

injunctive relief is sought against an arm of the State of Delaware to declare illegal and immediately terminate the ongoing, unconstitutional practice, custom or policy of the Justices of the Peace which in its primary effect, and also as applied, deprives financially poor, predominantly African-American citizens, and others, of the below described protections of the Fourth and Fourteenth Amendments.

I. JURISDICTION

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 12202, 42 U.S.C. § 2000d-7, 42 U.S.C. § 12133, and 29 U.S.C. § 794a. The cause of action arises under 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments, Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973 (“Rehab Act”), 29 U.S.C. § 794. The claims arose in this judicial district.

II. THE PARTIES

A. Plaintiffs.

5. At the time this case was filed, Plaintiff William Murphy (hereinafter “William Murphy,” “Murphy” or sometimes “Plaintiff”) was a legally blind, 52 year old, African-American male, widower, citizen of the United States and resident of New Castle County (“NCC”), Delaware. After he was unlawfully evicted from his Home at 329 Townsend Street, Wilmington, Delaware, 19801, on February 11, 2021, he resided at the NCC run homeless shelter known as the Hope Center. He brings this lawsuit in his individual capacity and also as sole surviving parent and guardian ad litem of his two minor daughters A.T. and K.M. In addition to his two minor daughters, he also has two adult children, another daughter and a son.

6. Plaintiff A.T. (hereinafter “A.T.”) is William Murphy’s middle daughter. At the time this Complaint was originally filed, she was 17 years old and in the 10th grade and living with Plaintiff Murphy at the Hope Center. Plaintiff A.T. attends high school completely by Zoom due to the COVID-19 pandemic where she is an honor roll student. Her extracurricular activities include singing in the chorus and playing volleyball. A.T. desires to go to college and become a writer.

7. Plaintiff K.M. (hereinafter “K.M.”) is William Murphy’s youngest daughter. At the time this Complaint was originally filed, she was 11 years old and in the 5th grade and living with Plaintiff Murphy at the Hope Center. Plaintiff K.M. is a special needs student and attends elementary school completely by Zoom due to the COVID-19 pandemic. She enjoys spending time with her family.

8. Plaintiff Tanisha Murphy (hereinafter “Tanisha Murphy,” “Tanisha” or collectively with the three other plaintiffs as “Plaintiffs”) is the eldest daughter of William Murphy and older sister of A.T. and K.M. At the time this Complaint was filed, she was a 30 year old, African-American female, citizen of the United States and resident of NCC, Delaware.

B. Defendants.

9. Defendant “State of Delaware, Justices of the Peace” is an arm of the State of Delaware. “Justices of the Peace” is a specific term used in Article 4, § 1 of the Delaware Constitution of 1897, and subsequently also referenced in Article 4, §§ 29-30, to identify a specific system of courts in Delaware. Rather than its formal state constitutional name of “Justices of the Peace,” it is usually referred to – including by Delaware statute and on the Delaware Courts’ own website – as the Justice of the Peace Court and is the lower-most rung of

the six primary courts in the Delaware court system. It is a court of limited jurisdiction that has statutory jurisdiction over, *inter alia*: residential landlord-tenant matters, including actions for eviction and summary possession; certain cases where the amount in controversy does not exceed \$25,000; as well as other matters.

10. Under Count I (Title II of the ADA and Section 504 of the Rehab Act), it is joined for all purposes because Congress has explicitly abrogated the State's Eleventh Amendment immunity.¹ The full panoply of damages and remedies available under both the ADA and Rehab Act are sought against it.

11. Under Counts II-III, the Justices of the Peace defendant is joined in this action for the purposes of: (1) prospective declaratory and injunctive relief to remedy an ongoing violation of federal law; and (2) collecting attorneys' fees and costs. No compensatory or punitive damages are sought against it under these specific Counts.

12. Defendant the Honorable Alan Davis is currently the "Chief Magistrate" of the Justices of the Peace Court system. The Chief Magistrate is appointed by the Governor, Del.Const. Art. 4, §§ 30 and 3, serves as the administrative head of the Court, 10 Del.C. § 9202, and, *inter alia*, appoints Justice of the Peace Constables, 10 Del.C. § 2801, and is responsible for their training. 10 Del.C. § 2806. He is sued solely in his official capacity for purposes of prospective injunctive and other relief. He is not sued in his individual capacity.

13. Defendant Jaman Brison is a Justices of the Peace Constable, appointed by the Chief Magistrate pursuant to the statutory authority found at Title 10, Chapter 28, entitled "Justice of

¹ See, e.g. 42 U.S.C. § 12202; Tennessee v. Lane, 541 U.S. 509 (2004); U.S. v. Georgia, 546 U.S. 151 (2006); 42 U.S.C. § 2000d-7; Haybarger v. Lawrence Cty. Adult Prob. & Parole, 551 F.3d 193 (3d Cir. 2008).

the Peace Constables,” of the Delaware Code. At all times during his interactions with Plaintiffs, discussed below, he was dressed in a blue law enforcement uniform, wore a badge and carried both a gun and a taser. He is sued individually and in his official capacity.

14. Defendant Hugh Craig is a Justices of the Peace Constable, also appointed by the Chief Magistrate pursuant to this same statutory authority found at Chapter 28 of Title 10 of the Delaware Code. At all times during his interactions with Plaintiffs, discussed below, he was dressed in a blue law enforcement uniform, wore a badge and carried both a gun and a taser. He is sued individually and in his official capacity.

15. Defendant Gerardo Hernandez is a Justices of the Peace Constable, also appointed by the Chief Magistrate pursuant to this same statutory authority found at Chapter 28 of Title 10 of the Delaware Code. At all times during his interactions with Plaintiffs, discussed below, he was dressed in a blue law enforcement uniform, wore a badge and carried both a gun and a taser. He is sued individually and in his official capacity.

III. FACTS GIVING RISE TO THE ACTION

A. Plaintiff William Murphy’s Background.

16. Plaintiff William Murphy has been completely and permanently blind since July of 2019.

17. He was born in Brooklyn, New York and was raised in Camden, New Jersey.

18. In 1988, Plaintiff earned an Associate’s degree in criminal justice from Drew University in Madison, New Jersey.

19. He lost vision in his left eye at the age of 9 after being struck with an ice ball (with a rock as the core) in a racially-motivated attack in Blackwood, New Jersey. His left eye was so

badly damaged it was removed and replaced with a prosthetic eye. At the age of 18, Plaintiff's right eye was diagnosed with glaucoma, a slow-progressing eye disease that damages the optic nerve and eventually causes permanent loss of vision. By the age of 35, the vision in Plaintiff's right eye had deteriorated to a point such that he began taking measures such as using a cane, learning braille, and utilizing his other senses so that he could function independently, maintain employment and take care of his family. In July 2019, Plaintiff's right eye finally succumbed to glaucoma, rendering him completely and permanently blind.

20. Notwithstanding his lifetime of at least partial blindness, Plaintiff held various jobs in waste management and construction for most of his career.

21. Plaintiff's most recent employment was with Blind Industries & Services of Maryland ("Blind Industries"), a nonprofit organization in Salisbury, Maryland, dedicated to providing career and training resources to blind residents of Maryland. There, he sewed clothing for the military.

22. Plaintiff's beloved wife and life partner, Lokia Murphy, passed away on October 30, 2018, from congestive heart failure. Lokia Murphy was cremated so that Plaintiff could keep her ashes in an urn and, even though unable to see, continue to cherish her memory through his sense of touch. His late wife's urn is one of his most cherished possessions.

B. Plaintiff Moves to Delaware But Loses His Job.

23. In late September 2020, Plaintiff left his job at Blind Industries, as well as his residence in Salisbury, Maryland, and moved his family to Delaware. This was done for several reasons.

24. First, in the aftermath of his beloved wife's passing, Plaintiff and his two youngest

daughters wanted to be closer to their many family members and support system who resided in Delaware. For example, in addition to his eldest daughter, co-plaintiff Tanisha Murphy, and his 28 year old son, Josh Murphy (hereinafter “Josh”), who both separately reside Wilmington, his elderly mother lives in Newark, Delaware.

25. Second, Plaintiff had received a job offer from Amazon, in New Castle, Delaware, for a job with higher pay and more growth potential to better enable him to support his family in these trying times.

26. Unfortunately, after arriving for his first day of work and sitting through training and orientation, Amazon declined to accommodate his disability and placed him on unpaid leave without benefits.

C. The Rental Home at 329 Townsend Street.

27. Faced with no immediate prospects of employment, Plaintiff sought the assistance of the Delaware Health and Social Services, Division of Social Services (“Social Services”), which placed he and his two minor daughters at the Best Knights Inn in New Castle. The motel was a temporary accommodation so that Plaintiff would have time to search for a rental property and preserve his savings towards a security deposit and first month’s rent.

28. While at the motel and through a neighbor there, Plaintiff heard about a Landlord that might have an available rental home.

29. Soon thereafter, on or about October 30, 2020, Plaintiff called the Landlord about whether he had a property available to rent. The Landlord replied and explained he had two properties available for rent, one for \$1,300/month and the other for \$700/month.

30. Because the first was out of Plaintiff’s price range, he requested to learn more about

the second property, located at 329 Townsend Street, Wilmington, DE 19801 (hereinafter, the “Home”).

31. During the phone call, Plaintiff informed the Landlord that he was blind.

32. As a result of this and subsequent interactions, the Landlord had actual knowledge that Plaintiff was blind.

33. On November 1, 2020, Plaintiff William Murphy and his oldest daughter Plaintiff Tanisha Murphy, along with several other family members, met the Landlord at the Home, a 775 square foot, semi-detached row house, consisting of a living room and kitchen on the ground floor, and 2 bedrooms and 1 full bathroom on the upper floor.

34. But the Landlord would only agree to lease the Home to Plaintiff William Murphy if Plaintiff Tanisha Murphy would co-sign and accept legal liability on the lease with her father.

35. With no other options, to help her father Tanisha Murphy reluctantly agreed to be a party to the lease.

36. The Landlord and Plaintiffs William and Tanisha Murphy moved forward with a lease agreement for the Home with a start date of November 15, 2020.

37. On November 15, 2020, William Murphy and Tanisha Murphy yet again met the Landlord at the Home to execute a one-year residential lease agreement (the “Lease Agreement”). A copy of the Lease Agreement is attached hereto as Exhibit A.

38. Plaintiffs William Murphy, A.T. and K.M. moved into the Home on November 17, 2020.

39. On November 17, 2020, Social Services issued a notice that William Murphy was approved for \$450 in rent assistance under the Emergency Assistance Services Program (the

“Approval Notice”). The Approval Notice stated that \$450 in rent assistance would be paid directly to the Landlord. A copy of the Approval Notice is attached hereto as Exhibit B.

**D. The Unlawful Eviction of the Murphy Family Pursuant to the
“Evict First, Ask Questions Later” Policy, Custom or
Practice of the Defendant Justices of the Peace.**

1. Facts Alleged in the Original Complaint (D.I. 1).

40. Thursday morning, February 11, 2021 was bitter cold and sleeting intermittently. The night before, several inches of snow had fallen in the area. The National Weather Service had issued a Winter Weather Advisory for all of Delaware through noon on Thursday, February 11th. Many schools were closed or delayed because of the poor weather conditions.

41. That morning, Plaintiff William Murphy was making pancakes for his two young daughters, who were upstairs attending school by Zoom, and for his adult son Josh who lived elsewhere but had spent the night at the Home to ensure that his family would be safe with the latest storm in the series of harsh winter weather to hit the area.

42. At approximately 10:30 a.m., Josh walked outside to go to a nearby convenience store. When he stepped out the door, he observed two Ford Taurus vehicles, one on the same side of the street of the Home, and one on the other side. He observed what appeared to be a police officer standing outside the vehicle that was parked on the same side of the street, talking to another apparent police officer who was inside his vehicle. Josh presumed that they were there for a matter unrelated to his family, as the area is known to be unsafe and has regular police activity.

43. When Josh returned from the store a few minutes later, he observed an additional Ford Taurus on the other side of the street. The officer who was previously inside his vehicle

had gotten out and was talking to the other officer.

44. As Josh was walking up the steps to enter the front door, one of the officers, later identified as defendant Constable Brison, said, “hey, are you the only one in there?”

45. Constable Brison was wearing what appeared to be a police uniform, a badge and was armed with a gun and a taser.

46. Josh responded that his father and two young sisters were inside.

47. Constable Brison replied, “No one is supposed to be in there. I have an Order stating that this place has to be boarded up. Everyone inside has 30 minutes to leave.”

48. Josh again responded and asked Constable Brison who he was supposed to be evicting.

49. Constable Brison replied, “Viola Wilson.”

50. Not wanting to engage further with Constable Brison, who was armed, Josh went inside to inform Plaintiff William Murphy, who was still in the kitchen making pancakes for his kids, of these happenings.

51. Upon learning from Josh that police were outside with an eviction Order, Plaintiff William Murphy made his way to the front door, cane in hand, to speak with them.

52. He assumed there was some kind of mix-up, perhaps that the police were at the wrong house, and he wanted to help them sort it out.

53. Plaintiff Murphy opened the door.

54. His son Josh was standing behind him as he did so.

55. At the bottom of the two small concrete steps, about three feet away stood Constable Brison and another armed officer, later identified as Constable Hernandez.

56. Constables Brison and Hernandez knew immediately from looking at Plaintiff – including from his use of his cane, to the look of his eyes, to the way he steadied himself with his hands, to the way his son Josh stood behind him steadying him, among many other reasons – that Plaintiff was blind.

57. Constable Brison then stated to Plaintiff Murphy, “You don’t look like a Viola Wilson to me.”

58. In stating this, Constable Brison acknowledged that William Murphy was not Viola Wilson, the person named in the eviction Order.

59. Plaintiff replied, “I’m sure not.”

60. In so stating, Plaintiff meant that he was not Viola Wilson.

61. Constable Brison then asked Plaintiff Murphy how long he had been living at his Home.

62. Plaintiff responded that he been living at his Home for about two to three months, with his two young daughters, who were upstairs attending school class by Zoom.

63. Constable Brison then replied that he had an eviction Order, that no one was supposed to be inside and that all the occupants had 30 minutes to leave before the front door gets boarded up.

64. Plaintiff was in shock to hear this and quickly replied that, again, he had been living in the Home for several months with his two daughters and that he had a legal right to be there.

65. Plaintiff explained to Constable Brison that this was his Home.

66. Constable Brison disparagingly replied, “you haven’t even produced a lease.”

67. At no time prior to this point had Constable Brison asked Plaintiff to produce a lease.

68. Nevertheless, in response to the Constable's statement, Plaintiff turned around, went back inside and with help from his son Josh retrieved a copy of the signed and fully executed Lease Agreement (Exhibit A) between he and the Landlord and handed it to Constable Brison.

69. Constable Brison accepted the Lease Agreement from Plaintiff.

70. Constable Brison read the Lease Agreement.

71. Constable Brison observed the signatures on the Lease Agreement.

72. Constable Brison noted that the name of the owner on the eviction Order, the Landlord, was the same name as the Lessor on the Lease Agreement, also the Landlord.

73. Constable Brison then went to his car, parked directly in front of the Home, and reread the Lease Agreement.

74. Constable Brison returned to the doorway of Plaintiff's Home a few minutes later and stated "anyone could have made up this lease."

75. Constable Brison criticized Plaintiff and said that the Lease Agreement was neither notarized nor "watersealed."

76. But there is no requirement under Delaware law that a residential lease agreement be notarized, sealed or watermarked.

77. In doing so, he accused Plaintiff of being a liar, a thief and a fraud.

78. Constable Brison then repeated his command that everyone had to leave immediately and that they had only a few minutes left to collect their things.

79. This command was pursuant to a policy, custom or practice of the defendant Justices of the Peace, during the pandemic and state of emergency in the State of Delaware, to always "evict first, and ask questions later" whenever there is a challenge to an eviction Order on the day

of the eviction, despite whatever proof and evidence a tenant has that the eviction command is improper and illegal.

80. As Constable Brison said all of this, Constable Hernandez was standing behind him, nodding his head in agreement.

81. Plaintiff William Murphy pleaded with Constables Brison and Hernandez and begged them not to throw him out of his Home in the middle of a snowstorm.

82. He again explained that his two young daughters were upstairs in Zoom school, still wearing their nightclothes. He explained that all of his Earthly possessions were inside, including the urn with his beloved wife's ashes, and that it was cold and he needed to get transportation.

83. Plaintiff explained to Constables Brison and Hernandez that he had additional written documentation establishing he was the current tenant, including recent electric and internet bills, and documentation from State of Delaware Social Services regarding rent assistance that was paid directly to his landlord, the Landlord.

84. Plaintiff asked the Constables to look at these documents.

85. But Constables Brison and Hernandez rejected Plaintiff's offer and refused to even look at the additional documentation and evidence establishing that Plaintiff had a legal right to be in his Home.

86. This was because the "evict first, ask questions later" policy, custom or practice provides no exception or reasonable accommodation for legal, logical, humanitarian, emergency or other reasons.

87. The Constables repeated their command that Plaintiff and his family were required to

leave immediately.

88. The Constables told Plaintiff that his only legal option was to go to JP Court #11 and file a lawsuit challenging the Constables' actions.

89. In their blue police uniforms, wearing badges, and carrying guns and tasers, the Constable defendants stated Plaintiff had no other options.

90. Plaintiff William Murphy then submitted to the Constables' display of legal authority and their commands.

91. Having no other choice, Plaintiff and his son Josh went upstairs and asked Plaintiff's two young daughters, who were preparing for their next class, to quickly get dressed and pack some warm clothes because the police were downstairs and were throwing them out of their Home.

92. The girls became hysterical, were highly distressed, but Plaintiff Murphy eventually calmed them down, assuring them everything was fine and that they would be back in their Home soon.

93. Plaintiff William Murphy then called his eldest daughter and co-signer on the Lease Agreement, Tanisha Murphy, who was at work, and informed her that he and the girls were being abruptly evicted and asked for help.

94. Tanisha then called her boyfriend, Devoughn, who was nearby and immediately rushed to the Home to help.

95. After about 15 minutes, Plaintiff Murphy and his children were forced out of their Home and thrown out onto the street.

96. All they had time to gather were a few warm clothes.

97. They still had faith that a mistake of some kind had been made, that the situation would be sorted out quickly and they would be back in their Home shortly.

98. The Murphy family left behind the bulk of their worldly possessions, including the girls' laptop computers for school, clothing, the urn with Lokia's ashes, Lokia's picture with a necklace with the wedding ring as a pendant, their bedroom sets, televisions, the dining room table, and their microwave.

99. At this point, the third Constable, later identified as defendant Craig, was standing outside the Home with defendant Constables Brison and Hernandez.

100. As he was exiting, Plaintiff William Murphy asked for further explanation of how he could get the mix-up sorted out because this was his legal Home as the Lease Agreement and other proffered evidence demonstrated.

101. Defendant Brison replied to this blind man, walking with a cane, at the end of a snowstorm, that he should go to JP Court # 11 in New Castle, almost seven miles away, and file a complaint for wrongful eviction.

102. Fortunately for Plaintiff, his daughter Tanisha's boyfriend Devoughn had arrived at the scene and quickly helped Plaintiff Murphy into Devoughn's car.

103. As this was occurring, Constable Brison said to Constables Hernandez and Craig, "[i]f anything goes wrong, I will take the fall for it."

104. By this, Constable Brison meant that he knew it was illegal and improper of him to throw someone out of their Home under these circumstances but he was going to do it anyway.

105. Devoughn then went over to Constables Brison, Hernandez and Craig and asked who they were and why the Murphy family was being evicted.

106. Devoughn explained that the Murphy family had been living at the Home for months, that Plaintiff Murphy was blind, his two young daughters were in school, and it was freezing, sleeting and snowing outside.

107. Defendant Hernandez responded that they were Constables, they are the law and that they needed everyone out of the Home immediately and that the Murphy family's only legal option was to go to JP Court #11 to get the matter resolved.

108. Devoughn requested the address for JP Court #11, and defendant Hernandez responded, "2 Penns Way, New Castle."

2. Facts Revealed In the Constable Defendants' Later Produced Written Reports to Their Superiors

109. This federal case was filed on March 23, 2021. (See D.I. 1).

110. After this case was filed - and as repeatedly (1) referenced in Plaintiffs' earlier Answering Brief in opposition to the State Defendants' Motion to Dismiss (D.I. 22 at 3 n.1), (2) discussed at length in Plaintiffs' counsel's Fed.R.Civ.P. 56(d) declaration attached to the same (D.I. 22-1 at ¶¶ 15-34), and (3) discussed on the record with the U.S. District Court and defense counsel at the oral argument held on December 19, 2022 - defense counsel from the Delaware Attorney General's Office for the State Defendants subsequently produced the undated written reports of the three constable Defendants which are official internal records of the Justices of the Peace Court Defendant.

111. As discussed at oral argument, the contents of these written reports appear to: (1) be directly responsive to the factual questions raised by this Court at the December 19, 2022 oral argument; and (2) lend plausibility to Plaintiffs' factual allegations in the original Complaint

under Third Circuit precedent.²

a. Actual Knowledge That Plaintiff Is Blind.

112. First, the statements reveal actual knowledge by all three Constable defendants that Plaintiff Murphy was blind.

113. All three statements reveal that they were told this both by Plaintiff Murphy's son Josh (incorrectly identified in the statements as Plaintiff's nephew) and by Plaintiff Murphy himself. (See Craig at 1 - "Mr. Murphy stated that he was blind..."; Brison at 1 - "my Blind Uncle lives here with his daughters"; Hernandez at 1 - "he stated that his uncle was, who is blind and his 2 daughters who are juveniles...").

114. Constable Brison additionally explained that because of Murphy's blindness, Murphy had to be "escorted to the door" of the residence by Josh to speak to the Constables. (Brison at 1).

b. Plaintiff Lacked Any Notice or Knowledge of Eviction Proceedings Against Him.

115. The statements also confirm that Plaintiffs lacked any knowledge or notice that he was in danger of being evicted from his constitutionally fortified Home.

116. Constable Hernandez wrote that "Mr. Murphy was surprised" they were there to evict he and his family. (Hernandez at 1).

117. Constable Craig recounts that after accosting Murphy's son Josh on the street and stating they were there for an eviction, that Josh "displayed confusion and stated that he was not aware of an eviction taking place." (Craig at 1).

² See Schuchardt v. President of the U.S., 839 F.3d 336, 348 (3d Cir. 2016) (explaining that the existence of a "detailed insider account," although not a pleading requirement under Rule 12(b)(6), nevertheless "strongly supported the plausibility of" a plaintiff's allegations.).

c. Plaintiff Explained Viola Wilson Might Be A Former Tenant Who Did Not Live There.

118. The statements also recount that Plaintiff Murphy told them that no one named Viola Wilson lived in his Home and that he thought she was a former tenant because mail came to the address addressed to her but he did not otherwise know because he had been there with his family for several months under his Lease Agreement. (Craig at 1; Hernandez at 1; Brison at 1).

d. Plaintiff Explained He Had a Lease and Gave His Original to the Constables Who Reviewed it.

119. The statements recount that Murphy explained that he had a written Lease Agreement, went back into his Home to retrieve it and gave it to the Constables who examined it and discussed it amongst themselves. (Craig at 1-2; Hernandez at 1).

e. The Constables Believed His Lease Was “Legitimate.”

120. The statements also confirm that after examining Plaintiff’s lease, the Constables concluded it “appeared somewhat legitimate, and even featured the signature of [the Landlord].” (Craig at 1). Another Constable confirmed it “contained [the Landlord’s] signature.” (Hernandez at 1).

121. Although several Constables noted that the lease was neither notarized nor watermarked (Craig at 1; Hernandez at 1), one noted that the Landlord was specifically questioned about this and confirmed that he did not have his leases notarized or watermarked. (Hernandez at 1).

f. Plaintiff Explained He Had Other Official Government Documentation Showing He Was Legally in His Own Home.

122. Another Constable statement confirms that Plaintiff Murphy “again explained that he had government assistance that had helped pay for his stay at the residence and all

documentation showing just this.” (Brison at 1).

**g. The Constables Believed that a Notice Naming “Viola Wilson”
Was Sufficient Legal Notice for a Different Person
Named “William Murphy.”**

123. Given the centrality of the requirements of notice and an opportunity to be heard to our constitutional system under both the Fourteenth Amendment to the U.S. Constitution and the analogous protections of Article I, § 7 of the Delaware Constitution, the reports also demonstrate that the Constables believed a legal notice naming “Viola Wilson” was legally sufficient notice for an entirely different person named “William Murphy.”

124. Defendant Brison recounted –

Mr. Murphy was informed that an eviction was placed on the residence for a Viola Wilson. He informed us there was no one living at the residence by that name and although mail and a previous eviction letter had come for this name, he paid no attention to it because he had a detail [sic] Lease with his name on it ... I regretfully advised Mr. Murphy, due to the name Viola Wilson being on the eviction at this time the eviction would have to stay in place and everyone in the dwelling would have to leave by order of the court.

(Brison at 1).

125. Defendant Craig recounted –

we explained to Mr. Murphy that there was to be an eviction taking place, and that the person on the court document was Viola Wilson, he stated that he doesn't know who that is, however her mail arrives to his residence. Constable Hernandez stated that there was an eviction notice posted on his door 6 days prior, and asked Mr. Murphy if he received it. Mr. Murphy stated that he did, and his mother read it to him. He then added that since the notice was not in his name, he discarded it in the trash. After some discussion, Mr. Murphy stated he had been living in the residence since November of 2020 and stated he had a lease in his name as proof ... then entered his residence to retrieve the lease ... After some time, Mr. Murphy emerged from his residence with his lease in hand. I retrieved it and began examining ... After reading

through the contents, the lease appeared somewhat legitimate and even featured the signature of [the Landlord] ... constable Brison [] was explaining to Mr. Murphy that unfortunately the eviction would have to continue.

(Craig at 1-2).

126. Constable Hernandez recounted –

I asked if he had seen the eviction notice which was posted to his door on 5/Feb/2021, he said yes his mother had read it to him but was for a Viola Wilson so he discarded it in the trash. ... He then stated that he had a lease with [the Landlord] since November 2020. I asked if he produce it and he said he could and returned inside to retrieve it. ... During this time Mr. Murphy produced the lease ... Mr. Murphy was informed that that [sic] point he had about half an hour to [leave his Home] ... The eviction process was completed by me and constable Craig.

(Hernandez at 1-2).

h. The Constable Defendants Contacted Their Non-Judicial Supervisor at the Justice of the Peace Court for Instructions.

127. The Constable's reports also reveal that they did not blindly rely upon the eviction Order that day but instead contacted their non-judicial Supervisor at the Justice of the Peace Court - Chief Constable Garcia - for instructions on how to proceed given Plaintiff Murphy was blind, had no notice or knowledge of the eviction proceedings and had a lease.

128. Constable Hernandez's report states –

While I was attempting to find a solution to the matter constable Brison was speaking to Chief constable Garcia seeking guidance on how we should proceed in the matter, once a decision was made, these constables proceeded in executing the writ.
(Hernandez at 1).

129. Constable Brison's report states –

I quickly contacted Chief Garcia to advised [sic] him of the situation. Chief Garcia told me that since we had an eviction order from the court everyone needed to vacate the dwelling and contact

the court to dispute the order. (Brison at 1).

130. Constable Craig's report does not reference any call or other contact that was made with the Justice of the Peace Court or his supervisors.

i. The Constables Confirmed Existence of the “Evict First, Ask Questions Later” Policy, Custom or Practice.

131. The statements of all the Constable Defendants confirm that Plaintiff Murphy was told that despite all of the facts laid out above, his only option was to be evicted now and thereafter go to the Justice of the Peace Court after and file an after the fact lawsuit to get his Home back.

132. Constable Brison recounted that after receiving his Orders from his supervisor Chief Garcia, he told Plaintiff Murphy –

due to the name Viola Wilson being on the eviction at this time the eviction would have to stay in place and everyone in the dwelling would have to leave by order of the Court ... he should gather [his lease agreement and government assistance documentation] and quickly take it to Justice of the Peace Court 13.

(Brison at 1).

133. Constable Craig explained “the eviction would have to continue ... [and] to contact court 13 and explain his situation while presenting his lease.” (Craig at 2).

134. Constable Hernandez recounted that after receiving his orders from Chief Garcia –

these constables proceeded in executing the writ ... Mr. Murphy asked if there was anything[] he could do to stop the action, he was advised that he could go to court 13 and ask to speak with a judge ... and he should take any documents with him that supported his case.

(Hernandez at 1-2).

j. Other Corroborating Details.

135. The Constables statements corroborate other factual allegations contained in the original Complaint.

136. For example, they corroborate Plaintiffs' charges that:

- on the morning of the eviction "it had recently snowed and was extremely cold," (Hernandez at 1);
- Defendants violated the requirements of Chief Magistrate Davis' Standing Order No. 6, dated December 14, 2020 (discussed in greater detail in section **III.H.** below), which required that even as to "properly ordered evictions" that they only be "[c]onduct[ed] ... in a manner that preserves the health and safety of ... the parties subject to eviction."
- they were given only 30 minutes to pack up there things before being thrown out of their Home, (Hernandez at 1);
- after the eviction was completed, an unknown male (Plaintiff Tanisha Murphy's boyfriend Devoughn) arrived at the Home in his car, picked up Plaintiff and took him to the Justice of the Peace Court to file a lawsuit to get his Home back. (Craig at 2);
- Defendants made no efforts to provide an ADA or Rehab Act required accommodation for Plaintiff Murphy's blindness;
- Defendants did not conduct an ADA or Rehab Act required communications assessment;
- Defendants did not provide him with any legal notices in braille as the ADA and Rehab Act require;
- Defendants did not provide him with an ADA or Rehab Act mandated "qualified reader" experienced in explaining complicated legal terminology;
- Defendants did not provide him with a hearing before a judge before evicting him from his Home.

k. Internally Contradictory Details.

137. Although two of the reports note that an eviction notice naming "Viola Wilson" had been "posted" to the Home's door (Hernandez at 1; Craig at 1), Constable Brison's report instead

recounts that a “previous eviction letter” naming “Viola Wilson” had arrived at the Home but it makes no mention of anything being posted to the door. (Brison at 1).

138. The reports all state that at some point, the Landlord showed up during the eviction process, although the reports contradict each other as to when that occurred. Constable Hernandez's statement says that the Landlord and another man arrived at the eviction after the Constables had already spoken to Plaintiff Murphy and begun the eviction process. (Hernandez at 1). But Constable Craig's statement says that the Landlord and another man arrived at the location before they had spoken to Plaintiff Murphy and begun the eviction process. (Craig at 1).

E. Plaintiff Murphy Goes to JP Court and Files a Wrongful Eviction Action.

139. Thereafter, that same day, February 11, 2021, after dropping off Plaintiff K.M. with a babysitter, Devoughn and Plaintiffs Murphy and A.T. drove immediately to JP Court #11. Josh stayed behind and observed that the front door to the Home had been boarded up shortly after the family left by either the Landlord or one of the Constables.

140. While en route to JP Court #11, Plaintiff Murphy called his elderly mother, Ruth Patten, 82 years old, who lives in Newark. Plaintiff Murphy explained to his mother that he needed her assistance in sorting out the situation at the JP Court. Ruth rushed to the Court, in dangerous driving conditions, and arrived shortly after Plaintiff Murphy.

141. Upon arriving at the Court, Plaintiff Murphy explained to the Court Clerk what had just transpired, that he had been evicted from his Home even though he had a valid lease and that he needed to return immediately as he had school-age children and had been forced to leave the bulk of his personal belongings inside the Home.

142. The Court Clerk provided Plaintiff Murphy with forms and provided guidance on how to complete the forms.

143. Plaintiff Murphy then dictated to his minor daughter and elderly mother what was to be written on the forms.

144. Plaintiff filled out two forms: (1) what is, in essence, a Complaint for unlawful eviction; and (2) a Request for a Forthwith Summons under 25 Del.C. § 5115, swearing that the situation was an emergency and that he and his family were suffering “irreparable harm” by being thrown out of their Home in a snowstorm, despite having a valid lease and other proper documentation of occupancy and tenancy.

145. After the forms were completed, Plaintiff submitted the forms to the Court Clerk, along with a copy of his Lease Agreement (Exhibit A) as well as a copy of the Delaware Social Services Approval Notice (Exhibit B) and, despite being an impoverished poor, blind person without financial resources, he was required to pay a \$45 Justice of the Peace Court fee in an attempt to get back his Home that the same Court had just illegally taken away from him.

146. Even though they were at JP Court #11, the case was assigned to JP Court #13 and assigned Case Number: JP13-21-000708.

147. The Murphy family then was forced to wait for days, despite the emergency they endured.

148. Four long days passed as Plaintiff and his two young daughters had to wait without any of their possessions because they had been unlawfully evicted from their Home.

149. Finally, on Monday, February 15, 2021, the JP Court approved an expedited hearing and set a trial date for Thursday, February 18, 2021, seven long days after the Murphy family were wrongfully thrown out of their Home.

F. Plaintiff Murphy Contacts the News Media.

150. During these four days, Plaintiff William Murphy contacted intrepid reporter Jeff

Neiburg of the *Wilmington News Journal*, who boldly began to call the Justice of the Peace Court and pointedly question the Court and the Court Administrator why a blind man and his family had been abruptly evicted from their Home in the middle of a snowstorm without ever having been granted a simple hearing in the midst of a once in a lifetime pandemic, a statewide declaration of emergency and an eviction moratorium under both state and federal law.

151. At 5:00 a.m. on February 18, 2021, reporter Neiburg published a prominent online newspaper story at delawareonline.com entitled, “Were Blind Widower and His 2 Daughters Wrongfully Evicted from their Wilmington Home?”

G. The Emergency Hearing is Held.

152. The emergency hearing in JP13-21-000708 challenging his eviction was held later that same day, February 18, 2021.

153. The emergency hearing was ably and fairly conducted by Deputy Chief Magistrate Judge Sean P. McCormick.

154. Judge McCormick was not the judge assigned to Plaintiff’s case in JP13-21-000708.

155. Nor was Judge McCormick the judge assigned to the previous JP13-20-003694 matter in which the Landlord wrongfully had obtained the eviction Order which had been issued for the long gone Viola Wilson.

156. Nevertheless, Judge McCormick reviewed the documentary evidence, including: the Lease Agreement; the written documentation and approval from Delaware Social Services; and other documents on the Court docket, and from elsewhere, containing the Landlord’s signature.

157. Judge McCormick read the Landlord his rights under Miranda v. Arizona, 384 U.S. 436 (1966), and then asked the Landlord numerous questions.

158. But in Judge McCormick’s words, the Landlord “elected to stand mute – other than

to say ‘I wish to seek counsel’ – to any other question asked of him” after being Mirandized.

159. Judge McCormick made certain oral rulings that day, and also later issued a five page written Opinion on February 26, 2021. He concluded that:

- “the signature of [the Landlord]” on four separate documents on the JP Court docket “is identical to the one on the lease offered by Murphy as proof of his leasehold;”
- the Murphy family “were [the Landlord’s] tenants and had a valid lease to that end;” and
- “clearly the Murphy’s were unlawfully ousted” from their Home.

160. In his later written ruling, the Judge also investigated further the circumstances leading up to the unlawful eviction and concluded that:

- The Landlord had “abus[ed] the resources of the Court” and “‘weaponized’ a writ meant for a previous tenant” by filing an eviction action (JP13-20-003694) against a prior tenant named Viola Wilson, who no longer lived at 329 Townsend Street;
- After Viola Wilson moved out, the Landlord had subsequently rented the same home at 329 Townsend Street to the Murphy family and took their money;
- But the Landlord used the eventual writ of eviction issued in the case against Viola Wilson (JP13-20-003694), to wrongfully evict the Murphy family, despite the Murphy family: having a valid lease with the Landlord; not being party to the Viola Wilson case; having no notice of the Viola Wilson case; having no notice that they were in danger of being evicted; and having no opportunity to be heard at a hearing challenging their eviction.
- The Landlord had likely perjured himself on several occasions in his sworn submissions to the JP Court across a series of at least three separate lawsuits he filed centering on the property at 329 Townsend Street; and
- Referred the matter to the Delaware Department of Justice to conduct a criminal investigation.

161. Following his oral ruling at the hearing, Judge McCormick gave Plaintiff William

Murphy the option of returning back to his Home at 329 Townsend Street or terminating the Lease Agreement.

162. Given the deep distrust that had developed arising from his unlawful eviction, Plaintiff chose to terminate the Lease Agreement rather than put his family through additional trauma inflicted by the Landlord.

163. However, because of the harsh winter weather, a date was not able to be scheduled when Plaintiff and his family could retrieve their personal possessions from the Home until six days later, February 24, 2021.

164. On February 24, 2021, Plaintiff and his family were finally able to retrieve their personal possessions from their now former Home at 329 Townsend Street.

H. The Larger Eviction Moratorium Context In Which Plaintiffs Were Thrown Out of Their Home.

165. On March 12, 2020, Delaware Governor John Carney issued a *Declaration of a State of Emergency for the State of Delaware* (the “Emergency Declaration”) in response to the serious public health threat created by the novel coronavirus (“COVID-19”). The public health emergency remains in effect to this day. Governor Carney has modified the Emergency Declaration 27 times in order to mitigate the evolving and life-threatening public health conditions presented by COVID-19.

166. At all times, defendants were aware of the Governor’s Emergency Declaration and its requirements.

167. On March 24, 2020, Governor Carney issued the Sixth Modification to the Emergency Declaration, which explained that, “[t]he enforcement of eviction orders for residential premises is contrary to the interest of preserving public health and ensuring that

individuals remain in their homes during the public health emergency.” (Emphasis added).

168. The Sixth Modification then went on to modify the Delaware Residential Landlord-Tenant Code by:

- (a) prohibiting actions for summary possession (i.e., eviction actions) with respect to any residential rental unit located within the State;
- (b) prohibiting the charging of late fees and/or interest with respect to any past due balance for a residential rental unit;
- (c) prohibiting the accrual of late fees and/or interest on the account of any residential rental unit during the state of emergency;
- (d) extending all deadlines in eviction actions commenced prior to the Emergency Declaration until a date no sooner than the 31st day following the termination of the state of emergency and rescission of the public health emergency; and
- (e) prohibiting the execution of any writ of possession for any residential rental unit what was the subject of an eviction action, where the final judgment was issued prior to the Emergency Declaration, until the 7th day following the termination of the state of emergency and rescission of the public health emergency.

(See Emergency Declaration, Sixth Modification, pp. 6-7).

169. At all times, defendants were aware of the Sixth Modification and its requirements.

170. A limited exception to the modifications set forth above was for eviction actions based upon a claim that continued tenancy will cause or is threatened to cause irreparable harm to person or property. (See id. at 7).

171. In our present case, defendants neither made nor attempted to make any showing of irreparable harm.

172. The Sixth Modification also prohibited utility providers, including providers of electric and water, from terminating service to residential dwellings and from charging fees for late payments. (See id. at 8-9).

173. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

174. The provisions of the Sixth Modification had the full force and effect of law. Failure to comply with the provisions of the Emergency Declaration or any modification thereto constitutes a criminal offense under several statutory provisions. (See id. at 8-9).

175. Governor Carney's attorneys have represented, on the record, to Judge Colm Connolly of this Court that violation of the Governor's Emergency Declaration carries significant legal penalties.

176. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

177. On June 30, 2020, Governor Carney issued the Twenty-Third Modification to the Emergency Declaration, which deleted and replaced the eviction provisions set forth in the Sixth Modification (as further modified by the Fourteenth Modification which related to holdover tenants) with the following 2 provisions:

Actions for summary possession may be filed with respect to any residential unit located within the State, and shall be stayed to permit the Justice of the Peace Court to determine whether the parties would benefit from participating in court supervised mediation or alternative dispute resolution, which process may include appropriate housing support services, as determined by the Delaware State Housing Authority, if requested by either party or the Court. Sheriffs, constables, court officers, and their agents shall refrain from acting to remove individuals from residential properties through the eviction process during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. With respect to any past due balance for a residential rental unit, no late fee or interest may be charged or accrue on the account for the residential unit during the COVID-19 State of Emergency. Actions filed should include supporting documents, as directed by the court and supplied by the landlord, that demonstrate that the subject property is not covered by a federal moratorium on evictions.

Any action for summary possession with respect to any residential unit located

within the State that was filed before the State of Emergency for which no final judgment had been entered shall be further stayed to permit the Justice of the Peace Court to determine whether the parties would benefit from participating in court supervised mediation or alternative dispute resolution, which process may include appropriate housing support services, as determined by the Delaware State Housing Authority, if requested by either party or the Court. Sheriffs, constables, and their agents shall refrain from acting to remove individuals from residential properties through the eviction process during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. With respect to any past due balance for a residential rental unit, no late fee or interest may be charged or accrue on the account for the residential unit during the COVID State of Emergency.

(See Emergency Declaration, Twenty-Third Modification, pp. 9-11) (emphasis added).

178. In short, although the Twenty-Third Modification lifted the prohibition on the filing of new eviction actions, effective July 1, 2020, any such eviction actions were automatically stayed so that it could be determined whether there were alternatives to court-sanctioned evictions. Specifically, new eviction actions were to be automatically referred to mediation or alternative dispute resolution (ADR), wherein it would be highly encouraged for the parties to apply for rental relief (as explained below) as a means resolve landlord-tenant disputes, the bulk of which involve delinquent rent. Should the out-of-court alternatives not work, the Twenty-Third Modification nonetheless placed limitations on the eviction actions by requiring, by motion, that enforcement of any such action is “necessary in the interest of justice.” Notwithstanding the lift on the eviction moratorium, the eviction process was only to be invoked as a last resort, and only after all other available options had been exhausted.

179. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

180. No Delaware judge in JP13-20-003694 ever made a determination that the eviction of Plaintiffs from their Home was necessary and in the interest of justice.

181. Nevertheless, defendants evicted Plaintiffs anyway.

182. Indeed, on July 2, 2020, Governor Carney, Delaware Attorney General Kathy Jennings, Delaware State Housing Authority (“DSHA”) Director Anas Ben Addi, and Justice of the Peace Court Chief Magistrate Judge Alan Davis announced a joint effort on foreclosure and eviction prevention. The joint effort on eviction prevention included the following:

- (a) Launching a multifaceted education campaign targeting Delaware renters at risk of eviction due to financial difficulty due to COVID-19;
- (b) Providing funding to the state’s legal aid organizations who offer legal services for unrepresented tenants facing eviction;
- (c) Encouraging the use of a JP Court-supervised ADR program designed to facilitate landlords and tenants working together to find solutions to avoid eviction; and
- (d) Reopening applications for the Delaware Housing Assistance Program (“DE HAP”) to provide rental assistance for struggling Delawareans.³

183. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

184. On September 11, 2020, Chief Magistrate Davis of the Justice of the Peace Court issued Administrative Order 2021-1. Administrative Order 2021-1 provided guidance on procedures for landlord-tenant cases filed before and after the Emergency Declaration and how the Court would process the backlog of cases due to COVID-19. In addition, Administrative Order 2021-1 generally discussed the eviction process following the lifting of the moratorium by the Twenty-Third Modification to the Emergency Declaration:

³ DE HAP, administered by the DSHA, was relaunched in August 2020 and provided emergency housing assistance (up to \$8,000) to renters affected by shutdowns, closures, layoffs, reduced work hours or unpaid leave due to the COVID-19 health crisis. The State of Delaware and NCC contributed a combined \$40 million of CARES Act monies to fund DE HAP.

The Governor's 23rd modification of the declaration of a state of emergency due to a public health threat, though opening the availability of filing of landlord-tenant cases, imposed an additional limitation on actual evictions proceeding. In order for an eviction to go forward, the Court must be satisfied that allowing an eviction is "in the interest of justice." While the Court cannot provide specific legal guidance on what constitutes the need for an eviction "in the interest of justice," the Court will require the moving party to show that something more than the normal legal right to possession granted under the Residential Landlord-Tenant Code is required.

(Administrative Order 2021-1) (emphasis added).

185. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

186. The "normal legal right," id., is set forth at 25 Del.C. §§ 5502(b) and 5702(2), which provides that a landlord may bring an action for summary possession for rent alone.

187. No such showing that Plaintiffs owed any rent was ever made.

188. Additionally, no Delaware judge ever made a determination that the eviction of Plaintiffs from their Home was necessary and in the interest of justice.

189. Nevertheless, defendants evicted Plaintiffs.

190. On December 14, 2020, Chief Magistrate Davis issued Standing Order No. 6 (Concerning COVID-19 Precautionary Measures and Scheduling of Cases). Standing Order No. 6, in recognition of the continued COVID-19 public health and safety emergency, addresses the additional measures the JP Court would implement to reduce the risk that COVID-19 poses to the multitude of parties who enter judicial facilities. With respect to landlord-tenant matters, Standing Order No. 6 provides that, in compliance with the Governor's Twenty-Third Modification to the Emergency Declaration, the Justice of the Peace Court shall:

- (a) Require parties filing actions to provide any available contact information for the defendant(s) to facilitate the scheduling of alternatives to in-person proceedings;

- (b) Determine whether each summary possession action is suitable for a court-supervised ADR process;
- (c) Schedule appropriate cases for ADR. The Court may also direct parties to engage in attempted resolution through an Online Dispute Resolution (ODR) platform, as appropriate. The ADR or ODR process may include appropriate housing support services, if requested by either party or by the Court;
- (d) Stay any execution of eviction orders while the Governor's Order remains in effect, except in the instance of a forthwith summons properly sought and adjudicated, or otherwise in the interests of justice in accordance with the Governor's Order;
- (e) Conduct any properly ordered evictions in a manner that preserves the health and safety of Court Constables, the parties subject to eviction, and the public;
- (f) Award no late fees or interest with respect to any past due balance for a residential rental unit that would otherwise have accrued during the COVID-19 State of Emergency.

(Standing Order No. 6, p.3) (emphasis added).

191. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

192. These requirements were not met in Plaintiffs' case. For example, no eviction Order was ever properly sought or obtained consistent with the Fourteenth Amendment. Similarly, no forthwith summons was ever "properly sought and adjudicated." Nor was the "health and safety of ... the parties subject to eviction, [or] the public" ever considered.

193. For all of the above mentioned reasons, Plaintiffs' eviction was illegal under both federal law as well as State of Delaware law.

I. Damages.

194. As a direct and proximate result of the actions of the defendants, as detailed herein,

Plaintiffs have suffered or will suffer damages including, but not limited to, the full panoply of damages available under federal common law and statutory rules for damages. These include, but are not limited to: full contract, expectation and consequential damages, physical and emotional pain and suffering, mental anguish, emotional distress, severe emotional distress, loss of enjoyment of life, humiliation, embarrassment, injury to reputation, disappointment, anger, inconvenience and other non-pecuniary losses and injuries. Psychological, emotional or mental injuries include, but are not limited to: depression; anxiety; trouble sleeping; recurring nightmares; decreased energy and motivation; as well as other psychological, emotional and mental injuries. Economic and other pecuniary losses damages include, but are not limited to: court filing fees; room and board fees to find a place to live during the period of homelessness during the snowstorm; moving expenses; losses suffered during the move; the lost security deposit; as well as other economic and pecuniary injuries.

195. Economic damages suffered include the following:

- \$45 - the filing fee the Justices of the Peace defendant charged Plaintiff Murphy when he went to challenge his unlawful eviction from his Home;
- ~\$82 - one night's stay at the Red Roof Inn, in Newark, Delaware, where Plaintiff Murphy and his two minor daughters were forced to stay the first night during the snowstorm after being evicted from their Home but before they were admitted to the NCC homeless shelter.
- The money spent on buying new clothing, toothbrushes, toothpaste, food and other similar life necessities. This was necessary because Plaintiffs were forced to leave behind most of their possessions when their Home was seized without notice.
- The money spent paying the babysitter to take care of K.M. so Plaintiff William Murphy would be free to go to the Justices of the Peace Court and challenge his eviction from his Home without notice.
- An undetermined amount of lost wages. The rules at the NCC homeless shelter both forbid adults from leaving minor children unattended and

include a nightly curfew. As a result, Plaintiff William Murphy was unable to work to support his family because he was not permitted to leave his two minor daughters there alone.

- An undetermined amount for application fees paid while seeking a new place to live after being evicted from their Home.

IV. ALLEGATIONS REGARDING THE DEFENDANTS' CONDUCT

196. All the actions of the defendants described both above and below were taken pursuant to policies, customs and practices of the Justices of the Peace and were authorized, sanctioned, implemented, permitted and/or ratified by officials functioning at a policymaking level.

197. By the policies, practices and/or customs of officials functioning at a policymaking level, defendants have denied Plaintiffs their constitutional rights under the Fourth and Fourteenth Amendment to the U.S. Constitution, as well as their statutory rights under both the ADA and the Rehab Act.

198. The individual defendants' actions violated clearly established federal constitutional rights and statutory rights of which any official would have known.

199. At all times material hereto the individual defendants participated in, implemented, authorized and/or sanctioned the federal constitutional and statutory deprivations described above.

200. At all times material hereto the individual defendants and their agents were acting under color of law. The federal constitutional and statutory deprivations described herein are fairly attributable to the state.

201. The individual defendants either knew or showed a negligent or reckless disregard for the matter of whether their conduct violated federal constitutional and statutory rights.

202. The actions of the individual defendants and their agents or employees were deliberately, intentionally, willfully, purposefully, and knowingly done in violation of federal constitutional and statutory rights and because of the exercise of those rights.

203. Their actions were malicious, outrageous, wanton, and taken with evil motive, in bad faith, out of personal animus and without any reasonable grounds to support them.

204. The exercise of rights under the U.S. Constitution and federal statutes made a difference in all actions adverse to Plaintiffs.

205. The exercise of these rights was a motivating, substantial or determinative factor in all actions adverse to Plaintiffs.

206. The defendants did not reasonably believe that the actions they took were necessary to accomplish any legitimate governmental purpose.

207. The defendants' actions were motivated by bias, bad faith, and improper motive.

208. The defendants' actions constitute an abuse of governmental power.

209. The defendants' actions do not further any narrowly drawn important, substantial or compelling governmental interest.

210. The defendants' actions are not so reasonable as to further any governmental interest asserted and do not closely fit the goal of serving those governmental interests.

211. The defendants' actions were capricious, irrational, arbitrary, egregious and outrageous.

212. The defendants' actions shock the conscience.

**COUNT I (Title II of the ADA and Section 504 of the Rehab Act -
Discrimination and Failure to Accommodate)**

213. Plaintiffs repeat and reallege paragraphs 1-212 set out above and adopt all

paragraphs set forth hereinafter.

214. The Justices of the Peace, State of Delaware defendant is charged under this count.

215. By information and belief, the State of Delaware, Justices of the Peace defendant receives federal funds.

216. By information and belief, the State of Delaware court system receives federal funds.

217. By information and belief, the State of Delaware receives federal funds, including CARES Act funding, specifically including funding designed to prevent evictions during this once in a lifetime COVID-19 pandemic.

A. Elements of an ADA and Rehab Act Claim.

218. To state a claim a plaintiff must demonstrate: (1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability.

1-2. Qualified Person With a Disability.

219. Plaintiff William Murphy is blind.

220. Despite not being required under either the ADA or the Rehab Act, defendants knew Plaintiff was blind.

221. As noted above, the Constable defendants observed Plaintiff was blind.

222. The Constable defendants concluded based upon their observations that Plaintiff was blind.

223. The Constable defendants had actual knowledge that Plaintiff was blind.

224. Plaintiff Murphy's blindness substantially limits the major life activities of seeing,

reading, communicating, walking, among other major life activities.

225. Plaintiff Murphy is a qualified person with a disability.

226. As explained at length above, co-Plaintiffs Tanisha, A.T. and K.M., have a sufficient “relationship or association” with Plaintiff Murphy to invoke the protections of the ADA and Rehab Act under the facts of our case.⁴

227. As to Tanisha, she was co-signer on the residential lease with him and had an identical Fourteenth Amendment property interest arising from that lease under Delaware law as did Plaintiff Murphy.

228. She was deprived of her leasehold and contractual rights in the same manner as her father Plaintiff Murphy.

229. As to A.T. and K.M., they were Plaintiff Murphy’s minor, dependent children, living with him in his Home after the death of their mother.

230. Their legal rights were dependent upon Plaintiff Murphy’s.

231. They were deprived of their Home and had an identical Fourteenth Amendment liberty interest in it.

232. They also were third party beneficiaries of Plaintiff Murphy’s residential lease under state law as the lease was intended to provide them with a stable and safe Home in which to live, learn, and grow into productive members of society.

⁴ See 28 C.F.R. § 35.130(g) (requiring “a relationship or association” with a disabled person); 28 C.F.R. Pt. 35, App. B, § 35.130 (“The individuals covered ... are any individuals who are discriminated against because of their known association with an individual with a disability ... This protection is not limited to those who have a familial relationship with the individual who has a disability. Congress considered, and rejected, amendments that would have limited the scope of this provision to specific associations and relationships.”); 28 C.F.R. § 35.160(a)(2) (defining “companion” to include a “family member, friend or associate” of a disabled person).

3(a). The 13 Services, Programs or Activities of the Public Entity Which Plaintiffs Were Excluded From Participation In, Or the Benefits Of the Entity That They Were Denied.

233. Plaintiffs were excluded from participation in or denied the following thirteen benefits and services:

1. Service of a summons or other process in a legal proceeding affecting their legal rights.
2. Acquisition of personal jurisdiction in such a proceeding.
3. Later Rule 5 service of pleadings in an eviction proceeding affecting their legal rights.
4. The statutory right of a jury trial before being deprived of their Home.
5. Summary possession requirements under 25 Del.C. §§ 5704-06.
6. Eviction protections under multiple COVID Administrative and Standing Orders of the Justice of the Peace Court and the Governor's Emergency Declarations.
7. Federal and State Procedural Due Process requirements.
8. Federal and State seizure requirements.
9. Required statutory 60 day notice of termination of a lease.
10. Statutory right to occupy a leasehold under 25 Del.C. § 5148.
11. Statutory right to the correct person in an eviction proceeding.
12. Statutory summary possession proceeding rights.
13. Other protections of the Delaware Residential Landlord-Tenant Code.

234. **Exclusion & Denial #1 - Service of a Summons** - Justice of the Peace Court Civil Rule 4(f)(1)(I) governs service of legal process, in the form of a summons, on an individual defendant in a lawsuit filed in the Justice of the Peace Court.

235. This is the means by which the Justice of the Peace Court acquires personal jurisdiction over a person, making them subject to, and bound by, the court's rulings.

236. Proper service of a summons is the *sine qua non* of an individual's participation in any legal proceeding.⁵

237. Plaintiffs were never served with a summons or any other legal process subjecting them to the personal jurisdiction of the Justice of the Peace Court, under Rule 4(f)(1)(I) or under any other rule of the Justice of the Peace Court.

238. Because they were never served with a summons or other legal process, Defendant Justices of the Peace Court lacked personal jurisdiction over them to seize their Home and remove them from it.

239. This failure to start a valid legal process with a summons excluded from and denied Plaintiffs the benefit of protections of Justice of the Peace Court Civil Rule 4(f)(1)(I).

240. **Exclusion & Denial #2 - Personal Jurisdiction** - The prerequisite of personal jurisdiction was denied. Personal jurisdiction determines whether a court has power over the parties to a legal dispute.⁶

241. Defendant Justices of the Peace Court did not have personal jurisdiction over Plaintiffs yet nevertheless exercised personal jurisdiction over them and deprived them of their

⁵ See Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350-51 (1999) (“the summons continues to function as the *sine qua non* directing an individual ... to participate in a civil action or forgo procedural or substantive rights.”)

⁶ See Genuine Parts Co. v. Cepec, 137 A.3d 123, 129 (Del. 2016) (“Personal jurisdiction refers to the court's power over the parties in the dispute.”); Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577 (1999) (“Jurisdiction to resolve cases on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction), so that the court's decision will bind them.”).

Home.

242. It is a due process violation to exercise legal authority over a person where the court lacks personal jurisdiction.⁷

243. Personal jurisdiction requires a valid means of service.⁸

244. As noted above, Plaintiffs were never served with process under Justice of the Peace Civil Rule 4.

245. Even actual notice does not replace formal service of process.⁹

246. The benefit of initial personal jurisdiction was denied to this disabled family. This excluded from and denied Plaintiffs the benefit of the protection of initial personal jurisdiction under Delaware law, Justice of the Peace Court Civil Rule 4(f)(1)(I), and due process under both

⁷ See, e.g. Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982) (“The requirement that a court have personal jurisdiction flows ... from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.”); J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011) (“Personal jurisdiction, of course, restricts judicial power not as a matter of sovereignty, but as a matter of individual liberty, for due process protects the individual's right to be subject only to lawful power. But whether a judicial judgment is lawful depends on whether the sovereign has authority to render it.”) (internal citation and punctuation omitted).

⁸ See, e.g. In re P3 Health Grp. Holdings, LLC, 282 A.3d 1054, 1058 (Del.Ch. 2022) (“A proper exercise of personal jurisdiction requires a valid means of serving the defendant, and the resulting exercise of jurisdiction must provide the defendant with the protections afforded by minimum standards of due process.”); Furek v. Univ. of Del., 594 A.2d 506, 513-14 (Del. 1991) (holding service upon the incorrect person under Delaware Superior Court Civil Rule 4(f) is “a nullity” so “personal jurisdiction over” the proper person “had not been secured”).

⁹ See, e.g. Skye Min. Invs., LLC v. DXS Cap. (U.S.) Ltd., 2021 WL 2983182,*3 (Del. Ch. July 15, 2021) (“[p]ersonal jurisdiction must be effected through proper service of process, and actual notice by a defendant [without service of process] does not satisfy this constitutional requirement.”); Showell v. Div. of Family Servs., 971 A.2d 98, 102 (Del. 2009) (“a party's actual knowledge of a lawsuit does not excuse a failure to give statutorily mandated notice.”).

Article I, § 7 of the Delaware Constitution and the Fourteenth Amendment to the U.S. Constitution.

247. Exclusion & Denial #3 - Later Rule 5 Service of an Eviction Proceeding -

Justice of the Peace Court Civil Rule 5 governs how service of court pleadings is completed on a party to a lawsuit after the Justice of the Peace Court already has acquired personal jurisdiction over that party under Rule 4.

248. Plaintiffs were never served in any manner permitted under Rule 5.

249. This excluded from and denied Plaintiffs the benefit of protections of Justice of the Peace Court Civil Rule 5.

250. Exclusion & Denial #4 - Statutory Right to a Jury Trial - 25 Del.C. § 5713 is a specific statutory protection provision of the Delaware Residential Landlord-Tenant Code which provides the protection required by Article I, § 4 of the Delaware Constitution in allowing a residential tenant the right to demand the protections of trial before a jury of his peers before being deprived of his Home.

251. Defendants removed Plaintiffs from their Home without providing them the protections of a jury trial.

252. This excluded from and denied Plaintiffs the benefit of protections of 25 Del.C. § 5713 which the Defendants are required to provide under, *inter alia*, 25 Del.C. §§ 5701, 5117 and other provisions of the Delaware Residential Landlord-Tenant Code.

253. Exclusion & Denial #5 - Summary Possession Requirements Under Statutes - 25 Del.C. §§ 5704-06 are specific statutory protection provisions of the Delaware Residential Landlord-Tenant Code which provides for how an action for summary possession is commenced and a tenant is served with legal process and provided notice of the complaint.

254. 25 Del.C. § 5704(b) requires that “the court shall issue the process specified in the praecipe and shall cause service of the complaint on the defendant, together with a notice stating the time and place of the hearing. The notice shall further state that if the defendant shall fail at such time to appear and defend against the complaint, defendant may be precluded from afterwards raising any defense or a claim based on such defense in any other proceeding or action.”

255. 25 Del.C. § 5706(a) requires that “Service of the notice of hearing and complaint shall be made in the same manner as personal service of a summons in an action.”

256. Defendants removed Plaintiffs from their Home in a summary possession proceeding despite the fact that the requirements of these statutory protection had not been met in that Plaintiffs: were never served with process or served with the Complaint; were not the defendant named in the service of process or the Complaint; and were never notified of the time or place of a hearing to determine whether they were to be removed from their Home.

257. This excluded from and denied Plaintiffs the benefit of protections of 25 Del.C. §§ 5704-06 which the Defendants are required to provide under, *inter alia*, 25 Del.C. §§ 5701, 5117 and other provisions of the Delaware Residential Landlord-Tenant Code.

258. Exclusion & Denial #6 - Eviction Protections Under Multiple COVID Administrative and Standing Orders of the Justice of the Peace Court and the Governor’s Emergency Declarations - During the COVID-19 pandemic and eviction moratorium, eviction of tenants was forbidden unless a Delaware judge made a determination that the “interest of justice” required the eviction of that tenant under the circumstances.

259. Application of this legal standard was required by: (1) Justices of the Peace Standing Order No. 6, issued on December 14, 2020, by Chief Magistrate Davis; (2)

Administrative Order 2021-1, issued on September 11, 2020, by Chief Magistrate Davis; (3) Delaware Governor Carney's March 12, 2020 Emergency Declaration, as modified by his March 24, 2020 Sixth Modification, as later modified by his June 30, 2020 Twenty-Third Modification.

260. No Delaware judge ever determined that the "interest of justice" required eviction of Plaintiffs from their Home before they were so evicted.

261. This excluded from and denied Plaintiffs the benefits of the protections Governor Carney's Emergency Orders listed above, as well as Chief Magistrate Davis' Administrative Order 2021-1 and Standing Order No. 6.

262. Exclusion & Denial #7 - Federal and State Procedural Due Process

Requirements - Procedural due process under both the Fourteenth Amendment and Article I, § 7 of the Delaware Constitution require that a person be given notice and an opportunity to be heard before being deprived of any liberty or property interest.

263. As detailed in Count II below, Plaintiffs had protected liberty and property interests in their Home.

264. Nevertheless, they were deprived of their Home without notice or an opportunity to be heard.

265. This excluded from and denied Plaintiffs the benefits of procedural due process under both the Fourteenth Amendment and Article I, § 7 of the Delaware Constitution.

266. Exclusion & Denial #8 - Federal and State Seizure Requirements - Plaintiffs were excluded from and denied the benefits of the protections of both the Fourth Amendment to the U.S. Constitution and of Article I, § 6 of the Delaware Constitution, including the prohibition on unreasonable seizures.

267. The seizure of their Home was unreasonable for all of the reasons set forth above

and below, including in Counts II and III below.

268. Exclusion & Denial #9 - Statutory 60 Day Notice of the Termination of His Lease - 25 Del.C. § 5106(c) is a specific statutory protection provision of the Delaware Residential Landlord-Tenant Code which ensures a tenant cannot be removed from his Home unless 60 days notice is provided at the end of his lease term.

269. Defendants removed Plaintiffs from their Home but did not give them this statutory protection.

270. This excluded from and denied Plaintiffs the benefit of protections of 25 Del.C. § 5106 which the Defendants are required to provide under, *inter alia*, 25 Del.C. §§ 5701, 5117 and other provisions of the Delaware Residential Landlord-Tenant Code.

271. Exclusion & Denial #10 - Statutory Right to Occupy a Leasehold under § 5148 - 25 Del.C. § 5141(38) is a specific statutory protection provision of the Delaware Residential Landlord-Tenant Code which defines the term “Tenant” as “a person entitled under a rental agreement to occupy a rental unit to the exclusion of others.”

272. Defendants removed Plaintiffs from their Home despite the fact they were valid tenants with the right to occupy under this statutory protection.

273. This excluded from and denied Plaintiffs the benefit of protections of 25 Del.C. § 5141(38) which the Defendants are required to provide under, *inter alia*, 25 Del.C. §§ 5701, 5117 and other provisions of the Delaware Residential Landlord-Tenant Code.

274. Exclusion & Denial #11 - Statutory Requirement to Name the Correct Person In An Eviction Proceeding - 25 Del.C. § 5141(23) is a specific statutory protection provision of the Delaware Residential Landlord-Tenant Code which defines the term “Person” as, among other things, “an individual.”

275. Defendants removed Plaintiffs from their Home despite the fact they were not the person or individual named in the summary possession eviction proceeding under this statutory protection.

276. This excluded from and denied Plaintiffs the benefit of protections of 25 Del.C. § 5141(23) which the Defendants are required to provide under, *inter alia*, 25 Del.C. §§ 5701, 5117 and other provisions of the Delaware Residential Landlord-Tenant Code.

277. Exclusion & Denial #12 - Statutory Summary Possession Proceeding Rights - 25 Del.C. § 5702 is a specific statutory protection provision of the Delaware Residential Landlord-Tenant Code which provides grounds for an action for summary possession to be maintained.

278. Defendants removed Plaintiffs from their Home in a summary possession proceeding despite the fact that the requirements of this statutory protection had not been met.

279. This excluded from and denied Plaintiffs the benefit of protections of 25 Del.C. § 5702 which the Defendants are required to provide under, *inter alia*, 25 Del.C. §§ 5701, 5117 and other provisions of the Delaware Residential Landlord-Tenant Code.

280. Exclusion & Denial #13 - Other Protections of the Delaware Residential Landlord-Tenant Code - Defendants also excluded from and denied Plaintiffs the benefits of the protections of other provisions of the Delaware Residential Landlord-Tenant Code.

3(b). Subjected To Discrimination.

281. Under both the ADA and Rehab Act, discrimination is defined as failure to reasonably accommodate a person's disability.¹⁰

¹⁰ See Haberle v. Troxell, 885 F.3d 170, 180 (3d Cir. 2018); Berardelli v. Allied Servs. Inst. of Rehab. Med., 900 F.3d 104, 116 (3d Cir. 2018); 28 C.F.R. § 35.130(b)(7)(i).

282. Defendants did not make any reasonable accommodations whatsoever to accommodate Plaintiff Murphy's disability.

283. Defendants did not consider the number of people involved, the number of children involved who were dependent upon their blind father, or the importance of the issue of depriving someone of their Home in the midst of a snowstorm.¹¹

284. Defendants did not conduct the "communications assessment" required once they realized they were dealing with a blind person.¹²

285. Defendants made no effort to ensure their communications with blind Plaintiff Murphy were as effective as communications with persons who could see.¹³

286. Defendants did not furnish appropriate auxiliary aids and services to Plaintiff Murphy.¹⁴

¹¹ See 28 C.F.R. Pt. 35, App. B, § 35.160 (the public entity is required to consider the "number of people involved" as well as the "importance" of the issue being communicated); *id.* at App. A, § 35.160.

¹² See 28 C.F.R. Pt. 35, App. A, § 35.160 (the "Department strongly encourages public entities to do a communication assessment of the individual with a disability when the need for auxiliary aids and services is first identified...").

¹³ See 28 C.F.R. § 35.130 (b)(1)(iii) (the ADA is violated when a service to the blind "is not as effective in affording equal opportunity to obtain the same result[or] to gain the same benefit" as that provided to the sighted); *id.* at (b)(1)(ii) (same, when an "opportunity to ... benefit from the ... service ... is not equal to that afforded to" the sighted); *id.* at (b)(1)(iv) (same when the state "provide[s] different ... benefits, or services to" the blind "than is provided to others."); 28 C.F.R. § 35.160(a)(1) (public entities are required to ensure their "communications" with disabled persons "are as effective as communications with others"); see 28 C.F.R. Pt. 35, App. A, § 35.160 (exhaustively addressing this requirement); USDOJ Title II Technical Assistance Manual (Jan. 2014) at 1 (must be "equally effective").

¹⁴ See 28 C.F.R. § 35.160 (b)(1) (public entities are required to "furnish appropriate auxiliary aids and service when necessary" to give the disabled "an equal opportunity" to benefit from the service); 28 C.F.R. Pt. 35, App. A, § 35.160 (exhaustively addressing this requirement); *id.* at App. B, § 35.160 (same); Title II Technical Assistance Manual at 5 ("The ADA places responsibility for providing effective communication ... directly on covered entities"); 28 C.F.R.

287. Despite the constables' assertion that legal notice of eviction to "Viola Wilson" served as legal notice to "William Murphy" and others, Defendants did not provide that notice in Braille.¹⁵

288. Defendants did not provide a qualified reader in any form.¹⁶

289. Defendants did not provide a qualified reader who was skilled in reading the language and subject matter, such that they could effectively, accurately, and impartially read and convey the content of the legal notice, including the specialized vocabulary.¹⁷

290. Defendants did not provide taped text of the notice.¹⁸

291. Defendants did not provide an audio recording of the notice.¹⁹

292. Defendants did not take into account the context, complexity or nature of the communications they were having with Plaintiff Murphy.²⁰

Pt. 35, App. A, § 35.160 (the USDOJ "strongly advises public entities that they should first inform the individual with a disability that the public entity can and will provide auxiliary aids and services, and that there would be no cost for such aids or services."); id. (There is "a continuing obligation" to assess and reassess "the auxiliary aids and services it is providing.").

¹⁵ See 28 C.F.R. § 35.104 (public entities are required to provide a blind person with a "[q]ualified reader; taped text; audio recording; Brailled materials" or similar materials); accord 28 C.F.R. Pt. 35, App. A, § 35.104; Title II Technical Assistance Manual at 2-4; see id. at 1 ("must provide").

¹⁶ See footnote 15 above.

¹⁷ See 28 C.F.R. Pt. 35, App. A, § 35.104 (public entities are required to ensure the "qualified reader" is "skilled in reading the language and subject matter"); 28 C.F.R. § 35.104; (they must be able to "effectively, accurately, and impartially" read and convey the content including "any necessary specialized vocabulary."); accord Title II Technical Assistance Manual at 2.

¹⁸ See footnote 15 above.

¹⁹ See footnote 15 above.

²⁰ See 28 C.F.R. § 35.160(b)(2) (the qualified reader and auxiliary aid determination must take into account the "context," "complexity," "nature," among other things, of the

293. Plaintiff was discriminated against by Defendants.

4. By Reason of His Disability

294. If Plaintiff Murphy, the only adult living on the premises, was able to see, and a notice was posted on his front door or a letter was mailed to him referring to an eviction action against a different persons, despite not being legally required, a sighted person may have been able to learn of and/or participate in the wrongfully initiated eviction action and thereby prevent it. But since he is blind he was discriminated against in the services, programs or activities of the Justices of the Peace which favor those who are not blind and grant them the opportunity to participate in the court process even when formal notice is absent.

295. Moreover, once the three Constable defendants on the scene realized Murphy was blind and totally unaware of any legal proceedings directed to his constitutionally fortified Home, their training in dealing with those governed by the ADA and the Rehab Act required them to stand down since they knew they were dealing with a disabled person protected by several major federal disability laws, two of the strikingly few to which Congress has attached such importance as to explicitly waive the Eleventh Amendment immunity otherwise enjoyed by the States. But by refusing to act in accord with the ADA and the Rehab Act they discriminated against Plaintiff and denied him the benefits of the services, programs or activities of their court system.

B. The Questions Raised By the Court at Oral Argument.

1. Agency & Vicarious Liability.

communication at issue); 28 C.F.R. Pt. 35, App. A, § 35.160 (exhaustively addressing this requirement); *id.* at App. B, § 35.160 (same); Title II Technical Assistance Manual at 1, 4 (same). As the USDOJ has made clear, “legal document[s]” are considered “complex.” Title II Technical Assistance Manual at 4; see USDOJ ADA Update: A Primer for State and Local Governments, An illustrated guide to help State and local government officials understand the requirements of the 2010 ADA regulations (2015) at 7.

296. As noted above, under the Delaware Code, the Constable Defendants are appointed by the Chief Magistrate of the Justices of the Peace Court system, 10 Del.C. § 2801, and the Chief Magistrate is responsible for their training. 10 Del.C. § 2806.

297. Additional aspects of their employment, including residency restrictions, are governed by other provision of Chapter 28 of Title 10 of the Delaware Code.

298. The Constable Defendants are employees of the State of Delaware Defendants.

299. The website of the Justices of the Peace admits that Constables are employees of the State of Delaware, stating “A constable is a peace officer employed by the State of Delaware though the Justice of the Peace Court.” (<https://courts.delaware.gov/jpcourt/constablesales.aspx>) (last visited on December 31, 2022) (emphasis added).

300. 10 Del.C. § 2802 is entitled “Duties; exclusive authority” and addresses, *inter alia*, the job duties and authority of constables.

301. These duties include:

- “Execute all lawful orders, warrants and other process directed to the constable by a justice of the peace,” id. at § 2802(c)(1);
- “Execute all writs of possession issued pursuant to § 5715 of Title 25 directed to the constable by a justice of the peace,” id. at § 2802(c)(2);
- “Serve all civil summonses directed to the constable by a justice of the peace,” id. at § 2802(c)(4); and
- “Perform any other related law-enforcement function required to maintain the dignity, integrity and security of the Justice of the Peace Court system.” Id. at § 2802(c)(10).

302. Under the definition of “What is a Constable?,” the Justices of the Peace website specifically lists some of these same job duties, explaining –

A constable conducts civil services for the Court including but not limited to serving summonses and subpoenas, executing writs of possession (evictions), and

other civil judgments such as wage and property garnishments, replevins, distress for rent, levies of property and constable sales. As peace officers, constables may arrest with or without warrant for violators of the State of Delaware penal laws.

(<https://courts.delaware.gov/jpcourt/constablesales.aspx>) (last visited on December 31, 2022).

303. The Constable Defendants' actions challenged in the present case are of the precise kind they are expected to perform by their Justices of the Peace employer – to execute writs of possession and conduct evictions.

304. The Constable Defendants' actions challenged in the present case are of the precise kind they are hired to perform by their Justices of the Peace employer – to execute writs of possession and conduct evictions.

305. The Constable Defendants' actions in the present case occurred within the authorized time and space limits of their employment by the Justices of the Peace.

306. For example, as already noted above, the Constable Defendants were on duty, in uniform and armed, carrying both firearms and tasers.

307. The Constable Defendants' actions in the present case were activated, in full, by the purpose of serving their employer, the Justices of the Peace.

308. The Constable Defendants' actions in the present case were activated, in part, by the purpose of serving their employer, the Justices of the Peace.

309. The actions taken by the Constable Defendants, including the implied and explicit threats of force used, were not unexpected by the Justices of the Peace and are, in fact, a foreseeable part of their job duties.

310. At all times, the Constable Defendants in our present case were acting within the scope of their job duties and their State employer is vicariously liable for their actions, as the Delaware Supreme Court has repeatedly and exhaustively addressed in cases against both public

and private employers, including law enforcement.²¹

2. “Close Supervision,” Direction & Actual Knowledge of Their Supervisor.

311. All of the State of Delaware Court systems strive at all times to abide by the legal requirements which bind them under Title II of the ADA and section 504 of the Rehab Act.

312. For example, on the website of the State of Delaware, Administrative Office of the Courts, is a formal “Notice Under the Americans with Disabilities Act,” explaining that the entirety of the Delaware court system abides by Title II of the ADA and all of its requirements. (<https://courts.delaware.gov/aoc/ada.aspx>) (last visited on December 31, 2022).

313. The Justices of the Peace court system’s website notes the same. (See <https://courts.delaware.gov/jpcourt/specialneeds.aspx>) (last visited on December 31, 2022).

314. The legal requirements under Title II of the ADA which govern state court systems have been well known since the enactment of the ADA in 1990.

315. The legal requirements under Title II of the ADA have been well known to the Delaware court system generally, and the Justices of the Peace court system specifically, since 1990.

316. The legal requirements of 28 C.F.R. Chapter 35 are well known to the Justices of the Peace Court system.

317. The legal requirements of the U.S. Department of Justice’s Title II Technical Assistance Manual for State and Local Governments on how to interpret the “Effective

²¹ See Sherman v. State Dep’t of Pub. Safety, 190 A.3d 148, 154-84 (Del. 2018) (en banc) (on-duty police officer); Hecksher v. Fairwinds Baptist Church, Inc., 115 A.3d 1187, 1199-1209 (Del. 2015) (en banc) (on and off duty private school teachers); Doe v. State, 76 A.3d 774, 776-77 (Del. 2013) (en banc) (on-duty police officer); see also Restatement (Second) of Agency § 228 (1958).

Communication” requirement of Title II of the ADA, published in January 2014, is well-known to the Justices of the Peace court system.

318. The legal requirements of the U.S. Department of Justice’s ADA Best Practices Tool Kit for State and Local Governments, published in 2007, is well-known to the Justices of the Peace court system.

319. The legal requirements of the U.S. Department of Justice’s ADA Update: A Primer for State and Local Governments, An illustrated guide to help State and local government officials understand the requirements of the 2012 ADA regulations, published in 2015, are well-known to the Justices of the Peace court system.

320. To ensure compliance with the requirements of the U.S. and Delaware Constitutions, Justices of the Peace Constables operate under close supervision of their supervisors.

321. To ensure compliance with the requirements of the U.S. and Delaware Codes, Justices of the Peace Constables operate under close supervision of their supervisors.

322. Delaware Justices of the Peace Constables operate under close supervision of their supervisors.

323. For example, Delaware Employment Link, where the Justices of the Peace Court system publicly posts for Constable positions, regularly publishes job postings for the Justices of the Peace Constables I, and notes that they are “the first level of constable work performing the full range of Essential Functions under close supervision.”²²

324. The written reports produced by the Delaware Attorney General’s Office

²² (jobapscloud.com/de/sup/BulPreview.asp?R1=101012&R2=MBBE01&R3=21300) (last visited on December 31, 2022).

representing the State Defendants in our present case bear out that close supervision occurred herein.

325. Upon being confronted with a undisputedly blind man:

- covered by Title II of the ADA and the Rehab Act;
- with a fully executed written Lease Agreement for the property he possessed, which was produced to the Constables at their request, examined in detail and appeared to be “legitimate;”
- whose name was not on the eviction Order;
- whose name bore no relation and was completely different from the name of the person on the eviction order;
- who did know who the person on the eviction Order was;
- who was surprised by the fact that he was supposed to be evicted; and
- who offered to give them official paperwork from the State of Delaware further demonstrating his legal right to be in his Home;

the Defendant Constables understandably called their highest level supervisor seeking instructions.

326. The supervisor they called was “Chief Constable Garcia,” as the Constables attested in their own later submitted, internal written reports to the Justices of the Peace Court system.

327. The Constables, admittedly, fully “advised him of the situation” described above. (Brison at 1).

328. Nevertheless, supervisor Chief Constable Garcia told them to evict the blind Plaintiff and his family anyway from their Home and, if the Plaintiffs wanted to contest it, he told the Constables the Plaintiffs had to come to the court and file a lawsuit doing so.

329. Supervisor Chief Constable Garcia directed the Constables to evict Plaintiff and his family from their Home despite the circumstances.

330. Supervisor Chief Constable Garcia authorized the Constables to evict Plaintiff and his family from their Home despite the circumstances.

331. Supervisor Chief Constable Garcia ordered the Constables to evict Plaintiff and his family from their Home despite the circumstances.

332. Supervisor Chief Constable Garcia had actual knowledge that the Constable Defendants were about to illegally evict Plaintiffs from their Home but, nevertheless, approved of Defendants' actions.

333. Supervisor Chief Constable Garcia gave his assent and acquiescence to Defendants evicting the blind Plaintiff and his family.

334. Supervisor Chief Constable Garcia had actual knowledge that Plaintiff William Murphy was blind.

335. Supervisor Chief Constable Garcia had actual knowledge that Plaintiffs were about to be evicted from their Home.

336. Supervisor Chief Constable Garcia had actual knowledge that Plaintiffs had a written lease.

337. Supervisor Chief Constable Garcia had actual knowledge that Plaintiffs had additional official paperwork from the State of Delaware confirming their legal right to be in their Home.

338. Supervisor Chief Constable Garcia had actual knowledge of all of the other information about Plaintiffs' circumstances set forth above.

339. Nevertheless, Chief Constable Garcia refused to accommodate the blind Plaintiff's disability in his interactions with the Constable Defendants, despite the Constables directly contacting him and seeking direction on how to proceed.

C. Miscellaneous.

340. Plaintiffs' rights under both Title II of the ADA and section 504 of the Rehab Act have otherwise been violated.

341. All of the above also demonstrates the illegality of the ongoing, "evict first, ask questions later" policy or practice of the Justices of the Peace defendant.

342. There is a direct causal relationship between defendants' actions and the harm Plaintiffs suffered.

343. Defendants' actions were the "but for" cause of Plaintiffs' injuries.

344. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

345. Plaintiffs' statutory rights to be free from disability discrimination have been denied under the ADA and the Rehab Act.

COUNT II (Fourteenth Amendment - Procedural Due Process)

346. Plaintiffs repeat and reallege paragraphs 1-345 set out above and adopts all paragraphs set forth hereinafter.

347. All defendants are charged under this count.

348. At its core, this is a simple case. Without any notice or opportunity to be heard, state actors knocked on the door of Plaintiff's Home and threw a blind man with no financial resources, and his two young daughters, out of their Home in the midst of a winter snowstorm and weather advisory, in the middle of a once in a lifetime pandemic and all despite well known eviction moratoriums under both federal and state law. The man had a signed, enforceable lease, and other written, state issued documentation demonstrating that this house was, in fact, his Home. He provided the three State Constables with these documents but they were of no moment to them as they enforced an ongoing, unconstitutional State Court practice or policy of

“evict first, ask questions later.”

349. Procedural due process legal analysis was settled by the U.S. Supreme Court in the 1970's and is well known. The first step requires the existence of an interest protected by the life, liberty or property language of the Fourteenth Amendment. If such an interest is found to exist, step two is implicated which asks the question of what process is due to protect it.²³

A. Protected Interests.

350. Under the facts of our case, Plaintiffs have Fourteenth Amendment protected liberty and property interests in the sanctity of their Home and not being illegally ousted from it and thrown out on the street.

1. Liberty Interest.

351. Few things have a more ancient pedigree or rarified and protected constitutional status than the right of a person to be secure in his or her Home against government intrusion. In the words of Lord Edward Coke,²⁴ “For a man[']s house is his castle, *et domus sua cuique est tutissimum refugium*; for where shall a man be safe, if it be not in his house?” 3 Edward Coke, Institutes of the Laws of England 162 (1644).²⁵ In his own seminal work, Sir William Blackstone similarly explained that “every man’s house is looked upon by the law to be his castle.” 3

²³ See, e.g. Shoats v. Horn, 213 F.3d 140, 143 (3d Cir. 2000); Hill v. Borough of Kutztown, 455 F.3d 225, 233-34 (3d Cir. 2006).

²⁴ Lord Coke was “widely recognized by the American colonists as the greatest authority of his time on the laws of England.” Payton v. N.Y., 445 U.S. 573, 593-94 (1980) (internal punctuation omitted); id. at 596 (noting “the prominence of Lord Coke” in the eyes of the Constitutional Framers).

²⁵ See also Semayne's Case, 5 Coke's Rep. 91a, 91b, 77 Eng.Rep. 194, 195 (K.B. 1603) (“the house of every one is to him as his castle and fortress, as well for his defense against injury and violence, as for his repose”)(quoted in both Payton, 445 U.S. at 596 n.44 and Mason v. State, 534 A.2d 242, 246 n.6 (Del. 1987)).

William Blackstone, Commentaries on the Law of England 288 (1768). And in words attributed by the U.S. Supreme Court to the Great Commoner, William Pitt the Elder, “[t]he poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter.” Miller v. U.S., 357 U.S. 301, 307 (1958).

352. As the Supreme Court has explained –

The common-law sources display a sensitivity to privacy interests that could not have been lost on the Framers. The zealous and frequent repetition of the adage that a ‘man’s house is his castle,’ made it abundantly clear that both in England and in the Colonies ‘the freedom of one’s house’ was one of the most vital elements of English liberty.

Payton, 445 U.S. at 596-97 (internal footnotes omitted)(emphasis added). The words of the Framers themselves bear this out. For example, John Adams wrote that “A man’s house is his castle; and while he is quiet, he is as well guarded as a prince in his castle.” Id. at 597 n.45 (quoting 2 Legal Papers of John Adams 142 (L. Wroth & H. Zobel eds. 1965)). And in the words of the Penman of the American Revolution, former President of Delaware, also past President of Pennsylvania, the well-traveled John Dickinson, who signed the Constitution as a Delaware delegate –

I know also, that the greatest asserters of the rights of Englishmen have always strenuously contended, that [the government's power to invade one's home] was dangerous to freedom, and expressly contrary to the common law, which ever regarded a man’s house as his castle, or a place of perfect security.

John Dickinson, Letters from a Farmer in Pennsylvania, Letter IX (1767), in Empire and Nation, p. 54 (Forrest McDonald, ed.) (2d Ed. 1999). As the Delaware Supreme Court has explained, “[t]he Framers of the United States Constitution were concerned with the problem of searches

and seizures by public officials. The concept of the home as a privileged place, the privacy of which may not be disturbed by unreasonable governmental intrusion, is basic in a free society.” Mason, 534 A.2d at 246.

353. This common law tradition lives on in the plain text of the Fourth Amendment, “[t]he right of the people to be secure in their ... houses ... against unreasonable searches and seizures shall not be infringed.” This “language unequivocally establishes the proposition that at the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.” Payton, 445 U.S. at 589-90.

354. This “ancient concept that ‘a man's home is his castle’ into which ‘not even the king may enter’ has lost none of its vitality” today. Rowan v. U.S. Post Office Dep't, 397 U.S. 728, 737 (1970).

A man can still control a small part of his environment, his house; he can retreat thence from outsiders, secure in the knowledge that they cannot get at him without disobeying the Constitution. That is still a sizable hunk of liberty — worth protecting from encroachment. A sane, decent, civilized society must provide some such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some inviolate place which is a man's castle.

Silverman v. U.S., 365 U.S. 505, 511 n.4 (1961). For more than 135 years, the Supreme Court

has –

stated in resounding terms that the principles reflected in the [Fourth] Amendment ... ‘apply to all invasions on the part of the government and its employe[e]s of the sanctity of a man’s home and privacies of life.’

Payton, 445 U.S. at 585 (quoting Boyd v. U.S., 116 U.S. 616, 630 (1886)).

355. Building on the extensive common law and constitutional sources outlined above, the long established liberty interest in the sanctity of one’s home cannot be contested as a matter

of both common and constitutional law.²⁶

2. Property Interest.

356. As the Supreme Court has long held, “Property interests are not created by the [U.S.] Constitution, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.” Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 (1985) (internal punctuation omitted).

357. Plaintiffs had protected property interests in their Home arising from numerous such sources, including the following.

358. **Source #1** - the many English common law sources outlined above. See Bridgeville Rifle & Pistol Club, Ltd. v. Small, 176 A.3d 632, 646 n.62 (Del. 2017) (“This Court has repeatedly held that Delaware law includes the English common law as it existed in 1776”).

359. **Source #2** - Article I, Section 6 of the Delaware Constitution which states, “[t]he people shall be secure in their ... houses ... and possessions, from unreasonable searches and seizures.”

360. **Source #3** - Article I, § 7 of the Delaware Constitution which protects against deprivation of “liberty or property” and is the Delaware analogue to the due process clause of the Fourteenth Amendment to the U.S. Constitution.

²⁶ See, e.g. Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (“[w]ithout doubt” the Fourteenth Amendment liberty interest includes “the right of the individual to ... establish a home ... and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”); accord Baraka v. McGreevey, 481 F.3d 187, 209 (3d Cir. 2007); Dowd v. New Castle Cnty., Del., 739 F.Supp. 2d 674, 683 (D. Del. 2010); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (noting “the private realm of family life which the state cannot enter”); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 65 (1973) (noting the “right to privacy guaranteed by the Fourteenth Amendment ... encompasses and protects the personal intimacies of the home”); accord Mitchell v. Commissioners of Comm'n of Adult Ent. Establishments of State of Del., 802 F.Supp. 1112, 1125 (D. Del. 1992).

361. **Source #4** - the Preamble to the Delaware Constitution which states, “all people have by nature the rights ... of ... protecting ... property.”

362. **Source #5** - Article I, Section 9 of the Delaware Constitution, which states, “every person for an injury done him or her in his or her person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land.”

363. **Source #6** - At least three other provisions of the Delaware Bill of Rights, which encompasses the entirety of Article I of the Delaware Constitution, speak to the heightened legal protections one has in their home, house or property in a wide variety of additional constitutional contexts. See Art. I, § 7 (“In all criminal prosecutions ... nor shall he or she be deprived of life, liberty or property, unless by the judgment of his or her peers or by the law of the land.”); Art. I, § 18 (“No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war but by a civil magistrate, in manner to be prescribed by law.”); Art. I, § 20 (“A person has the right to keep and bear arms for the defense of ... home ...”)

364. **Source #7** - Plaintiffs’ contract and residential lease for their Home.

365. **Source #8** - Delaware common law has long recognized the legal rights conferred by a contract. See generally *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003) (recognizing the elements of a breach of contract claim).

366. **Source #9** - the Delaware Residential Landlord-Tenant Code, 25 Del.C. § 5101, et seq. This specifically includes the various protections included in, but not limited to, 25 Del.C. §§ 5106 (“Rental agreement; term and termination of rental agreement”), 5109 (“Rental agreement; promises mutual and dependant”), 5117 (“Remedies for violation of the rental agreement or the Code”), 5141(38) (definition of “Tenant”), 5141(23) (definition of “Person”),

5502 (“Landlord remedies for failure to pay rent”), 5702 (“Grounds for summary proceeding”), 5704 (“Commencement of action and notice of complaint”), 5705 (“Service and filing of notice”); 5706 (“Manner of service”); 5711 (“Judgment”); 5713 (“Jury trials”).

367. **Source #10** - as mandated by 25 Del.C. § 5118, the summary of the residential landlord-tenant code prepared by the Consumer Protection Unit of the Delaware Attorney General’s Office that is required to be given to new tenants at the beginning of the rental term.

368. **Source #11** - Delaware Governor Carney’s March 12, 2020 Emergency Declaration, as modified by his March 24, 2020 Sixth Modification which, *inter alia*, barred eviction actions and gave tenants protections subject to an irreparable harm standard, as later modified by his June 30, 2020 Twenty-Third Modification which, *inter alia*:

- “stayed” eviction actions to allow for “court supervised mediation or alternative dispute resolution;”
- barred “Sheriffs, constables, court officers, and their agents ... from acting to remove individuals from residential properties through the eviction process ... unless the court determines ... [eviction] is necessary in the interest of justice.”

369. **Source #12** - the July 2, 2020 eviction prevention declaration by Delaware Governor Carney, Delaware Attorney General Jennings, DSHA Director Addi and Chief Magistrate Davis.

370. **Source #13** - Administrative Order 2021-1, issued on September 11, 2020, by Chief Magistrate Davis articulating the “in the interest of justice” standard that must be met before evictions were permitted under the Governor’s Twenty-Third Modification and mandating that “the Court will require the moving party to show that something more than the normal legal right to possession granted under the Residential Landlord-Tenant Code is required.”

371. **Source #14** - Standing Order No. 6, issued on December 14, 2020, by Chief

Magistrate Davis, requiring that the Justice of the Peace Court:

- mandate certain procedures and protections for “parties” to landlord-tenant actions;
- “Stay any execution of eviction orders ... except in the instance of a forthwith summons properly sought and adjudicated, or otherwise in the interests of justice in accordance with the Governor’s Order;” and
- “Conduct any properly ordered evictions in a manner that preserves the health and safety of ... the parties subject to eviction, and the public.”

372. All of the above created a property interest as defined and required under U.S.

Supreme Court precedent going back at least to the 1970's.

B. The Process Due.

373. Once a protected interest is determined to exist, the process due is determined as a matter of federal law. Loudermill, 470 U.S. at 541.

374. Under the Fourteenth Amendment, it is axiomatic that the “core of due process is the right to notice and a meaningful opportunity to be heard.” LaChance v. Erickson, 522 U.S. 262, 266 (1998).

375. Plaintiffs received none of these core due process protections.

376. Plaintiffs were denied the right to notice of the claim against them before being thrown out of their Home.

377. None of the Plaintiffs are Viola Wilson.

378. Plaintiffs are not agents of Viola Wilson.

379. Plaintiffs are not the principal of Viola Wilson.

380. Viola Wilson is a person unknown to Plaintiffs.

381. Plaintiffs do not have, and have never had, any legal relationship whatsoever with Viola Wilson.

382. Notice to Viola Wilson is not notice to William Murphy or any other Plaintiff.

383. No notice was ever given to Plaintiffs that they were in danger of being evicted from their Home before they were actually evicted from their Home.

384. The ADA and Rehab Act also require that notice or legal service on a blind person must, at least, be in Braille.

385. No such Braille notice was ever served upon Plaintiff William Murphy.

386. The “root requirement” of procedural due process is “that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.” Loudermill, 470 U.S. at 542 (1985) (emphasis added).

387. Plaintiffs were denied the root requirement of the opportunity for a hearing before being deprived of their Home.

388. No hearing was ever given to Plaintiffs before being evicted from their Home.

389. 30 minutes notice is neither meaningful notice nor is it meaningful opportunity to be heard.

390. No meaningful opportunity to be heard was ever given to Plaintiffs before being evicted from their Home.

391. No disinterested decisionmaker ever heard the facts and made a decision that Plaintiffs were not entitled to be in their Home before evicting them from their Home.

392. Plaintiffs also were denied some opportunity to present their side of the case.

393. Factual disputes were involved too.

394. The need for an eviction of a person with a valid lease with the owner and other state issued confirmatory documents was not clear.

395. The only meaningful opportunity to invoke the discretion of the decisionmaker was

before being thrown out of their Home.

396. Allowing Plaintiffs to present their full version of the events would have provided “a meaningful hedge against erroneous action.” Loudermill, 470 U.S. at 543 n.8.

397. “When protected interests are implicated, the right to some kind of prior hearing is paramount.” Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 469-70 (1972) (emphasis added).

398. The U.S. Supreme Court has exhaustively addressed this issue and held that prior notice is a constitutional requirement,²⁷ even when only relatively minor property interests are at stake.²⁸

399. The property interest and importance one has in their Home far supercedes that they have in their kitchen appliances, such as a toaster, or a coffee table.

400. As exhaustively addressed above, the significance of the private interest a person has in their Home is paramount and has been undisputed for centuries.

401. The governmental interest in an immediate eviction of Plaintiffs was non-existent.

402. The state presented no administrative burden nor intolerable delays.

403. No significant hazard was presented by keeping Plaintiffs in their Home.

404. No extraordinary or emergency situation or otherwise rare exception to the requirements of a pre-deprivation hearing exist.

405. Nor is any extremely narrow exception justified.

²⁷ See, e.g. Fuentes v. Shevin, 407 U.S. 67, 80-93 (1972).

²⁸ See, e.g. U.S. v. James Daniel Good Real Property, 510 U.S. 43, 54 (1993) (the mere “loss of kitchen appliances and household furniture [i]s significant enough to warrant a predeprivation hearing.”); Fuentes, 407 U.S. at 89-90 (“household goods” such as stoves, television sets, beds and tables all require a predeprivation hearing because the “Fourteenth Amendment speaks of ‘property’ generally.”).

406. Even though the post-deprivation hearing ably and fairly conducted by Deputy Chief Magistrate Judge McCormick quickly and efficiently concluded that Plaintiffs had been indisputably, erroneously and illegally thrown out of their Home, the ease with which the Judge McCormick so quickly determined this underscores the need for there to have been the constitutionally mandated pre-deprivation hearing before throwing Plaintiffs out of their Home in the first place and being made homeless for 13 days.²⁹

407. All of the above also demonstrates the unconstitutionality of the ongoing, “evict first, ask questions later” policy or practice of the Justices of the Peace defendant.

408. There is a direct causal relationship between defendants’ actions and the harm Plaintiffs suffered.

409. Defendants’ actions were the “but for” cause of Plaintiffs’ injuries.

410. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

411. Plaintiffs’ constitutional right to procedural due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT III (Fourth Amendment - Seizure)

412. Plaintiffs repeat and reallege paragraphs 1-411 set out above and adopts all paragraphs set forth hereinafter.

413. All defendants are charged under this count.

414. Defendants evicted Plaintiffs from their Home.

415. The U.S. Supreme Court has held that an eviction of a person from their home is a

²⁹ See, e.g. Fuentes, 407 U.S. at 84-85 (“But it is now well settled that a temporary, nonfinal deprivation of property is nonetheless a ‘deprivation’ in the terms of the Fourteenth Amendment.”); id. at 86 (“While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind.”).

seizure which triggers Fourth Amendment analysis. See Soldal v. Cook County, Ill., 506 U.S. 56 (1992). “We fail to see how being unceremoniously dispossessed of one’s home ... can be viewed as anything but a seizure invoking the protection of the Fourth Amendment.” Id. at 61.

416. The eviction was objectively unreasonable under the circumstances.

417. A seizure of someone’s home without notice or an opportunity to be heard in violation of the Fourteenth Amendment is unreasonable as a matter of law.

418. A seizure of someone’s home where the notice violates Title II of the ADA is unreasonable as a matter of law.

419. A seizure of someone’s home where the notice violates the Rehab Act is unreasonable as a matter of law.

420. The objective unreasonableness also is demonstrated by:

- the Constables were told that Plaintiffs had a valid, fully executed residential Lease Agreement, signed by the landlord and owner, establishing their legal right to be there.
- the Constables were shown the actual, valid, fully executed Lease Agreement.
- the Constables read the Lease Agreement.
- the first and last names of the Lessees on the Lease Agreement were different from the name of the person named in the eviction Order.
- the Constables were, repeatedly, offered but refused to view official government issued documentation from State of Delaware Social Services that demonstrated Plaintiffs were lawfully in their Home and that the Landlord had accepted rent assistance on Plaintiffs’ behalf from the State of Delaware.
- the Constables were offered but refused to view other documents, including recent electric and internet bills that demonstrated Plaintiffs were lawfully in their Home.
- the eviction Order named an adult female.

- the door was opened by a blind male.
- there was no adult female on the premises.
- the only females on the premise were two school aged minor children.
- the Constables were told that the adult female person named in the eviction Order did not live there.
- the Constables were told the persons answering the door had no idea who the adult female person named in the eviction Order was.
- the Constables learned and confirmed there was no adult female on the premises when they evicted the blind man and two minor females.
- the first and last names of the persons living in the Home were different from the name of the person named in the eviction Order.
- the Constables were told that the wife and mother of the three persons died more than two years earlier.
- the urn was visible and the Constables were told about the urn.
- the name of the wife and mother of the three persons present was not the name of the female on the eviction Order.
- the Constables were told by several additional persons who did not live in the Home that the persons in the Home were legally there.
- the Constables made no reasonable accommodation for the disability of this blind man.
- the Constables evicted a blind man and his two minor daughters in the midst of a snowstorm and winter weather advisory for NCC.
- the eviction occurred in the midst of an eviction moratorium ordered by the State Governor.
- the eviction occurred in the midst of an eviction moratorium imposed by the federal government.
- the eviction occurred in the midst of an eviction moratorium ordered by the Chief Magistrate of the Justices of the Peace Court itself.

- the eviction occurred in the midst of a once in a lifetime pandemic.
- the eviction violated the mandatory requirements of Chief Magistrate Davis’ Standing Order No. 6, dated December 14, 2020, which required that even as to “properly ordered evictions” that they only be “[c]onduct[ed] ... in a manner that preserves the health and safety of ... the parties subject to eviction.”
- the eviction violated the other legal provisions discussed above.

421. All of the above also demonstrates the unconstitutionality of the ongoing, “evict first, ask questions later” policy or practice of the Justices of the Peace defendant.

422. There is a direct causal relationship between defendants’ actions and the harm Plaintiffs suffered.

423. Defendants’ actions were the “but for” cause of Plaintiffs’ injuries.

424. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

425. Plaintiffs’ constitutional right to be free from unreasonable seizures has been denied under the Fourth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

Wherefore, Plaintiffs pray that the Court:

- A. Enter a prospective declaratory judgment declaring the ongoing actions of the official capacity and State of Delaware defendants, including its ongoing “evict first, ask questions later” policy, custom or practice, to be a violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.³⁰
- B. Issue a prospective mandatory injunction enjoining the ongoing actions of the official capacity and State of Delaware defendants and prohibiting them from enforcing their ongoing “evict first, ask questions later” policy or practice because it violates both the Fourth and Fourteenth

³⁰ See generally Morrison v. Ayoob, 627 F.2d 669, 672-73 (3d Cir. 1980) (following a determination that, in response to a federal lawsuit, the President Judge of the Pennsylvania Court of Common Pleas had changed a state court policy that violated the Sixth Amendment rights of litigants, holding there is no Eleventh Amendment or judicial immunity bar to an award of attorneys fees under 42 U.S.C. § 1988 in a lawsuit against the Pennsylvania District Judges of that Court in their official capacities).

Amendments to the U.S. Constitution.

- C. Issue a prospective mandatory injunction requiring that during any future state of emergency declared by any present or future Delaware Governor, where a moratorium of any type is imposed on the freedom of any landlord to evict any tenant of that landlord, including the financially poor, the blind, disabled or handicapped, or any African-American or other citizens, permanently enjoining constables, court officers and their agents from:
 - 1. enforcing any “evict first, ask questions later” policy, custom or practice;
 - 2. evicting anyone from their home without ever giving them pre-eviction notice and an opportunity to be heard;
 - 3. evicting any tenant during the moratorium unless they are engaging in criminal activity or threatening the health or safety of neighbors; and
 - 4. allowing evictions claimed to be “in the interest of justice” or due to “irreparable harm” if the landlord claims mere injury to his finances.
- D. Enter separate judgments against each of the individual capacity defendants.
- E. Enter a declaratory judgment declaring the acts of each of the defendants to be a violation of Plaintiffs’ constitutional and statutory rights.
- F. Enter a judgment against the individual capacity defendants, jointly and severally, for nominal damages.
- G. Enter a judgment against the individual capacity defendants, jointly and severally, for compensatory damages, including but not limited to the full panoply of contract, expectation and consequential damages, loss of earning capacity, physical and emotional injuries, pain and suffering, emotional distress, humiliation, embarrassment, injury to reputation and other damages.
- H. Enter a judgment against the individual capacity defendants, jointly and severally, for punitive damages.
- I. Issue a reparative injunction directing that each of the individual capacity defendants write a letter of apology to Plaintiffs, apologizing for their illegal violations of Plaintiffs’ constitutional, statutory and common law

rights.

- J. Enter separate judgments against the Justices of the Peace and other State defendants under Title II of the ADA and Section 504 of the Rehab Act.
- K. Enter a judgment against the Justices of the Peace and other State defendants under Title II of the ADA and Section 504 of the Rehab Act, jointly and severally, for nominal damages.
- L. Enter a judgment against the Justices of the Peace and other State defendants under Title II of the ADA and Section 504 of the Rehab Act, jointly and severally, for all compensatory damages permitted by these statutes, including but not limited to the full panoply of contract, expectation and consequential damages, loss of earning capacity, and any other damages permitted under the statutes and case law.
- M. Award Plaintiffs attorney's fees, costs, expenses and pre and post judgment interest for this action.
- N. Require such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

THE NEUBERGER FIRM, P.A.

/s/ Thomas S. Neuberger

THOMAS S. NEUBERGER, ESQ. (#243)

STEPHEN J. NEUBERGER, ESQ. (#4440)

17 Harlech Drive, P.O. Box 4481

Wilmington, DE 19807

(302) 655-0582

TSN@NeubergerLaw.com

SJN@NeubergerLaw.com

**SANJAY K. BHATNAGAR, ATTORNEY AT
LAW**

SANJAY K. BHATNAGAR, ESQ. (#4829)

Brandywine Plaza

2500 Grubb Road

Suite 240-B

Wilmington, DE 19810

(302) 990-3144

Sanjay@skblawde.com

OF COUNSEL
THE RUTHERFORD INSTITUTE
JOHN W. WHITEHEAD, ESQ.
WILLIAM WINTERS, ESQ.
P.O. Box 7482
Charlottesville, VA 22906-7482
(434) 978-3888
Legal@Rutherford.org

Dated: January 10, 2023

Attorneys for Plaintiffs