



December 14, 2021

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Via email

Dear Mayor Robinson, President Hill, Vice President Wiggins, and Council Members,

We write on behalf of the National Homelessness Law Center, Southern Legal Counsel, and the American Civil Liberties Union of Florida to urge you not to conduct the planned closure of the Hollice T. Williams Park encampment unless individual housing units are available to displaced residents. Displacing encampment residents, confiscating their shelters, and destroying their personal property violates guidelines released by the U.S. Centers for Disease Control and Prevention (“CDC”) and risks violating the constitutional rights of encampment residents.

Who We Are

The National Homelessness Law Center (“Law Center”) is the national legal advocacy organization dedicated solely to ending and preventing homelessness. We have over 30 years of experience in policy advocacy, public education, and impact litigation. Since 2006, the Law Center has tracked laws criminalizing homelessness in 187 cities across the country, and we have documented the failures and costs of those policies in numerous national reports, including [Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities](#) (2019). We have also published best practices, model policies, and case studies from across the country on how to constructively address homeless encampments. See [Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding](#) (2018).

We also litigate in federal courts to challenge policies that punish homeless people for living in public space when they lack adequate indoor options. One of our cases, [Martin v. City of Boise](#),

resulted in an order from the U.S. Court of Appeals for the Ninth Circuit which held that the Eighth Amendment to the U.S. Constitution prohibits enforcement of laws criminalizing sleeping, sitting, and lying down outside against people with no access to indoor shelter.

Southern Legal Counsel (“SLC”) is a Florida statewide not-for-profit public interest law firm that is committed to the ideals of equal justice for all and the attainment of basic human and civil rights. SLC primarily assists individuals and groups with public interest issues who otherwise would not have access to the justice system and whose cases may bring about systemic reform. SLC works proactively to ensure fairness, social justice and government accountability for Floridians through focused, high impact initiatives, policy advocacy and civil litigation.

Since 2004, SLC’s Ending Homelessness Project has worked to protect the civil and human rights of persons experiencing homelessness. SLC is a founding organizational member of the national campaign “Housing Not Handcuffs” that advocates for constructive solutions to homelessness instead of criminalizing homeless people. SLC is a statewide leader in the civil legal aid system on legal issues faced by homeless individuals and frequently trains lawyers and advocates (including public defenders) on raising constitutional claims on behalf of homeless persons. SLC has successfully litigated cases statewide protecting the rights of homeless individuals, including *McArdle v. City of Ocala*, 519 F.Supp.3d 1045 (M.D. Fla. 2021), which resulted in the Middle District of Florida holding that the City of Ocala’s open lodging ordinance was an unconstitutional violation of the Eighth Amendment as it criminalized sleeping, sitting, and resting outside even when individuals did not have access to indoor shelter.

American Civil Liberties Union of Florida (“ACLU-FL”) is the Florida affiliate of the national American Civil Liberties Union, which works daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States. ACLU-FL has more than 40,000 members in Florida dedicated to the principles of liberty and equality. ACLU-FL has a longstanding history of protecting homeless individuals’ right to engage in life-sustaining activity. *See McArdle v. City of Ocala*, 519 F.Supp.3d 1045 (M.D. Fla. 2021); *Stone v. City of Fort Lauderdale*, No. 0:17-cv-61211-WPD (S.D. Fla. 2017); *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

Discussion

First, we commend the City of Pensacola for keeping a moratorium in place to protect the individuals who are currently living at the encampment at Hollice T. Williams Park. However, according to reports from concerned residents of Pensacola, the City is planning to lift the moratorium and close the encampment without a plan for all of the individuals in the encampment to have secured, individual housing.

Displacing encampment residents and tearing down their “makeshift housing”¹ threatens the life

¹ When people lose their housing, “their decisions about where to stay represent pragmatic choices among the best available alternatives, based on individual circumstances at a particular moment in time. Encampments form in response to the absence of other, desirable options for shelter.” REBECCA COHEN, WILL YETVIN & JILL KHADDURI, [Understanding Encampments of People Experiencing Homelessness and Community Responses](#) (2019).

and health of encampment residents. Because homeless people have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population, they are especially vulnerable to serious harms flowing from loss of their shelters and other property. NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL, [Homelessness & Health: What's the Connection?](#) 1–2 (2019). For many unsheltered homeless people, property loss is “the greatest threat” to their survival. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIOLOGICAL REV. 769, 790 (2019). This is especially true with the COVID-19 pandemic and the emerging Omicron variant.

“Makeshift housing,” like tents, offer protection, however rudimentary, from outdoor elements. The destruction of their tents and other temporary structures deprives homeless people of this protection, thus exposing already vulnerable individuals to increased risk of serious physical harm. See *Jeremiah v. Sutter Cty.*, Case No. 2:18-cv-00522, 2018 WL 1367541, at *4; 2018 U.S. Dist. LEXIS 43663, at *12 (E.D. Cal. Mar. 16, 2018) (“[T]he Court finds that Sutter County would knowingly place the homeless at increased risk of harm if it confiscates and seizes Plaintiffs’ shelters and possessions.”).

Moreover, the planned encampment closure runs counter to updated public health guidance released on June 7, 2021 by the CDC. See [Interim Guidance on People Experiencing Unsheltered Homelessness](#). The CDC guidelines state in part, “[i]f individual housing options are not available, **allow people who are living unsheltered or in encampments to remain where they are**. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” *Id.* As such, the CDC advises that communities should not clear any encampments unless they can provide individual housing units for those displaced. Specifically, the CDC states that “[e]ncampment disbursement should **only be conducted as part of a plan to rehouse people living in encampments**, developed in coordination with local homeless service providers and public health partners.” *Id.* Otherwise, the CDC recommends that encampment residents be allowed to remain where they are and be provided with necessary sanitation facilities.

People experiencing homelessness are at an increased risk of contracting COVID-19 or experiencing worse COVID-19 outcomes because they are less able to self-isolate. If encampments must be cleared, it is critical that residents be provided with individual housing units and that communities, “make plans to maintain services for all people experiencing unsheltered homelessness.” *Id.* Unfortunately, congregate shelter facilities are not necessarily equipped to truly safeguard against the spread of COVID-19. This is because congregate shelter settings do not allow for the recommended social distancing, air circulation, and sanitation necessary to stem the spread of the virus. COVID-19 outbreaks have erupted in congregate shelter facilities throughout the pandemic. In April 2020, 144 residents in a single San Francisco shelter were tested and five were found positive for COVID-19. Less than one week later, 92 of those residents tested positive for COVID-19, along with 10 shelter staff workers. See Colette Auerswald et al., *For the Good of Us All: Addressing the Needs of Our Unhoused Neighbors During the COVID-19 Pandemic* (2020), <https://publichealth.berkeley.edu/wp-content/uploads/2020/04/For-the-Good-of-Us-All-Report.pdf>. In July 2021, over 100 of the 156 residents at a Sonoma County homeless shelter tested positive for COVID-19. See <https://www.pressdemocrat.com/article/news/more-than-100-residents-at-sonoma-countys-largest-homeless-shelter-positiv/>. 64 of the infected residents were fully vaccinated against COVID-19.

To support the CDC Guidance, FEMA has implemented cost-sharing with local, state, and tribal governments for expenditures associated with COVID-19 recovery efforts, including non-congregate shelter stays for people experiencing homelessness. This FEMA funding was recently [extended](#), and is available through April 1, 2022. These funds allow Pensacola to devote resources toward adequate housing options and away from policies and practices that criminalize, displace, and jeopardize the health and safety of unhoused residents. If Pensacola truly wishes to eradicate the need for encampments, it could do so by providing hotel rooms to all the current encampment residents, [fully reimbursable by FEMA](#).

Along with risking life and health, the potential encampment eviction risks violating homeless people's property and due process rights under the U.S. Constitution. Homeless people's property, however meager it may seem to an outsider, often "represent[s] everything they own." *Lavan v. City of Los Angeles*, 797 F.Supp. 2d 1005, 1016 (C.D. Cal. 2011). Homeless people "have a 'compelling ownership interest in their personal property, especially given the vulnerability of [] homeless residents.'" *See v. City of Fort Wayne*, Case No. 1:16-cv-00105-JVBSLC, 2016 U.S. Dist. LEXIS 185598, at *27 (N.D. Ind. June 16, 2016) (alterations in original; quotations omitted), adopted 2017 U.S. Dist. LEXIS 49956 (N.D. Ind., Mar. 31, 2017). Unreasonable deprivation of homeless people's property is unconstitutional under the Fourth Amendment, and a city's interest in keeping an area clean is not sufficient to render reasonable the deprivation of personal property. *See e.g., Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1015 (C.D. Cal. 2011). Moreover, merely providing some advance notice, without any meaningful opportunity to dispute the seizure and destruction of homeless people's property does not satisfy due process requirements under the Fourteenth Amendment. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993) (predeprivation hearing and notice is required except in the "extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event") (internal quotations removed)).

In an era of record poverty exacerbated by the global COVID-19 pandemic, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. We all wish to end homelessness in our communities—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who are unsheltered can access adequate, alternative housing. Conducting encampment sweeps without providing individual housing units just displaces people experiencing homelessness, risks the destruction of property, and inevitably leads to subsequent encampments. *See Sara K. Rankin, Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 114 (2019).

We urge you to follow CDC guidance and controlling federal precedent and not conduct the potential closure and clearance of the Hollice T. Williams Park encampment unless individual housing units are available to displaced residents. If you would like, we would be happy to work with you to develop and implement solutions that work for everyone. Please feel free to contact us at chelsea.dunn@southernlegal.org to set up a time to discuss.

Sincerely,

Eric Tars, Legal Director, National Homelessness Law Center

Chelsea Dunn, Attorney, Southern Legal Counsel

Kirk Bailey, Policy Director, American Civil Liberties Union of Florida

Jacqueline Azis, Staff Attorney, American Civil Liberties Union of Florida