

Anti-Camping Enforcement Violates 8th Amendment If No Other Sleeping Options Available

09.07.2018

The 8th Amendment bars cities from criminally prosecuting individuals who are sleeping outdoors in public when no other sleeping space is practically available.

In *Martin v. City of Boise*, six homeless residents of the City of Boise alleged that their citations under the City's Camping and Disorderly Conduct Ordinances (the "Ordinances") were unconstitutional. The Ordinances make it a misdemeanor to sleep or "camp" outside on public property, or in any public or private building or structure without permission. Boise's homeless shelters notify the police on nights they reach capacity, and the Ordinances require enforcement to be suspended if no shelter space is available. As there has never been a night that all three shelters reported being full, however, Boise police routinely issue citations under the Ordinances.

Relying on U.S. Supreme Court precedent that it is cruel and unusual to criminalize a person's status, as opposed to his or her conduct, the Ninth Circuit Court of Appeals ruled that the Ordinances violate the 8th Amendment when enforced against those who have been forced to sleep outdoors because they cannot obtain shelter. The court reasoned that the act of sitting, lying, or sleeping in public is "involuntary and inseparable from status" when a person is homeless, as "human beings are biologically compelled to rest."

The non-enforcement provision was not enough to avoid a constitutional violation, given the facts presented. The plaintiffs were often turned away from the shelters for reasons other than a lack of space, including missing the check-in times, exhausting the limit on consecutive nights, or objecting to mandatory religious programs. The court found that such conditions "functionally limit access" to homeless shelters "even when space is nominally available."

The district court will now decide whether to enjoin enforcement of the Ordinances moving forward. Notably, the Ninth Circuit's decision does not cover individuals who have access to adequate shelter but choose not to use it. However, the court's thorough discussion of the conditions imposed by Boise's shelters may set a high bar for the type of information a city must gather prior to issuance of a citation on any given night. The burden of gathering this additional information about the person cited and his or her circumstances may make enforcement practically impossible. For now, public agencies should not cite individuals who violate anti-camping ordinances unless it is apparent that an alternative sleeping space is available to that individual.

If you have questions or would like more information on this case, please contact **Casey Strong** in our Public Law Department.