

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

BLACK & BROWN LIBERATION, )  
INDIANA CIVIL LIBERTIES UNION, )  
INC., d/b/a ACLU of INDIANA, )  
ALISHA RAUCH, TAYLOR )  
RAYMOND CRANE, KENDALL )  
DIMOND, MATT CARMER, JANET )  
BADIA, BEN SCHOCH, NANCY )  
VIRTUE, FRANCISCO NAVARRO, )  
KAYLA HARRINGTON, )  
EMMA BAKER, SKYLER DARNELL, )  
NICOLE LABOSSIER, AMANDA )  
JOSEPH, )

Plaintiffs, )

v. )

CITY OF FORT WAYNE, ALLEN )  
COUNTY SHERIFF, in his official )  
capacity, )

Defendants. )

No. 1:20-cv-240-DRL-SLC

JURY TRIAL REQUESTED

**First Amended Complaint for Declaratory and Injunctive Relief and Damages**

**Introduction**

1. In the days following the murder of George Floyd in Minneapolis, numerous persons have come together to attempt to engage in peaceful protest in downtown Fort Wayne, in front of and near the Allen County Courthouse. Peaceful protesters have repeatedly been met by members of the Fort Wayne Police Department and the Allen County Sheriff’s Department who have engaged in a range of unreasonable and

inappropriate behaviors designed to prevent the persons from engaging in lawful protest. These behaviors have included the use of tear gas, pepper spray, flash grenades, and rubber bullets and other policing tactics designed to remove peaceful protesters from public spaces. This behavior by law enforcement violated, and continues to violate, both the First and Fourth Amendments to the United States Constitution. The plaintiffs wish to continue to engage in their constitutional right of assembly and protest, but justifiably fear that the above behaviors will be repeated by the agents, employees, and officers of Fort Wayne and the Allen County Sheriff's Department. The plaintiff organizations have members in the same position as the plaintiffs. The plaintiffs seek declaratory and injunctive relief to ensure that the constitutional violations are not repeated, and the individual plaintiffs also seek their damages.

**Jurisdiction, venue, cause of action**

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331, 1343.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202 ad Rule 57 of the Federal Rules of Civil Procedure.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

**Parties**

6. Black & Brown Liberation is a membership organization located in Allen County, Indiana.
7. The Indiana Civil Liberties Union Foundation, Inc., d/b/a ACLU of Indiana, is a domestic nonprofit corporation incorporated under the laws of the State of Indiana. Its principal and sole office is located in Indianapolis.
8. Alisha Rauch is an adult resident of Allen County, Indiana.
9. Taylor Raymond Crane is an adult resident of Allen County, Indiana.
10. Kendall Dimond is an adult resident of Allen County, Indiana.
11. Matt Carmer is an adult resident of Allen County, Indiana.
12. Janet Badia is an adult resident of Allen County, Indiana.
13. Ben Schoch is an adult resident of Allen County, Indiana.
14. Nancy Virtue is an adult resident of Allen County, Indiana.
15. Francisco Navarro is an adult resident of Allen County, Indiana.
16. Kayla Harrington is an adult resident of Allen County, Indiana.
17. Emma Baker is an adult resident of Allen County, Indiana.
18. Skyler Darnell is an adult resident of Allen County, Indiana.
19. Nicole Labossier is an adult resident of Allen County, Indiana.
20. Amanda Joseph is an adult resident of Allen County, Indiana.
21. The City of Fort Wayne is a municipality located in Allen County, Indiana.

22. The Allen County Sheriff is the county-wide law enforcement officer for Allen County, Indiana.

### **Facts**

#### *Introductory facts*

23. Following the murder of George Floyd in Minneapolis on May 25, 2020, protests have erupted throughout the United States as persons have demonstrated against systemic racism and the manner in which systemic racism has negatively influenced police actions towards persons and communities of color.

24. The protesters have demanded changes in policing practices and the structure of police forces.

25. In Fort Wayne there have been protests directed to institutional racism and policing practices beginning on May 29, 2020, and continuing through today's date with more protests to be held in the future.

26. These protests have been located at or near the Allen County Courthouse in downtown Fort Wayne.

27. The protests have been almost entirely peaceful.

28. The protests have been marred by officers of the Fort Wayne Police Department and deputies from the Allen County Sheriff's Department taking violent and inappropriate actions against peaceful protesters who were engaging in legitimate protest activities on public property.

29. Unreasonable force has been utilized against protesters.

30. Among other things, protesters have been teargassed, pepper sprayed, attacked with rubber bullets, and pushed away from public areas by inappropriate shows of force by police authorities. The police have also used stun grenades to force peaceful protesters to disperse.

31. Tear gas consists of aerosolized chemicals that cause severe irritation in the eyes, mouth, lungs, and nose. It causes difficulty in breathing, pain and uncontrollable watering in the eyes, and coughing.

32. It is painful to be hit by a tear gas container and being hit by one may cause serious injury, particularly if an individual is struck in the head or neck with the device.

33. Pepper-spray contains a chemical that irritates the eyes, nose, skin, and respiratory system.

34. In addition to the tearing of eyes, blurred vision, respiratory difficulties, and burning and irritation caused by tear gas and pepper spray, these common side effects are particularly dangerous during the current pandemic as they promote the spread of the disease by causing sneezing and coughing that propel droplets into the air.

35. The 1993 Chemical Weapons Convention, signed by the United States, explicitly forbids the use of "riot control agents" like tear gas and pepper balls, "as a method of warfare." Convention on the Prohibition of the Development, Production, Stockpiling

and Use of Chemical Weapons and on Their Destruction, Art. I(5), *opened for signature* Jan. 13, 1993, 1874 U.N.T.S, available at [https://treaties.un.org/doc/Treaties/1997/04/19970429%2007-52%20PM/CTC-XXVI\\_03\\_ocred.pdf](https://treaties.un.org/doc/Treaties/1997/04/19970429%2007-52%20PM/CTC-XXVI_03_ocred.pdf) (last visited June 15, 2020).

36. It is painful to be struck by rubber bullet, which are rubber-coated projectiles. They may cause serious injury depending on where the person is struck.

37. Stun grenades are also called flash or flashbang grenades. These are explosive devices that emit an extremely loud sound and bright light upon detonation. They can cause temporary loss of sight and temporary hearing loss and are designed to disorient persons.

38. Stun grenades may cause permanent hearing loss. They can also cause serious burns and injuries to persons struck by them.

39. Stun grenades can be as loud as 175 decibels when they are detonated. A jet engine at 100 feet is only 140 decibels.

*May 29, 2020*

40. On May 29, 2020, protesters gathered on the Courthouse Green, the one-acre public park area in front of the Allen County Courthouse and they also gathered on the public sidewalks near the Courthouse.

41. A group of protesters marched from this area on Clinton Street to the nearby Martin Luther King Bridge and then back to the Courthouse Green.

42. Some persons were on the sidewalks and some were in the street.

43. As the protesters walked back towards the Courthouse, a large number of officers of the Fort Wayne Police Department came out of the police headquarters in the Rousseau Building on Clinton Street. At that point there were also protesters on the public sidewalk and the Courthouse Green.

44. The police officers proceeded to move toward the Courthouse Green where there were peaceful demonstrators.

45. Without warning, the police officers began to indiscriminately shoot off dozens of tear gas cannisters. They were shot into the Courthouse Green and the public sidewalks near the Courthouse where demonstrators had gathered as well as into the street where there were demonstrators.

46. One of the tear gas cannisters broke a window of the Courthouse.

47. After the initial volley of tear gas, the police created a line and pushed forward across South Clinton Street.

48. Police officers sprayed any person with pepper spray who did not fall back off of the public space they were previously occupying to engage in peaceful protest.

49. A number of protesters were on the public sidewalks that bounded the nearby Freimann Square, a 4.6-acre public park diagonally across from the Courthouse Green, and a number where in Freimann Square.

50. Officers from the Fort Wayne Police Department indiscriminately shot tear gas into the protesters on the sidewalks and those in Freimann Square.

51. Deputies from the Allen County Sheriff's Department assisted in creating the line of officers that pushed protesters out of the public areas.

52. Law enforcement officers fired rubber bullets into the crowds of persons who were peaceably assembled in the public areas.

53. The protest lasted into the night and despite some isolated incidents of property destruction by a few protesters, remained largely peaceful despite indiscriminate attacks by law enforcement.

*May 30, 2020*

54. Another protest was planned for the environs near the Allen County Courthouse on May 30, 2020.

55. Deputies of the Allen County Sheriff's Department had lined up their vehicles near the entrance to the Courthouse, forming a barrier.

56. A number of deputies from the Allen County Sheriff's Department were accompanied by police canines and were present on the Courthouse Green.

57. However, the large majority of the Courthouse Green was open, and the protesters gathered there.



58. A number of protesters entered the street, although the majority remained on the Courthouse Green and on public sidewalks.

59. Nevertheless, Fort Wayne Police Department officers joined by Allen County Sheriff Department deputies again formed a line and moved toward the peaceful protesters on the public spaces.

60. There was a quiet announcement that persons had to disperse, although it could not be heard by protesters who were not immediately next to the law enforcement officer who made the announcement. There was no lawful basis for this order.

61. Ten seconds later, again, without further warning, Fort Wayne Police Department officers fired tear gas indiscriminately towards persons in the Courthouse Green and on the public sidewalks.

62. Again, officers from the Fort Wayne Police Department indiscriminately shot tear gas into the protesters on the sidewalks and those in Freimann Square.

63. Tear gas was sprayed at a three-year old whose mother was taking her home. She was two blocks from the protest scene. While street medics attempted to administer first aid to her, law enforcement officers shot another tear gas cannister from a moving vehicle directly into the group helping the child.

64. Persons in public areas were pepper sprayed.

65. Rubber bullets were shot by law enforcement officers at demonstrators who were in public places.

66. Stun grenades, causing loud explosions and brilliant flashes of light, were also deployed against the protesters.

67. A number of protesters had marched on the street and neighboring sidewalks to the nearby Martin Luther King Bridge.

68. Without warning, officers of the Fort Wayne Police Department descended on the persons on the bridge and sidewalks and started shooting teargas into the crowd, including into those persons on sidewalks. Law enforcement personnel blocked protesters from leaving the bridge in either direction, or then shot tear gas canisters at them. The protesters were given no opportunity or time to safely disperse.

69. Law enforcement officers travelled near the Courthouse, and if they saw persons on the sidewalk, they would shoot tear gas or pepper spray at them.

*Further demonstrations*

70. On May 31, 2020, protesters again gathered on the Courthouse Green to engage in peaceful protest.

71. Again, police authorities used tear gas, rubber bullets, pepper spray, and stun grenades to prevent persons from engaging in peaceful protest in public spaces including on public sidewalk.

72. Persons have continued thereafter to engage in protests activity on the Courthouse Green and nearby areas.

73. On June 14, 2020, a group of protesters marched in the street towards the Martin Luther King Bridge blocking the street.

74. After protesters refused to clear the road, Fort Wayne Police Department officers responded and shot rubber bullets into the crowd, which dispersed.

75. Police pursued the demonstrators, even after they left the street, shooting rubber bullets at that them.

76. As protesters dispersed to get away from the weapons being deployed, police went into private businesses and dragged out protesters who were just trying to get away from rubber bullets.

77. On this date, officers of the Fort Wayne Police Department also attacked persons who were peacefully protesting on the Courthouse Green, a number of blocks away from the bridge, shooting rubber bullets at them.

78. Law enforcement officers ordered the peaceful protesters to disperse. There was no lawful cause to do so.

79. On June 15, 2020, protesters gathered peacefully on the Courthouse Green.

80. Around 6:00 p.m., without warning, Fort Wayne Police Department officers started arresting persons without stating any charges and without reading them their rights. Weapons were pointed at other persons and they were threatened with arrest.

81. The police sprayed persons on the Courthouse Green with pepper spray.

82. This compelled persons to leave the Courthouse Green, even though they were peaceably assembled.

83. At no point was a curfew established in Fort Wayne.

*The plaintiffs*

Black & Brown Liberation

84. Black & Brown Liberation is a membership organization that was started approximately three months ago.

85. The purpose of the organization is to engage in organized activities to combat racial bias in the United States and in Allen County, including systemic racism in policing that negatively affects persons and communities of color.

86. The group started out with 67 members and now has approximately 500 members of all races.

87. The group has an active Facebook page that it utilizes to inform members of protests, meetings, and other activities germane to its purpose.

88. The murder of George Floyd galvanized the group and its members and many of the members of the group participated in the demonstrations on the Allen County Courthouse Green and in other public places near the Green as described above.

89. These protests, seeking an end to the systemic racism that infects policing, are at the core of the mission of Black & Brown Liberation.

90. Its members were attacked by law enforcement with tear gas, other chemical weapons, and by the shows of force as described above.

91. Its members wish to continue to engage in peaceful protest on the Courthouse Green and nearby public places, but do not want to be exposed to the violence that law enforcement unleashed on the organization's members and other persons at the earlier protests.

92. There are members of Black & Brown Liberation who wish to be able to exercise their right to engage in peaceful and lawful protest, but do not want their names publicized because of fear of adverse consequences.

ACLU of Indiana

93. The ACLU of Indiana is one of the preeminent civil rights organizations in the State of Indiana.

94. It is the Indiana affiliate of the American Civil Liberties Union.

95. The ACLU of Indiana and its more than 14,000 members are dedicated to advocating for the constitutional rights of Hoosiers and to advance these goals the ACLU of Indiana and its employees engage in, among other things, community education, legislative and administrative advocacy, and litigation.

96. This case involves the essential rights of protest against the government and free expression that are at the heart of the First Amendment and that are extremely germane to the purposes of the ACLU of Indiana.

97. The case also concerns ensuring that the agents of government do not use unreasonable force against the public. Preventing this abuse of power is also at the heart of the ACLU of Indiana's purpose and mission.

98. The ACLU of Indiana has members who reside in Allen County and who have participated in the above peaceful protests in Fort Wayne where they have attempted to exercise their fundamental rights to speak out against systemic racism and its effects on police practices in Fort Wayne and the United States.

99. Its members have been exposed to the teargassing and other aggressive law enforcement practices noted above that violate both the First Amendment and the Fourth Amendment.

100. The ACLU of Indiana has members who reside in Allen County who wish to protest for racial justice in the future on the Allen County Courthouse Green and nearby public places, but who do not want to be exposed to tear gas, pepper spray, rubber bullets or other aggressive and improper law enforcement practices described above.

101. A number of the members do not want their names to be publicized because of fear of retribution or other adverse actions by the defendants.

Alisha Rauch

102. Following the murder of George Floyd, Alisha Rauch set out to organize a protest and rally addressing systemic racism and policing practices in the United States and Fort Wayne.

103. She therefore announced on her Facebook account that there would be a rally on the Allen County Courthouse Green at 5:00 p.m. on Friday, May 29, 2020.

104. On May 29, 2020, she travelled to the Courthouse Green and briefly spoke to the close to 300 persons who were peacefully assembled on the Courthouse Green.

105. Later in the evening, while she was there, a number of the persons entered into the street and kneeled.

106. They then proceeded to march toward the Martin Luther King bridge and then returned.

107. She remained on a street corner, not blocking traffic, and observed what was happening.

108. Many persons remained on the Courthouse Green and the sidewalks near the Courthouse.

109. She heard someone yell, as they ran by, that SWAT was coming, and as more people ran by, she felt the effects of teargas that was being deployed and she proceeded to run away from the clouds of tear gas.

110. She ran to the sidewalk outside the Hoppy Gnome on the corner of Berry and Clinton Streets.

111. While she was attempting to catch her breath, she was hit with more waves of tear gas.

112. She has asthma and was having difficulty breathing.

113. She ran to her car that was parked in the public parking lot at Citizen's Square so she could use her inhaler.

114. From there she could see the Courthouse Green and she saw Fort Wayne Police Department officers move through this public area and spray people with pepper spray who were on the Green and were behaving peacefully.

115. She saw people who were kneeling on the grass on the Green who were sprayed with pepper spray, even though they were doing nothing wrong.

116. She saw a line of SWAT officers marching toward where she was, and she left.

117. On May 30 she returned to the Green with her children and everything was peaceful.

118. She returned, by herself, around 9:00 p.m.

119. She stayed in her car to observe.

120. She saw Fort Wayne Police Department officers arresting people who appeared to be doing nothing wrong.

121. She also saw police shooting tear gas canisters at persons who were on sidewalks or on the Courthouse Green who were behaving peacefully.

122. She also saw the police walk up to persons on the Courthouse Green and sidewalks and spray them in the face with pepper spray.

123. She has returned to other protest activities on and near the Courthouse Green. However, she is extremely concerned and anxious about again being attacked and would



like to be able to engage in peaceful protest without fear of a violent and inappropriate response by law enforcement.

Taylor Raymond Crane

124. On May 29, 2020, Taylor Raymond Crane went to the protest taking place on the Courthouse Green around 4:30 p.m.

125. He walked with protesters to the Martin Luther King Bridge.

126. As he walked back, he saw Fort Wayne Police officers leave their headquarters.

127. He saw the police launch tear gas into the crowd on the Courthouse Green and sidewalks, as well as persons in the street.

128. He was on the Courthouse Green and got teargassed.

129. The persons on the Courthouse Green and sidewalks were not doing anything unlawful.

130. Nevertheless, Fort Wayne Police Department officers, in riot gear, again began to indiscriminately shoot tear gas everywhere.

131. He was again teargassed.

132. He witnessed police spray persons with pepper spray who were on the Courthouse Green and on the sidewalks.

133. He watched police officers proceed on the lawn with batons, pushing back protester while spraying them.

134. He eventually went to a public parking lot to try to avoid the tear gas. He was there with a number of media personnel. Nevertheless, the police launched tear gas into the sidewalk by the parking lot, and he again was engulfed by tear gas.

135. He was present on May 30, 2020, while 200-300 persons were on the Courthouse Green.

136. Again, law enforcement came onto the lawn, firing tear gas indiscriminately.

137. Although he remained on the sidewalk and the Courthouse Green, he was again teargassed.

138. He also witnessed concussion grades being employed.

139. Although he was peaceably protesting, he was shot in the back by a rubber bullet. He believes it was shot by Allen County Sheriff's Department deputy.

140. He was present on May 31 near the Courthouse.

141. He saw law enforcement personnel fire rubber bullets at peaceful protesters on May 29, 20 and 31.

142. He is aware that protests are continuing. He has checked in on them, but he has not stayed as he is fearful of being exposed to further violence by law enforcement officials.

143. He wants to be able to engage in peaceful protest without fear and without needing to be hypervigilant.

Kendall Dimond

144. On May 29, 2020, Ms. Dimond joined other persons engaging in peaceful protest near the Allen County Courthouse.

145. During the afternoon she was on the sidewalk near the headquarters of the Fort Wayne Police Department when numerous police officers, dressed in riot garb, left the building heading towards the Courthouse.

146. She was instructed to get out of the way and she and other persons on the sidewalk moved so that they were pressed against a retaining wall, allowing the officers to pass.

147. As the officers walked by a number of them sprayed her and others with pepper spray.

148. She suffered intense discomfort, burning in her eyes and on her face, and respiratory difficulties.

149. The officers then proceeded to fire cannisters of tear gas at protesters who were in the intersection of Main and Clinton Streets as well as firing into the crowds of protesters in the Courthouse Green and on neighboring sidewalks.

150. The teargas directed to the protesters in the intersection resulted in all protesters except one leaving the intersection.

151. Members of the Fort Wayne Police Department proceeded to fire tear gas cannisters directly at this man. He collapsed as he was apparently overcome by the tear gas.

152. Ms. Dimond was on the sidewalk and she and a number of persons entered the intersection and dragged the man to the sidewalks. As she did this the law enforcement officers fired numerous cannisters of tear gas at them as they rescued this man.

153. Much like the pepper spray, the tear gas caused intense discomfort. She had difficulty breathing and suffered pain in her face and eyes.

154. Law enforcement then started firing rubber bullets at persons on sidewalks as well as on the Courthouse Green.

155. Although at one point, after she was initially sprayed with pepper spray, she heard an announcement that the protest had been declared to be an unlawful assembly, this was quickly followed, without warning, with cascade of tear gas.

156. Persons were never instructed by law enforcement where they should go to safely leave the areas.

157. On May 30, 2020, she arrived in the early evening and travelled to the area near the Martin Luther King bridge, where protesters were on the sidewalk.

158. She briefly left and by the time she came back Fort Wayne Police Department Officers were shooting tear gas cannisters into crowds of persons in Freimann Square and in the Courthouse Green.

159. People had gone into Freimann Square to try to escape the violent responses of police authorities directed to persons on the Courthouse Green. But law enforcement, from outside of Freimann Square, just launched multiple volleys of tear gas into the area.

160. Since that time she has returned to protests in and around the Courthouse Green only intermittently and only for brief periods of time. She generally just drives by.

161. She would like to be able to continue with protesting on the Courthouse Green and surrounding sidewalks. However, she is extremely fearful of being exposed to more violence from law enforcement.

Matt Carmer

162. On May 29, 2020, Matt Carmer travelled to the Allen County Courthouse to participate in the peaceful protest that was ongoing.

163. He took his young child with him as he wanted to teach the child about the rights that all persons have in the United States to engage in peaceful protest.

164. He also wanted to teach the child about racism and the need for persons to stand up against it and its influences and effects.

165. He and his child participated in the peaceful protest for a period of time.

166. It started to rain, and he and his child went into Freimann Square to get under the trees there.

167. From there he saw the line of officers from the Fort Wayne Police Department leave police headquarters.

168. No demonstrators were behaving violently, but the police immediately began to deploy chemicals, indiscriminately, at protesters.

169. Almost immediately he saw plumes of smoke and persons being sprayed.

170. He heard people screaming.

171. Shortly thereafter, the chemical clouds that the police had caused descended on him and his child in Freimann Square.

172. His child started coughing and while Mr. Carmer attempted to tend to the child Mr. Carmer felt the effects of the gas—his eyes started to water, and he began to cough.

173. He and his child ran to the far end of Freimann Square, attempting to get as far away from the Courthouse Green as possible.

174. His child was terrified and stated that that the police were coming to kill them.

175. He would like to go back to engage once again in peaceful protest, but he is unwilling to do so given the reaction of law enforcement on May 29. He would also like to teach his child that persons have the right to engage in peaceful protest.

176. If law enforcement is enjoined to allow peaceful protests he will return to protest, as from what he saw protesters were all peaceful before they were attacked.

Janet Badia

177. On May 30, 2020, she participated in the protest for Black Lives Matter at the Allen County Courthouse, arriving in the late afternoon.

178. The protests were peaceful, and she left for a brief period to get dinner.

179. Around 7:00 p.m. she received frantic texts from a group of friends who alerted her that law enforcement were teargassing people; a short time later, she received another

text from those same friends saying they were trapped in a parking garage where they had sheltered to try to get away from the tear gas and to try to wash their eyes.

180. She and her partner went back downtown to try to get to their friends and provide them assistance.

181. They parked blocks from the Courthouse area and proceeded on foot.

182. While they walked near an area called The Landing, she passed a group of Fort Wayne Police Department officers who were standing outside their parked cruiser in the middle of the street. The police did not stop her and her partner from continuing to walk in the direction of the Courthouse.

183. As they approached the corner of Clinton and Main streets, they saw persons running towards them being followed by uniformed law enforcement officers. One of the persons was tackled by the police under the railroad bridge that bears a sign that says, "Welcome to Fort Wayne."

184. She and her partner were on a street corner, at a distance from the officers.

185. They took videos of the police with their phones but did not, in any way, obstruct the police officers.

186. Nevertheless, several of the officers turned towards them and threw a tear gas cannister at them and two other persons on the street corner, even though they were on a public sidewalk and were doing nothing illegal.

187. At no time did the police order them to disperse or make any comments at all.

188. They ran and suffered only slight effects of the tear gas, but she did suffer some of the effects.

189. She has returned to the protests at and around the Courthouse on two to three occasions since that time.

190. When she returned, she was concerned about again being attacked without justification by law enforcement.

191. She would like to be able to engage in peaceful protest without fear of chemical and other attack by law enforcement.

Ben Schoch

192. On May 29, 2020 he was present on and around the Courthouse Green to participate in peaceful protests against racism and policing.

193. He took video of the events.

194. He witnessed members of the Fort Wayne Police Department in a line approach protesters.

195. Two officers threw tear gas canisters at the protesters and this was followed by numerous canisters being launched at protesters by mechanical means.

196. There was absolutely no warning given to the protesters before the tear gas started.

197. He was on the Courthouse Green and tear gas canister after tear gas canister was launched at peaceful protesters.



198. He suffered the full effects of the tear gas – including tearing, itching, and burning eyes and skin on the face. He suffered intense burning sensations in his lungs.

199. Later that evening he returned to the Courthouse Green and its immediate vicinity to help pick up trash. There were hundreds of tear gas canisters on the ground.

200. On May 30 he returned and engaged in peaceful protest on the sidewalks next to the Courthouse.

201. He heard a warning from law enforcement to disperse and immediately thereafter law enforcement officers began to shoot volleys of tear gas at peaceful protesters on the sidewalks and the Courthouse Green.

202. He and a friend left to walk to where they had parked their cars.

203. Their path was blocked by a deputy sheriff who indicated they had to take another route.

204. They therefore walked down an alley to get to their cars.

205. They heard a group of young persons running behind them in the alley, and he saw law enforcement officers who gave no warning and said nothing, but who proceeded to shoot tear gas canisters at them. One of the canisters hit him directly in the foot.

206. This was extremely painful.

207. He continues to return to the protests but is concerned about being again attacked with chemicals and suffering other harm from law enforcement. He is also concerned about being arrested even though he is engaged in peaceful protest.

Nancy Virtue

208. On May 30, 2020, she and her partner, Steven Carr, participated in the peaceful protest against systemic racism on the Courthouse Green.

209. They left before there was any violence from law enforcement.

210. However, they received messages about the teargassing and the other actions that were occurring and decided to return with supplies for persons who were suffering the effects of being teargassed and pepper sprayed.

211. They returned with their supplies and parked and began walking towards the Courthouse Green.

212. They passed a number of Fort Wayne Police Department officers who had parked their cars in the streets.

213. At no point did any of the officers indicate that they should turn back.

214. Nevertheless, as they walked on the sidewalks on Barr Street (the side street between Berry and Main Streets) Fort Wayne Police Department cars were stationed at both ends of Barr Street on Berry Street and Main Street.

215. Without saying anything the officers either threw or shot tear gas cannisters into Barr Street from both directions.

216. Initially, there were only a few people on the sidewalks on Barr Street and there was no one in the street. But once police began firing tear gas, people began to run down Barr Street to escape being hit.

217. She received a direct hit of tear gas to her face. This caused her to start coughing and her eyes burnt.

218. They ran into the parking garage to get out of the way and to try to tend to the effects of the tear gas.

219. This was extremely painful and discomfoting.

220. They remained in the parking lot but could hear the sounds of the disturbance at and near the Courthouse Green.

221. She has returned to participate in the protests but is extremely concerned about again being attacked with chemical weapons with no provocation.

Francisco Navarro

222. On May 30, 2020, Mr. Navarro arrived downtown at approximately 7:30 p.m. and travelled to the corner of Clinton and Berry Streets, where he met a crowd of peaceful protesters. He stood on the sidewalk along Clinton Street.

223. At the time that he arrived, there was a line of police standing in the middle Clinton Street, facing the protesters on Berry Street, but they were not engaging the protesters in any way.

224. After approximately 10-15 minutes, without warning or any other communication, police started shooting canisters of tear gas and rubber bullets into the assembled crowd.

225. Mr. Navarro ran with a group of other protesters for approximately one block, and then began rendering assistance to those who were overcome by the tear gas.

226. Before even being able to catch his breath, police again began firing tear gas and rubber bullets into the crowd.

227. As the group again attempted to flee, they rounded the corner of a building and were stopped by another line of police, who began tear gassing and shooting rubber bullets into the crowd.

228. At this point, the protesters were being shot with tear gas and rubber bullets from multiple sides.

229. The group then turned back, and ran along Berry Street, still being shot by tear gas and bullets, by both lines of officers.

230. At some point during these events, Mr. Navarro was hit by some sort of projectile, which left a bruise on his side.

231. He sprained both of his feet while running and was taken to the hospital for treatment. He had to use crutches to walk for approximately two weeks after the incident.

232. He felt the physical effects of the tear gas, including burning in his nose, throat, mouth, and eyes.

233. He has also witnessed police arresting peaceful protesters.

234. He has not engaged in any protest activities since mid-June, although he would like to, as he is extremely fearful of being exposed to more violence or arrest from law enforcement.

235. He continues to suffer emotional injuries, as he is still afraid of police while he conducts his daily activities, and he has flashbacks to these events.

Kayla Harrington

236. On May 30, 2020, Ms. Harrington arrived downtown at approximately 6:30 p.m. and travelled to Freimann Park, where she joined a group of protesters who were peaceably assembled there.

237. After approximately ten minutes, she heard several boom sounds coming from the direction of the courthouse, where another group of protesters was located. She perceived that police were launching canisters of tear gas into that group of protesters. The people assembled around her started to shout "tear gas!".

238. She then realized that tear gas was also being launched into the group of people where she was standing, and it appeared to be coming from both north and south of them.

239. She heard no warnings or any other communications from police before the tear gas canisters were launched at them.

240. Police also began shooting rubber bullets indiscriminately into the crowd.

241. She and others in the group began to run to avoid the effects of the tear gas and being hit by the canisters and rubber bullets as they flew.

242. It was difficult to run, because her vision and breathing were impaired by the effects of the tear gas, including burning, watering of her eyes, and coughing.

243. As a result, she twisted her ankle trying to step around obstacles as she fled.

244. Police continued to chase her and the group of protesters, indiscriminately firing tear gas and rubber bullet into the crowd, which numbered over 100, east to the St. Mary River, then north to Headwaters Park, and then east over a bridge into the old fort.

245. Ms. Harrington witnessed police pepper spraying the fleeing protesters.

246. As she attempted to find a safe location, she witnessed three young adults trapped in a parking structure called Clinton Street Parking. Police were firing tear gas into the parking structure, and then pepper spraying the individuals as they attempted to leave.

247. Ms. Harrington witnessed police arresting individuals who were peacefully protesting on the Courthouse Green.

248. As a result of seeing police arrest peaceful protesters, even away from protest sites, she has not participated in any protest activities.

249. She would like to be able to continue protesting, however, she is extremely fearful of being exposed to more violence or arrest from law enforcement.

250. She continues to be afraid of police as he conducts her daily activities.

Emma Baker

251. On May 29, 2020, Ms. Baker arrived downtown at approximately 10:00 p.m. and travelled toward the Courthouse Green with the goal of documenting peaceful protest activities.

252. As she approached the intersection of Calhoun and Berry Streets, she noticed a group of police standing in a line opposite a group of protesters, who were standing in the street holding hands.

253. Ms. Baker stopped at that intersection, on the sidewalk of Calhoun Street, in order to begin documenting these activities using the camera on her phone. There were approximately 6-7 people assembled on the sidewalk alongside her.

254. Without warning, police officers then launched a tear gas canister into the group of protesters in the street, with the cloud overtaking the individuals both in the street and on the sidewalk.

255. One of the officers then said, "Do you want some more?"

256. As a result of being hit with the tear gas, Ms. Baker turned and attempted to leave.

257. Officers then launched another canister, effectively blocking the path of those attempting to escape.

258. Ms. Baker felt the physical effects of the tear gas, including difficulty breathing, and burning eyes, throat, and lungs.

259. Ms. Baker no longer felt safe participating in the protest activities, and she left the area.

260. On May 30, 2020, Ms. Baker travelled downtown to the Courthouse Green at around 1:00 p.m. to participate in peaceful protest activities.

261. At around 3:00 p.m., she viewed a group of protesters move into the road at the corner of Clinton and Main Streets.

262. Police began to launch tear gas canisters both into the group of protesters in the road and those peaceably assembled on the Courthouse Green and surrounding sidewalks.

263. Ms. Baker remained on the sidewalk, and was hit by the clouds of tear gas.

264. Ms. Baker again left the area after being affected by the tear gas fired indiscriminately into the crowd.

265. She would like to be able to continue protesting, however, she is extremely fearful of being exposed to more violence from law enforcement.

Skyler Darnell

266. On May 30, 2020, at approximately 3:00 p.m., Ms. Darnell travelled to the Courthouse Green and joined a group of protesters who were peaceably assembled there.

267. She positioned herself on the sidewalk at the intersection of Main and Clinton Streets. She stayed in that area for approximately 90 minutes.

268. One group of protesters was assembled in the road, engaging in peaceful protest.

269. They appeared to be attempting to disperse, when police began firing tear gas canisters into the crowd.



270. Ms. Darnell ran from the sidewalk onto the Courthouse Green, but police continued shooting tear gas canisters onto the lawn, with the cloud of tear gas hitting Ms. Darnell.

271. She ran to an unused parking lot in order to escape the tear gas.

272. Later in the day she decided to head home, and she walked to Freimann Park, as she was waiting on her brother to retrieve the family's car.

273. She noticed that police appeared to be lining up near the park, so she decided to try to document the peaceful protest activities using the camera on her phone.

274. Without warning, police began to shoot tear gas canisters into the groups of people peacefully assembled in Freimann Park. On one side of the park, police were also shooting rubber bullets into the crowd.

275. She saw a man yelling at the police to stop teargassing peaceful protesters, who was positioned a short distance in front of her.

276. The police then shot tear gas canisters in the direction of that man and the group of protesters that Ms. Darnell was positioned with.

277. One of those canisters hit Ms. Darnell in the ankle.

278. In order to escape the tear gas, Ms. Darnell ran to a train track bridge that crosses Clinton Street. She attempted to hide under that bridge, where she continued to be pummeled with tear gas from multiple sides, trapping her in.

279. A police officer pointed a gun at her and told her to leave.

280. She responded that she was trying to leave, but she was blocked by police and the tear gas from reaching her car.

281. The officer responded that this was not his problem, and that she should call an Uber.

282. After she was able to leave the bridge, she was crossing Berry Street in order to reach her vehicle.

283. A black sport utility vehicle containing law enforcement officers then pulled up alongside her. Without stopping, the passenger opened the window, threw a tear gas canister at her, and laughed.

284. She felt the negative effects of the tear gas, including difficulty breathing, and burning in her eyes, throat, and mouth.

285. Due to lingering pain in her throat, she was not able to eat solid food for almost a week after this incident.

286. She also suffered a bruise on her ankle from being hit with the tear gas canister.

287. She would like to be able to continue protesting, however, she is extremely fearful of being exposed to more violence from law enforcement.

Nicole Labossier

288. On May 29, 2020, Ms. Labossier arrived downtown at approximately 6:00 p.m. and travelled to the Courthouse with her husband and her fifteen-year old son, where she joined a group of protesters who were peaceably assembled there.

289. Her group peacefully protested on the Courthouse Green, then a number of persons marched to the Martin Luther King, Jr. bridge and back toward the Green. This march back and forth happened a couple of times.

290. As she stood on the west side of the intersection of Clinton and Main Streets alongside her family and several reporters, she saw police, dressed in riot gear, advancing toward them along Clinton Street along the edge of the street and on the sidewalk, spraying protesters with a chemical who were peaceably assembled on the sidewalk.

291. Police then lined up across Clinton Street at the intersection with Main Street, approximately 15 feet away from where Ms. Labossier was standing.

292. At that time, a group of protesters was peacefully assembled in the intersection, approximately eight feet away from the line of police.

293. Ms. Labossier was standing at the southwest corner of Clinton Street and Main Street, on the sidewalk.

294. Without warning or any other communication, police then released tear gas canisters into the crowd of protesters who were assembled in the street.

295. After one to two minutes, again without warning or any other communication, the police also fired tear gas canisters at Ms. Labossier and nearby protesters who were now standing on the Courthouse Green.

296. Ms. Labossier and her family then retreated further into the Courthouse Green, in order to avoid the tear gas and its effects.

297. Police then fired tear gas into the crowd of protesters on all sides of the Courthouse Green.

298. Several canisters landed immediately next to Ms. Labossier and her family, and her son fell down on several occasions, gagging from the effects of the tear gas.

299. Two volunteer medics carried Ms. Labossier's son to Berry Street in order to render him aid, but the tear gas canisters continued to be fired and to reach them at that location.

300. She felt the effects of the tear gas, including burning in her eyes and throat, shortness of breath, and coughing, and her lungs continued to hurt through the following day.

301. Since that time, she has participated in further protest activities, but she is extremely fearful of being exposed to more violence from law enforcement.

Amanda Joseph

302. On May 29, 2020, at approximately 10:00 p.m., Amanda Joseph went downtown hoping to attend a peaceful protest taking place on the Courthouse Green.

303. She walked to Main and Calhoun Streets, on the back side of the courthouse.

304. Approximately two minutes later police in riot gear walked down Main Street, throwing canisters of tear gas into the crowd assembled on the sidewalks. She never heard police issue a warning, and she was overtaken by the tear gas.

305. She walked quickly to Calhoun and Wayne Streets where she witnessed protestors treating their exposure to tear gas with milk and water.

306. There, she witnessed police arresting protesters.

307. From there she traveled to the corner of Calhoun and Berry Streets.

308. Police again walked down the road in full riot gear, throwing canisters of tear gas into the crowds of protesters on the sidewalk.

309. Because she was overwhelmed by the effects of the violence and tear gas, she travelled a block away, and attempted to render aid to others who were tear gassed.

310. She is pregnant, and did not want to expose herself to further possible injury, and decided to leave.

311. As she was leaving, she witnessed police pepper spraying two young men at point blank range, causing them to fall to the ground. She then rendered them aid by providing them with milk for their eyes.

312. On May 30, 2020, Ms. Joseph returned to the Courthouse Green to listen to speakers who were scheduled to make remarks to the public.

313. As she was standing on the corner of Berry and Barr Streets, the police began firing tear gas canisters into the crowd, indiscriminately. She heard no warning prior to these canisters being fired.

314. In order to avoid the tear gas, she walked on the sidewalk from the courthouse to the Martin Luther King Bridge, where further protest activities were occurring, and then back to the Courthouse Green. When she had to cross the street she used the crosswalk.

315. At this point, a crowd of protesters was gathered at Clinton and Berry Streets because the sidewalks were blocked by police.

316. Police then began to shoot rubber bullets into the crowd.

317. She witnessed a man shot in the back with a rubber bullet as he was attempting to walk away after being told to leave the area.

318. He fell to the ground, unconscious, and the police threw a canister of tear gas next to him.

319. A crowd pulled him to safety, and as they attempted to treat his injuries, police threw a tear gas canister into the group.

320. As Ms. Joseph and at least ten other people walked through a nearby alley attempting to leave the area, police threw tear gas canisters on both sides of the group, so that they would be trapped between clouds of tear gas.

321. Once she was able to escape the alley, Ms. Joseph stood on the corner of Barry and Lafayette Streets, ready to cross the street to her vehicle, when she saw police cars driving around, with officers throwing tear gas canisters out of the windows.

322. On June 6, 2020 Ms. Joseph was walking her dog near Barr and Barry Streets after leaving a scheduled and permitted event on the Courthouse Green.

323. When she was walking towards her car she ran into friends who were walking into a restaurant.

324. As she was standing, talking to friends and the workers of the restaurant, Fort Wayne Police Department officers pulled up in a SWAT van and ordered them to disperse.

325. Some of those individuals, including the owner of the restaurant, walked into the restaurant.

326. Police then entered the restaurant, and dragged several individuals out onto the sidewalk.

327. Police then shot rubber bullets at Ms. Joseph and her dog as they attempted to follow the police's instructions to disperse.

328. During these events, Ms. Joseph suffered the physical effects of inhaling tear gas, including burning and watering eyes, coughing, nausea, and difficulty breathing.

329. She also suffered emotional injuries from witnessing other individuals being brutalized by police.

330. She would like to engage in peaceful protest, but she is now fearful of engaging in any protest activities and of further violence by police.

331. She remains fearful of future violence by law enforcement as she conducts her daily activities.

*Concluding allegations*

332. On information and belief defendants have employed drones to survey the crowd and to identify persons who have engaged in peaceful protest.

333. At no point has any representatives of the City of Fort Wayne or the Allen County Sheriff's Department indicated that it was a mistake to use tear gas, stun grenades, pepper spray, and rubber bullets against peaceful protesters. Nor have they promised not to use similar weapons and tactics in the future to suppress peaceful protest.

334. The violent response to peaceful protests by the officers, agents, and employees of the defendants has led to persons being unwilling to exercise their rights to engage in peaceful protest.

335. The items used by defendants to interfere with, punish, and disperse peaceful protest are dangerous.

336. It is the practice or policy of the defendants to utilize these items on peaceful protesters.

337. The defendants have engaged in a practice, without lawful justification, of preventing peaceful protest in public spaces.

338. The actions and the inactions of the defendants, their officers, agents, and employees, have had the effect of denying persons the ability to peaceably assemble and protest. They also represent the objectively unreasonable use of force.



339. The plaintiffs and the members of the plaintiff organizations are suffering continuing harm in that their rights to peaceably protest have been and continue to be chilled by the actions and inactions of the defendants, their officers, agents, and employees.

340. The plaintiffs and the members of the plaintiff organizations are suffering continuing harm in that they are threatened with the objectively unreasonable use of force by defendants, their officers, agents, and employees.

341. The individual plaintiffs have been damaged by the actions and inactions of defendants, their officers, agents, and employees.

342. Plaintiffs and the members of the plaintiff organizations are being caused irreparable harm for which there is no adequate remedy at law.

343. At all times the defendants, their officers, agents, and employees have acted under color of state law.

### **Jury demand**

344. The individual plaintiffs request a trial by jury on all claims so triable.

### **Legal claims**

345. The actions of the defendants, their officers, agents, and employees, in attempting to interfere with and stop lawful protest activities in Fort Wayne through the use of tear gas, pepper spray, rubber bullets, stun grenades, and overwhelming shows of force, violate the First Amendment to the United States Constitution.

346. The use of such things as tear gas, stun grenades, rubber bullets, and pepper spray against peaceful protesters was and is the objectively unreasonable use of force in violation of the Fourth Amendment to the United States Constitution.

WHEREFORE, plaintiffs request that this Court

1. accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. declare that the actions of the defendants, their officers, agents, and employees violated, and continue to violate, the First and Fourth Amendments to the United States Constitution.
3. enter a preliminary injunction, later to be made permanent, enjoining defendants and their officers, agents, and employee from
  - i. taking any actions designed to interfere with or stop lawful protest activities.
  - ii. utilizing objectively unreasonable force against protest activities including, but not limited to, employing tear gas, rubber bullets, pepper ball projectiles, and stun grenades.
4. award the individual plaintiffs their damages following a jury trial.
5. award plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.
6. award all other proper relief.

Kenneth J. Falk  
Gavin M. Rose  
Stevie J. Pactor  
ACLU of Indiana  
1031 E. Washington St.  
Indianapolis, IN 46202  
317/635-4059

fax: 317/635-4105  
kfalk@aclu-in.org  
grose@aclu-in.org  
spactor@aclu-in.org

Attorneys for Plaintiffs

### **Certificate of Service**

I certify that a copy of the foregoing was served on the below named parties by first class U.S. postage, pre-paid, on this 2nd day of July ,2020.

City of Fort Wayne  
c/o Office of the Mayor  
Citizens Square  
200 East Berry St., Suite 425  
Fort Wayne, IN 46802

Allen County Sheriff  
715 S. Calhoun St., No 101  
Fort Wayne, IN 46802

Kenneth J. Falk  
Attorney at Law