

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

**Damen Aguila, Mario Lanza
Dyer, and Jamie
Scarborough,**

Plaintiffs,

No. 3AN-25-04570 CI

v.

Municipality of Anchorage

Defendant

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Plaintiffs urge this court to issue a temporary restraining order immediately. This is necessary to protect their fundamental rights and to protect them from **imminent irreparable harm**. Late this morning, on February 11, 2025, the Municipality began abating the location where Plaintiffs reside. Plaintiffs' counsel conferred with Municipality counsel on site. Plaintiffs' counsel understands that the Municipality's intent is to dispossess Plaintiffs of property they rely on to protect themselves from the elements at any moment.¹ Whether stored or destroyed, this

¹ Reply Ex. 1 (Third Affidavit of Helen Malley).

dispossession will cause immediate harm to Plaintiffs, who will suffer significantly more tonight without access to their property than they otherwise would if permitted to remain in place.

Plaintiffs are solely requesting preliminary relief to enjoin the Municipality from evicting them and seizing their property before this court has an opportunity to conduct further inquiry into the constitutional arguments they have raised. Plaintiffs are not requesting to stay on the land “permanently” or seeking to enjoin the city from resolving the public health issues posed by the encampment through alternate means, such as trash removal. But the Plaintiffs deserve to be heard before this action is taken against them, and they have raised serious and substantial legal claims that the Municipality cannot constitutionally abate them when there are no safe places for them to go.

In the event the abatement proceeds, there will be no legal place for Plaintiffs to go; it is undisputed that shelters are full and the Municipality has failed to identify any alternate locations where Plaintiffs can safely and lawfully exist. Anywhere they might go in Anchorage, they are fated to recreate the “public

nuisance” of “prohibited camping” and commit the crime of trespass. Similarly, the neighborhood complaints that the Municipality currently cites as reason to target the present location are a foreseeable outcome wherever else they might go – and again, these issues can be sufficiently addressed by Municipality through actions such as clearing trash from the site, without harming plaintiffs. As such, the Municipality’s interests do not justify abatement.

The Municipality asserts that the site where Plaintiffs are self-sheltering is of particular concern. The facts, however, show that Plaintiffs do not fall within the parameters of the Municipality’s official priorities. For just one example, the Municipality cites that Plaintiffs are “under 400 feet” from a school, notwithstanding that both the Code and Policy & Procedure 36-1 (MOA Exh. B) provides that “100 feet” distance from a protected land use is cause for enforcement prioritization. By contravening formal priorities, the Municipality is demonstrating that it is employing its power arbitrarily and capriciously.

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: courtfilings@acluak.org

Without the protection of their current structure, Plaintiffs will be left exposed to the harsh elements of an Anchorage winter later tonight. Although the Municipality claims it will store any property the Plaintiffs cannot personally carry away from this site, there is no realistic way for Plaintiffs to transport all the property they need to protect themselves from the elements. Exposure to below freezing temperatures for hours on end poses a direct threat to their health and life.

Moreover, the rushed nature of these proceedings, and the city's determination to proceed even as this Court considers the emergency motion for relief, demonstrates that Plaintiffs' due process rights are being violated. Ten days' notice is evidently an insufficient window for Plaintiffs' to be meaningfully heard prior to the deprivation of their personal belongings.

The Municipality's attempts to defend its code ignore completely the humans who are at its mercy, but this Court should not similarly turn a blind eye to the vulnerable Anchorage residents at the heart of this dispute. The undisputed facts here demonstrate that Plaintiffs are vulnerable and facing irreparable harm: There is no legal place within the Municipality where they

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: courtfilings@acluak.org

can sleep at night that will not be subject to the city's abatement regime; they do not have anywhere to go; they need their belongings and their communities to provide their minimal needs for warmth, shelter, and safety. Yet the city is insistent on rousting them from their homes, providing no opportunities for them to be heard or contest the abatement. This Court should issue emergency injunctive relief and act to protect Plaintiffs by allowing them continued access to their meagre belongings and their chosen homes, until it can fully adjudicate the merits of the plaintiffs' claims.

DATED February 11, 2025

Respectfully submitted,

**American Civil Liberties Union of
Alaska Foundation**

/s/ Helen Malley

Helen Malley, Alaska Bar No. 2411126

Eric Glatt, Alaska Bar No. 1511098

(Emeritus)

Ruth Botstein, Alaska Bar No. 9906016

Katherine Wagner, Alaska Bar No.

NA21364

ACLU of Alaska Foundation

1057 West Fireweed Lane, Suite 207

Anchorage, AK 99503

(907) 258-0044

Pro Bono Counsel for Plaintiffs

Aguila, et al. v. Municipality of Anchorage

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

Case No. 3AN-25-04570 CI

Page 5 of 6

CERTIFICATE OF SERVICE

On February 11, 2025, a true and correct copy of the foregoing Reply in Support of Plaintiffs' Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction was served on CourtDocs@muni.org, with courtesy copies sent to

Joseph Busa, Joseph.Busa@anchorageak.gov
Jessica Willoughby, Jessica.Willoughby@anchorageak.gov
Zachary Schwartz, Zachary.Schwartz@anchorageak.gov

By: /s/ Helen Malley

Helen Malley, Alaska Bar No. 2411126
ACLU of Alaska Foundation
1057 West Fireweed Lane, Suite 207
Anchorage, AK 99503
Telephone: 907-258-2006
Facsimile: 907-263-2016

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: courtfilings@acluak.org

Aguila, et al. v. Municipality of Anchorage

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
Case No. 3AN-25-04570 CI

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

**Damen Aguila, Mario Lanza
Dyer, and Jamie Scarborough,**

Plaintiffs,

v.

Municipality of Anchorage

Defendant

No. 3AN-25-04570 CI

THIRD AFFIDAVIT OF HELEN MALLEY

I, Helen C. Malley, declare under penalty of perjury:

1. I have personal knowledge of all facts contained in this affidavit.
2. I am counsel of record for the Plaintiffs in the above-captioned action.
3. At approximately 10:30 this morning, February 11, 2025, Plaintiff's counsel returned to the Arctic-Fireweed location.
4. When I arrived, there were multiple Municipality and Police vehicles present.
5. While at the Arctic-Fireweed location, I conferred with counsel for the Municipality, Jessica B. Willoughby.

ANCHORAGE, ALASKA 99503
TEL: 907.258.0044
FAX: 907.263.2016
EMAIL: courtfilings@achak.org

Aguila et al. v. Municipality of Anchorage

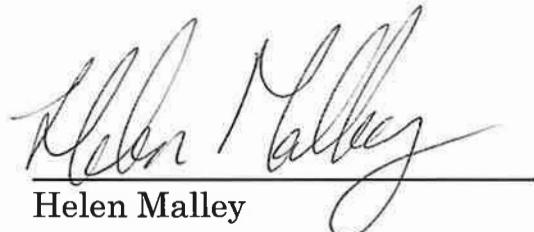
THIRD AFFIDAVIT OF HELEN C. MALLEY

Case No. 3AN-25-04570 CI

Reply Ex. 1

Page 1 of 2

6. Counsel for the Municipality explained that the abatement plan for today includes disposing of all “abandoned” property that is not identified as belonging to the Plaintiffs.
7. Once this disposal phase is complete, the Municipality will proceed with the storage phase. This will include deconstruction of Plaintiffs’ structure and the storage of any property that Plaintiffs do not carry away from the site.
8. Plaintiffs will be instructed to leave the Arctic-Fireweed site today.
9. I declare that the foregoing is true and correct to the best of my knowledge and that a notary public or other official empowered to administer oaths is unavailable to me. AS 09.63.020



Helen Malley
Helen Malley

Executed on this 11 day of February, 2025