 Portland.

9 On July 24, 2014, Officer Sanders again arrested Ms. Barrett at Chapman Square for IPO,  
 10 Camping Prohibited, and Resisting Arrest.<sup>4</sup> The IPO resulted from Ms. Barrett’s alleged non-  
 11 compliance with an order issued by Officer Sanders. The IPO resulted from Ms. Barrett’s alleged  
 12 non-compliance with an order issued by Officer Sanders, who at some earlier date warned her about  
 13 camping on the sidewalk near Chapman Park.  
 14

15 On August 7, 2014, Portland Police Officer Crooker arrested for Criminal Trespass II for  
 16 entering Chapman Park and for IPO for moving towards an officer.<sup>5</sup> The Trespass charge was based  
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18 <sup>2</sup> Interfering with a peace officer is defined as:

19 (1) A person commits the crime of interfering with a peace officer or parole and probation officer if the  
 20 person, knowing that another person is a peace officer or a parole and probation officer . . . :

21 (b) Refuses to obey a lawful order by the peace officer or parole and probation officer.

22 ORS 162.247.

23 <sup>3</sup> Officers also charged Ms. Barrett with Possession of a controlled Substance, Methamphetamine, which is the subject of  
 24 a separate motion to suppress, filed on November 19, 2014, and which will be argued at the time set for trial, which is  
 currently scheduled to begin on March 2, 2015.

25 <sup>4</sup> The Resisting Arrest charge is not included as one of the charges that the defense seeks to have dismissed as part of  
 this motion.

26 <sup>5</sup> This is the only non-camping IPO that Ms. Barrett has been charged with. The defense does not seek to have this

1 on an exclusion order issued when Ms. Barrett was arrested on June 20th.

2 On August 19, 2014, Officer McCormick cited Ms. Barrett for sidewalk obstruction and  
3 ordered her to not camp in the City of Portland at any time.

4 On August 20, 2014, Officer Crooker again cited Ms. Barrett for camping. Later that same  
5 day, Officer McCormick cited Ms. Barrett for camping and ordered her to not camp in the City of  
6 Portland at any time, at any place. Around the same time, Sergeant Engstrom cited Ms. Barrett for  
7 sidewalk obstruction.

8 On August 22, 2014, Officer McCormick arrested Ms. Barrett and charged her with five  
9 counts of IPO. One for being in Chapman Park on August 19, allegedly in defiance of a verbal order  
10 issued by Officer McCormick. Two for being in Chapman Park on August 20, contrary to Officer  
11 McCormick's verbal order of August 19 that Ms. Barrett not camp in Portland at any time. One for  
12 Ms. Barrett being in Chapman Park on August 21 against Officer McCormick's verbal order of  
13 August 19 and August 20. Finally, one for Ms. Barrett being in Chapman Park on August 22, again  
14 in alleged violation of Officer McCormick's prior orders to not camp anywhere in Portland.  
15

16 On September 9, 2014, Officer Engstrom arrested Ms. Barrett and charged her with Criminal  
17 Trespass II for entering Chapman Park in alleged defiance of an exclusion order issued by Ranger  
18 Turner on August 13, which itself was issued in response to Ms. Barrett's camping in Chapman Park  
19 on May 23 and June 20.  
20

21 On October 9, 2014, Portland Police Officer Taylor arrested Ms. Barrett for Criminal  
22 Trespass II while Ms. Barrett was under the Burnside Bridge after having allegedly seen Ms. Barrett  
23 enter Chapman Square earlier that day.  
24

25 On December 12, 2014, Officer Sanders issued Ms. Barrett citations for Sidewalk  
26 charge dismissed as part of this motion.

1 Obstructions and Offensive Littering after Ms. Barrett had moved from an alleged campsite under  
 2 the Burnside Bridge and left behind a scrap of cardboard.<sup>6</sup>

3 On December 28, 2014, Portland Police Officer Doran Ms. Barrett was arrested for Criminal  
 4 Trespass II for trespassing on County property after she was found sleeping near the steps of the  
 5 Multnomah County Detention Center. She was also charged with Criminal Mischief for urinating in  
 6 a police car after telling officers that she had to pee.<sup>7</sup>

## 8 ARGUMENT

### 9 **I. Introduction**

10 Ms. Barrett argues that the Court should grant her demurrer for the following reasons: (1)  
 11 Ms. Barrett has standing under both Article 1, section 16, of the Oregon Constitution and the Eighth  
 12 Amendment of the United States Constitution to challenge the constitutionality of Portland's  
 13 camping ordinance; (2) The camping ordinance, as applied to Ms. Barrett, constitutes cruel and  
 14 unusual punishment because it targets conduct that is inseparable from Ms. Barrett's homeless  
 15 status; (3) The camping ordinance violates the Equal Protection clause of the Fourteenth  
 16 Amendment of the Federal Constitution by infringing on Ms. Barrett's right to assemble, right to  
 17 travel, and right to associate; and (4) The camping ordinance is both overbroad and vague. Given  
 18 these reasons, and that charges listed above all stem from Ms. Barrett's camping, Ms. Barrett asks  
 19 this court to dismiss the counts listed above.  
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 23 <sup>6</sup> These cases (14-VI-04508, the sidewalk obstruction citation and 15-CR-00103, the offensive littering criminal charge)  
 24 have not yet been joined with the ones listed in the caption, but the parties expect that they will eventually be joined for  
 trial and have therefor included them in this motion.

25 <sup>7</sup> This case (14-CR-32814) also has not been joined with the others, but the parties expect that it will eventually be  
 26 joined for trial and so include it in this motion. The defense does not seek to dismiss the Criminal Mischief charge as part  
 of this motion.

1           **II. Ms. Barrett Has Standing To Bring Her Demurrer<sup>8</sup> On Federal and State Grounds**

2           The Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States  
3 Constitution

4                   circumscribes the criminal process in three ways . . . it limits the kind of punishment that can be  
5                   imposed on those convicted of crimes . . . second, it proscribes punishment grossly disproportionate to  
6                   the severity of the crime . . . and third, it imposes substantive limits on what can be made criminal and  
                  punished as such.

7           *Ingraham v. Wright*, 430 U.S. 651, 667 (1977) (citing *Robinson v. California*, 370 U.S. 660 (1962)).

8           Under *Ingraham*'s third prong, courts have recognized that homeless individuals have standing to  
9 challenge city ordinances that punish camping. *See, e.g., Jones v. City of Los Angeles*, 444 F.3d  
10 1118, 1128–30 (9th Cir. 2006) *vacated on other grounds*, 505 F.3d 1006 (9th Cir. 2007) (“all that is  
11 required for standing is some direct injury—for example, a deprivation of property, such as a fine, or  
12 a deprivation of liberty, such as an arrest—resulting from the plaintiff’s subjection to the criminal  
13 process due to violating the statute.”); *Lehr v. City of Sacramento*, 624 F.Supp.2d 1218, 1226 (E.D.  
14 Cal. 2009) (standing where homeless plaintiffs had been cited or convicted of camping); *Anderson v.*  
15 *City of Portland*, No. CIV 08-1447-AA, 2009 WL 2386056, at \*4 (D. Or. July 31, 2009) (finding  
16 that homeless plaintiffs had standing where they faced the “threat of criminal sanctions and the loss  
17 of personal property,” as well as potential exclusion from parks, and exposure to future violations for  
18 sleeping outside). Here, we have exactly the situation discussed by the Ninth Circuit in *Jones*. Ms.  
19 Barrett was arrested multiple times for allegedly violating a city ordinance and the accompanying  
20 orders issued by the police. As such, Ms. Barrett has standing under the Eighth Amendment.  
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23           Similarly, Ms. Barrett has standing under Article I, section 16, of the Oregon Constitution.  
24 Like the U.S. Constitution, Article I, section 16, “focuses on prohibited methods of punishment.”  
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26           <sup>8</sup> Defense counsel acknowledged on December 8, 2014, that the original motion, captioned as a motion to dismiss, was  
                  incorrectly captioned. It should have been labeled a demurrer under ORS 135.630(4).

1 *State v. Wheeler*, 343 Or 652, 665 (2007).

2 Furthermore, Article I, section 16 cannot limit the protections already bestowed by the Federal  
3 Constitution. It is a well-established principle of federalism that the U.S. Constitution is the supreme  
4 law of the land and, where applied to the states, overrides any contrary provisions. *See Testa v. Katt*,  
5 330 U.S. 386, 391 (1947) (“... the Constitution and the laws passed pursuant to it are the supreme  
6 laws of the land, binding alike upon states, courts, and the people, ‘any[]thing in the Constitution or  
7 Laws of any State to the contrary notwithstanding.’”); *see also Robinson*, 370 U.S. at 666 (applying  
8 the Cruel and Unusual Punishment Clause to the states). For Article I, section 16, of the Oregon  
9 Constitution to avoid preemption, it must recognize, at minimum, the protections afforded by the  
10 U.S. Constitution. The Oregon Supreme Court has tacitly acknowledged that the Oregon  
11 Constitution confers the same benefits as the U.S. Constitution when it comes to cruel and unusual  
12 punishment. *See Wheeler*, 343 Or at 662 n.5 (noting that the Court did not need to discuss  
13 prohibitions against certain types of punishment because the defendant’s issue did not fall under the  
14 cruel and unusual punishment clause of either the Oregon or federal constitutions). Because, at  
15 minimum, the Cruel and Unusual Punishment Clause of the Oregon Constitution must cover the  
16 same grounds as the U.S. Constitution, Ms. Barrett has standing under both the federal and state  
17 constitutions to challenge the ordinance as constituting cruel and unusual punishment.  
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### 21 **III. The Camping Ordinance is Unconstitutional as Applied to Ms. Barrett as it** 22 **Constitutes Cruel and Unusual Punishment**

23 As discussed in some length in Ms. Barrett’s initial motion, the rule synthesized from the  
24 Supreme Court’s decisions in *Robinson* and *Powell v. State of Tex.*, 392 U.S. 514 (1968) is that a  
25 person cannot be punished for conduct inextricably bound to that person’s status. *See Def. Motion to*  
26 *Dismiss* at 5–8. In its response, the government cites to two cases for the proposition that the City

1 ordinance at issue here does not punish Ms. Barrett’s status as a homeless person, but only for her  
2 conduct of camping in Portland, *Anderson v. City of Portland*, Civ. No. 09-1447-AA, 2011 WL  
3 6130598 (D. Or. Dec. 7, 2011) and *Lehr v. City of Sacramento*, 624 F.Supp.2d 1218 (E. Dist. Cal.  
4 2009). *Anderson* is distinguishable from the instant case whereas the *Lehr* opinion has come under  
5 criticism in recent years.  
6

7 In *Anderson*, Judge Aiken expanded the requirements of *Robinson* and *Powell*. Instead of  
8 determining whether criminalizing status resulted from targeting “involuntary conduct that is  
9 derivative of status,” the district court judge determined that a second inquiry was also required;  
10 namely that “resolution of plaintiffs’ Eighth Amendment claim requires consideration of the nature  
11 of the prohibited conduct and whether and to what degree defendants’ enforcement of the camping  
12 and temporary structure ordinances criminalizes ‘conduct that society has an interest in preventing.’”  
13 *Anderson*, 2011 WL 6130598 at \*2. Unlike the plaintiffs in *Anderson*, who failed to bring examples  
14 of the specific conduct that was being punished under the ordinance, here, each count is an example  
15 of Ms. Barrett being punished for the innocuous conduct of sleeping outside, conduct that Ms.  
16 Barrett cannot avoid as part of her homelessness. With regard to the charges that the defense seeks to  
17 dismiss as part of this motion, there are no allegations that Ms. Barrett was creating a disturbance or  
18 that she threatened other people or caused other people to fear for their safety. This case goes beyond  
19 citing to the number of homeless people arrested in violation of the camping ordinance, as happened  
20 in *Anderson*. Rather, each one of Ms. Barrett’s cases represents an instance where Ms. Barrett is  
21 being punished for activity that is inseparable from her status as a homeless woman.  
22  
23

24 Although the *Lehr* opinion is on point, it has been criticized in the years since its issuance.  
25 See e.g., *State v. Adams*, 91 So. 3d 724, 753 (Ala. Crim. App. 2010) (declining to follow the  
26

1 reasoning in *Lehr* and opting instead to follow the *Jones* analysis to conclude that an Alabama  
2 statute requiring sex-offenders to provide an address was cruel and unusual punishment as applied to  
3 homeless individuals); *see also* Def. Motion to Dismiss 5–8 (discussing the *Jones* analysis of  
4 *Robinson* and *Powell*). Indeed, unlike the court in *Lehr*, many jurisdictions realized that an  
5 individual cannot be punished for conduct that is inseparable from their status. As the Northern  
6 District of Texas noted:  
7

8 Eighth Amendment scrutiny on the facts before the Court does not bode well for the  
9 sleeping in public ordinance. It should be a foregone conclusion that maintaining  
10 human life requires certain acts, among them being the consuming of nourishment,  
11 breathing and sleeping. The evidence . . . demonstrates that at any given time there  
12 are persons in Dallas who have no place to go, who could not find shelter even if  
13 they wanted to—and many of them do want to—and who would be turned away  
14 from shelters for a variety of reasons. There are not enough beds available at the area  
15 shelters to accommodate the demand. Some persons do not meet particular shelter's  
16 eligibility requirements. For many of those homeless in Dallas, the unavailability of  
17 shelter is not a function of choice; it is not an issue of choosing to remain outdoors  
18 rather than sleep on a shelter's floor because the shelter could not provide a bed that  
19 one found suitable enough . . . for a number of Dallas homeless at this time  
20 homelessness is involuntary and irremediable. They have no place to go other than  
21 the public lands they live on. In other words, they must be in public. And it is also  
22 clear that they must sleep. Although sleeping is an act rather than a status, the status  
23 of being could clearly not be criminalized under *Robinson*. Because being does not  
24 exist without sleeping, criminalizing the latter necessarily punishes the homeless for  
25 their status as homeless, a status forcing them to be in public. The Court concludes  
26 that it is clear, then, that the sleeping in public ordinance as applied against the  
homeless is unconstitutional.

27 *See, e.g., Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994), *rev'd on other grounds*,  
28 61 F.3d 442 (5th Cir. 1995). Similarly, the Southern District of Florida struck down a Miami  
29 camping ban, noting that citizens

30 . . . become homeless due to a variety of factors that are beyond their control. In  
31 addition, plaintiffs do not have the choice, much less the luxury, of being in the  
32 privacy of their own homes. Because of the unavailability of low-income housing or  
33 alternative shelter, plaintiffs have no choice but to conduct involuntary, life-  
34 sustaining activities in public places. The harmless conduct for which they are  
35 arrested is inseparable from their involuntary condition of being homeless.  
36 Consequently, arresting homeless people for harmless acts they are forced to perform  
in public effectively punishes them for being homeless. This effect is no different  
from the vagrancy ordinances which courts struck because they punished 'innocent

1 victims of misfortune' and made a crime of being "unemployed, without funds, and  
2 in a public place." . . . arresting the homeless for harmless, involuntary, life-  
sustaining acts such as sleeping, sitting or eating in public is cruel and unusual.

3 *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992) (citing *Headley v. Selkowitz*,  
4 171 So.2d 368, 370 (Fla. 1965) (concluding that vagrancy statute should not be applied to vagrants  
5 "who are not such either by choice or intentional conduct); *Parker v. Municipal Judge*, 83 Nev. 214,  
6 427 P.2d 642, 644 (1967) (noting that "[i]t is simply not a crime to be unemployed, without funds,  
7 and in a public place. To punish the unfortunate for this circumstance debases society."); *Wheeler v.*  
8 *Goodman*, 306 F.Supp. 58 (W.D.N.C. 1969) *vacated on other grounds*, 401 U.S. 987 (1971)  
9 (concluding that vagrancy laws were unconstitutional because they punished mere status)).

11 Even if courts across the nation are divided on the issue of whether a person is liable for  
12 conduct that is inseparable from their status of being homeless, that is not the case in Oregon.  
13 Although the issue has yet to be taken up by the Oregon Court of Appeals, as mentioned in Ms.  
14 Barrett's previous filing, at least two Oregon courts have determined that a camping ordinance, as  
15 applied to homeless individuals, is cruel and unusual punishment. *See State v. Wicks*, Nos. 2711742  
16 & 2711743, (Ore. Cir. Ct. Multnomah County 2000); *Voeller v. The City of the Dalles*, No.  
17 CC02155 (Or. Cir. Ct. Wasco County 2003) (holding that an ordinance modeled on the Portland  
18 ordinance at issue in *Wicks* was unconstitutional).<sup>9</sup>

20 The severity of the Portland ordinance differs little, in practice, from the ordinance that was  
21 held unconstitutional in *Jones*. In that case, the City of Los Angeles could convict someone of  
22 camping who sits, lies, or sleeps in a public way at any time of day. *Jones v. City of Los Angeles*,

24 <sup>9</sup> Although the government cites to *City of Portland v. Johnson*, 59 Or App 647, 651 (1982), the decision of that court  
25 was limited to an overbreadth and vagueness discussion and did not touch upon the Eighth Amendment or Article I,  
26 section 16 of the Oregon Constitution. Furthermore, as discussed below, that decision used a test for overbreadth and  
vagueness that was subsequently altered in *State v. Ausmus*, 336 Or 493 (2003).

1 444 F.3d 1118, 1123 (9th Cir. 2006). Here, the Portland ordinance is little different in its application.  
2 Although it is true that the Portland ordinance requires someone to set up or maintain a campsite, the  
3 definition of campsite is so broad as to extend to the laying down of a simple blanket on the ground:  
4 “[c]ampsite’ means any place where any bedding, sleeping bag, or other sleeping matter, or any  
5 stove or fire is placed, established, or maintained, whether or not such place incorporates the use of  
6 any tent, lean-to, shack or any other structure, or any vehicle or part thereof.” PCC 14A.50.020.  
7 Thus, according to the government’s reading, so long as a person sleeps on bare concrete or the dirt  
8 of a park without any “sleeping matter” she’s not in violation of the ordinance. In practice that is a  
9 difference without a distinction. Whether it is in Los Angeles or Portland, a person would not choose  
10 to just sleep or rest on the bare, hard ground without at least some sort of minimal protection from  
11 the elements. Thus the distinction between the Portland and Los Angeles ordinances is really no  
12 distinction at all. They both punish the same activity.  
13  
14

15 The government is incorrect when it states that the camping ordinance does not inflict  
16 punishment. It does, equal to a C level misdemeanor. PCC 14A.50.020(c), which applies to conduct  
17 charged under the City Code, states that “[t]he violation of this Section is punishable, upon  
18 conviction, by a fine of not more than \$100 or by imprisonment for a period not to exceed 30 days or  
19 both.”  
20

21 Because punishing someone for conduct that is inseparable from their status *is* punishing a  
22 person for their status, especially when that conduct is innocuous and tied to the very act of being,  
23 Ms. Barrett asks this court to find that the Portland camping ordinance is unconstitutional as applied  
24 to her. As a homeless woman, as in *Johnson* and *Pottinger*, there are certain activities that she must  
25 do in public that are necessary to staying alive. This includes eating and sleeping. She can do this  
26

1 nowhere else, but on the public lands in Portland.

2  
3 **IV. As Applied to Ms. Barrett, the Portland Camping Ordinance Violates The Equal**  
4 **Protection Clause of the Federal Constitution**

5 As noted in Ms. Barrett’s initial filing, under the Equal Protection Clause of the Federal  
6 Constitution, where there is an infringement of a fundamental, personal right, strict scrutiny is the  
7 proper test. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Here, there are  
8 several fundamental rights that the ordinance infringes on: (1) Ms. Barrett’s freedom to Assemble,  
9 and (2) her freedom to travel.

10 *1. Freedom to Assemble*

11 The freedom to assemble and petition one’s leaders is guaranteed by Article I, section 26 of  
12 the Oregon Constitution and the First Amendment of the United States Constitution. Article I,  
13 section 26, states that “[n]o law shall be passed restraining any of the inhabitants of the State from  
14 assembling together in a peaceable manner to consult for their common good . . .”). The First  
15 Amendment states that “Congress shall make no law respecting an establishment of religion, or  
16 prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right  
17 of the people peaceable to assemble, and to petition the Government for a redress of grievances.”<sup>10</sup>  
18 *See also State v. Ausmus*, 336 Or 493, 507 (2003) (“[s]imply put, congregating with others in a  
19 manner that does not cause harm, even when coupled with one of the mental states proscribed in the  
20 [disorderly conduct] statute, is conduct that Article I, section 8 and 26, protects.”).

21 Ms. Barrett does not have the means to petition her government that are available to other  
22 citizens. She does not own a computer or a phone. Nor does she have ready access to social  
23 networking sites. Even keeping pens and paper for a letter to the editor, her congressmen, or city

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25  
26 <sup>10</sup> Applied to the states in *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

1 commissioner is difficult due to the cost of postage and keeping such materials dry. Rather, the  
2 principal way that Ms. Barrett expresses her dissatisfaction with Portland’s current homeless policy  
3 is simply by being visible. By camping in Chapman Square, Ms. Barrett shows the people who walk  
4 through the civic buildings that border Chapman Square the plight of the homeless citizens of the  
5 City of Portland. *See Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (assuming  
6 that camping to illustrate the plight of the homeless was expressive conduct). In *Clark*, the Court  
7 upheld a sleeping restriction in certain “memorial-core” parks as a reasonable time, place, and  
8 manner restriction on the freedom of speech that was narrowly tailored to preventing damage to  
9 certain parks heavily used by tourists. *See Clark*, 468 U.S. at 297–98 (1984). But part of the Court’s  
10 reasoning was that the National Park Service did not seek to prevent sleeping generally in national  
11 parks. *See id* at 295 (“[t]o the contrary, the Park Service neither attempts to ban sleeping generally  
12 nor to ban it everywhere in the parks. It has established areas for camping and forbids it elsewhere,  
13 including Lafayette Park and the Mall.”). The camping ordinance at issue here has no such  
14 limitations. It is a blanket ban on camping in the City of Portland. *See PCC 14A. 050.020*.

## 17 2. *Freedom to Travel*

18 The freedom to travel intrastate is a fundamental right. *See Josephine County School District*  
19 *No. 7 v. OSAA*, 15 Or App 185, 197–98 (1973) (establishing that the freedom of movement in  
20 intrastate travel is a fundamental right guaranteed by Article I, section 20 of the Oregon Constitution  
21 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution).  
22 *See also Chicago v. Morales*, 527 US 41, 61–62 (1999) (“The freedom to loiter for innocent  
23 purposes is part of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment.  
24  
25  
26

1 We have expressly identified this right to move from one place to another according to inclination as  
2 an attribute of personal liberty protected by the Constitution.”).

3         Being homeless is akin to loitering, except that unlike the defendants in *Morales*, Ms. Barrett  
4 has no home to return to. Wherever she goes she can be considered loitering. Yet, like in *Morales*,  
5 Ms. Barrett was doing nothing that would give rise to suspicion of other criminal activity, besides  
6 the alleged camping. In fact, her loitering was for the most innocent of purposes, sleeping and being  
7 with a community with whom she felt comfortable. Other courts that have considered similar cases  
8 have come to the same conclusion. In *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir.  
9 2009), four homeless plaintiffs were challenging the enforcement of a St. Petersburg criminal  
10 trespass ordinance after they had been arrested in a local park. The Eleventh Circuit concluded that  
11 “[p]laintiffs have a constitutionally protected liberty interest to be in parks or on other city lands of  
12 their choosing that are open to the public generally.” 658 F.3d at 1266 (*citing Morales*, 527 U.S. at  
13 54); *see also Johnson v. Board of Police Com’rs*, 351 F. Supp. 2d 929, 949 (E.D. Mo. 2004) (finding  
14 that arresting homeless individuals when they were sitting, eating, and resting in public places in  
15 downtown St. Louis, was a violation of the right to travel).

16         Thus, for a city to constitutionally burden this right, the policy must be “narrowly tailored to  
17 a compelling government interest.” *Catron*, 658 F.3d at 1270–71. Although the City of Portland  
18 might have a compelling interest in the safety and sanitation of its parks and sidewalks, the camping  
19 ordinance is not narrowly tailored to that interest. There are a variety of other avenues the City can  
20 pursue to ensure the safety and cleanliness of its parks. First, it can provide true outreach services to  
21 the homeless community, which consist more than a little booklet that is not even produced by the  
22 city, but by Street Roots, an independent newspaper. It can invest in shelter space, or open up  
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1 emergency shelter space. It can arrest individuals for disorderly conduct, when they are truly being  
 2 disruptive. *Cf. Metropolitan Council Inc. v. Safir*, 99 F. Supp. 2d 438, 445–46, 449–50 (S.D.N.Y.  
 3 2000) (finding that a blanket ban on camping was not narrowly tailored to its interest in regulating  
 4 sleeping on public sidewalks, especially when it could still arrest individuals for disorderly conduct  
 5 when they acted in a manner that obstructed traffic). Yet, in Ms. Barrett’s case, police are arresting  
 6 her for the innocuous conduct of camping. There are no charges of disorderly conduct. There are no  
 7 allegations that she was being disruptive before being confronted by the police. There are no  
 8 allegations that her camp contained hazardous material. There were no containers of urine, or open  
 9 containers of food. One police report mentioned bugs under her cardboard padding, yet the same  
 10 could be said for a picnic blanket. Because the ordinance is not narrowly tailored to a compelling  
 11 government interest, it is a violation of the Equal Protection Clause of the Fourteenth Amendment.  
 12

## 13 **V. The Portland City Ordinance is Vague and Overbroad**<sup>11</sup>

### 14 *1. Overbreadth*

15  
 16 The state cites to *City of Portland v. Johnson*, which held that a former camping ordinance  
 17 was not overbroad or vague. *Johnson* cited to *State v. Robertson*, 293 Or 402 (1982) for its definition  
 18 of overbreadth and vagueness in finding that the Portland camping ordinance did not touch on a  
 19 constitutional right. *See Johnson*, 59 Or App 647, 649 (1982). However, the Oregon Supreme Court  
 20 has since found that there is a constitutionally protected right to gather and congregate so long such  
 21 action does not cause harm. *See State v. Ausmus*, 336 Or 493, 507 (2003) (“[s]imply put,  
 22 congregating with others in a manner that does not cause harm, even when coupled with one of the  
 23 mental states proscribed in the statute, is conduct that Article I, sections 8 and 26, protects.”)  
 24

25  
 26 <sup>11</sup> Though the issue of overbreadth and vagueness was not raised initially by the defendant, the government raised the  
 issue when it cited to *City of Portland v. Johnson*, so the defense responds to that issue in this reply.

1           It was under the *Ausmus* standard that Judge Litzenberger struck down a Portland sidewalk  
2 obstruction ordinance in 2004. Similar to the situation in the instant case, Judge Litzenberger found  
3 that the sidewalk obstruction ordinance, which prohibited “any person to obstruct any sidewalk . . .  
4 or to place or cause to be placed, or permit thereon, anything that obstructs or interferes with the  
5 normal flow of pedestrian or vehicular traffic,” prohibited people from assembling and associating  
6 when no harm was caused or threatened. *See Oregon v. Kurylowicz*, No. 03-07-50223 at 2 (Or. Cir.  
7 Ct. 2004). Judge Litzenberger found that Article I, section 8 and 26 of the Oregon Constitution and  
8 the First Amendment of the U.S. Constitution conferred the right to peaceably assemble and that the  
9 government could not criminalize “the mere gathering of two or more persons when they are not  
10 harming anyone else.” *Oregon v. Kurylowicz*, No. 03-07-50223 at 8 (*citing Ausmus*, 336 Or at 506  
11 and *City of Eugene v. Lee*, 177 Or App 492, 503 (2001)); *see also State v. Perkins*, No. Z1757240 at  
12 3 (“[defendant] was cited for ‘sidewalk obstruction,’ not for engaging in some other type of conduct.  
13 In the absence of proof that she intended to create a public inconvenience, annoyance or alarm, or  
14 recklessly created a risk of doing so, the conduct for which she was cited is permitted by state law,  
15 but prohibited by the ordinance.”); *cf. State v. Robison*, 202 Or App 237, 244 (2005) (“[t]he  
16 legislative history thus makes clear the legislature's intention to preserve from criminal liability  
17 conduct that obstructs vehicular or pedestrian traffic in the absence of proof that the actor either  
18 intended to create public inconveniences, annoyance, or alarm, or recklessly created a risk of doing  
19 so.”). Here, there are no allegations that Ms. Barrett was harming anyone or threatened to harm  
20 anyone. She was engaged in completely innocuous conduct. Because the ordinance burdens the  
21 constitutional right to assemble and associate as mentioned above, it is unconstitutionally overbroad.  
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## 26           2. *Vagueness*

1  
2 A criminal statute is vague when it creates “a serious danger of unequal application of  
3 [the] statute.” *State v. Cornell*, 304 Or 27, 32 (1987). Article I, section 20, of the Oregon  
4 Constitution serves as a limitation “upon legislative action for the protection of the individual from  
5 arbitrary or capricious legislation.” *City of Klamath Falls v. Winters*, 289 Or 757, 775 (1980)  
6 (quoting *State v. Pirkey*, 203 Or 697, 703 (1955)). Here, the statute as applied to homelessness is  
7 flawed. The sole discretion as to whether the crime has been committed rests with the police officer.  
8 *But see Delgado v. Souders*, 334 Or 122, 145–46 (2002) (“Article I, section 20, requires that a  
9 governmental decision to offer or deny some advantage to a person ‘be made by permissible criteria  
10 and consistently applied.’ . . . Article I, section 20, prohibits ‘[h]aphazard’ or ‘standardless’  
11 administration of laws.”). The haphazard application of the laws is exactly what is going on here.  
12 Officers are determining who to arrest for non-compliance with a directive not to camp. Here, on the  
13 days Ms. Barrett was arrested there were other individuals in Chapman Park, engaged in the exact  
14 same behavior, yet officers decided not to arrest those campers. Indeed those

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16  
17 generally implicated by the imprecise terms of the ordinance—poor people,  
18 nonconformists, dissenters, idlers—may be required to comport themselves  
19 according to the life style deemed appropriate by the . . . police and the courts.  
20 Where, as here, there are no standards governing the exercise of the discretion  
21 granted by the ordinance, the scheme permits and encourages an arbitrary and  
discriminatory enforcement of the law. It furnishes a convenient tool for ‘harsh and  
discriminatory enforcement by local prosecuting officials, against particular groups  
deemed to merit their displeasure.’ It results in a regime in which the poor and the  
unpopular are permitted to ‘stand on a public sidewalk . . . only at the whim of any  
police officer.’

22 *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972) (internal citations omitted). Indeed,  
23 there is no guidance provided for how officers should determine what constitutes a temporary living  
24 structure. It was exactly this problem that Judge Litzenger encountered in 2004 when she noted  
25 that the sidewalk ordinance, just as the camping ordinance now, “does not require an officer to give  
26

1 an order to disperse before issuing a criminal citation, it permits persons to be arrested before an  
2 order to abate is given and there is no reasonableness requirement to protect against unfettered  
3 enforcement of the ordinance.” *Oregon v. Kurylowicz*, No. 03-07-50223 at 14. When it comes to the  
4 homeless population such disparate application of the camping ordinance renders it impermissibly  
5 vague.  
6

7 CONCLUSION

8 For the above reasons, Ms. Barrett asks this court to find the Portland camping ordinance  
9 unconstitutional as applied to her and dismiss the charges listed above.  
10

11 DATED this 20th day of January, 2015.  
12

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CERTIFICATE OF SERVICE

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I certify that on January 20, 2014, I or a representative of my office served the within:  
DEFENDANT’S REPLY on the attorney of record for plaintiff by emailing a courtesy copy to DDA  
Andrew Sherwood.

s/ Francis C. Gieringer  
METROPOLITAN PUBLIC DEFENDERS

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
 FOR MULTNOMAH COUNTY

STATE OF OREGON,	)	Case Nos. 14CR10631
	)	14CR14443
	)	14CR16019
Plaintiff,	)	14CR17841
	)	14CR20088
v.	)	14CR24192
	)	14CR20918
ALEXANDRA CHANEL BARRETT,	)	14CR20285
	)	14CR20924
Defendant.	)	14CR32814
	)	15CR00103
	)	14VI04508
	)	
	)	OPINION

**INTRODUCTION**

Defendant was arrested on multiple occasions and charged with several offenses, including unlawful camping in the City of Portland (City) in violation of Portland City Code (PCC) 14A.50.020 (the Ordinance).<sup>1</sup> Defendant has filed a demurrer/motion to dismiss the charges, contending that the Ordinance, as applied to defendant, violates Article I, section 16, of the Oregon Constitution; the Eighth Amendment to the United States Constitution; and the Fourteenth Amendment’s Equal Protection Clause.

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<sup>1</sup> The Ordinance provides that it is “unlawful for any person to camp in or upon public property or public right of way” unless otherwise authorized by law. PCC 14A.50.020B. “To camp” means “to set up, or remain in or at a campsite, for the purpose of establishing or maintaining a temporary place to live.” PCC 14A.50.20A(1). A “campsite” is defined as “any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.” PCC 14A.50.020A(2). A violation of the Ordinance is punishable by a fine of not more than \$100, imprisonment of not more than 30 days, or both. PCC 14A.50.020C.

Defendant contends that the Ordinance violates the constitutional prohibitions against cruel and unusual punishment because it punishes her for the status of being homeless. According to defendant, such punishment violates Article I, section 16, of the Oregon Constitution and the Eighth Amendment under *Robinson v. California*, 370 US 660 (1962), and *Powell v. Texas*, 392 US 514 (1968). Defendant contends that strict scrutiny applies to her Equal Protection challenge because the Ordinance violates defendant's fundamental rights to travel and assemble. Finally, defendant contends that the Ordinance is unconstitutionally vague and overbroad.

For the reasons explained in this opinion, the court concludes as follows: (1) applying the Ordinance to defendant does not violate the prohibitions on cruel and unusual punishment in Article I, section 16, of the Oregon Constitution and in the Eighth Amendment; (2) the Ordinance does not violate the Equal Protection Clause because it is rationally related to legitimate governmental interests; (3) strict scrutiny does not apply because the Ordinance does not infringe upon defendant's fundamental rights to travel or assemble; and (4) the Ordinance is not unconstitutionally vague or overbroad. Accordingly, defendant's demurrer/motion to dismiss is DENIED.

## FACTS

The parties stipulated to facts relating to defendant's arrests for purposes of this motion. The stipulated facts are set forth in defendant's reply memorandum at pp. 2-5. The charges at issue stem from defendant's arrests on the following dates: May 23, 2014; June 20, 2014; July 24, 2014; August 7, 2014; August 19, 2014; August 20, 2014; August 22, 2014; September 9, 2014; October 9, 2014; December 12, 2014; and December 28, 2014.<sup>2</sup> Many of the arrests were

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<sup>2</sup> The stipulated facts include facts relating to citations on December 12, 2014 that are at issue in case nos. 14VI04508 and 15CR00103, and an arrest on December 28, 2014 that is at issue in case no. 14CR32814. Those

for camping in Chapman Square in downtown Portland. The State does not dispute that defendant was homeless at the time of these arrests.

## DISCUSSION AND ANALYSIS

### **Cruel and Unusual Punishment—Eighth Amendment and Article I, section 16**

Defendant contends that the Ordinance violates the prohibition on cruel and unusual punishment in Article I, section 16, of the Oregon Constitution and the Eighth Amendment. Defendant does not present separate arguments under the state and federal constitutions, relying instead on the Supreme Court's decisions in *Robinson* and *Powell* in support of her arguments under both constitutional provisions.

In *Robinson*, the Supreme Court reversed a conviction for violating a California statute that made it a crime for a person to be addicted to the use of narcotics. The Court observed that the statute did not punish the use of narcotics, the purchase, sale or possession of narcotics, or any antisocial or disorderly behavior resulting from the use of narcotics. Nor did the law purport to provide or require medical treatment. Rather, the statute made the "status" of narcotic addiction a criminal offense, for which the offender may be prosecuted at any time before he reforms. As a result, under this law, a person could be continuously guilty of an offense, whether or not he had ever used or possessed any narcotics in California, and whether or not he had been guilty of any other criminal conduct in the state. The Court noted that narcotic addiction was "an illness which may be contracted innocently or involuntarily," and held that "a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment." *Robinson*, 370 US at 667.

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cases have not been joined with the present cases, but the parties stipulated that the court's ruling on defendant's demurrer should apply to those cases as well.

In *Powell*, the successor case to *Robinson*, the Supreme Court affirmed a conviction for being intoxicated in public. Justice Marshall's plurality opinion explained that *Robinson* did not apply because defendant Powell

“was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion. The State of Texas thus has not sought to punish a mere status, as California did in *Robinson*; nor has it attempted to regulate appellant's behavior in the privacy of his own home. Rather, it has imposed upon appellant a criminal sanction for public behavior which may create substantial health and safety hazards, both for appellant and for members of the general public, and which offends the moral and esthetic sensibilities of a large segment of the community. This seems a far cry from convicting one for being an addict, being a chronic alcoholic, being ‘mentally ill, or a leper.’”

*Powell*, 392 US at 532 (Marshall, J., plurality) (quoting *Robinson*, 370 US at 666). Justice Marshall explained that

“*Robinson* so viewed brings this Court but a very small way into the substantive criminal law. And unless *Robinson* is so viewed it is difficult to see any limiting principle that would serve to prevent this Court from becoming, under the aegis of the Cruel and Unusual Punishment Clause the ultimate arbiter of the standards of criminal responsibility, in diverse areas of the criminal law, throughout the country.”

*Id.* at 553. The plurality also rejected the dissent's interpretation of *Robinson* as precluding the imposition of criminal penalties upon a person for being in a condition he is powerless to change.

Rather,

“the entire thrust of *Robinson's* interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms, has committed some *actus reus*. It thus does not deal with the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, ‘involuntary’ or ‘occasioned by a compulsion.’”

*Id.* at 553.

Justice White concurred in the judgment. In his view, if it could not be a crime to have an "irresistible compulsion to use narcotics" in *Robinson*, then an addict's use of narcotics would

also be beyond the reach of the criminal law. *Id.* at 548-49 (White, J., *concurring in the result*). It followed, according to Justice White, that the statute under which Powell was convicted should not be applied to a chronic alcoholic who has a compulsion to drink and nowhere but a public place in which to do so. "As applied to [such alcoholics] this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment—the act of getting drunk." *Id.* at 551. However, Justice White did not believe that Powell's conviction violated the Constitution because Powell made no showing that he was unable to stay off the streets on the night he was arrested. *Id.* at 552-53.

The *Powell* dissent opined that a criminal penalty could not be imposed on a person suffering the disease of chronic alcoholism for a condition—being in a state of intoxication in public—which is characteristic of his disease. *Id.* at 559 (Fortas, J., *dissenting*). Contrary to the plurality, the dissent read *Robinson* to mean that "criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change." *Id.* at 567. Although the statute in *Powell* differed from the statute in *Robinson* by covering more than mere status (being intoxicated and being found in a public place while in that condition), the dissent nevertheless found the same constitutional defect present as in both cases because the defendant was accused of being "in a condition which he had no capacity to change or avoid." *Id.* at 567-68.

In *Ingraham v. Wright*, 430 US 651 (1977), the Supreme Court explained how *Robinson* fits within the Court's analysis of the Cruel and Unusual Punishment Clause. *Ingraham* involved the use of corporal punishment in public schools. The Court first noted that the Eighth Amendment's proscription against cruel and unusual punishment "confirms that it was designed to protect those convicted of crimes." *Id.* at 664. In other words, "the primary purpose of [the clause] has always been considered, and properly so, to be directed at the method or kind of

punishment imposed for the violation of criminal statutes." *Id.* at 667 (quoting *Powell*, 392 US at 531-32 (Marshall, J., plurality). The Court concluded that its Eighth Amendment cases

“recognize that the Cruel and Unusual Punishments Clause circumscribes the criminal process in three ways. First, it limits the kinds of punishment that can be imposed on those convicted of crimes; second, it proscribes punishment grossly disproportionate to the severity of the crime; and third, it imposes substantive limits on what can be made criminal and punished as such.”

*Id.* at 667 (citations omitted). The Court stated that the third limitation—the limitation recognized in *Robinson*—was “to be applied sparingly.” *Id.*

Oregon appellate courts have addressed *Robinson* and the substantive limits the Eighth Amendment imposes on “what can be made criminal and punished as such” in only a few reported cases. In *State v. Caughey*, 89 Or App 605 (1988), the trial court imposed an enhanced sentence based on its finding that defendant suffered from a severe personality disorder that gave him a propensity toward criminal conduct, making him a dangerous offender within the meaning of Oregon’s dangerous offender statute, ORS 161.725. On appeal, defendant argued that imposition of an enhanced sentence “punishes the ‘status’ of suffering a severe personality disorder and thereby violates the prohibition against cruel and unusual punishment contained in Article I, section 16, and the Eighth Amendment.” *Id.* at 607, citing *Robinson*, 370 US 660.

The Court of Appeals disagreed, concluding that the statute “does not punish a person for having a severe personality disorder.” *Id.* at 607. The court explained that the statute “merely reflects the legislative recognition that a person who has a severe personality disorder that causes him to commit dangerous crimes is less amenable to rehabilitation.” *Id.* Thus, the court concluded, the Oregon legislature “could properly determine that, because he is less likely to be rehabilitated during incarceration so that he can be safely released into society, increased incarceration time is necessary for the protection of the public.” *Id.*

In *State v. James*, 3 Or App 539 (1970), the Court of Appeals rejected defendant's contention that his 10-year prison sentence for unlawful possession of heroin constituted cruel and unusual punishment under *Robinson*. The court concluded: "*Robinson* is not controlling here, because the crime of which defendant stands convicted is not the 'status crime' of being a narcotics addict, but the crime of unlawful possession of heroin." *Id.* at 540.

No reported Oregon appellate decision addresses whether the Ordinance, or any analogous camping ordinance, violates the substantive limits the Eighth Amendment places on what is punishable as a crime.<sup>3</sup>

The California Supreme Court addressed the facial validity of the City of Santa Ana's anti-camping ordinance in *Tobe v. City of Santa Ana*, 892 P2d 1145 (Cal 1995).<sup>4</sup> In that case, the court held that the anti-camping ordinance was facially valid, but declined to decide whether and how it might be unconstitutionally applied.<sup>5</sup> The court would not assume that the ordinance would be enforced "against persons who have no alternative to 'camping' or placing camp paraphernalia on public property." *Id.* at 1155, n. 8. The state assured the court that "a necessity defense might be available to 'truly homeless' persons and that prosecutorial discretion would be exercised." *Id.*

After *Tobe*, the California Court of Appeals held in *In re Eichorn*, 69 Cal App 4<sup>th</sup> 382, 81 Cal Rptr 2d 535 (1998), that a defendant charged with violating the City of Santa Ana's anti-

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<sup>3</sup> Defendant cites Judge Gallagher's opinion in *State v. Wicks*, Multnomah County Circuit Court Case Nos. Z711742 and Z711743 (Sept. 27, 2000). Judge Gallagher's opinion is not binding on this court. With respect, this court disagrees with and declines to follow that opinion.

<sup>4</sup> Santa Ana's ordinance stated that it was "unlawful for any person to camp, occupy camp facilities or use camp paraphernalia" in any street, public parking lot, or public area, improved or unimproved. *Tobe*, 892 P2d at 1150 (quoting the ordinance).

<sup>5</sup> The California Supreme Court noted the distinction between a "status" that cannot be punished under the Eighth Amendment and a "condition" that causes conduct that is punishable. 892 P2d at 1166. The court reversed the California Court of Appeals' ruling that the ordinance was unconstitutional on its face because "it is far from clear that none [of the defendants] had alternatives to either the condition of being homeless or the conduct that led to homelessness and to the citations." *Id.* at 1167.

camping ordinance is entitled to raise a “necessity” defense where there was evidence that defendant camped in public “because his alternatives were inadequate and economic forces were primarily to blame for his predicament.” 69 Cal App 4<sup>th</sup> at 390. The court concluded that the ordinance, as applied, did not violate the Eighth Amendment under *Robinson* because the defendant could raise a necessity defense. *Id.* at 391.<sup>6</sup>

Several conclusions follow from the above survey of pertinent case law. The Ordinance, on its face, does not impermissibly punish someone for their homeless status. For a statute or ordinance to be facially unconstitutional, “it must be unconstitutional in all circumstances, *i.e.*, there can be no reasonably likely circumstances in which application of the statute would pass constitutional muster.” *State v. Sutherland*, 329 Or 359, 365 (1999). *See also State v. Christian*, 354 Or 22, 40 (2013) (stating that court’s analysis of a facial challenge to an ordinance “is limited to whether the ordinance is capable of constitutional application in any circumstance”). Here, the Ordinance punishes conduct—camping on public property—not the status of being homeless. On its face, it can be applied in a constitutional manner. For example, the Ordinance prohibits people who are not homeless from camping on public property. Thus, it does not, on its face, impermissibly punish individuals based on their homeless status.

Whether the Ordinance, as applied, impermissibly criminalizes conduct that is the unavoidable consequence of being involuntarily homeless is a more difficult question. A majority of the Supreme Court has never adopted the views of the *Powell* dissenters or Justice White’s concurrence. Instead, the Court subsequently noted that the Eighth Amendment’s limitation on punishing “status” is “to be applied sparingly.” *Ingraham*, 430 US at 667. The

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<sup>6</sup> The “necessity” defense under California law is virtually identical to the “choice of evils” defense available under Oregon law in some cases. *See Eichorn*, 69 Cal App 4<sup>th</sup> at 389 (listing elements of California’s “necessity” defense); ORS 161.200; *State v. O’Neill*, 256 Or App 537, 540-41 (2013) (listing elements of Oregon’s “choice of evils” defense).

appellate courts in Oregon and other courts have generally applied *Robinson* sparingly, declining to extend it to preclude states or local governments from criminalizing conduct that is derivative of status.

Defendant cites one reported appellate decision, *Jones v. City of Los Angeles*, 444 F3d 1118 (9<sup>th</sup> Cir 2006), *vacated* 505 F3d 1006 (2007), in support of her position. That opinion, by a divided panel, was subsequently vacated by the Ninth Circuit. Thus, the panel opinion has no precedential value. *United States v. Joelson*, 7 F3d 174, 178 n 1 (9<sup>th</sup> Cir 1993) (stating that a vacated panel opinion “has no precedential value” but may be considered for its persuasiveness). Moreover, as the dissent in *Jones* points out, the vacated majority opinion was contrary to prior Ninth Circuit precedent. *Jones*, 444 F3d at 1145 (Rymer, J., *dissenting*), citing *United States v. Ayala*, 35 F3d 423 (9<sup>th</sup> Cir 1994); *United States v. Kidder*, 869 F2d 1328 (9<sup>th</sup> Cir 1989); and *United States v. Ritter*, 752 F2d 435 (9<sup>th</sup> Cir 1985). And as the dissent further noted, “[n]either the Supreme Court nor any other circuit court of appeals has ever held that conduct derivative of a status may not be criminalized.” *Jones*, 444 F3d at 1139 (Rymer, J., *dissenting*).

The federal district court opinions on this issue have generally held that similar municipal camping ordinances do not violate the Eighth Amendment. *See, e.g., Ashbaucher v. City of Arcata*, 2010 US Dist LEXIS 126627, \*41 (ND Cal 2010) (holding that Eighth Amendment “does not prohibit ordinances that criminalize conduct such as sleeping or camping outside even though such conduct is beyond each Plaintiff’s control because they are homeless”); *Lehr v. City of Sacramento*, 624 F Supp 2d 1218 (ED Cal 2009) (holding that Sacramento’s anti-camping ordinance does not impermissibly punish homeless status); *Joyce v. City & County of San Francisco*, 846 F Supp 843 (ND Cal 1994) (holding that, even if homelessness is a status, criminalizing acts of sitting, lying or sleeping on public streets does not violate the Eighth

Amendment). *But see Pottinger v. City of Miami*, 810 F Supp 1551 (SD Fla 1992) (holding that arresting homeless individuals for harmless, involuntary conduct may violate the Eighth Amendment).<sup>7</sup>

Both parties cited a civil case, *Anderson v. City of Portland*, 2009 US Dist LEXIS 67519 (D Or 2009), that presented a similar constitutional challenge to the Ordinance. The plaintiffs in *Anderson* brought a civil rights action under 42 USC § 1983, alleging that the Ordinance as applied to the homeless plaintiffs violated the Eighth Amendment. The court denied the City's motion to dismiss, concluding that

“plaintiffs adequately state a claim under the Eighth Amendment, in that they allege that the City's enforcement of the anti-camping and temporary structure ordinances criminalizes them for being homeless and engaging in the involuntary and innocent conduct of sleeping on public property. Given that plaintiffs bring an as-applied challenge, precisely when, where and how the City enforces the anti-camping and temporary structure ordinances requires development of the facts.”

2009 US Dist LEXIS 67519 at \*20. In a later proceeding in the same case, the court denied plaintiffs' motion for summary judgment, concluding:

“Given the legitimate governmental interests of safety and sanitation cited by defendants and the differing interpretations that result from the summary of citations and the manner of their enforcement, plaintiffs do not establish, as a matter of law, that defendants' enforcement actions criminalize status as opposed to conduct in violation of the Eighth Amendment.”

2011 US Dist LEXIS 140728 at \*9.

This court agrees with the *Anderson* court's observation that development of the facts regarding enforcement of the Ordinance as to defendant would be helpful in analyzing

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<sup>7</sup> Defendant cites two other district court opinions in support of the proposition that the Eighth Amendment forbids criminalizing conduct derivative of status, *Goldman v. Knecht*, 295 F Supp 897 (D Colo 1969); and *Wheeler v. Goodman*, 306 F Supp 58 (WD NC 1969), *vacated on other grounds by* 401 US 987 (1971). In both cases, the courts struck down laws that expressly criminalized the status of being a “vagrant” while recognizing that the statutes would have been constitutional if they had instead criminalized conduct. *Goldman*, 295 F Supp at 908; *Wheeler*, 306 F Supp at 64.

defendant's as-applied Eighth Amendment challenge. Even assuming, without deciding, that the Eighth Amendment prevents the City from criminalizing derivative conduct that is an unavoidable consequence of a defendant's involuntary homeless status, dismissing the charges against this defendant is not required. If defendant presents evidence that her homelessness was involuntary and that camping in a public place was an unavoidable consequence of that status, she would be entitled to have the jury consider a "choice of evils" defense to the charges.<sup>8</sup> Because that defense is potentially available, this court concludes, as the California Court of Appeals concluded in *Eichorn*, that the Ordinance, as applied, does not unconstitutionally punish defendant for her homeless status in violation of the constitutional proscriptions against cruel and unusual punishment.

#### **Equal Protection and the Fundamental Rights to Travel and Assemble—14<sup>th</sup> Amendment**

Defendant contends that the Ordinance impermissibly infringes upon her fundamental right to travel, and is therefore subject to strict scrutiny under the Equal Protection Clause. Although not expressly listed in the Constitution, "a right of interstate travel undoubtedly exists." *State v. Berringer*, 234 Or App 665, 671 (2010). A law that infringes on the right to travel "must be supported by a compelling justification." *In re Marriage of Fedorov*, 228 Or App 50, 66 (2009), citing *Shapiro v. Thompson*, 394 US 618, 634 (1969). As the Court of Appeals has noted, the constitutional source of the right to travel "has never been identified definitively" and its contours "are as vague as its source." *Berringer*, 234 Or App at 672. Nevertheless, the Court of Appeals has held that "the right to travel intrastate is a right protected from discriminatory

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<sup>8</sup> Under Oregon law, the "choice of evils" defense applies when there is evidence that: (1) defendant's conduct was necessary to avoid a threatened injury; (2) the threatened injury was imminent; and (3) it was reasonable for the defendant to believe that the threatened injury was greater than the potential injury of her illegal actions. *State v. O'Neill*, 256 Or App at 541; ORS 161.200.

regulation to the same extent” as the right to travel interstate. *Josephine Co. Sch. Dist. v. OSAA*, 15 Or App 185, 196 (1973).

Generally, courts have held that laws imposing residence requirements (or otherwise distinguishing between residents and nonresidents) impermissibly discriminate against nonresidents in violation of their right to travel. *See Berringer*, 234 Or App at 672-73 (summarizing cases). However, the right to travel does not “endow citizens with a ‘right to live or stay where one will.’” *Tobe*, 892 P2d at 1165. Moreover, the recognition of a constitutionally-protected right to travel “does not impose on a state or governmental subdivision the obligation to provide its citizens with the means to enjoy that right.” *Id.*

Here, as in *Tobe*, the Ordinance on its face does not impermissibly discriminate between residents and nonresidents. Nor does it discriminate between homeless and non-homeless individuals. The Ordinance has no impact on the right to travel except insofar as individuals, homeless or otherwise, might be discouraged from traveling to the City because camping in public places within the City is prohibited. That is not enough to show that the Ordinance impermissibly infringes upon the right to travel. For the reasons articulated by the California Supreme Court in *Tobe*, this court concludes that the Ordinance does not infringe upon defendant’s fundamental right to travel.

Defendant further contends that strict scrutiny applies because the Ordinance violates her fundamental right to freedom of assembly. The Oregon Supreme Court recently held in *State v. Babson*, 355 Or 383 (2014), that a Legislative Administration Committee guideline prohibiting overnight use of the steps of the state capitol building did not violate anyone’s constitutional right to freedom of assembly. The court explained that the guideline’s restriction on overnight use of the capitol steps “is not, by its terms, directed at assembling, instructing representatives, or

applying for the redress of grievances. Nor does the text of the guideline expressly or obviously include those rights as an element or proscribed means of causing a targeted harm.” *Id.* at 430.

The same is true here: the Ordinance is directed at camping in public places, not assembling, and it does not include assembling as an element or proscribed means of causing the targeted harm—camping. Under *Babson*, the Ordinance does not violate defendant’s right to freedom of assembly.

Because strict scrutiny does not apply, the Ordinance will satisfy the Equal Protection Clause as long as it is rationally related to a legitimate governmental interest. Defendant does not contend that the Ordinance violates the Equal Protection Clause under the rational basis test. Because the Ordinance is rationally related to the City’s legitimate interests in protecting and preserving public health, safety and welfare, it does not violate the Equal Protection Clause.

### **Vagueness and Overbreadth**

Defendant contends that the Ordinance is unconstitutionally vague and overbroad. In *City of Portland v. Johnson*, 59 Or App 647 (1982), the Court of Appeals held that an earlier version of the City’s anti-camping ordinance was not unconstitutionally vague or overbroad. With respect to the overbreadth challenge, the court noted that, although the ordinance’s “definition of ‘campsite’ is indeed very broad, we must construe the definition in light of the entire ordinance in order to effectuate the intent of the City Council.” *Id.* at 650. The version of the ordinance in effect at that time included a statement of purpose—prohibiting campsites established “for the purpose of maintain a temporary place to live” (*Id.*)—that is now part of the definition of “campsite” in the current version of the ordinance.

The Court of Appeals read that statement of purpose into the definition of “campsite” and concluded that the ordinance, so construed, was “not intended to prohibit the type of activities

that defendant contends are now prohibited by the ordinance, such as picnicking on a blanket in a park, waiting in line for tickets while wrapped on a blanket or watching the Rose Festival parade from a cot or blanket.” *Id.* The court further concluded that the ordinance was not unconstitutionally overbroad because the court “cannot find a ‘constitutionally protected ground’ that is invaded by this ordinance, despite defendant’s imaginative attempts to identify rights that it may impinge upon.” *Id.*

Defendant contends that *Johnson* is not controlling here because the Oregon Supreme Court’s decision in *State v. Ausmus*, 336 Or 493 (2003) changed the law. In *Ausmus*, the court held that one subsection of the disorderly conduct statute was unconstitutionally overbroad because the statute on its face prohibited “congregating with others in a manner that does not cause harm.” *Id.* at 507. The Supreme Court later clarified that, in general, Oregon courts “will not consider a facial challenge to a statute on overbreadth grounds if the statute’s application to protected speech is not traceable to the statute’s express terms.” *State v. Illig-Renn*, 341 Or 228, 236 (2006). The court further explained that “courts may invalidate a statute for facial overbreadth only if the statute proscribes a substantial amount of protected conduct in relation to its legitimate sweep.” *Id.* at 238.

Here, defendant contends that the Ordinance “proscribes a substantial amount of protected conduct”—specifically, defendant’s rights to assemble, travel and associate. However, the Court of Appeals in *Johnson* rejected that argument, concluding that Portland’s anti-camping ordinance did not infringe upon any constitutionally-protected conduct. The Ordinance on its face prohibits camping, not assembling, traveling or association. Any infringement on constitutionally-protected conduct resulting from the application of the Ordinance would not be traceable to its express terms. *Ausmus* and *Illig-Renn* did not change the law in any way that

overrules or undermines *Johnson*. Under *Johnson* (which is binding on this court), the Ordinance is not unconstitutionally overbroad.

With respect to defendant's contention that the Ordinance is unconstitutionally vague, the Court of Appeals in *Johnson* concluded otherwise. The court held that Portland's anti-camping ordinance was not unconstitutionally vague because it was "sufficiently specific that it does not leave the determination of the law to the 'uncontrolled discretion' of judges and juries, or invite 'standardless and unequal application of penal laws, contrary to article I, section 20 of the Oregon Constitution.'" *Johnson*, 59 Or App at 651 (citations and internal quotes omitted).

Defendant contends, despite the court's holding in *Johnson*, that the Ordinance is unconstitutionally vague under current law because it prohibits setting up or remaining in a campsite "for the purpose of establishing or maintaining a temporary place to live" without defining what is meant by "a temporary place to live."

A law may be unconstitutionally vague "if it gives the police, the prosecutor, or the court, uncontrolled or unbridled discretion to punish defendants or to decide what is prohibited, or fails to inform persons subject to it of what conduct on their part will render them liable." *State v. Rogers*, 352 Or 510, 527 (2012), citing *Illig-Renn*, 341 Or at 238-42. A criminal statute "need not define an offense with such precision that a person in every case can determine in advance that specific conduct will be within the statute's reach." *Illig-Renn*, 341 Or at 239, quoting *State v. Graves*, 299 Or 189, 195 (1985). Only a "reasonable degree of certainty" is required. *Id.* The "fair warning" requirement is satisfied if the challenged law would "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly." *Illig-Renn*, 341 Or at 241, quoting *Grayned v. City of Rockford*, 408 US 104, 108 (1972)

In addition, a law may be unconstitutionally vague “if it either contains no identifiable standard, or employs a standard that relies on the shifting and subjective judgments of the persons who are charged with enforcing it.” *Illig-Renn*, 341 Or at 240, citing *Kolender v. Lawson*, 461 US 352, 358 (1983), and *City of Chicago v. Morales*, 527 US 41, 62 (1999). A statute is not unconstitutionally vague if, by its terms, it “leaves nothing to the ad hoc judgment of the individual police officer, judge, or jury but instead, invokes ascertainable standards from an outside source, *i.e.*, the substantive laws of this state.” *Illig-Renn*, 341 Or at 240. The fact that police officers have discretion in deciding whether or not to arrest someone for violating the law does not make a law unconstitutionally vague if the statute itself is not the source of that discretion. *Illig-Renn*, 341 Or at 239, n 5.

As noted above, the Court of Appeals held in *Johnson* that Portland’s anti-camping ordinance is not unconstitutionally vague. That conclusion is binding on this court. Defendant’s only arguments for reaching a contrary result in this case are (1) the Ordinance is unconstitutionally vague under the subsequent Supreme Court decision in *Morales*; and (2) Multnomah County’s recent decision to suspend enforcing the Ordinance to ensure the accuracy of a “homeless street count” demonstrates unconstitutional “haphazard, standardless administration of the law.”

The Supreme Court’s decision in *Morales* does not undermine the Court of Appeals’ decision in *Johnson*. Portland’s anti-camping ordinance is different from the Chicago “Gang Congregation Ordinance” found to be unconstitutionally vague in *Morales*. Chicago’s ordinance applied to people who the police believed to be “criminal street gang members” who loitered in any public place for no apparent purpose. *Morales*, 527 US at 47 (listing the predicates of an offense under Chicago’s ordinance). The Supreme Court noted that Chicago’s ordinance

“contains no *mens rea* requirement, and infringes on constitutionally protected rights.” *Id.* at 55. The Court explained that “the vagueness that dooms [Chicago’s] ordinance is not the product of uncertainty about the normal meaning of ‘loitering,’ but rather about what loitering is covered by the ordinance and what is not.” *Id.* at 57. In short, Chicago had “enacted an ordinance that affords too much discretion to the police and too little notice to citizens who wish to use the public streets.” *Id.* at 64.

The Ordinance here—unlike Chicago’s ordinance—contains a *mens rea* requirement. Setting up or remaining in a campsite violates the Ordinance only if a person engages in that conduct “for the purpose” of establishing or maintaining a temporary place to live. This refers to the person’s intent. Making a criminal violation hinge on a person’s intent invokes ascertainable standards from substantive criminal laws. *See* ORS 161.085(7) (defining “intentionally” or “with intent” for purposes of the criminal code). That is permissible under *Illig-Renn*, 341 Or at 240.

Unlike Chicago’s ordinance, Portland’s ordinance does not infringe upon any constitutionally-protected rights, as explained above, and it prohibits remaining in a specific public place (a campsite) only for a specific purpose—the purpose of establishing or maintaining a temporary place to live. The Ordinance does not suffer from the same uncertainty that doomed Chicago’s ordinance in *Morales*. There is no uncertainty about what camping is covered by the Ordinance and what camping is not—all camping is covered. It is true that police officers have discretion in determining whether to arrest someone who violates the Ordinance. But that is permissible under *Illig-Renn*, 341 Or at 239, n 5, because the Ordinance itself is not the source of the police’s discretion.

The Court of Appeals' conclusion in *Johnson* that the Ordinance is not unconstitutionally vague is binding on this court. Subsequent Oregon and United States Supreme Court decisions have not overruled or undermined *Johnson*. A person of ordinary intelligence would know from the plain meaning of the words used in the Ordinance that camping in public is prohibited by the Ordinance.

The fact that elected officials can temporarily suspend enforcement of the Ordinance to get an accurate count of homeless people living in Portland does not make the Ordinance unconstitutionally vague or overbroad. Under *Johnson*, *Illig-Renn*, and the cases cited in those opinions, the Ordinance is not unconstitutionally overbroad or vague.

### CONCLUSION

Homelessness is a serious problem in Portland and other communities across the nation. Every day, homeless men, women, and children struggle to find food, shelter, clothing, a safe place to sleep. For many people, these basic human needs—many would call them basic human rights—are not being met. The underlying causes of homelessness—poverty, mental illness, drug and alcohol addiction, among others—are often left unaddressed as public policymakers attempt to deal with limited resources, increasing demands for public services, and constituents concerned about “livability” and the effect homelessness has on local businesses, property values, and our community.

The City's anti-camping ordinance is not the solution to this complex problem. Arresting people who are struggling to survive in the streets just because they have no place else to go is not the answer. We must do better than that. But determining the best ways to address this difficult problem is the job of public policymakers, not the courts. This court's only role is to

decide whether the City's anti-camping ordinance violates defendant's constitutional rights in any of the ways she contends.

For the reasons stated in this opinion, based on the record developed at this stage of the proceedings, the court concludes that the Ordinance, as applied to defendant, does not violate Article I, section 16, of the Oregon Constitution, nor does it violate the Eighth Amendment or the Equal Protection Clause of the Fourteenth Amendment. The court further concludes that the Ordinance is not unconstitutionally vague or overbroad. Accordingly, defendant's demurrer/motion to dismiss is DENIED.

Dated: \_\_\_\_\_

Signed: 2/5/2015 08:30 AM

  
\_\_\_\_\_  
Stephen K. Bushong  
Circuit Court Judge



**LAW AND ARGUMENT**

**I. The State Has Failed to Prove The Elements of the IPO Charges That Resulted from the Incidents on May 23, June 20, July 24, August 19, August 20, August 21, and August 22.**

Under ORS 136.445, the court shall grant a motion for judgment of acquittal if “the evidence introduced is such as would not support a verdict against the defendant.” If “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt,” the defendant is entitled to a judgment of acquittal. *State v. King*, 307 Or 332, 339 (1989) (citing *State v. Harris*, 288 Or 703, 721 (1980)).

Interfering with a peace officer, set forth in ORS 162.247, is committed if the person, “knowing that another person is a peace officer or a parole and probation officer as defined in ORS 181.610:

- (a) Intentionally acts in a manner that prevents, or attempts to prevent, a peace officer or parole and probation officer from performing the lawful duties of the officer with regards to another person; or
- (b) Refuses to obey a lawful order by the peace officer or parole and probation officer . . .
- (3) This section does not apply in situations in which the person is engaging in :
  - (a) Activity that would constitute resisting arrest under ORS 162.315 (Resisting Arrest); or
  - (b) Passive resistance.

Therefore, Ms. Barrett is entitled to a judgment of acquittal if no rational trier of fact can find beyond a reasonable doubt that a) Ms. Barrett refused an order, b) the order came from a police officer, c) was lawful, d) Ms. Barrett knew the person issuing the order was an officer, e) the conduct could not be charged as resisting arrest, and f) Ms. Barrett was not engaged in passive resistance.

Here, there are three reasons why no rational trier of fact could find beyond a reasonable doubt that Ms. Barrett interfered with a police officer. First, Ms. Barrett lacked the required mental state to

1 violate ORS 162.247. Second, Ms. Barrett’s conduct was too attenuated from when the orders were  
 2 given. Third, Ms. Barrett was engaged in passive resistance.

3 ***a. Ms. Barrett Lacked the Mens Rea to be Convicted Under ORS 162.247***

4 The Court of Appeals has recently held that ORS 162.247(1)(b) “requires the state to prove  
 5 an intentional mental state for the ‘refuse to obey’ element of the crime.” *State v. Enyeart*, 266 Or  
 6 App \_\_\_, slip op. at 2 (2014). “A person acts with an intentional mental state when the person acts  
 7 ‘with a conscious objective to cause the result or to engage in the conduct so described.’” *Enyeart*,  
 8 266 Or App \_\_\_, slip op. at 2 (quoting ORS 161.085(7)). Thus

9  
 10 ‘refus[ing] to obey’ a lawful order under ORS 162.247(1)(b) means to show or communicate a *positive*  
 11 unwillingness to obey the order. A refusal is more than an accident; it is a positive, that is to say,  
 12 willful expression of a conscious choice. If a hypothetical defendant were physically unable to obey an  
 order, then the defendant would have failed to obey, rather than refused to obey, an order.

13 *Enyeart*, 266 Or App \_\_\_, slip op. at 3. The state has not shown that Ms. Barrett went to  
 14 Chapman Park with the express, positive purpose of defying the orders given by the various  
 15 officers. Rather, all that has been shown is that Ms. Barrett returned to the park to sleep.  
 16 Even if Ms. Barrett knew that doing so would violate an order; that is not sufficient. The state  
 17 must prove that it was her conscious objective to return to Chapman Park for the purpose of  
 18 defying the police order. Furthermore, Ms. Barrett was unable to obey the orders issued by  
 19 the officers. If she attempted to sleep anywhere in the City of Portland she would have been  
 20 in violation of the order. As the Court of Appeals noted, this is failure to comply, it is not  
 21 refusal and it is not conduct penalized by the IPO statute. *Id.*, at 59–60.

22  
 23 ***b. Ms. Barrett’s Conduct was Too Attenuated from the Issuance of the Order To Be***  
 24 ***Interfering.***

25 Second, how the statute is written indicates that it is the counterpart to the resist  
 26 statute. Where resist covers conduct that involves the threatened use of force or violence

1 against an officer to prevent arrest, *see* ORS 162.315(c), the IPO statute covers non-violent  
2 conduct, excluding passive resistance, that would prevent an officer from making an arrest or  
3 carrying out his/her lawful duties. *See* ORS 162.247. It is not meant to cover conduct that  
4 takes place days after the order is given.  
5

6 ***c. Ms. Barrett Was Engaged In Passive Resistance, Activity That Is Not Interfering With A***  
7 ***Police Officer***

8 ORS 162.247 explicitly excludes passive resistance. ORS 162.247(3)(b). Passive  
9 resistance is “specific acts or techniques that are commonly associated with governmental  
10 protest or civil disobedience.” *State v. Patnesky*, 265 Or App 261, 366 (2014) (upholding  
11 arrest for IPO where defendant was working on his car, and not engaged in an act that could  
12 be characterized as an act associated with a protest). This does not mean that “defendant’s  
13 actions was . . . to force concessions from the government; the question is whether defendant  
14 was engaging in an act or technique commonly associated with the kind of protest.”  
15 *Patnesky*, 265 Or App at 366. The legislative history cited by the court in *Patnesky* attests to  
16 this. ““In my community there are a lot of people that want to have passive resistance under  
17 the MLK approach or the Ghandhi approach of just basically being there as a presence but  
18 not doing anything physically the way of waving arms or swinging stuff.” *Patnesky*, 265  
19 Or App at 264 (*quoting* statement of Rep. Prozanski). “So if you were lying down and  
20 officers had to pick you up, that was okay. On the other hand, if they were trying to pick you  
21 up and you started swinging at them . . . that became at least interference.” *Patnesky*, 265 Or  
22 App at 365 (*quoting* statement of Rep. Mannix).  
23  
24  
25  
26

1 Here, Ms. Barrett was engaged in passive resistance. Camping has been seen as a  
2 legitimate form of protest against government policy. *See Clark v. Community for Creative*  
3 *Non-Violence*, 468 U.S. 288, 293 (1984). Indeed, the simple act of merely being present and  
4 refusing to move is one of the most common forms of protesting. Our history is replete with  
5 such examples: the Woolworth Lunch Counter Sit In, the 2011 Sit-in at the Wisconsin State  
6 Capitol, the 2011 Occupy Protests. Indeed, if Ms. Barrett was simply in her sleeping bag at  
7 the time of the IPO charges, and officers had to pick her up to move her, this would explicitly  
8 be passive resistance. Because the conduct that Ms. Barrett engaged in, sleeping near a park  
9 and non-violent verbal protest, that is so closely tied to traditions of government protest, she  
10 was engaged in passive resistance and cannot be found guilty of interfering with a police  
11 officer.  
12

13  
14 ***d. The Government Has Not Provided Evidence that on the Dates Mentioned Above,  
Portland Police Officers Gave Ms. Barrett a Lawful Order***

15 As discussed in more detail in section II(a), ORS 203.079 requires that officers  
16 provide written, posted notice 24 hours before evicting someone from a campsite. No  
17 evidence has been provided that the officers in this case did that. Thus, they provided Ms.  
18 Barrett with no lawful order to not camp in Portland. Subsequently, the Government has  
19 failed to prove this element.  
20

21  
22 **II. No Reasonable Finder of Fact Could Find that the Government Proved All of  
the Elements of Camping Prohibited Beyond A Reasonable Doubt**

23 There are two reasons why the government failed to prove the elements of Camping  
24 Prohibited beyond a reasonable doubt. First, the government failed to show that Ms. Barrett a  
25 written posted notice, in both Spanish and English, was posted twenty-four hours before  
26

1 ordering Ms. Barrett to leave her alleged campsite. Second, the government has failed to  
 2 show that Ms. Barrett set up a camp with the purpose of establishing a temporary place to  
 3 live.

4  
 5 ***a. No Evidence Was Presented That Showed that Officers Conformed with ORS  
 203.077 and ORS 203.079.***

6 The state legislature has promulgated several statutes recognizing the social problem  
 7 of homelessness. The two most relevant statutes are ORS 203.077 and ORS 203.079. The  
 8 former is aspirational. It calls on cities and counties to “Develop a policy that recognizes the  
 9 social nature of the problem of homeless individuals camping on public property”; as such  
 10 city and county governments should implement their policies “to ensure the most humane  
 11 treatment for removal of homeless individuals from camping sites on public property.” ORS  
 12 203.077. In recognition of the aspirational goals of ORS 203.077, the legislature passed ORS  
 13 203.079, which requires that:  
 14

15 (1) A policy developed pursuant to ORS 203.077 shall include, but is not limited to, the following:

16 (a) Prior to removing homeless individuals from an established camping site, law enforcement officials  
 17 shall post a notice, written in English and Spanish, 24 hours in advance.

18 (b) At the time that a 24-hour notice is posted, law enforcement officials shall inform the local agency  
 19 that delivers social services to homeless individuals where the notice has been posted . . .

20 (2) The 24-hour notice required under subsection (1) of this section shall not apply:

21 (a) When there are grounds for law enforcement officials to believe that illegal activities other than  
 camping are occurring.

22 (b) In the event of an exceptional emergency such as possible site contamination by hazardous  
 materials or when there is immediate danger to human life or safety.

23 (3) A person authorized to issue a citation for unlawful camping under state law, administrative rule or  
 24 city or county ordinance may not issue the citation if the citation would be issued within 200 feet of the  
 25 notice described in this section and within two hours before or after the notice was posted.

26 ORS 203.079. No evidence has been presented that Portland police officers posted a written posted

1 notice 24 hours before ordering Ms. Barrett to leave Chapman Park. Nor was there any evidence that  
2 officers then contacted social services so that individuals in Chapman Park could set up  
3 programming to get into shelters, housing, or campsites on private land. Instead, all the only thing  
4 that officers did was to pass out the Street Roots booklet. That is not sufficient under the statute.  
5

6 ***b. The Government has Failed To Show That Ms. Barrett Set Up a Campsite with the  
7 Purpose of Establishing A Temporary Place To Live***

8 In order to establish a temporary place to live a person must do more than depositing their  
9 items in a park so that they can enjoy amenities of the park unencumbered. Indeed, the Court of  
10 Appeals found that conduct where individuals have temporarily deposited blankets, chairs, and other  
11 accoutrements that are potentially associated with camping does not violate the camping ordinance  
12 where that conduct is for day use. “[I]t is apparent that the ordinance is not intended to prohibit  
13 picnicking on a blanket in a park, waiting in line for tickets while wrapped in a blanket or watching  
14 the Rose Festival parade from a cot or blanket.” *City of Portland v. Johnson*, 59 Or App 647, 650–51  
15 (1982).  
16

17 Ms. Barrett can only take part in the activities that the Court of Appeals outlined in *Johnson*  
18 if she carries her belongings with her. Thus, if she was to use Chapman Square Park for a “picnic,”  
19 without anywhere else to store her things she would have to bring them with her to Chapman Square  
20 Park. On none of the days where Ms. Barrett was charged with camping prohibited has there been  
21 evidence presented that officers actually observed Ms. Barrett sleeping the night in Chapman Square  
22 Park. All that has been demonstrated is that Ms. Barrett often frequents Chapman Square Park and  
23 that because she is homeless she must bring all of her possessions with her. Nowhere has evidence  
24 been presented that has shown that Ms. Barrett actually slept in the park for a single night, let alone  
25 multiple nights, to show that Ms. Barrett set up a temporary place to live.  
26

1           **III. The Government Has Failed to Provide Sufficient Evidence, Which Looked**  
2           **at in the Light Most Favorable to the Government Could Prove the Charge**  
3           **of Resisting Arrest Beyond A Reasonable Doubt**

4           Resists means to engage in any behavior that “creates a substantial risk of physical  
5 injury to any person . . . passive resistance does not constitute behavior intended to prevent  
6 being taken into custody. ORS 162.315(2). What the state has shown is that Ms. Barrett was  
7 approached by at least two officers while she was asleep, on the ground, in her sleeping bag.  
8 The officers then yell in her ear, and she “tucks in,” rolls over, and puts her hands under her  
9 body. Officer Sanders then testified that he uses a pressure point on Ms. Barrett and then  
10 handcuffs her within seconds. This is not a case like *State v. Jordan*, where the defendant  
11 struggled and used his strength to prolong the arrest by eight to ten minutes before officers  
12 could get him under control. 28 Or App 421 (1979). Furthermore, not evidence was  
13 presented that she bit, struck, spit, or run away from ant of the officers. She didn’t squirrel  
14 away from the officers as in *State v. Birchard*, where the defendant in an attempt to escape  
15 officers, tried to flee and in the process caused several officers to fall. 251 Or App 223, 225  
16 (2012). Nor is she using her body in a “tug of war” with officers as in *State v. Allison*, where  
17 the defendant anchored his body against the steering wheel of a car. 104 Or App 149, 151. At  
18 most, what Ms. Barrett did was roll over in her sleeping bag and placed her hands under her  
19 body. This is passive resistance. She is ignoring the officer’s commands, remains on the  
20 ground, and refuses to move. As the Court of appeals recently noted in *State v. Patnesky*, the  
21 test for determining if defendant is passively resisting is whether the “defendant was  
22 engaging in specific acts or techniques that are commonly associated with government  
23 protest or civil disobedience.” 265 Or App 356, 355 (2014). The Court of Appeals,

1 specifically noted the refusing to move or stand is exactly the type of conduct defined as  
2 passive resistance. *Id.* at 365.

3 **IV. The Government Has Failed to Adduce Sufficient Evidence That Any of the**  
4 **Exclusion Orders that Were the Basis of the August 7, September 9, or**  
5 **October 9 Arrests for Criminal Trespass Were Valid.**

6 All of the exclusion orders in this case trace themselves back to an exclusion  
7 order written out by an Officer Webber on May 21, 2014. Yet no evidence was presented  
8 about this notice. Whether it was valid, who wrote it, what it was for, and whether notice was  
9 given to Ms. Barrett. We proceed on each motion in turn.

10 The Criminal Trespass from August 7, 2014. No evidence was presented  
11 about what this criminal trespass was based on. No officer testified about it. And there was  
12 no testimony about the basis of the criminal trespass.

13 The Criminal Trespass from September 9, 2014. Officer Engstrom, the arrest  
14 officer on that date testified that the basis for the Criminal Trespass was an exclusion order  
15 issued on 14-67931, and as Officer Engstrom noted, no warning was given to Ms. Barrett  
16 about her trespass because of the warning given in her previous case. Referring to the case  
17 that Officer Engstrom cited brings up another exclusion order. This order, issued by an  
18 Officer named Ray Turner, who did not testify also noted that Ms. Barrett had not been given  
19 warning that her conduct could result in a Criminal Trespass charge based on a prior 90 day  
20 exclusion for violating an unidentified exclusion order. Thus, no evidence has been presented  
21 that Ms. Barrett was ever properly warned that entering Chapman Square was violating an  
22 exclusion order. Thus, even looking at the evidence in the light most favorable to the  
23  
24  
25  
26



STATE OF OREGON

JUDGMENT

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. ACR10631

DA NO. 299277-1

PROCEEDING DATE 3/10/15  FTR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Sherwood Bar No. \_\_\_\_\_ Defense Attorney: Mulkey Bar No. \_\_\_\_\_

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count 1 Offense: INTERFERING WITH A PEACE OFFICER Date of Incident: 9/23/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury; Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS or  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed:  Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_ Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

INCARCERATION Duration: 600 days / months / years / units Jail apply  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended.  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: ACR 1443  Other \_\_\_\_\_

ALTERNATIVE INCARCERATION OPTIONS

Defendant  MAY  MAY NOT be considered by the executing or releasing authority for any form of leave; release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 Exceptions:  Defendant is eligible for Good Time/Work Time  Other: \_\_\_\_\_

The releasing authority  MAY  MAY NOT release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

PAYMENT TERMS: Full payment of all financial obligations is due within 30 days of the date of this judgment unless a payment plan is authorized by the court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to financial obligations ordered in this and any other circuit court case after satisfaction of any and all orders directing that the deposit be applied to outstanding child support obligations.

Dated: 3/10/15 Judge (Signature) [Signature] / Name of Judge (printed) BUSHONG

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

23-74A (2013-07-30) Page 1 of 4

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
15 MAR 10 AM 10:11

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-85

STATE OF OREGON

Other Plaintiff

**MISDEMEANOR**

**JUDGMENT**  
 **AMENDED JUDGMENT**  
 **SUPPLEMENTAL JUDGMENT**

ALEXANDRA CHANEL BARRETT  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR10631

The defendant is convicted of the below listed count(s).

Count: 2 Offense: CAMPING ON PUBLIC PROPERTY Date of Incident: 5/23/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 150 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: 14CR14443  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (SUSPEND)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ None

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/16/15 Judge (Signature) [Signature] / Name of Judge (printed) Bushong

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-86

STATE OF OREGON

Other Plaintiff

MISDEMEANOR

- JUDGMENT
- AMENDED JUDGMENT
- SUPPLEMENTAL JUDGMENT

ALEXANDRA CHANEL BARRETT  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR10631

The defendant is convicted of the below listed count(s).

Count: 3 Offense: INTERFERING WITH A PEACE OFFICER Date of Incident: 6/20/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 600 days / months / years / units Jail CRS/936 apply  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: 14CR14493  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (SUSPENDED)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ waive

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration.

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/15 Judge (Signature) [Signature] Name of Judge (printed) BUSHONG

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-87

STATE OF OREGON

JUDGMENT

Other Plaintiff

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

ALEXANDRA CHANEL BARRETT  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR10031

The defendant is convicted of the below listed count(s).

Count: 4 Offense: CAMPING ON PUBLIC PROPERTY Date of Incident: 6/20/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 15 days / months / years / units Jail CTS/936 apply  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: 14CR14443  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee wave

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative-incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/15 Judge (Signature) [Signature] Name of Judge (printed) Bushong

STATE OF OREGON

**JUDGMENT**

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 14 CR 1443

DA NO. 2301512-1

ALEXANDRA BARRETT  
Defendant

PROCEEDING DATE 3/10/15 FTR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Sherwood Bar No. \_\_\_\_\_ Defense Attorney: MULLROY Bar No. 084274

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count 1 Offense: Interfering with a Peace Officer Date of Incident: 7/24/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS or  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed:  Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
MAR 10 AM 10:12  
JUDICIAL DIST

INCARCERATION Duration: 60 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: BOA BAZELLE and BOA Other: \_\_\_\_\_

1309 51176

ALTERNATIVE INCARCERATION OPTIONS

Defendant  MAY  MAY NOT be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 Exceptions:  Defendant is eligible for Good Time/Work Time  Other: \_\_\_\_\_

The releasing authority  MAY  MAY NOT release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

MONEY AWARD - Fine \$ 100 (suspend)

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$ 100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

PAYMENT TERMS: Full payment of all financial obligations is due within 30 days of the date of this judgment unless a payment plan is authorized by the court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to financial obligations ordered in this and any other circuit court case after satisfaction of any and all orders directing that the deposit be applied to outstanding child support obligations.

Dated: 3/10/15 Judge (Signature) Steph K. Bushong / Name of Judge (Printed) BUSHONG

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-89

STATE OF OREGON

Other Plaintiff

**MISDEMEANOR**

**JUDGMENT**

**AMENDED JUDGMENT**

**SUPPLEMENTAL JUDGMENT**

ALEXANDRA CHANEL BARRETT  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR14443

The defendant is convicted of the below listed count(s).

Count: 3 Offense: RESISTING ARREST Date of Incident: 7/24/18  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/18

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 60 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: α 1  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_ wave

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/18 Judge (Signature) [Signature] / Name of Judge (printed) Bushong

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-90

STATE OF OREGON

JUDGMENT

Other Plaintiff

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

ALEXANDRA CHANEL BAZZETT  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR14443

The defendant is convicted of the below listed count(s).

Count: 3a Offense: CAMPING ON PUBLIC PROPERTY Date of Incident: 7/24/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/14/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 15 @ ORS 1936 apply days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ wave

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ - Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/15 Judge (Signature) [Signature] Name of Judge (printed) BUSHONG

STATE OF OREGON

**JUDGMENT**

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 14-CR-116019

DA NO. 2302429-1

ALEXANDRA BARRETT  
Defendant

PROCEEDING DATE 3/10/15  FTR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Sherwood Bar No. \_\_\_\_\_ Defense Attorney: MULLROY Bar No. 084279

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count: 2 Offense: CRIMINAL TRESPASS 2 Date of Incident: 8/7/14  Is a Lesser Included Offense

Mistreated as Vio: Prosecutor Elects (ORS 161.566)  Mistreated as Vio: Court Elects (ORS 161.568)

Guilty Based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

**GUILTY EXCEPT FOR INSANITY:**  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS or  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

**PROBATION** Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court.. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed:  Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_ Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

**INCARCERATION** Duration: 15 days / months / years / units Jail apply  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: 14CR19443  Other \_\_\_\_\_

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant  **MAY**  **MAY NOT** be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 **Exceptions:**  Defendant is eligible for Good Time/Work Time  Other: \_\_\_\_\_

The releasing authority  **MAY**  **MAY NOT** release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

**MONEY AWARD** Fine \$ 100 (suspended)

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

**PAYMENT TERMS:** Full payment of all financial obligations is due within 30 days of the date of this judgment unless a payment plan is authorized by the court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to financial obligations ordered in this and any other circuit court case after satisfaction of any, and all orders directing that the deposit be applied to outstanding child support obligations.

Dated 3/10/15 Judge (Signature) [Signature] Name of Judge (printed) BUSHONG

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
15 MAR 10 AM 10:11  
4TH JUDICIAL DIST

STATE OF OREGON

MISDEMEANOR

JUDGMENT

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 14CR16019

DA NO. 23024291

PROCEEDING DATE 3/13/15  PTR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: BREWSTER Bar No. \_\_\_\_\_ Defense Attorney: MULKEY Bar No. \_\_\_\_\_

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

**GUILTY EXCEPT FOR INSANITY:**  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS or:  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

**PROBATION** Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

**The following special conditions of probation are imposed:**  Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_ Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

**INCARCERATION** Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: \_\_\_\_\_  Other \_\_\_\_\_

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant  **MAY**  **MAY NOT** be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 **Exceptions:**  Defendant is eligible for Good Time/Work Time  Other:

The releasing authority  **MAY**  **MAY NOT** release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

**MONEY AWARD Fine \$ \_\_\_\_\_**

DUI Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information for restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application fees, are imposed and are to be added by the Clerk of the Court as a money award unless otherwise ordered.

**PAYMENT TERMS:** Full payment of all financial obligations is due within 30 days of the date of this judgment. Payment may be made to the court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to outstanding child support obligations.

14CR16019  
JGAC  
Judgment - Acquittal  
2300369



Judgment if

it entered as a

authorized by the

provisions ordered in this and any

Dated: 3/16/15 Judge (Signature) [Signature] / Name of Judge (printed) BUSHONG

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
15 MAR 17 AM 6:09  
JUDICIAL DISTRICT

STATE OF OREGON

JUDGMENT

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 14-CR-17841

DA NO. 2303A44-1

ALEXANDRA BARRETT  
Defendant

PROCEEDING DATE 3/10/15  TR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Sherwood Bar No. \_\_\_\_\_ Defense Attorney: MULROY Bar No. 094274

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count 1 Offense: INTERFERING WITH A PEACE OFFICER Date of Incident: 8/19/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury; Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS *or*  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years.

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed: \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_

Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

INCARCERATION Duration 60 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: FCR19443  Other \_\_\_\_\_

ALTERNATIVE INCARCERATION OPTIONS

Defendant  MAY  MAY NOT be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752. Exceptions:  Defendant is eligible for Good Time/Work Time  Other: \_\_\_\_\_

The releasing authority  MAY  MAY NOT release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

PAYMENT TERMS: Full payment of all financial obligations is due within 30 days of the date of this judgment unless a payment plan is authorized by the court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to financial obligations ordered in this and any other circuit court case after satisfaction of any and all orders directing that the deposit be applied to outstanding child support obligations.

Dated: 3/10/15 Judge (Signature) [Signature] / Name of Judge (printed) BUSHONG

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
15 MAR 10 AM 10:11

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-94

STATE OF OREGON

Other Plaintiff

**MISDEMEANOR**

**JUDGMENT**

**AMENDED JUDGMENT**

**SUPPLEMENTAL JUDGMENT**

Alexandra Chanel Barrett  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR17841

The defendant is convicted of the below listed count(s).

Count 2 Offense: Interfering with a Peace Officer Date of Incident: 8/20/15  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/18

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 60 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: 14CR17443  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (SUSPEND)

DUII Conviction Fees: \$255  Bench Prob. Fee \$ 100  suspend \$ \_\_\_\_\_ Atty Fee \$ WAIVE

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$ 100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/18 Judge (Signature) [Signature] Name of Judge (printed) BUSHONG

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-95

STATE OF OREGON

- JUDGMENT
- AMENDED JUDGMENT
- SUPPLEMENTAL JUDGMENT

Other Plaintiff

MISDEMEANOR

ALEXANDRA CHANEL BARRETT  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR17841

The defendant is convicted of the below listed count(s).

Count: 3 Offense: INTERFERING WITH A PEACE OFFICER Date of Incident: 8/20/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 60 days months/ years/ units Jail as applicable  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: 14CR14443  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspense)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ wave

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/16/15 Judge (Signature) [Signature] Name of Judge (printed) BUSHONG

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-96

STATE OF OREGON

JUDGMENT

Other Plaintiff

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 4CR17841

The defendant is convicted of the below listed count(s).

Count: 4 Offense: INTERFERING WITH PEACE OFFICER Date of Incident: 8/21/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/14/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION

Duration: 60 days months / years / units Jail CR/934 apply

Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: 4CR14443  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ Waive

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION

Duration: \_\_\_\_\_ days / months / years / units Jail

Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

ALTERNATIVE INCARCERATION OPTIONS

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/15 Judge (Signature) [Signature] / Name of Judge (printed) Bushong

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-97

STATE OF OREGON

Other Plaintiff

**MISDEMEANOR**

**JUDGMENT**  
 **AMENDED JUDGMENT**  
 **SUPPLEMENTAL JUDGMENT**

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. 14CR17841

ALEXANDRA CHANEL BARRETT  
Defendant

The defendant is convicted of the below listed count(s).

Count: 5 Offense: Interfering with a Peace Officer Date of Incident: 8/22/15  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: 100 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: 14CR14443  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee waived

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding: \_\_\_\_\_

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

INCARCERATION Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

MONEY AWARD Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/15 Judge (Signature) [Signature] / Name of Judge (printed) BUSHONG

STATE OF OREGON

MISDEMEANOR

JUDGMENT

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 14-CR-20088

DA NO. 2304691-1

ALEXANDRA BARRETT  
Defendant

PROCEEDING DATE 3/10/15  FTR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Sherwood Bar No. \_\_\_\_\_ Defense Attorney: MULROY Bar No. 084274

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count: 1 Offense: Criminal Trespass 2 Date of Incident: 9/9/14  Is a Lesser Included Offense.

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding: 3/4/15

**GUILTY EXCEPT FOR INSANITY:**  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS or  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

**PROBATION** Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed:

Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other \_\_\_\_\_

Community Service \_\_\_\_\_

Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
MAR 10 AM 10:11

**INCARCERATION** Duration: 150 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: 14CR14443  Other \_\_\_\_\_

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant  **MAY**  **MAY NOT** be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 **Exceptions:**  Defendant is eligible for Good Time/Work Time  Other: \_\_\_\_\_

The releasing authority  **MAY**  **MAY NOT** release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

**MONEY AWARD** Fine \$ 100 (suspend)

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$100  suspended \$ \_\_\_\_\_ Attorney Fees \$  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

**PAYMENT TERMS:** Full payment of all financial obligations is due within 30 days of the date of this judgment unless a payment plan is authorized by the court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to financial obligations ordered in this and any other circuit court case after satisfaction of any and all orders directing that the deposit be applied to outstanding child support obligations.

Dated: 3/10/15 Judge (Signature) [Signature] / Name of Judge (printed) BUSHONG

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

MISDEMEANOR

**X** JUDGMENT

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 14CR24192

DA NO. 2300833-1

Alexandra Barrett  
Defendant

PROCEEDING DATE 3/10/15  FTR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Sherwood Bar No. \_\_\_\_\_ Defense Attorney: Mulroy Bar No. \_\_\_\_\_

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: 1 Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury; Date of Guilty Finding \_\_\_\_\_

**GUILTY EXCEPT FOR INSANITY:**  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS or  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

**PROBATION** Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed:  Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_

Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

**INCARCERATION** Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended:

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: \_\_\_\_\_  Other \_\_\_\_\_

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant  MAY  MAY NOT be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 Exceptions:  Defendant is eligible for Good Time/Work Time  Other:

The releasing authority  MAY  MAY NOT release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

**MONEY AWARD Fine \$ \_\_\_\_\_**

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

**PAYMENT TERMS:** Full payment of all financial obligations is due within 30 days of the date of this judgment unless a court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to financial other circuit court case after satisfaction of any and all orders directing that the deposit be applied to outstanding child support.

14CR24192  
JGAC  
Judgment > Acquittal  
2260780  


Dated: 3/10/15 Judge (Signature) [Signature] / Name of Judge (printed) Bushong

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

STATE OF OREGON

JUDGMENT

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 14CR32814

DA NO. 2311067-1

ALEXANDRA CHANEL BARRETT  
Defendant

PROCEEDING DATE: 3/10/15  Yes  No  
 TR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Shenwood Bar No. \_\_\_\_\_ Defense Attorney: Mulroy Bar No. \_\_\_\_\_

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s). \_\_\_\_\_  Def waives 48 hrs

Count: 1 Offense: CRIMINAL TRESPASS 2 Date of Incident: 12/20/14  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury; Date of Guilty Finding 3/10/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS *or*  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed: \_\_\_\_\_  Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_ Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

INCARCERATION Duration: 150 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: 14CR14443  Other \_\_\_\_\_

ALTERNATIVE INCARCERATION OPTIONS

Defendant  MAY  MAY NOT be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 Exceptions:  Defendant is eligible for Good Time/Work Time  Other: \_\_\_\_\_

The releasing authority  MAY  MAY NOT release the defendant on post-prison supervision under ORS 421.508(4) following successful completion of an alternative incarceration program. \* Basis for ineligibility:  By Stipulation  Substantial and compelling reasons (specify): \_\_\_\_\_

MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$ 100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered.

All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

PAYMENT TERMS: Full payment of all financial obligations is due within 30 days of the date of this judgment unless a payment plan is authorized by the court collections unit, probation officer, or post prison supervision officer. The security deposit shall be applied to financial obligations ordered in this and any other circuit court case after satisfaction of any and all orders directing that the deposit be applied to outstanding child support obligations.

Dated: 3/10/15 Judge (Signature) [Signature] (Name of Judge (printed) Bushong)

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
15 MAR 10 AM 10:12  
1TH JINCAI/MT

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ER-101

STATE OF OREGON

Other

Plaintiff

**MISDEMEANOR**

**JUDGMENT**

**AMENDED JUDGMENT**

**SUPPLEMENTAL JUDGMENT**

ALEXANDRA CHANEL BARRETT  
Defendant

SUPPLEMENTAL PAGE FOR ADDITIONAL COUNTS

CASE NO. HCR 32814

The defendant is convicted of the below listed count(s).

Count: 2 Offense: CRIMINAL MISCHIEF 3 Date of Incident: 12/28/15  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

**GUILTY EXCEPT FOR INSANITY:**  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

**PROBATION** Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

**INCARCERATION** Duration: 15 days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: HCR 14443  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

**MONEY AWARD** Fine \$ 100 (SUSPEND)

DUII Conviction Fees: \$255  Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ WAIVE

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Count: \_\_\_\_\_ Offense: \_\_\_\_\_ Date of Incident: \_\_\_\_\_  Is a Lesser Included Offense

Misd Treated as Vio: Prosecutor Elects (ORS 161.566)  Misd Treated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding \_\_\_\_\_

**GUILTY EXCEPT FOR INSANITY:**  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other \_\_\_\_\_ Duration: \_\_\_\_\_ days / months / years / permanent

**PROBATION** Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

Special conditions: Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender

Other Conditions:  Concurrent with conditions on count \_\_\_\_\_

**INCARCERATION** Duration: \_\_\_\_\_ days / months / years / units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  Concurrent with: \_\_\_\_\_  Only after \_\_\_\_\_ days in jail

**ALTERNATIVE INCARCERATION OPTIONS**

Defendant is eligible  Defendant is not eligible for alternative incarceration programs (ORS 137.750 - 137.752)  Exception: \_\_\_\_\_

**MONEY AWARD** Fine \$ \_\_\_\_\_

DUII Conviction Fees: \$255  waived Bench Prob. Fee \$100  suspend \$ \_\_\_\_\_ Atty Fee \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

All financial obligations in the money judgment are a condition of probation. Award and Payment Information (Form #06-60) must accompany Judgment if restitution or compensatory fine is ordered. All statutory assessments and fees applicable to each charge disposed, including indigent defense application and contribution fees unpaid and not entered as a judgment previously, are imposed and are to be added by the Clerk of the Court as a money award unless waived on this judgment.

Dated: 3/10/15 Judge (Signature) [Signature] / Name of Judge (printed) BUSHONG

STATE OF OREGON

JUDGMENT

MISDEMEANOR

AMENDED JUDGMENT

SUPPLEMENTAL JUDGMENT

Other Plaintiff

CASE NO. 15CR00103

DA NO. 2310519-1

ALEXANDRA CHANEL BARRETT  
Defendant

PROCEEDING DATE 3/10/15  FTR  Clerk  Reporter  Interpreter Name: \_\_\_\_\_

Deputy District Attorney: Sheerwood Bar No. 126338 Defense Attorney: Mulroy Bar No. 084274

Defendant Appearance:  In Person In Custody  In Person Out of Custody  By Telephone  By Video  Waived Appearance

Representation Status:  Court Appointed  Privately Retained  Found Indigent and Waived Attorney  Waived Attorney (Pro Se)

Judgment of Dismissal on counts: \_\_\_\_\_ Judgment of Acquittal on Finding of Not Guilty on counts: \_\_\_\_\_

The Court determines that the defendant is convicted of the below listed count(s).  Def waives 48 hrs

Count 1 Offense: OFFENSIVE LITTERING Date of Incident: 12/2/14  Is a Lesser Included Offense

Mistreated as Vio: Prosecutor Elects (ORS 161.566)  Mistreated as Vio: Court Elects (ORS 161.568)

Guilty based upon:  Guilty Plea  No Contest Plea  Stipulated Facts Trial  Court Trial  Jury: Date of Guilty Finding 3/4/15

GUILTY EXCEPT FOR INSANITY:  GEI: By  Stipulated Facts Trial  Court Trial  Jury Trial; Subject to jurisdiction of PSRB  Yes  No

If yes,  Committed to State Hospital by DHS or  Conditional Release (see accompanying Order per ORS 161.327)

SIS  SES Statutory Requirements:  HIV Blood Draw  DNA Blood Draw/Buccal Sample  Sex Offender Registration

License Information:  Suspend  Revoke Type:  Drivers  Other Duration: \_\_\_\_\_ days / months / years / permanent

PROBATION Type:  Supervised  Bench Duration: \_\_\_\_\_ days / months / years

Defendant subject to all general conditions of probation in ORS 137.540(1) unless specifically deleted by the court. Delete #'s: \_\_\_\_\_

The following special conditions of probation are imposed:  Probation Judge (if specified): \_\_\_\_\_

Packages:  Alcohol  Drug  Enhanced Bench Probation  Financial Crimes  Sex Offender  Other: \_\_\_\_\_

Community Service \_\_\_\_\_

Other Conditions: \_\_\_\_\_

No Contact Victim \_\_\_\_\_

Victim's Panel by \_\_\_\_\_

Anger counseling program \_\_\_\_\_

No Intox/Inhalants  Elec Home Detention \_\_\_\_\_

Book & Release  No trespass/entry \_\_\_\_\_

INCARCERATION Duration: 150 days/months/years/units Jail  Remand immediately to Sheriff

Report to Sheriff by: \_\_\_\_\_ to arrange TSI date. Work Release:  Recommended  NOT Recommended

Consecutive to: \_\_\_\_\_  By Stipulation  Findings per ORS 137.123(5): \_\_\_\_\_

Concurrent with: 14CR14443  Other \_\_\_\_\_

ALTERNATIVE INCARCERATION OPTIONS

Defendant  MAY  MAY NOT be considered by the executing or releasing authority for any form of leave, release, alternative incarceration programs or reduction in sentence as specified in ORS 137.750 or 137.752 Exceptions:  Defendant is eligible for Good Time/Work Time  Other: \_\_\_\_\_

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MONEY AWARD Fine \$ 100 (suspend)

DUII Conviction Fees (per ORS 813.030): \$255  waived

Bench Prob. Fee \$100  suspended \$ \_\_\_\_\_ Attorney Fees \$ \_\_\_\_\_  waived Other: \$ \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

Comp Fine  Restitution \$ \_\_\_\_\_ Victim: \_\_\_\_\_  TBD: Hrg set for \_\_\_\_\_  J/S with \_\_\_\_\_

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Dated: 3/10/15 Judge (Signature) [Signature] Name of Judge (printed) BUSHONG

Original to Court File Copies to:  Jail  Probation Intake  DA  Defense Attorney  Probation Judge

FILED  
CIRCUIT COURT  
MULTNOMAH COUNTY  
15 MAR 10 AM 10:11

CTS 1936 credits apply

AND  
Gieringer  
id 3242

## **APPENDIX INDEX**

Statement of Interest .....APP 1-17

VANITA GUPTA  
Principal Deputy Assistant Attorney General  
Civil Rights Division  
United States Department of Justice

WENDY OLSON  
United States Attorney for the District of  
Idaho  
United States Department of Justice

MARK KAPPELHOFF  
EVE HILL  
Deputy Assistant Attorney Generals  
Civil Rights Division

CHIRAAG BAINS  
Senior Counsel to the Assistant Attorney  
General  
Civil Rights Division

JUDY PRESTON  
Acting Chief  
Civil Rights Division  
Special Litigation Section

*Of Counsel:*  
Lisa Foster  
Director  
Office for Access to Justice

TIMOTHY MYGATT  
Special Litigation Counsel  
Civil Rights Division  
Special Litigation Section

Maha Jweied  
Deputy Director  
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Special Litigation Section  
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Phone: (202) 514-5324  
Email: Bob.Bullock@usdoj.gov

*Attorneys for the United States of America*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

<hr/>		)	
JANET F. BELL, et al.,		)	
	Plaintiffs,	)	
		)	Civil Action No. 1:09-cv-540-REB
	v.	)	Hon.
		)	
CITY OF BOISE, et al.,		)	<b>STATEMENT OF INTEREST</b>
	Defendants.	)	<b>OF THE UNITED STATES</b>
<hr/>		)	

**STATEMENT OF INTEREST OF THE UNITED STATES**

On any given night in the United States, half a million people are likely to be experiencing homelessness.<sup>1</sup> Homeless individuals are a diverse population, including children, families, veterans, and the elderly. The causes of homelessness are also varied. In recent years, some people who were affected by the economic downturn and foreclosure crisis have become homeless.<sup>2</sup> Some homeless individuals have serious and persistent physical or behavioral health conditions that neither they nor the communities in which they live have sufficient services to accommodate. As a result, these individuals are unable to obtain permanent housing.<sup>3</sup> Other individuals are homeless because of circumstances beyond their control; they are victims of domestic violence and trafficking, or youth who are separated from their families.<sup>4</sup> These individuals must find space in a public shelter or sleep on the street.

For many homeless people, finding a safe and legal place to sleep can be difficult or even impossible. In many cities, shelters are unable to accommodate all who are homeless.<sup>5</sup> In 2014, 42% of homeless individuals slept in unsheltered, public locations—under bridges, in cars, in parks, on the sidewalk, or in abandoned buildings.<sup>6</sup>

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<sup>1</sup> U.S. Dep't of Hous. and Urban Dev., *2014 Annual Homeless Assessment Report* ("2014 AHAR") 1 (October 2014), available at <https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf>. The 2014 AHAR found that as of January 2014, 578,424 individuals in the United States were homeless on any given night.

<sup>2</sup> See generally *id.* Nationally, 11% of all homeless adults are veterans. *Id.* at 40.

<sup>3</sup> U.S. Interagency Council on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* 6, 10-11 (2010), available at [http://usich.gov/PDF/OpeningDoors\\_2010\\_FSPPpreventEndHomeless.pdf](http://usich.gov/PDF/OpeningDoors_2010_FSPPpreventEndHomeless.pdf).

<sup>4</sup> There are approximately 45,205 unaccompanied homeless children in the United States. 2014 AHAR at 1. "Unaccompanied children and youth" is defined in the AHAR as a person under the age of 25 who is not a member of a family or a multi-child household. *Id.* at 32.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 14. In 2014 there were roughly 153,000 unsheltered homeless individuals nationwide on any given night. *Id.*

In this case, Plaintiffs are homeless individuals who were convicted of violating certain city ordinances that prohibit camping and sleeping in public outdoor places.<sup>7</sup> They claim that the City of Boise and the Boise Police Department's ("BPD") enforcement of these ordinances against homeless individuals violates their constitutional rights because there is inadequate shelter space available in Boise to accommodate the city's homeless population. Plaintiffs argue that criminalizing public sleeping in a city without adequate shelter space constitutes criminalizing homelessness itself, in violation of the Eighth Amendment.<sup>8</sup>

The parties disagree about the appropriate framework for analyzing Plaintiffs' claims. Plaintiffs encourage the court to follow *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006) (*vacated after settlement*, 505 F.3d 1006 (9th Cir. 2007)), which held that enforcement of anti-camping ordinances may violate the Eighth Amendment on nights where there is inadequate

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<sup>7</sup> See Revised Second Am. Compl. at 4-5, ECF No. 171. Plaintiffs in this case challenge the application of two Boise Municipal Code ordinances. The first ordinance, Boise City Code § 9-10-02, prohibits "us[ing] any of the streets, sidewalks, parks or public places as a camping place at any time, or to cause or permit any vehicle to remain in any of said places to the detriment of public travel or convenience." The ordinance defines "camp" or "camping" to mean "the use of public property as a temporary or permanent place of dwelling, lodging or residence, or as a living accommodation at any time between sunset and sunrise, or as a sojourn." The second ordinance, § 6-01-05(A), prohibits "disorderly conduct," which includes "[o]ccupying, lodging or sleeping in any building, structure or place, whether public or private, or in any motor vehicle without the permission of the owner or person entitled to possession or in control thereof."

<sup>8</sup> Plaintiffs allege that BPD's enforcement practices are unconstitutional because: 1) there is insufficient shelter space available to accommodate all who are homeless in Boise, Pls. Mem. in Supp. of Pls. Mot. for Summ. J. ("Pls. Mem."), ECF No. 243-2, at 16-18; 2) there are restrictions on certain shelter beds that some homeless individuals are unable to meet, thereby preventing them from obtaining shelter space even when beds may be unoccupied, *id.* at 20; and 3) the BPD continues to enforce the anti-camping and disorderly conduct ordinances when shelters are full and against those who do not qualify for the beds, either because BPD officers are insufficiently trained or they are unaware when shelters are full because of unreliable reporting from the shelters. *Id.* at 20-21. Defendants, on the other hand, contend that there has never been a time when a homeless individual was turned away from a shelter due to lack of space, and even if that were to occur, the BPD would not enforce the ordinances under such circumstances. Defs. Resp. in Opp'n to Pl. Mot. for Summ. J. ("Defs. Resp."), ECF No. 257, at 7-10. The parties dispute whether individuals are being turned away from shelters for lack of space or inaccessibility to persons with disabilities. The parties also dispute whether the beds available in the Boise Rescue Mission, which is affiliated with a religious institution, should be counted in the total number of available beds for homeless individuals, as use of those beds may subject them to unwanted proselytizing. Pls. Mem. at 13-14. The United States takes no position on any of these disputes.

shelter space available for all of a city's homeless individuals. Pls. Mem. at 5. Defendants, on the other hand, assert that Plaintiffs' reliance on *Jones* is "heavily misplaced, factually unsupported, and immaterial to this case." Defs. Resp. at 7.

Because the summary judgment briefing in this case makes clear that there is a significant dispute between the parties on the applicability of *Jones* and conflicting lower court case law in this area, the United States files this Statement of Interest to make clear that the *Jones* framework is the appropriate legal framework for analyzing Plaintiffs' Eighth Amendment claims. Under the *Jones* framework, the Court should consider whether conforming one's conduct to the ordinance is possible for people who are homeless. If sufficient shelter space is unavailable because a) there are inadequate beds for the entire population, or b) there are restrictions on those beds that disqualify certain groups of homeless individuals (e.g., because of disability access or exceeding maximum stay requirements), then it would be impossible for some homeless individuals to comply with these ordinances. As set forth below, in those circumstances enforcement of the ordinances amounts to the criminalization of homelessness, in violation of the Eighth Amendment.

### **INTEREST OF THE UNITED STATES**

The United States has authority to file this Statement of Interest pursuant to 28 U.S.C. § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in a federal court.<sup>9</sup> Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), the United States enforces the rights of individuals to be free from unconstitutional and abusive policing. The United States has used its

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<sup>9</sup> The full text of 28 U.S.C. § 517 is as follows: "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

authority under Section 14141 to investigate numerous jurisdictions for unconstitutional police practices.<sup>10</sup>

The United States also has a broad interest in ensuring that justice is applied fairly, regardless of wealth or status. In 2010, Attorney General Eric Holder launched the Office for Access to Justice (“ATJ”) at the Department of Justice to address the access-to-justice crisis in the criminal and civil justice systems. ATJ’s mission is to help the justice system deliver outcomes that are fair and accessible to all.<sup>11</sup> ATJ works with other federal agencies on a range of programs and policies affecting low-income and vulnerable people—including agencies that work to prevent and end homelessness.

The United States also has an interest in breaking the cycle of poverty and criminalization. Numerous federal initiatives are tasked with reducing the criminalization of homelessness and promoting alternatives to incarceration that are more cost-effective, efficient, and fair. For example, the United States Interagency Council on Homelessness (“USICH”), composed of nineteen cabinet secretaries and agency heads, coordinates federal efforts to end homelessness. USICH was established through the Stewart B. McKinney Homeless Assistance Act in 1987 and was most recently reauthorized in 2009 with the passage of the Homeless Emergency Assistance and Rapid Transition to Housing Act. 42 U.S.C. § 11311 *et seq.*

In 2010, USICH and ATJ, with support from the Department of Housing and Urban Development (“HUD”), held a summit entitled *Searching for Balance: Civic Engagement in*

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<sup>10</sup> See, e.g., Letter from Jocelyn Samuels, Acting Ass’t Att’y Gen., to Hon. Richard J. Berry, Mayor of Albuquerque, N.M. (Apr. 10, 2014), *available at* [http://www.justice.gov/crt/about/spl/documents/apd\\_findings\\_4-10-14.pdf](http://www.justice.gov/crt/about/spl/documents/apd_findings_4-10-14.pdf); Letter from Thomas Perez, Ass’t Att’y Gen. to John Engen, Mayor of Missoula, Mont. (May 15, 2013), *available at* [http://www.justice.gov/crt/about/spl/documents/missoulapdfind\\_5-15-13.pdf](http://www.justice.gov/crt/about/spl/documents/missoulapdfind_5-15-13.pdf); Investigation of the New Orleans Police Dep’t, U.S. Dep’t of Justice, Civil Rights Division (Mar. 16, 2011), *available at* [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

<sup>11</sup> See Office for Access to Justice, U.S. Dep’t of Justice, <http://www.justice.gov/atj/> (last visited June 16, 2015).

*Communities Responding to Homelessness* on the development of constructive alternatives to the criminalization of homelessness. A related report, *Searching Out Solutions: Constructive Alternatives to Criminalization*, explores themes raised at the summit.<sup>12</sup> HUD also produced a guide, *Reducing Homeless Populations' Involvement in the Criminal Justice System*, intended to raise awareness among law enforcement and service providers about available resources to serve homeless people, and those at risk of homelessness, who are involved in the criminal justice system.<sup>13</sup>

## DISCUSSION

The “Cruel and Unusual Punishments” Clause of the Eighth Amendment “imposes substantive limits on what can be made criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667-68 (1977). Pursuant to that clause, the Supreme Court has held that laws that criminalize an individual’s status, rather than specific conduct, are unconstitutional. *Robinson v. California*, 370 U.S. 660 (1962). In *Robinson*, the Court considered a state statute criminalizing not only the possession or use of narcotics, but also addiction. Noting that the statute made an addicted person “continuously guilty of this offense, whether or not he had ever used or possessed any narcotics within the State”—and further that addiction is a status “which may be contracted innocently or involuntarily,” given that “a person may even be a narcotics addict from the moment of his birth”—the Court found that the statute impermissibly criminalized the status of addiction and constituted cruel and unusual punishment. *Id.* at 666-67 & n.9.

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<sup>12</sup> U.S. Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to Criminalization* (2012), available at [http://usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](http://usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf).

<sup>13</sup> U.S. Dep’t of Justice, *Reducing Homeless Populations' Involvement in the Criminal Justice System* (2012), available at <http://www.justice.gov/sites/default/files/atj/legacy/2012/05/09/doj-resource-guide.pdf>.

Six years after *Robinson*, the Court addressed whether certain acts also may not be subject to punishment under the Eighth Amendment if they are unavoidable consequences of one's status. In *Powell v. Texas*, 392 U.S. 514 (1968), the Court considered the constitutionality of a statute that criminalized public intoxication. A four-member plurality interpreted *Robinson* to prohibit *only* the criminalization of status and noted that the statute under consideration in *Powell* criminalized conduct—being intoxicated in public—rather than the status of alcohol addiction. The plurality declined to extend *Robinson*, citing concerns about federalism and a reluctance to create a “constitutional doctrine of criminal responsibility.” *Id.* at 534 (plurality opinion). Moreover, the plurality found that there was insufficient evidence to definitively say Mr. Powell was incapable of avoiding public intoxication. *Id.* at 521-25. The dissenting justices, on the other hand, found that the Eighth Amendment protects against criminalization of conduct that individuals are powerless to avoid, and that due to his alcoholism, Mr. Powell was powerless to avoid public drunkenness. *Id.* at 567 (dissenting opinion). The dissenters, therefore, would have reversed Mr. Powell's conviction. *Id.* at 569-70.

Justice White provided the decisive fifth vote to uphold Mr. Powell's conviction. Instead of joining the plurality opinion, in a separate concurrence he set forth a different interpretation of *Robinson*. Justice White did not rest his decision on the status-versus-conduct distinction raised by the plurality. Instead, Justice White considered the voluntariness, or volitional nature, of the conduct in question. *See Powell*, 392 U.S. at 548-51 (White, J., concurring in the judgment). Under this analysis, if sufficient evidence is presented showing that the prohibited conduct was involuntary due to one's condition, criminalization of that conduct would be impermissible under the Eighth Amendment. *Id.* at 551.

Notably for the present case, Justice White specifically contemplated the circumstances of individuals who are homeless. He explained that, “[f]or all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking.” *Id.* Justice White believed some alcoholics who are homeless could show that “resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible.” *Id.* For these individuals, the statute “is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment—the act of getting drunk.” *Id.* Ultimately, Justice White sided with the plurality because Mr. Powell did not present evidence to show that he was incapable of avoiding public places while intoxicated. *Id.* at 552. However, Justice White’s concurrence articulated the narrowest grounds for the decision; accordingly, it is the only controlling precedent from *Powell*. See *Marks v. United States*, 430 U.S. 188, 193 (1977) (explaining that the narrowest position controls when no rationale garners the votes of a majority of the Court).

*Robinson* and *Powell* have resulted in a division among courts on how to analyze claims regarding enforcement of anti-camping ordinances against homeless individuals. Because *Powell* did not produce a majority opinion on whether the Eighth Amendment prohibits only the criminalization of status or also the criminalization of involuntary conduct, it does not provide a binding test for how courts should analyze these issues. Some courts have adopted the plurality’s strict interpretation of *Robinson*, opining that the Eighth Amendment limits only the criminalization of status, not of conduct. See, e.g., *Lehr v. City of Sacramento*, 624 F. Supp. 2d. 1218 (E.D. Cal. 2009) (finding the Eighth Amendment inapplicable where a statute criminalizes conduct and not status). Others have considered the voluntariness of the conduct, and whether

the conduct is inextricably linked to one's status, such that punishing the conduct is indistinguishable from punishing the status. *See, e.g., Jones*, 444 F.3d 1118 (finding anti-camping ordinance violated Eighth Amendment because it criminalized sleeping in public when homeless individuals had no other choice but to sleep in public, and therefore criminalized the status of homelessness itself); *Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994), *rev'd on other grounds*, 61 F.3d 442 (5th Cir. 1995) (same); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1563 (S.D. Fla. 1992) (same). Finally, some courts have avoided the debate altogether by deciding a case on factual grounds. *See, e.g., Joel v. City of Orlando*, 232 F.3d 1353, 1362 (11th Cir. 2000) (not deciding the legal issue of whether the Eighth Amendment reaches conduct that is inextricably linked to status because Orlando proved the voluntary nature of public sleeping by "present[ing] unrefuted evidence" that the city's large homeless shelter "has never reached its maximum capacity and that no individual has been turned away because there was no space available or for failure to pay the one dollar nightly fee"); *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 59 (2015) (upholding an anti-camping ordinance because the plaintiffs failed to "allege why [they] had no shelter").

The differing interpretations of *Robinson* and *Powell* have caused drastically different results for both individuals and the criminal justice system. In the mid-1990s, the United States twice filed briefs in appellate cases to help clarify the Eighth Amendment analysis for claims brought by individuals who were convicted of violating anti-camping ordinances. *See* Brief for the United States as Amicus Curiae, *Joyce v. City and County of San Francisco*, No. 95-16940 (9th Cir. Mar. 29, 1996); Brief for the United States as Amicus Curiae, *Tobe v. City of Santa Ana*, No. S03850 (Cal. June 9, 1994). In those briefs, the United States took the position—as it does here—that criminalizing sleeping in public when no shelter is available violates the Eighth

Amendment by criminalizing status. In the twenty years since the United States last weighed in on this issue, courts' analyses of these statutes have remained divergent.

Consistent with the position taken in its previous filings, the United States now urges this Court to adopt the reasoning of *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006). Although the Ninth Circuit ultimately vacated its opinion in *Jones*—pursuant to a settlement agreement between the parties, 505 F.3d 1006 (9th Cir. 2007), not for any substantive reason—its logic remains instructive and persuasive.

The *Jones* court considered the enforcement of a Los Angeles ordinance prohibiting sitting, lying, or sleeping in public. There, like here, the court was asked to consider a statute that, on its face, criminalized conduct rather than status. Importantly, the plaintiffs in *Jones* presented evidence suggesting that there was an inadequate number of shelter beds available for homeless individuals, so many individuals had no choice but to sleep in public in violation of the city's ordinance. *See Jones*, 444 F.3d at 1137.

The *Jones* court found enforcement of the ordinance to be unconstitutional as applied to the plaintiffs because of inadequate shelter space. The court based its decision on its conclusion that, “[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.” *Id.* at 1136. Because sleeping is unavoidable, the court then considered whether the plaintiffs had a choice to sleep somewhere other than in public, concluding that they did not: “for homeless individuals in [Los Angeles’] Skid Row who have no access to private spaces, these acts can only be done in public.” *Id.* at 1136. As a result, the court found that sleeping in public is “involuntary and inseparable from” an individual’s status or condition of being homeless when no shelter space is available. *Id.* at 1132. The court

concluded that, under those circumstances, “by criminalizing sitting, lying, and sleeping, the City [of Los Angeles] is in fact criminalizing [Plaintiffs’] status as homeless individuals.” *Id.* at 1137.

Defendants assert that reliance on *Jones* would be “misplaced, factually unsupported, and immaterial to this case.” Def. Rep. at 7. In advocating against the applicability of *Jones*, Defendants rely on a conduct-versus-status distinction that does not withstand close scrutiny. *Id.* (stating that the Boise ordinances “avoid criminalizing status by making *conduct* an element of the crime”). However, Defendants’ position is unpersuasive because the Eighth Amendment analysis is not limited to a reading of the plain language of the statute in question. Rather, the practical implications of enforcing the statute’s language are equally important. Those implications are clear where there is insufficient shelter space to accommodate the homeless population: the conduct of sleeping in a public place is indistinguishable from the status of homelessness.

Supreme Court precedent suggests as much. As the *Jones* court correctly noted, *Powell* is best read as providing support for Plaintiffs’ argument against the criminalization of involuntary sleeping in public, not as posing a barrier to that position. Indeed, five members of the *Powell* Court (Justice White and the four dissenting Justices) believed that punishing truly involuntary or unavoidable conduct resulting from status would violate the Eighth Amendment; only four Justices would have held otherwise. *Jones*, 444 F.3d at 1135.

It should be uncontroversial that punishing conduct that is a “universal and unavoidable consequence[] of being human” violates the Eighth Amendment. *See id.* at 1136. It is a “foregone conclusion that human life requires certain acts, among them . . . sleeping.” *Johnson*, 860 F. Supp. at 350. As the *Jones* court noted, it is impossible for individuals to avoid “sitting, lying, and sleeping for days, weeks, or months at a time . . . as if human beings could remain in

perpetual motion.” *Jones*, 444 F.3d at 1136. Once an individual becomes homeless, by virtue of this status certain life necessities (such as sleeping) that would otherwise be performed in private must now be performed in public. *Pottinger*, 810 F. Supp. at 1564; *see also Johnson*, 860 F. Supp. at 350 (“they must be in public” and “they must sleep”). Therefore, sleeping in public is precisely the type of “universal and unavoidable” conduct that is necessary for human survival for homeless individuals who lack access to shelter space. *Id.*

In this way, the Boise anti-camping and disorderly conduct ordinances are akin to the ordinance at issue in *Robinson*, at least on nights when homeless individuals are—for whatever non-volitional reason(s)—unable to secure shelter space.<sup>14</sup> When adequate shelter space exists, individuals have a choice about whether or not to sleep in public. However, when adequate shelter space does not exist, there is no meaningful distinction between the status of being homeless and the conduct of sleeping in public. Sleeping is a life-sustaining activity—*i.e.*, it must occur at some time in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless. *See id.* at 1136-37.

Adopting the *Jones* court’s approach would not implicate the knotty concerns raised by the *Powell* plurality and cited by the district courts that depart from *Jones*. In *Powell*, the plurality was concerned with the Cruel and Unusual Punishments Clause becoming “the ultimate arbiter of the standards of criminal responsibility.” 392 U.S. at 533; *see also Joyce v. City & Cnty. of San Francisco*, 846 F. Supp. 843, 857 (N.D. Cal. 1994); *Lehr*, 624 F. Supp. 2d at

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<sup>14</sup> In *Powell*, Justice White noted that he may have held differently on the merits if there was evidence presented that Mr. Powell was unable to avoid drinking in public; the availability of alternative venues in which Mr. Powell could drink was essential to Justice White’s concurrence in the judgment. *See Powell*, 392 U.S. at 553.

1231.<sup>15</sup> The Justices in the *Powell* plurality declined to extend the Eighth Amendment prohibition to the punishment of involuntary conduct because they feared doing so would allow violent defendants to argue that their conduct was “compelled” by any number of “conditions.” *Powell*, 392 U.S. at 534 (expressing concern that a hypothetical murderer could claim a compulsion to kill). The plurality was reluctant to “defin[e] some sort of insanity test in constitutional terms.” *Id.* at 536.

But these concerns are not at issue when, as here, they are applied to conduct that is essential to human life and wholly innocent, such as sleeping. No inquiry is required to determine whether a person is compelled to sleep; we know that no one can stay awake indefinitely. Thus, the Court need not constitutionalize a general compulsion defense to resolve this case; it need only hold that the Eighth Amendment outlaws the punishment of unavoidable conduct that we know to be universal. Moreover, unlike the hypothetical hard cases that concerned the *Powell* plurality, the conduct at issue in the instant case is entirely innocent. Its punishment would serve no retributive purpose, or any other legitimate purpose. As the plurality in *Powell* itself noted, “the entire thrust of *Robinson*’s interpretation of the Cruel and Unusual

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<sup>15</sup> In *Lehr*, the district court declined to follow the Ninth Circuit’s decision in *Jones* in evaluating the plaintiffs’ Eighth Amendment as-applied claims regarding the City of Sacramento’s anti-camping ordinance. Despite evidence that the population of homeless individuals in Sacramento far outnumbered the available shelter beds, the court decided to follow the plurality opinion in *Powell* and the dissent from *Jones* because there was no precedential opinion in place, and it found the *Jones* dissent “to be the more persuasive and well-reasoned opinion.” *Lehr*, 624 F. Supp. 2d at 1231. For the reasons discussed above, the United States disagrees with *Lehr* and urges this Court to reject its analysis. The rationale in *Joyce* is equally unpersuasive. In *Joyce*, a pre-*Jones* district court decision, the court rejected the relevance of whether the City of San Francisco provided enough beds for homeless individuals. Rather than consider how and when the city enforced its state and local laws prohibiting camping and sleeping in public places, the court looked only at the language of the statute itself and concluded that it addressed only “acts” that derive from a person’s status, and not the status itself. *Joyce*, 846 F. Supp. at 857 (N.D. Cal. 1994). The *Joyce* court therefore declined to grant the plaintiffs’ motion for a preliminary injunction. However, while the plaintiffs’ appeal was pending before the Ninth Circuit, the City of San Francisco suspended, and eventually eliminated, enforcement of the challenged laws, issuing a memorandum affirming the rights of all homeless individuals. See *Joyce v. City and Cnty. of San Francisco*, No. 95-16940, 1996 WL 329317 (9th Cir. June 14, 1996).

Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act [or] has engaged in some behavior *which society has an interest in preventing.*”

*Powell*, 392 U.S. at 533 (emphasis added).

Using this reasoning, the vital question for the Court becomes: Given the current homeless population and available shelter space in Boise, as well as any restrictions on those shelter beds, are homeless individuals in Boise capable of conforming the necessary life activity of sleeping to the current law? If not, enforcing the anti-camping ordinances and criminalizing sleeping in public violates the Eighth Amendment, because it is no different from criminalizing homelessness itself. The *Jones* framework, developed from analyses of earlier cases, makes it clear that punishing homeless people for “acts they are forced to perform in public effectively punishes them for being homeless.” *Pottinger*, 810 F. Supp. 1551, 1564; *see also Jones*, 444 F.3d at 1136-37; *Johnson*, 860 F. Supp. at 350.

The realities facing homeless individuals each day support this application of the Eighth Amendment. Homelessness across the United States remains a pervasive problem. As the *Jones* court observed, “an individual may become homeless based on factors both within and beyond his immediate control, especially in consideration of the composition of the homeless as a group: the mentally ill, addicts, victims of domestic violence, the unemployed, and the unemployable.” *Jones*, 444 F.3d at 1137. Regardless of the causes of homelessness, individuals remain homeless involuntarily, including children, families, veterans, and individuals with physical and mental health disabilities. Communities nationwide are suffering from a shortage of affordable housing. And, in many jurisdictions, emergency and temporary shelter systems are already underfunded and overcrowded. For example, the 2010 Hunger and Homelessness Survey conducted by the

U.S. Conference of Mayors found that 64% of cities reported having to turn people away from their shelters.<sup>16</sup>

At least one of the Justices in *Robinson* was concerned with how criminalizing certain conditions (there, addiction to narcotics) may interfere with necessary treatment and services that could potentially improve or alleviate the condition. *See Robinson*, 370 U.S. at 673-75 (Douglas, J., concurring). Those concerns are equally applicable in this context. Criminalizing public sleeping in cities with insufficient housing and support for homeless individuals does not improve public safety outcomes or reduce the factors that contribute to homelessness. As noted by the U.S. Interagency Council on Homelessness, “[r]ather than helping people to regain housing, obtain employment, or access needed treatment and service, criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”<sup>17</sup> Issuing citations for public sleeping forces individuals into the criminal justice system and creates additional obstacles to overcoming homelessness. Criminal records can create barriers to employment and participation in permanent, supportive housing programs.<sup>18</sup> Convictions under these municipal ordinances can also lead to lengthy jail sentences based on the ordinance violation itself, or the inability to pay fines and fees associated with the ordinance violation. Incarceration, in turn, has a profound effect on these individuals’

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<sup>16</sup> U.S. Conference of Mayors, *2010 Hunger and Homelessness Survey* (2010), available at [http://www.usmayors.org/pressreleases/uploads/2010\\_Hunger-Homelessness\\_Report-final%20Dec%2021%202010.pdf](http://www.usmayors.org/pressreleases/uploads/2010_Hunger-Homelessness_Report-final%20Dec%2021%202010.pdf) (cited in *Searching out Solutions: Constructive Alternatives to Criminalization*, *supra* note 12 at 7).

<sup>17</sup> *Searching out Solutions: Constructive Alternatives to Criminalization*, *supra* note 12 at 7.

<sup>18</sup> The Federal Interagency Reentry Council, established by Attorney General Eric Holder in January 2011, is working to coordinate efforts to remove these barriers at the federal level, so that individuals are able to move past their criminal convictions and compete for jobs, attain stable housing, support their children and families, and contribute to their communities. *See* Federal Interagency Reentry Council, *Overview* (May 2014), available at [http://csgjusticecenter.org/wp-content/uploads/2014/05/FIRC\\_Overview.pdf](http://csgjusticecenter.org/wp-content/uploads/2014/05/FIRC_Overview.pdf).

lives.<sup>19</sup> Finally, pursuing charges against individuals for sleeping in public imposes further burdens on scarce public defender, judicial, and carceral resources. Thus, criminalizing homelessness is both unconstitutional and misguided public policy, leading to worse outcomes for people who are homeless and for their communities.

### CONCLUSION

For the reasons stated above, the Court should adopt the analysis in *Jones* to evaluate Boise's anti-camping and disorderly conduct ordinances as applied to Plaintiffs in this case. If the Court finds that it is impossible for homeless individuals to secure shelter space on some nights because no beds are available, no shelter meets their disability needs, or they have exceeded the maximum stay limitations, then the Court should also find that enforcement of the ordinances under those circumstances criminalizes the status of being homeless and violates the Eighth Amendment to the Constitution.

Submitted this 6th day of August, 2015.

*s/ Sharon Brett*  
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<sup>19</sup> See Nat'l Law Ctr.on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* 32-33 (2014), available at [http://www.nlchp.org/documents/No\\_Safe\\_Place](http://www.nlchp.org/documents/No_Safe_Place).

**CERTIFICATE OF SERVICE**

I hereby certify that on August 6, 2015, I served the foregoing via the Court's CM/ECF system, which will automatically provide notice to all counsel of record.

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## CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

### Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 9,874 words.

### Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

## NOTICE OF FILING AND PROOF OF SERVICE

I certify that I directed the original Appellant's Opening Brief to be filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301, on February 4, 2016.

I further certify that, upon receipt of the confirmation email stating that the document has been accepted by the eFiling system, this Appellant's Opening Brief will be eServed pursuant to ORAP 16.45 (regarding electronic service on registered eFilers) on Paul L. Smith, #001870, Deputy Solicitor General, attorney for Plaintiff-Respondent.

Respectfully submitted,

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***Signed***

*By Lindsey Burrows at 6:14 pm, Feb 03, 2016*

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