



June 28, 2021

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Via email

Dear Mayor Romero, City Manager Ortega, and Tucson City Council:

I write on behalf of the National Homelessness Law Center (“Law Center”) to **urge you not to conduct the planned closure and clearance of the Southside homeless camp at Country Club and Drexel (“Southside Encampment”) unless individual housing units are available to displaced residents.** Displacing encampment residents and confiscating their shelters and other personal property during a historic heatwave and active wildfire season threatens the life and health of encampment residents, violates recent guidelines released by the U.S. Centers for Disease Control and Prevention, and risks violating the constitutional rights of Southside encampment residents.

### **Who We Are**

The 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. *Martin* is controlling precedent in the western United States, including Arizona.

## Discussion

According to a KVOA news report, <https://kvoa.com/news/digging-deeper/2021/06/22/digging-deeper-southside-homeless-camp-to-shut-down/>, Tucson plans to evict Southside encampment residents on July 1 whereby “all of the makeshift housing will be torn down and cleaned up.” The news report describes non-violent criminal activity as justification for clearance of the encampment, but it points to no imminent public health or safety threats, nor does it describe any available alternative housing or even temporary shelter for displaced residents.

Displacing encampment residents and tearing down their “makeshift housing”<sup>1</sup> threatens the life 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).

“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.”). **Tearing down Southside encampment residents “makeshift housing” is especially dangerous during the historic heatwave and early wildfire activity affecting Tucson.** Indeed, it threatens to destroy encampment residents’ only ability to protect themselves at all from high temperatures and smoke.

Moreover, the planned encampment closure runs counter to updated public health guidance released on June 7, 2021 by the U.S. Centers for Disease Control (“CDC”). See <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#facility-encampments>. 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.

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<sup>1</sup> 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).

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.* Fortunately, FEMA is now authorizing 100% reimbursement for provision of non-congregate shelter consistent with local public health guidance, and it has waived its 30-day renewal requirement. See <https://nlihc.org/resource/fema-changes-policy-approve-non-congregate-shelter-reimbursement-duration-emergency>. Tucson can take advantage of this funding to offer individual housing units to people experiencing homelessness for the duration of the pandemic.

Along with risking life and health, the planned 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)).

Ensuring that homeless people are not displaced from encampments without access to adequate indoor alternatives is necessary for the current crisis, and it is also best practice for the long term. “Evidence overwhelmingly suggests [encampment closures] are expensive exercises in futility. Instead of improving homelessness, [encampment closures] destroy property and disrupt fragile communities often leaving unsheltered people more likely to remain homeless.” ” Sara K. Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 CAL. L. REV. 559 (2021). “[T]his exercise merely disperses, rather than reduces, homelessness, new encampments inevitably reappear.” Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 114 (2019). Thus, taxpayer resources are wasted on useless, harmful encampment closures when more prudent, cost-effective approaches exist.

We urge you to follow CDC guidance and controlling federal precedent and **not conduct the planned clearance and closure of the Southside homeless camp at Country Club and Drexel (“Southside Encampment”)** unless individual housing units are available to displaced residents. We are happy to discuss this matter with you. Please feel free to contact us at [tbauman@nlchp.org](mailto:tbauman@nlchp.org) with any questions or concerns.

Sincerely,

Tristia Bauman  
Senior Attorney