

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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Federal Appeals Court Affirms Right of Homeless Persons to Not Be Punished for Sleeping in Public in Absence of Alternatives

(September 4, 2018, Boise, Idaho) – Today the 9th Circuit Court of Appeals affirmed that homeless persons cannot be punished for sleeping outside in the absence of adequate alternatives in *Martin v. Boise* (formerly *Bell v. Boise*), a lawsuit challenging Boise, Idaho’s ban on sleeping in public. In so holding, the court of appeals permitted various homeless individuals who have received criminal citations under Boise’s policy to proceed with their constitutional claims against the City. The National Law Center on Homelessness & Poverty, which filed the case in 2009 with co-counsel Idaho Legal Aid Services and Latham & Watkins LLP, hailed the decision and looks forward to a final decision in the case.

“Criminally punishing homeless people for sleeping on the street when they have nowhere else to go is inhumane, and we applaud the Court for holding that it is also unconstitutional” said Maria Foscarinis, executive director at the National Law Center on Homelessness & Poverty. “It’s time for Boise to stop trying to hide its homelessness problem with unconstitutional ordinances, and start proposing real solutions.”

The case challenges Boise’s enforcement of its Camping and Disorderly Conduct Ordinances against persons experiencing homelessness who need to sleep in public in the absence of adequate housing or shelter. Today, the 9th Circuit agreed with the central premise in the suit, holding that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

“Cities with similar bans against sleeping in public should redirect resources to constructive solutions to homelessness, such as affordable housing and health services,” said Eric Tars, senior attorney at the National Law Center on Homelessness & Poverty. “Getting homeless people into housing is a win-win approach, benefitting both the individuals helped and the communities that no longer have to deal with the negative impacts of people living in public spaces, at lower cost than cycling people through the criminal justice system.”

The case gained national attention in 2015 when the U.S. Department of Justice filed a Statement of Interest brief in the case, arguing that making it a crime for people who are homeless to sleep in public places unconstitutionally punishes them for being homeless.

“The outcome of Court’s decision will ripple across the country. Cities will have to address real solutions to the complex issues faced by homeless individuals and families rather than just create more barriers and fill more jails with persons who only needed a place to sleep for the night,” said Howard Belodoff, of Idaho Legal Aid Services, Inc.

“We are pleased that the Ninth Circuit held that the Constitution ‘prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter,” said Michael Bern, lead pro bono counsel from Latham & Watkins, who argued the case before the 9th Circuit. “As the Department of Justice recognized earlier in this case, ‘[c]riminalizing public sleeping in cities with insufficient housing and support for homeless individuals does not improve public safety outcomes or reduce the factors that contribute to homelessness.’ With today’s decision, we hope that cities can redirect their efforts to identifying meaningful and constitutional solutions to the problem of homelessness.” Latham & Watkins.

This case is part of a nationwide movement against the criminalization of homelessness, spearheaded by the National Law Center on Homelessness & Poverty and more than 700 groups and individuals who have endorsed the [Housing Not Handcuffs Campaign](#).

The court’s decision can be read [here](#).

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[The National Law Center on Homelessness & Poverty](#) (the Law Center) is the only national organization dedicated solely to using the power of the law to prevent and end homelessness. With the support of a large network of pro bono lawyers, we address the immediate and long-term needs of people who are homeless or at risk through outreach and training, advocacy, impact litigation, and public education.