EMORY UNIVERSITY SCHOOL OF LAW
AND EMORY MOOT COURT SOCIETY

PRESENT THE

Sixteenth Annual Civil Rights and Liberties Moot Court Competition

Atlanta, Georgia
October 7-9, 2022

No. 22-1007

IN THE

Supreme Court of the United States

JAMIE LANG,

Petitioner,

v.

CITY OF LULLWATER,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

TRANSCRIPT OF THE RECORD

2022 Civil Rights and Liberties Moot Court Competition

Emory University School of Law
16th Annual Civil Rights and Liberties
Moot Court Competition
October 7 – October 9, 2022
Atlanta, Georgia

INSTRUCTIONS

1. Do not cite to any case that was decided after the Supreme Court granted certiorari in this case, which was on August 19, 2022.

2. Assume that all motions, defenses, and appeals were timely filed in accordance with the Federal Rules of Civil Procedure.

3. When citing to the record, use the page numbers at the bottom of each page of this document.

4. A team may make a request for questions and clarifications relating to the competition problem. Any such request must be emailed by a team member or student coach to emorymootcourt@gmail.com with the subject line "Problem Clarification" by Sunday, September 11, 2022 at 11:59 p.m. EST. All clarifications will be posted on the CRAL website at http://www.law.emory.edu/cral.

LETTERS & OPINIONS

Lullwater Times | April 3, 2020

By Prashant Moorjani

Anti-camping ordinance harms the homeless, local advocacy group says

I write on behalf of Lullwater Homes for All (LH4A) to voice disappointment in the new ordinance that further burdens our unhoused fellow citizens. Not only has our city failed to address the human problem of homelessness here in Lullwater, but it has also spent time and resources to make the problem worse. Making the activities we all have to perform to stay alive into a crime is a disgrace, and LH4A will not stand for this.

This new illness that hit Lullwater recently has made things difficult for all of us, but it is time to come together as a community rather than make life harder for those most vulnerable among us. We all expect things to open back up after a few weeks, but we don't know what the future holds. Many of LH4A's clients have been reporting difficulty with securing shelter beds for weeks. This ordinance does nothing to confront the fact that Lullwater has serious deficiencies when it comes to public services, housing chief among them. All this ordinance really does is create more hurdles for people who have nowhere else to go.

The one shelter that Lullwater subsidizes is almost always full, and the City continues to refuse to fund any other locations for the increasing homeless population. The most recent count of homeless individuals in Lullwater put the population at 933. A single shelter with barely enough space for all of those people is not a sufficient public response, especially when none of us knows how this virus will affect a demographic already at risk for illness. LH4A has repeatedly asked the City of Lullwater to work with us to develop practical solutions for the homelessness epidemic in our city, but we have repeatedly been brushed off.

When someone is forced into homelessness because of any of a number of factors that could impact any of us, it is imperative upon the community to offer support. Causing harm to the unhoused citizens of Lullwater by taking away their right to use public spaces like the rest of us is inhumane. This ordinance must be repealed.

POLICE REPORT

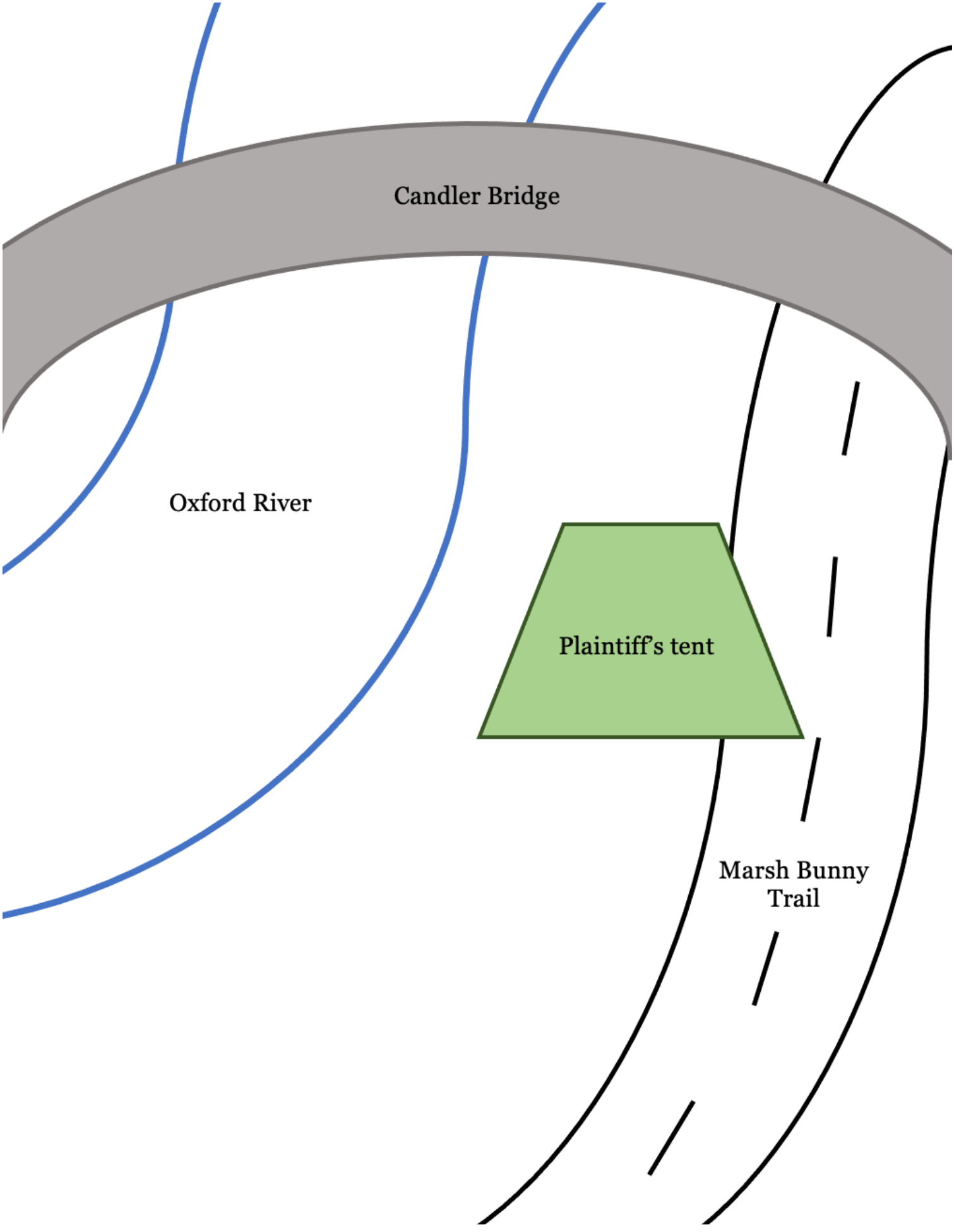
CITY OF LULLWATER POLICE DEPARTMENT
Lullwater, Gambrell
Incident Report No. 1979
Incident Reported: October 2, 2020

Incident Type		**Offense**	
Nonviolent		Violation of 4 L.C. § 16(5) (anti-camping ordinance)	
Time of Incident	**Date of Incident**	**Address of Incident**	
6:49 p.m.	October 2, 2020	Underneath the Candler Bridge, on the Marsh Bunny Trail; corresponding street address above: 536 Woodruff Drive	
Reporting Officer		**Supervising Officer**	
NGUYEN, Long Badge: 21		JONES, Markisha Badge: 39	
Persons Present			
Jamie Lang			
Permanent Address	**Date of Birth**	**Race/Ethnicity**	**Gender**
N/A; unhoused	March 28, 1986	Asian	woman

Narrative Report

On a regular walkthrough of the Marsh Bunny Trail segment between 520 and 600 Woodruff Drive on the evening of October 2, officers encountered a tent under the Candler Bridge at approximately 6:30 p.m. Officers approached the tent and spoke with a Ms. Jamie Lang. Officers informed Ms. Lang that camping under the bridge was not permitted and that she would have to pack up and relocate. Ms. Lang did not protest but inquired where she should go. Officers provided Ms. Lang with the name and address of the local shelter. Ms. Lang complained that that shelter was always full and that she had not been successful in securing a bed there; she subsequently told officers that she would be staying in her tent under the Candler Bridge. At that time, officers arrested Ms. Lang. Officers drove Ms. Lang to the stationhouse, where she was processed and placed in custody for the weekend.

END OF REPORT


Candler Bridge
Oxford River
Plaintiff's tent
Marsh Bunny Trail

No. 22-1007

IN THE

Supreme Court of the United States

JAMIE LANG,

Petitioner,

v.

CITY OF LULLWATER,

Respondent.

ORDER GRANTING WRIT OF CERTIORARI

The petition for writ of certiorari to the Supreme Court of the United States is granted, limited to the following questions:

I. Whether Petitioner, who was arrested but not convicted under an anti-camping ordinance, has standing to seek prospective relief to enjoin enforcement of that ordinance on Eighth Amendment grounds.

II. Whether Respondent's anti-camping ordinance violates the Cruel and Unusual Punishment Clause of the Eighth Amendment.

UNITED STATES DISTRICT COURT
DISTRICT OF GAMBRELL

JAMIE LANG,	)	
	)	
Plaintiff,	)	Case No. 20-CV-1301
	)	
v.	)	
	)	
CITY OF LULLWATER,	)	
	)	
Defendant.	)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

BOBINSKY, District Judge:

Jamie Lang ("Plaintiff") brings a claim for declaratory and injunctive relief against the City of Lullwater ("Defendant") arising from Plaintiff's October 2020 arrest for violating 4 L.C. § 16(5), a Lullwater ordinance prohibiting individuals from camping overnight in public areas. Plaintiff asks that this Court find the anti-camping ordinance is unconstitutional under the Cruel and Unusual Punishment Clause of the Eighth Amendment; she also asks this Court to enjoin Defendant from future enforcement of the ordinance on the same Eighth Amendment basis. Defendant moved to dismiss on the grounds that (1) Plaintiff does not have standing to seek injunctive relief for her claim and (2) the anti-camping ordinance does not violate the Eighth Amendment. For the reasons stated below, Defendant's motion is DENIED.

I. BACKGROUND

A. The Parties

Plaintiff alleges that she is an unhoused, immunocompromised person. Previously, she worked at Lullwater Elementary School, assisting teachers with various classroom management tasks. Her salary did not cover all of her basic needs, and she was and is a Medicaid recipient; her Medicaid benefits help defray the cost of her anti-depressant medications. In March of 2020, the COVID-19 pandemic stuck Lullwater. The school at which Plaintiff worked shuttered its doors on March 13, 2020 and would not reopen for over a year. Teachers did their best to modify

their lessons for students whom they no longer saw in person. Because Plaintiff worked in a support rather than primary role and the demands of the pandemic eviscerated Lullwater Elementary's already-meager budget, Plaintiff was terminated on March 31, 2020.

Defendant is a municipality located in the State of Gambrell with a population of approximately 115,000. It has a semi-continental climate with hot, humid summers and cold, dry winters. During the relevant time period, Lullwater had an unhoused population ranging from 930 to 935 persons. Lullwater has only one continuously operational homeless shelter ("the shelter"), which is run by the City and contains 943 beds. Due to space constraints in the shelter, the beds are spaced no more than four feet apart from each other. Throughout the relevant time period, the shelter consistently remained at 98-99% capacity (leaving roughly 8-18 beds available), and no individual was denied entry due to lack of vacancy. The shelter regularly receives complaints from temporary residents. These complaints have ranged in scope from generally unclean conditions to an inability to secure personal possessions to the lack of any screening for COVID-19 symptoms.

B. The Anti-Camping Ordinance

On March 20, 2020, Defendant enacted an anti-camping ordinance ("the ordinance"), which reads as follows: "A person shall not sleep, camp, or otherwise obstruct any sidewalk, alley, crosswalk, or other public place open as a pedestrian route or generally accessible to the public." 4 L.C. § 16(5). Lullwater Homes for All (LH4A) protested the ordinance when it was enacted. LH4A published an op-ed in the *Lullwater Times*, asserting that the rule was unkind to people who live on the street.

C. Events Leading to Plaintiff's October 2020 Arrest

After Plaintiff was laid off from Lullwater Elementary in March 2020, she was unable to pay her rent and became unhoused. She set up a tent on the path that runs under the Candler Bridge. This running trail that extends under the bridge is designated as publicly accessible property. On April 30, 2020, when Lullwater began experiencing warmer weather, Defendant allowed a local private charity called Hope for All to set up an encampment in the parking lot of the shelter but did not subsidize resources for the camp.

The Hope for All encampment consisted of several large open-air tents equipped with fans as well a centralized "coat check" where temporary residents could secure their belongings overnight. Plaintiff stayed in the Hope for All encampment from May 1, 2020 until September 30, 2020, when the Hope for All encampment shut down due to budgetary constraints. The shelter immediately began experiencing near-full capacity again. After being forced out of the encampment, Plaintiff set up a tent on the path under the Candler Bridge.

On October 2, 2020, two officers approached Plaintiff's tent and informed her that she was camping in a publicly accessible area in violation of the anti-camping ordinance. Plaintiff told the officers she could not sleep at the shelter because of her immunocompromised status and the need to secure her anti-depressant medications as well as her personal belongings. The officers offered to provide her a ride to the shelter, but she refused. The officers then arrested Plaintiff for violating the ordinance. She spent three nights in jail before the Lullwater City Solicitor decided not to prosecute her. On October 5, Plaintiff was released from custody. She subsequently commenced the instant suit.

II. DISCUSSION

A. Standing

The doctrine of standing requires plaintiffs to "demonstrate a 'personal stake in the outcome' in order to 'assure that concrete adverseness which sharpens the presentation of issues' necessary for the proper resolution of constitutional questions." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). To satisfy this requirement, a plaintiff seeking equitable relief must show they are likely to suffer some future "direct injury as the result of the challenged official conduct and the . . . threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'" *Id.* at 102 (citation omitted). A plaintiff's showing of prior injury is not *itself* sufficient to establish standing, but "[o]f course, past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury." *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Lyons*, 461 U.S. at 102.

Here, Plaintiff has met the standing requirement because it is highly likely she will be subject to criminal charges for violating the ordinance when the ongoing lack of adequate shelter forces her to sleep in an area accessible to the public. While, generally speaking, courts are reluctant to find standing by "assum[ing] that the party seeking relief will repeat the type of misconduct that would once again place him or her at the risk" of experience a previously suffered injury, "[n]o such reluctance . . . is warranted here" where Plaintiff's "very inability to conform [her] conduct" to comply with the ordinance is apparent. *Honig v. Doe*, 484 U.S. 305, 320 (1988). As more fully elaborated in the Court's merits discussion below, neither Plaintiff's unhoused status nor Defendant's lack of a safe shelter for immunocompromised persons has changed. Accordingly, so long as the ordinance is in place, Plaintiff will almost certainly be forced to violate it. Given her prior arrest for doing so, there is a "real and immediate" danger she will suffer the injury of criminal charges again.

Nor is this Court convinced by Lullwater's contention that standing to bring an Eighth Amendment claim requires Plaintiff to have suffered a conviction. For one thing, conviction is far from the sole form of punishment cognizable as an Eighth Amendment injury. *See, e.g.*,

Helling v. McKinney, 509 U.S. 25, 32 (1993) (recognizing future harm to health as acceptable basis for Eighth Amendment claim); *Bell v. Wolfish*, 441 U.S. 520, 537-38 (discussing non-conviction forms of punishment).

Additionally, Defendant's reliance on *Ingraham v. Wright*, 430 U.S. 651 (1977), is misplaced. The *Ingraham* Court simply noted that the Eighth Amendment "was designed to protect those convicted of crimes." 430 U.S. at 664. While this might translate to a pre-conviction standing bar for those Eighth Amendment cases alleging a cruel and usual type or amount of punishment, it makes little sense to apply it to the claim asserted here, which (as discussed below) is that the ordinance violates the Eighth Amendment's "'substantive limits on *what can be made criminal* and punished as such'" in the first place. *Martin v. City of Boise*, 920 F.3d 584, 614 (9th Cir. 2019) (quoting *Ingraham*, 430 U.S. at 667) (emphasis added). By arresting and jailing Plaintiff, Defendant involved her in the criminal process. That certainly qualifies as a direct injury which she will surely suffer again absent injunctive relief, and this threat does not vanish because her prior arrest happened not to result in conviction.

For these reasons, Plaintiff has standing to bring her Eighth Amendment claim, the merits of which this Court will now address.

B. Plaintiff's Eighth Amendment Claim

Plaintiff contends Defendant's ordinance effectively criminalizes her status as an unhoused person and thus amounts to cruel and unusual punishment. For the following reasons, this Court agrees.

The Supreme Court has identified three ways in which the Cruel and Unusual Punishment Clause of the Eighth Amendment "circumscribes the criminal process." *Ingraham*, 430 U.S. at 667. First, the government is limited in the "kinds of punishment" it may impose. *Id*. Second, the punishment must not be "grossly disproportionate to the severity of the crime." *Id*. Finally—and most relevant to the instant case—the Cruel and Unusual Punishment Clause "imposes substantive limits on what can be made criminal and punished as such." *Id*.

The paradigm "substantive limit" is that the government can never criminalize a person's *status*. *Robinson v. California*, 370 U.S. 660, 667 (1962); *Powell v. Texas*, 392 U.S. 514, 533 (1968). For example, in *Robinson*, the Court struck down a local law that criminalized "be[ing] addicted to the use of narcotics." 370 U.S. at 660. The Court determined that criminalizing addiction as a "status" was cruel and unusual regardless of the severity of the punishment imposed. *Id.* at 667 ("[e]ven one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold.").

While the Supreme Court and most circuits have not addressed the issue, the Ninth Circuit recently addressed an anti-camping ordinance in *Martin*, 920 F.3d 584. That anti-camping ordinance prohibited individuals from sleeping outside on public property. *Martin*, 920 F.3d at 604. However, in the jurisdiction where the ordinance applied, there were more unhoused individuals than beds available in shelters, leaving many with no choice but to sleep outside on public property. *Id.* at 605. Even though the ordinance technically proscribed only the *conduct* of sleeping outside, rather than the *status* of being unhoused, the court rightfully explained that the "conduct at issue here is involuntary and inseparable from status . . . given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping." *Id.* at 617. Accordingly, the court held that the government cannot criminalize unhouse persons for sleeping outside "as long as there is no option of sleeping indoors." *Id*.

District courts outside the Ninth Circuit have reached similar conclusions. *See, e.g.*, *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992) (holding anti-camping ordinance "effectively punish[es] [unhoused persons] for something for which they may not be convicted under the [E]ighth [A]mendment—sleeping, eating and other innocent conduct."); *see also Johnson v. City of Dallas*, 860 F. Supp. 344 (N.D. Tex. 1994), *rev'd on other grounds*, 61 F.3d 442 (5th Cir. 1995).

Plaintiff was unhoused for at least some period of time. She alleges that living on the street was not the only option but was the only *safe* option. While Defendant, unlike the municipality in *Martin*, has more "available" shelter beds than unhoused individuals, there is more than a numbers game at play here. It would be a mistake to read *Martin*'s holding—and the "substantive limits" principle articulated in *Robinson*—as allowing governments to escape constitutional accountability by simply providing any bed. If conditions are such that sleeping in that bed is not practical or safe, then the government is just creating a "false premise [unhoused persons] had a choice" to sleep in that bed. *Martin*, 920 F.3d at 617. And as Plaintiff alleges here, sleeping in the shelter simply was not safe for her because she is an immunocompromised individual.

The Supreme Court made clear in *Robinson* that the Cruel and Unusual Punishment Clause protects individuals from being criminalized for their particular status. Because the anti-camping ordinance effectively criminalizes Plaintiff's status of being unhoused, it is repugnant to the Eighth Amendment and she has presented a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Defendant's Motion to Dismiss is DENIED.

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

JAMIE LANG,	)	
	)	
Plaintiff-Appellee,	)	No. 20-CV-4673
	)	
v.	)	
	)	
CITY OF LULLWATER,	)	
	)	
Defendant-Appellant.	)	

Appeal from the United States District Court for the
District of Gambrell
No. 20-CV-1301 — Bobinsky, *Judge*.

OPINION

JACKSON, Circuit Judge.

On October 12, 2020, Plaintiff-Appellee Jamie Lang ("Appellee") filed a suit against Defendant-Appellant, the City of Lullwater ("Appellant"), in the United States District Court for the District of Gambrell. On October 15, 2020, Appellant filed a motion to dismiss for failure to state a claim. On November 24, 2020, the District Court denied Appellant's motion to dismiss and entered judgment in favor of Appellee. For the reasons stated herein, we reverse the District Court's holding and find that (1) Appellee lacks standing to seek injunctive relief for her Eighth Amendment claim and (2) that even if standing were proper, the ordinance at issue does not violate the Eighth Amendment to the United States Constitution.

Appellate Review Standard

This Court reviews *de novo* a district court's rejection of a motion to dismiss for failure to state a claim. *See Devereux v. Knox Cnty., Tennessee*, 15 F.4th 388, 392 (6th Cir. 2021); *Platt v. Moore*, 15 F.4th 895, 901 (9th Cir. 2021). We accept all well-pleaded facts as true, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and view them in the light most favorable to the plaintiff. *True*

v. Robles, 571 F.3d 412, 417 (5th Cir. 2009) (citation omitted). We must decide whether there are "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). We read the district court's interpretation of the City of Lullwater ordinance *de novo*. *Burlison v. McDonald's Corp.*, 455 F.3d 1242, 1245 (11th Cir. 2006); *Fairhurst v. Hagener*, 422 F.3d 1146, 1149 (9th Cir. 2005).

Background

As previously stated, we accept as true all facts the district court found. To briefly summarize, Appellee is an immunocompromised person who previously worked in education. She has been unhoused for some time and relies on public assistance to support her basic needs. Appellee stated that the COVID-19 pandemic made it impractical and unsafe for her to sleep at the local shelter. City of Lullwater officials arrested and detained Appellee for violating an anti-camping ordinance. Appellee alleged that the ordinance violated the Eighth Amendment and sought to enjoin Appellant from enforcing it. The district court denied Appellant's motion to dismiss, resulting in the instant appeal.

Discussion

I. Appellee lacks standing to bring her Eighth Amendment claim.

Appellee sought injunctive relief before the district court, asking that the court enjoin future enforcement of the City of Lullwater's anti-camping ordinance ("ordinance"). The district court found that Appellee alleged facts sufficient to show standing for injunctive relief. We disagree for two reasons. First, Appellee failed to show she is at risk of a cognizable Eighth Amendment injury because she was not convicted. Second, even if mere arrest were a cognizable Eighth Amendment injury, Appellee failed to demonstrate she was at immediate risk of suffering that "injury" again.

A. Conviction is required for Eighth Amendment protection.

The district court held that even though Appellee was never convicted of any crime, she is still entitled to the Eighth Amendment's safeguards because she was arrested and jailed and thus "involved" with the criminal legal system in some way. This argument is legally erroneous.

The Supreme Court has instructed that "[a]n examination of the [Eighth] Amendment and the decisions of this [Supreme] Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those *convicted of crimes*." *Ingraham v. Wright*, 430 U.S. 651, 664 (1977) (emphasis added). It is for this reason that the Fifth Circuit found in *Johnson v. City of Dallas*, 61 F.3d 442 (5th Cir. 1995) that the unhoused plaintiffs there

lacked standing to bring their Eighth Amendment claims against an anti-camping ordinance. Even though the record indicated "numerous tickets ha[d] been issued," the court could "find no indication that any [plaintiffs] ha[d] been *convicted* of violating the sleeping in public ordinance." *Johnson*, 61 F.3d at 445. Similarly, though Appellee was cited and arrested under the ordinance, pretrial detention is not "punishment" qualifying for protection under the Eighth Amendment.

Appellee's invocation of *Helling v. McKinney*, 509 U.S. 25 (1993) confounds this Court because of the overwhelming factual dissimilarities between that case and the immediate one. In *Helling*, a prisoner brought a civil rights suit under the Eighth Amendment, alleging that exposure to tobacco smoke while in confinement was unconstitutional. 509 U.S. at 35. Though the *Helling* Court found that the prisoner was entitled to Eighth Amendment protection, the alleged punishment was an environmental factor endemic to the carceral facility. *Id*. Such a circumstance was not present in the Lullwater Jail where Appellee was briefly held in compliance with established precedent such as *United States v. Salerno*, 481 U.S. 739 (1987).

The Eighth Amendment has historically been applied in the most serious of cases in which convicted defendants' most basic liberties were violated. A mere arrest and brief detention are not as serious as the real punishments suffered by defendants successfully invoking the Eighth Amendment. Appellee is not currently in custody and is not suffering any kind of legally imposed punishment. Various courts have agreed that conviction is required for attachment of the Eighth Amendment, which is the position this Court takes today. *See, e.g.*, *Whitley v. Albers*, 475 U.S. 312, 317-18 (1986); *see also Palermo v. Rorex*, 806 F.2d 1266, 1271 (5th Cir. 1987) ("The cruel and unusual punishment clause of the Eighth Amendment applies only in criminal actions, following a conviction."), *cert. denied*, 484 U.S. 819 (1987).

B. Appellee has not shown she will suffer a direct injury under the ordinance.

Appellee asserted that Appellant should be prevented from enforcing the ordinance it enacted in March 2020. We disagree. Even if a conviction were not required to meet the standing requirements for an Eighth Amendment claim, Appellee has still failed to show she will suffer the same harm in the future. She cannot establish standing for the prospective relief she seeks. *See City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

Appellee alleged that she was arrested one time and spent a brief period incarcerated before charges were dismissed. Her complaint also demonstrates that she has spent a significant amount of time on the streets without being arrested, that there is shelter space available, and that she has in fact been housed recently for several discrete periods. Since her single arrest and brief detention, Appellee has not been arrested for violating the Lullwater ordinance. It is thus

"entirely conjectural" that Appellee would suffer the same harm she alleges to have already suffered. *Shain v. Ellison*, 356 F.3d 211, 215 (2d Cir. 2004).

Moreover, Appellee's reliance on *Honig v. Doe*, 484 U.S. 305 (1988) is misplaced. The lack of personal control the student in *Honig* exhibited does not apply to Appellee because Appellee can and in fact has found housing, which would moot any purported "need" to violate the anti-camping ordinance. Appellant partially funds a homeless shelter. Appellee was temporarily prevented from accessing that shelter because she chose to abandon an opportunity to be housed there. Appellee had and still has the choice to obtain housing somewhere other than under a bridge, either at the Lullwater shelter or with friends, as she previously has done. Further, homeless individuals and people in housing transition by definition lead transient lives; Appellee has not alleged that she will not move to another city beyond the reach of the ordinance.

We can "only speculate whether [Appellee] will be arrested . . . again . . . for violating a municipal ordinance . . . particularly in the absence of any [substantiated] allegations that unconstitutional criminal statutes are being employed to deter constitutionally protected conduct." *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974). Restricting standing for injunctive relief here will prevent a deluge of cases unlikely to succeed on the merits courts would otherwise have to process. Appellee has thus failed to allege plausible standing.

II. Appellant's anti-camping ordinance does not violate the Eighth Amendment.

Even if we were to allow Appellee's case to proceed, her claim fails on the merits. In finding for Appellee, the district court erred in two key respects.

First, the district court relied extensively on the Ninth Circuit's decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), an opinion that is not binding on this Court. *Martin* extended the "substantive limits" of the Cruel and Unusual Punishment Clause far beyond the limits first narrowly crafted by the Supreme Court in *Robinson v. California*, 370 U.S. 660 (1962) and more fully elaborated in subsequent cases. *See, e.g.*, *Powell v. Texas*, 392 U.S. 514 (1968) (plurality opinion); *Ingraham*, 430 U.S. 651 (1977). *Robinson* stood for the proposition that the Cruel and Unusual Punishment Clause occasionally prohibits the rare laws which make status a "criminal offense." 370 U.S. at 666. But the ordinance at issue here and that in *Martin* target conduct, not status.

In *Powell*, a plurality of the Supreme Court stressed the importance of the status-versus-conduct distinction, refusing to strike down a local law criminalizing public intoxication. 392 U.S. at 517. The Court explained that a law that punishes alcoholics for appearing in public while intoxicated (conduct) was not to be equated with a law that punishes alcoholics for being

alcoholics (status). *Id.* at 533. Crucially, the Court explained that it did not matter that appearing intoxicated in public may, for alcoholics, be "in some sense[] 'involuntary' or 'occasioned by a compulsion.'" *Id*.

Instead of following the plurality in *Powell*, the *Martin* court adopted the position in *Powell* expressed by the four dissenting justices and in Justice White's concurrence. 920 F.3d at 616. The Ninth Circuit argued that "five Justices [in *Powell*] gleaned from *Robinson* the principle that 'the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being.'" *Id.* (citation omitted). The Supreme Court held in *Marks v. United States*, 430 U.S. 188, 193 (1977) that for plurality opinions, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." The *Martin* court ignored both *Powell* and *Marks*, adopting the broader position of the *Powell* dissent.

The Supreme Court's position on the "substantive limits" doctrine is that it applies only to laws that criminalize status and not to laws criminalizing conduct, including conduct which may or may not be a consequence of that status. *See Powell*, 392 U.S. at 533; *see also Ingraham*, 430 U.S. at 667 (insisting the substantive limits function of the Cruel and Unusual Punishment Clause is "to be applied sparingly.").

Second, even if we were to follow the Ninth Circuit's holding in *Martin*, it plainly does not extend to the instant set of facts. The *Martin* court insisted its "holding is a narrow one . . . We hold only that so long as there is a greater number of homeless individuals in a jurisdiction than the number of available beds in shelters, the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public." 920 F.3d at 617 (cleaned up).

Here, however, the record is clear that there were enough beds at the shelter. *See Joel v. City of Orlando*, 232 F.3d 1353, 1362 (11th Cir. 2000) (holding that an anti-camping ordinance did not violate the Eighth Amendment because "the availability of shelter space means that [the unhoused plaintiff] had an opportunity to comply with the ordinance."). The district court waived *Martin*'s plainly limited holding. It contended that during a pandemic, the Eighth Amendment required the City of Lullwater to provide an ideal environment for housing people rather than merely enough beds for them. Such a holding cannot reasonably be said to flow from the text of the Eighth Amendment, the Supreme Court's opinions in *Robinson* and *Powell*, or even the Ninth Circuit's limited holding in *Martin*. Appellee had the option to sleep indoors on a bed. That Appellee might have made a personally prudent choice not to do so is irrelevant; a prudent choice is a choice nonetheless.

The decision below is REVERSED.