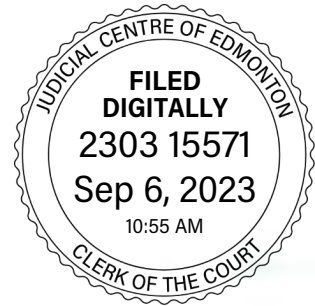


COURT FILE NUMBER 2303 15571
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF COALITION FOR JUSTICE AND HUMAN RIGHTS LTD.
DEFENDANT CITY OF EDMONTON
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AFFIDAVIT OF DR. ANDREA SEREDA
AFFIRMED SEPTEMBER 5, 2023

I, Doctor Andrea Sereda, of the City of Aylmer, Ontario in the Province of Ontario, MAKE
OATH (AFFIRM) AND STATE:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.

Credentials and Nature of Work

2. A copy of my *Curriculum Vitae* is attached hereto as **Exhibit 'A'**.
3. I am a physician practicing at London Intercommunity Health Centre (the “Health Centre”) in London, ON. The Health Centre serves patients with barriers to healthcare in the traditional healthcare system, providing a broad spectrum of interdisciplinary supports. My practice within the Health Centre focuses on people deprived of housing (homelessness), people who inject drugs (PWID) and women working in the survival sex trade. Most of my patients are unhoused or precariously housed, living in encampments, solo rough sleeping, staying in shelters, couch surfing or any combination thereof. Living unhoused means that patients are in a state of forced transience throughout the city, and focus their days on survival living (obtaining food, hygiene, income, a place to sleep that day, prescribed or unregulated medication, staying safe). Because of the enormous daily time investment required to just survive living on the street, acute and chronic health conditions often are not prioritized by patients due to more pressing needs on Maslow’s Hierarchy. A copy of the Hierarchy is attached hereto as **Exhibit ‘B’**.¹
4. My team at LIHC focuses on dismantling structural barriers to care for people who are unhoused by “meeting people where they are at”. This phrase refers to a harm reduction

¹ Saul McLeod, PhD, “Maslow’s Hierarchy Of Needs” (Simply Psychology, updated 26 July 2023), available online: <https://www.simplypsychology.org/maslow.html> (**Exhibit ‘B’**).

practice that prioritizes creatively meeting a person's needs in their individual context, instead of expecting them to fit into traditional models of care. "Meeting people where they are at" can mean providing culturally appropriate care, understanding a person's social and emotional context, considering their personal history and tailoring assessment and treatment plans to their individual framework. Or, with people living rough and in encampments, "meeting people where they are at" can be interpreted literally by medical teams and translated into actions such as bringing medical services directly to people living in encampments and other unstable housing sites. This approach of "meeting people where they are at" is essential to providing successful medical care to people who are living in encampments.

5. I personally provide primary care for my patients through a blended model of traditional office-based medicine, as well as mobile outreach and street-level care (street medicine).
6. I certify that I am aware of my duty as an expert witness to assist the court, and not be an advocate for any party. I have made this affidavit and have given this written testimony in conformity with that duty. If I am called on to give further testimony, it will be in conformity with that duty.

Expertise in providing health care to unhoused people

7. I have been a physician for 15 years. I graduated from the Schulich School of Medicine at Western University in London ON in 2007. I completed a residency in Family Medicine in 2009, and a fellowship in Emergency Medicine in 2010. I completed both residency training programs at the Schulich School of Medicine.

8. I have been providing health care to unhoused and precariously housed people for 12 years.
9. I have been working with LIHC since 2012.
10. I am the lead physician in Health Outreach, and I provide direct care, medical consultation or care coordination to all patients cared for by my team.
11. The Health Outreach team cares for 1800 rostered patients, all of whom have been unhoused at some point in their life. It is difficult to precisely determine how many of our rostered patients are unhoused at any given time because people's housing status can shift abruptly and frequently. People often do not declare all changes in their housing status, and thus this cannot be accurately tracked in charts. However, based on my experience I estimate that 800 rostered Health Outreach patients are unstably housed and 200 rostered patients sleep rough at any given time. This estimate is based on personal knowledge and consultation with the Health Outreach team.
12. The HOME bus and street outreach teams care for an additional 1100 unrostered people. All people seen via HOME and street outreach are unhoused. These 1100 people shift between shelters, sleeping solo rough or in encampments. While precise information about where these patients are staying is unknown for the same reasons as above, our team estimates that 700 of these 1100 people regularly sleep rough, with a known 300-350 sleeping rough in the City of London on any given day.

Practical difficulties with delivering health care to the unhoused

13. There are many difficulties to providing health care to unhoused people, I have witnessed these difficulties in my own medical practice and categorize them below.

i) Building and Rebuilding Trust

This can be thought of as both a challenge and an opportunity. People who live in encampments are marginalized not just from healthcare but from the rest of community. People are deprived of housing in the context of significant accumulated lifetime trauma; they have often been traumatized and neglected across multiple systems such as child protective services, the school system, the residential school system, healthcare, addiction care, the justice system and the housing sector. A disproportionate number of unhoused people across Canada identify as Indigenous, and live within a framework of historical trauma due to colonialism and historical events such as the Sixties Scoop. Their housing deprivation is a further example of continuing injustice and discrimination. . Thus, people living in encampments have a healthy and legitimately carried distrust of people representing the system, including healthcare professionals. Healthcare workers need to rebuild trust with their unhoused patients; both trust that healthcare professionals will help, but also that they will not actively harm by further victimizing people with unwanted health care services and referrals to other systems such as shelter.

ii) Locating

Physically locating a patient who is unhoused can become the better part of a day's work for a healthcare team. People who are unhoused often have no choice but to move their camping site based on weather, bylaw enforcement, safety concerns or any other number of reasons. Healthcare teams spend an inordinate amount of time and resources looking for patients who do not have a stable living site. This can delay the diagnosis and treatment of acute conditions (e.g., pneumonia, wound care), chronic conditions (e.g., diabetes, heart disease), chronic conditions with life-altering disease courses (e.g., HIV), mental health conditions (e.g., schizophrenia) and normal life transitions that require medical support (e.g., pregnancy).

iii) Maslow's Hierarchy of Needs dictates patient priorities

People who are unhoused are not only deprived of housing, they are also almost always deprived of the needs at the base of Maslow's triangle, such as food, water, sleep and clothing (which is also a type of shelter). These are basic, life sustaining necessities. When these needs have not been met, healthcare teams need to tend to these first, before a person can engage meaningfully in their own healthcare.

iv) Absence of Maslow's Needs – sleep deprivation, nutrition, hygiene, safety

The impacts of the *absence* of Maslow's needs on the ability of healthcare teams to care for unhoused persons are related to, but distinct from how the impact of the *absence* of Maslow's needs is perceived by the unhoused patient.. For example, people who do not eat for days at a time will have nutritional deficits

that complicate disease presentation, diagnosis and treatment. People who have nowhere safe to sleep commonly have profound sleep deprivation, which can impact physical and mental health, but also contribute to greater risk of death through mechanisms like overdose.

v) Linkage to hospital-based care and diagnostics – trauma

Most people who are unhoused have had terrible and traumatizing experiences in the hospital system. They usually face stigma and judgement towards their unhoused state, untreated withdrawal from unregulated drugs, care provided in an invasive, paternalistic manner and care provided in the context of long-standing anti-Indigenous racism (e.g., searches, security guards.) Traditional hospital settings for those who are unhoused are typically judgemental, stigmatizing and provide negligent and/or inequitable care. These experiences make it very difficult to refer patients to specialty care, hospital-based imaging or diagnostics or to have patients consider a hospital admission when needed.

vi) Linkage to hospital-based care and diagnostics – loss of possessions

People who are unhoused have a tenuous and survival relationship to their possessions. Survival items like tents, cooking and warmth tools, clothing, and tents can take significant effort to obtain. When people living unhoused have to leave their tents, or their encampments are cleared, they are at high risk of losing all of their hard-won possessions. This affects people practically; they may have no shelter to return to if they leave for an x-ray or a hospital visit. It is also important to recognize that for people who have so little, belongings can also be

part of one's identity. People can lose a bit of their identity and self-worth as they repeatedly have fewer and fewer possessions. The community and city bylaw often see these meagre possessions as entirely disposable and having no meaning. This becomes a proxy for how people view themselves, and how they feel they are viewed by the rest of the community. When people lose their possessions, they also lose the function those possessions had in their life (shelter, warmth, cooking). This directly negatively impacts their health, and creates another layer that healthcare teams caring for unhoused people need to attend to. The loss of phones is particularly profound as it also results in loss of contacts – to support workers, peers, family and resources. Similarly, when people lose their identification, they face additional barriers such as being able to access healthcare and apply for housing. People must start all over again.

vii) Acute vs. Chronic medical concerns - Having to choose

People who are unhoused face sometimes overwhelming layers of unmet healthcare needs. These needs can be acute (e.g. wound care, frostbite, amputations, burns, pneumonia) or chronic (e.g. diabetes, schizophrenia). Due to the health consequences of living unhoused, and the persistent onslaught of environmental factors (e.g. heat, cold, rain, snow) causing injuries and acute illness, it is difficult for healthcare providers to help unhoused people move beyond the treatment of acute issues to focus on chronic health needs.

viii) Interruptions in continuity of care and longitudinal care by forced transiency

The forced transience faced by unhoused persons, which can include encampment clearing by cities, interrupts the ability of healthcare teams to complete diagnostic

and treatment plans. These interruptions are exacerbated by the lack of shared data systems between community healthcare teams, hospitals and jail.

ix) No access to Home Care Nursing, PSW, Physio or OT support

Most community support agencies are unable and unwilling to support people without an address. Most people living unhoused cannot travel to bricks and mortar locations for these services, for all of the reasons described above. This inability to access these providers creates a large gap in necessary healthcare services for people who are unhoused.

x) Decreased access to “risky”/ intensive treatments such as (PICC lines) or surgeries

Unregulated drug use (e.g. fentanyl or crystal meth) is common among people living unhoused. This unregulated drug use is a survival support mechanism for most people, used to treat and cope with the extreme deprivation they live within. However, the use of unregulated street drugs, particularly intravenous use, is seen as a contraindication to many lifesaving medical interventions such as surgeries or PICC lines (a special IV used to deliver medications like antibiotics over many weeks or months). In other words, people who admit to using unregulated street drugs will not be offered these lifesaving treatments. This “contraindication” is not based in evidence, but primarily in stigma. Therefore while IV drug use is used by many unhoused people to survive their circumstances, this drug use is also used by hospitals and specialists to deny lifesaving treatments to people. This creates an abundance of untreated or undertreated infections in the unhoused population, which community healthcare teams need to address in order to try and keep people alive. These untreated infections often worsen, then resulting in more drastic and

expensive hospital-based treatments which could have been avoided if unhoused persons were given equitable access to care in the first place.

xi) Tech inequity

Sleeping rough makes it incredibly difficult to obtain, keep and maintain a cell phone. Services are increasingly relying on these methods of communication to follow-up with clients, a trend exacerbated by the COVID-19 pandemic. This results in missed virtual court appointments and no ability to call intake phone numbers to receive health services or social services. If a phone call is made with a service provider, there is often an appointment set for days in the future, a task exacerbated by constant change in location as noted above.

xii) Geographical barriers

Being constantly forced into increasingly remote locations makes it difficult to get to a pharmacy, meet with one's probation officer, make housing viewings, make medical appointments, access food programs in the city's core, and attend court.

The Health Centre's Model of Care to Attempt to Overcome Barriers in Healthcare

14. The Health Centre model of care seeks to ameliorate the practical difficulties described above, by designing service delivery that places the person in the centre of their care. The model attempts to overcome traditional barriers as follows:

i) Prioritize people needs over system needs

The Health Outreach teams design services that meet people where they are at. This phrase refers to a harm reduction practice that prioritizes creatively meeting a person's needs in their individual context, instead of expectations they fit into traditional models of care. "Meeting people where they are at" can mean providing

culturally appropriate care, understanding a person's social and emotional context, consideration of personal history and tailoring assessment and treatment plans to their individual framework. Or, with people living rough and in encampments, "meeting people where they are at" can be interpreted literally by medical teams, into actions such as bringing medical services directly to people living in encampments and other unstable housing sites. This approach is essential to providing successful medical care to people who are living in encampments.

ii) Culturally appropriate care to reduce stigma

Stigma causes people to disengage from healthcare that traumatizes, re-traumatizes, judges or shames them. The Health Outreach team reduces the impact of stigma by recognizing the lived and living expertise of people who are unhoused, as well as people who use drugs. This means centring these voices, and providing care that recognizes the benefits that using drugs can have on people surviving outside. The Health Outreach team prioritizes *supporting changes that improve both physical health* as well as social determinants of health, over enforcing a structure based off of pre-conceived notions of how a person should fit into and move through the mold of traditional healthcare systems.

iii) Allied health team to address social factors in care and advocacy (housing, income, criminal justice, etc.)

An allied health team approaches care and reframes health care in the context of the social determinants of health. This is an acknowledgement of the social, societal, cultural, historical, and lifestyle factors which affect an individual and their wellness. This can include their income, criminal justice system involvement,

housing, education, culture, gender, employment, food security and the reciprocal relationship between these factors on overall wellness. A team that is literate in interpreting these factors in concert is equipped to address these contextual factors in a way that builds toward holistic wellness and equity. This broader picture of how inequity within a singular system ripples into broader personal and systemic marginalization provides a powerful vantage point for care planning/ wrap-around care. This is also a valuable perspective in advocacy as building a context around inequity supports developing a community and ecosystem better suited for the wellness of people.

iv) High-threshold accessibility/low or “no” barrier care

The Health Outreach Team acknowledges the complexities that can result in missed appointments and medication adherence difficulties. The team is incredibly flexible, creative and solution focused in creating solutions to these difficulties. For example, medication may be delivered at a meal program that serves breakfast, or appointments with specialists may be conducted via facetime from a park.

Service delivery model to unhoused persons

15. The Health Centre provides support for people experiencing homelessness or who are heavily street-involved in London, Ontario. The Health Centre provides several creative approaches to patient care, tailored to where patients are located and their structural barriers. All patients are offered a broad array of wrap-around health and social care by an interdisciplinary team consisting of primary care physicians, nurse practitioners, nurses, systems navigators, social workers, outreach workers and care facilitators,

addressing clients' health and social needs through a social determinants of health and harm reduction approach. The model also includes:

i) Office based care

This is a mixture of booked and drop-in appointments, providing physician/nurse practitioner led primary medical care, specialty care (HIV, Hepatitis CV treatment), walk-in acute services such as wound care, nursing care, basic needs support such as ID and food security. The “bricks and mortar” care serves people who live in close proximity to the clinic, either housed or sleeping rough in the Dundas corridor, an area in London, Ontario anchored by Dundas street. Office based care at the Health Centre differs from a traditional health clinic in several ways. A robust team of clinicians and allied health professionals such as Social Workers, Care Facilitators, Systems Navigators, and Outreach Workers provide intensive support and wrap-around services. These services can all be initiated same-day, and they can be provided concurrent to each other. Same day and concurrent support mean that the Health Centre team meets people where they are at in time and space and significantly improves linkages and retention in care.

ii) HOME (Health Outreach Mobile Engagement) “The Bus”

All of the services provided in the Health Outreach bricks and mortar clinic are also provided on a retrofitted city bus that acts as a mobile clinic. HOME visits encampment and shelter sites, and flexibly adapts to the ever-changing locations of encampments and other places unhoused people gather. HOME meets people where they are physically located. This is essential to serving encampment residents who are unwilling to leave their tents or sites due to fear of bylaw

clearing their possessions or who are physically unable to leave due to the severity of their medical needs. This can include ambulatory limitations, lack of accessible transportation, and lack of access to assistive devices or mental health. HOME also meets people where they are in time; encampment residents have survival priorities that often preclude having time to come to a clinic. HOME serves people who have experienced trauma in healthcare infrastructure such as hospitals, clinics and jails. For people who have experienced structural trauma, visiting a healthcare site with a door, or a lock, or security can completely emotionally preclude them from care. HOME seeks to remove this barrier by removing structural triggers for trauma.

iii) Community Paramedicine “home visits”

The HOME team includes a team of paramedics who provide home visits to people who are unhoused. This team can bring intensive treatment, like intravenous antibiotics or wound care, directly to people who are living precariously housed or living rough in encampments. The team often is treating people in encampments who cannot participate in emergency room, or hospital-based care due to trauma and structural barriers. Video conferencing can also be facilitated with one’s primary care provider while the medical team is present.

iv) Street Outreach Medicine

Health Outreach clinicians and Allied Health staff also seek out people utilizing a “boots on the ground and backpack” approach with capacity to support intensive wound care, primary care and social care. These medical practitioners locate people in need of assistance by walking through areas where unhoused people

may be sheltering.. This is critical for people sleeping rough who are living either in newly established encampment sites that need to be located or are hard to get to, or people who have been evicted from encampments and are living in locations hidden from bylaw or other services that seek to move them along.

Impact of Encampment Evictions on Healthcare Delivery

16. The Health Centre has encountered many healthcare problems created by encampment evictions. These include:

i) Obliterates progress – personal stability

Encampments provide more than just stability of physical location. They provide stability of community structures and human connections, the stability to build tomorrow upon the work accomplished today and yesterday. Stable community structures allow people to stay connected with survival partners and other safe friends. Forced eviction upends this stability.

ii) Obliterates progress - Return immediately to the Bottom of Maslow's Hierarchy

The long-term act of surviving on the streets necessitates the accumulation of possessions to ensure needs and comforts are established. Being consistently moved from an established location results in progress toward building the materials needed for survival long-term being dismantled and reversed. When people are able to establish a space that is conducive to their survival in a way that does not require round-the-clock investment of time, they are able to engage in other areas of their wellness. The dismantling of this foundation in the form of

encampment evictions pushes people back into a space where their focus must be on satisfying the most basic of needs, unravelling with it the progress toward other medical goals in that process.

iii) Locating

Programs and services for people who are housing deprived rely on the ability to support these people where they are known to be. When individuals are forced to frequently change their location, they are often unable to follow-up with supports and commitments, such as: missed court dates, applications for service waiting for signatures, health care needs which are unmet, missed appointments with healthcare specialists, and missed viewings for apartments. In sum, once people are disconnected from their support services, their ability to recover and stabilize is immediately compromised.

iv) Evictions create more acute illness

People's possessions are almost always lost during encampment evictions and clearing. The loss of items such as tents, clothing, and medications results in more acute health conditions such as frostbite or exposure. Loss of medications creates challenges in managing chronic and acute health conditions. The act of survival also creates acute and chronic health care needs. For example, losing diabetic medications such as insulin results in acute deterioration of blood sugars and resulting chronic deterioration of glycemic control when this happens recurrently.

v) Mental health impact

Eviction creates emotions of loss, fear, uncertainty, the de-valuing of people, and grief. Being treated as "human garbage to be swept along" (patient quote)

exacerbates emotions of loss, and also exacerbates mental health conditions such as depression, anxiety, PTSD and panic disorders.

vi) Discharged from services which cannot locate patient

The precedent taken by survival can make it difficult or impossible for housing deprived people to maintain the required level of engagement for some programs.

When some social and medical programs, such as housing supports, cannot reach a client, or the client does not regularly attend appointments, they risk being discharged from the program. Being discharged leaves an already marginalized individual with even fewer supports and community connections.

vii) Loss of trust, loss of therapeutic relationship

The “system” is seen as several interconnected pieces working together to support people in our communities. The clearing of encampments by large systemic figures such as municipal bylaw officers deepens the mistrust in municipal services/authorities. This permeates the programs such as outreach and emergency shelter, which are directly funded by municipalities, as well as the rapport and relationship with agencies that partner with municipalities and rely on their ability to provide timely and effective service to people in acute need.

17. As outlined above, the difficulties facing healthcare teams providing medical care to unhoused people are aggravated when municipalities adopt a policy and practice of displacing encampments, creating a heightened risk of serious suffering or death for unhoused people. In a study, published in the Journal of the American Medical

Association (JAMA) in April 2023,² researchers say practices such as encampment sweeps, bans, move-along-orders and cleanups that forcibly relocate individuals away from essential services will lead to substantial increases in overdose deaths, life threatening infections and hospitalizations. This study suggests that clearing encampments could contribute to 15-25% of all deaths in unhoused persons over the next 10 years.

Encampment Evictions in London

18. Encampments often emerge in locations that are central to services which support street-based survival (hygiene, food, health care, harm reduction).
19. Before a revamp of services beginning in the fall of 2022, the City of London bylaw enforcement team would regularly clear encampments, and would clear them daily at times.
20. As a result, there were no permanent encampments in London before the fall of 2022. Instead, encampment locations were continuously being cleared, the people evicted, and encampment locations shifted every few days to weeks. Therefore, it can be assumed that every person in London with a history of living in an encampment, can also be assumed to have been evicted from an encampment.
21. Beginning in fall of 2022, the City of London embarked on a systems re-design for supporting unhoused Londoners. This included a commitment to a significant decrease in the clearing of encampments, as well as embedded connections between bylaw teams and

² Barocas JA, Nall SK, Axelrath S, Pladsen C, Boyer A, Kral AH, Meehan AA, Savinkina A, Peery D, Bien M, Agnew-Brune C, Goldshear J, Chiang J, Linas BP, Gonsalves G, Bluthenthal RN, Mosites E; NHBS Study Group. "Population-Level Health Effects of Involuntary Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities." JAMA. 2023 May 2;329(17):1478-1486. doi: 10.1001/jama.2023.4800. PMID: 37036716; PMCID: PMC10087093. (**Exhibit 'C'**).

outreach teams with expertise in supporting unhoused people if encampments needed to be cleared for safety reasons. In the summer of 2023, the City of London with the support of community partners implemented an encampment support plan which includes daily site visits to several large encampment sites providing three meals daily, water, hygiene supplies, portable toilets, trash collection and outreach team support and linkage back to healthcare teams as needed. The encampment support plan has improved the health and well-being of encampment residents and begins the long term process of rebuilding trust between the City of London and encampment residents.

22. My current best estimate of patients currently cared for by Health Outreach, with an experience of encampment eviction, would be approximately 1000 people.

Advantages and Disadvantages of Living in a Tent/Encampment: Aggregate Themes Amongst this demographic

23. Based on my 12 years' experience caring for unhoused people and people who live in encampments, the **most common** themes of harm associated with encampment evictions are as follows:

- i) Environmental/weather related ailments – frostbite, heat stroke, burns
- ii) Loss of survival possessions – tents
- iii) Food insecurity and starvation
- iv) Increased substance use
- v) Fatal overdose
- vi) Medical destabilization
- vii) Lack of prenatal and perinatal care
- viii) Increased sexual and physical violence

- ix) Further marginalization
- x) Loss of community safety and structure

Case studies of the themes

24. The following are case studies of patients supported by the Health Centre who experienced some of the harms set out above:

i) Example of environmental complication

- Person dug hole in park to hide from bylaw, laid there for several days in winter, and developed frost bite so severe that it resulted in multiple limb amputations

ii) Examples of loss of survival possessions

- Person lost all of their clothes, boots, coats in winter due to bylaw clearance of encampment site, resulting in severe frostbite to both feet
- Person lost tent, flashlights, blankets, food, power sources/generators because they were not afforded the time/ability to gather live-saving items. The person was then arrested after shoplifting to try and replace those survival items.

iii) Example of food insecurity and starvation

- Person forced to move so far into margins to avoid encampment eviction/clearing, person could not access food banks. They had no ability to own cooking pot or generate heat (for fear of discovery), and existed on granola bars. They died of starvation related illness.

iv) Example of fatal overdose

- Person evicted from encampment. Had lived communally in encampment for many years. They used drugs communally, following best practices which is to

not use opioids alone. After being evicted from encampment, they were forced into solo living space. They died of overdose within days

v) Examples of medical destabilization

- Person who required daily medication was unable to keep medication safe/in storage, cyclically incarcerated due to crimes of poverty (stealing to eat, breaking/damaging store fronts) resulting in poor adherence to medical treatment, increased infection, increased substance use that directly impacted physical and mental health
- Person developed resistance to medication HIV due to poor adherence (due to inability to keep medication safe), resulting in an AIDS diagnosis with high risk of death.

vi) Example of pregnancy/prenatal complication

- Mother's lack of stable living site resulted in no prenatal care and cardiac arrest of baby during labour due to preventable pregnancy complication

vii) Example of increased sexual and physical violence

- Woman separated from survival partner during bylaw eviction. Neither partner had phone, could not locate each other after being separated. They both slept solo for many days. Without protection of her partner, the woman was gang raped while sleeping behind a dumpster, and then subsequently raped multiple more times, following each encampment eviction and separation from her partner.

viii) Example of further marginalization

- City bylaw cleared central encampment. People moved to city margin to escape detection – resulted in complete disconnect from healthcare services, missed anti-

psychotic injections resulting in acute psychosis and person became victim of violence

ix) Example of loss of community structure and safety

- People have lost feeling of community belonging due to inability to create peer-regulated spaces
- People are forced into isolated, inaccessible areas that created heightened risk of violence
- People are forced from rural areas to city limits resulting in new community members with no relationship with existing street-entrenched community often resulting in increased violence, “othering” and lack of understanding of shelter services/basic needs services.

Examples of Medical Care Provided to Evicted Encampment Residents

25. The following case studies based on patients supported by the Health Centre:

i) Woman recently evicted from downtown tent encampment

- Severe soft tissue infection to her lower leg
- Requested hospital admission three times over the previous months, was discharged twice and told to follow up with cellulitis clinic
- Left hospital against medical advice after stigmatized treatment in hospital
- Sepsis being kept at bay with antibiotics and care from mobile medical team but still requires surgical amputation
- Ongoing eviction every few days from encampment, meant that medical team spends more time locating this woman than treating her infection

ii) Man with multiple encampment evictions by city staff

- Untreated schizophrenia, untreated HIV
 - Presented to team with multiple AIDS-defining illness
 - Zero primary care, zero supports
 - City deemed him ineligible for hotel or city-funded shelters due to schizophrenic-related behaviours
-
- Has visited ER 42 times in last year. No referrals, no outpatient appointments, because he cannot be found

iii) Woman, multiple tent encampment evictions

- Severe seizure disorder
- No diagnostics, no treatment, no medications due to inability to locate and distrust of the system
- Seizures are so debilitating that she is unable to attend soup kitchens or church drop-ins for fear of injury or assault while post-ictal
- Blood work shows severe malnutrition

iv) Woman evicted from tent encampment while actively miscarrying foetus

- By the time she was found in new tent location by medical team, was diagnosed with sepsis due to uterine infection

v) Woman with long-standing diagnosis of schizophrenia

- Numerous encampment evictions
- No supports, no medications, no form of treatment
- As per police, has been forcibly sexually trafficked for 18 months
- Ongoing psychosis makes her incredibly vulnerable to sex traffickers

- Active syphilis

26. I have reviewed the following affidavits from unhoused Edmontonians who have experienced encampment displacements and find that their experiences and reports of being unhoused and evicted from an encampment or not permitted to stay in an encampment, are consistent with the harm related themes reported by my patient pool:

- i) Affidavit of Lisa Wemp, affirmed July 13, 2023;
- ii) Affidavit of Lauren Rivard, affirmed July 13, 2023;
- iii) Affidavit of Joshua Bell, affirmed July 13, 2023;
- iv) Affidavit of Raymond Neal Shirt-Yellowbird, affirmed July 13, 2023;
- v) Affidavit of Tristan Scott, affirmed August 18, 2023;
- vi) Affidavit of Tristan Seneca, affirmed August 18, 2023;
- vii) Affidavit of Asia Rivard, affirmed August 18, 2023;
- viii) Affidavit of Russell Francis Cardinal, affirmed August 23, 2023;
- ix) Affidavit of Pamela Souter, affirmed August 25, 2023; and
- x) Affidavit of Dean Gladue, affirmed August 25, 2023.

Advantages of living in an encampment versus living in public space without a tent

27. Having reviewed files of my patients who have reported living in an encampment, I have identified many benefits of living in an encampment compared to sleeping rough:

i) Health outcomes:

Encampments decrease forced transiency which increases the odds that the unhoused can maintain routine connection to outreach services such as health care, system navigators, street outreach of basic needs (food, clothing), housing services, delivery of medications, harm reduction supplies, etc.

ii) Decreased isolation and risk of fatality:

When people know they will be evicted from their encampment by authorities, they will move further into the margins where they are less visible and more alone in order to avoid eviction enforcement by the authorities. By moving further into the margins such as forests, train tracks, abandoned buildings, holes dug into the ground, people place themselves at greater risk of harm because they are alone and disconnected from routine services. This places them at greater risk of violence, overdose and loss of connection to medical services. Conversely, when people are allowed to remain stably over time in encampments, this isolation and disconnect from services is no longer experienced to a large extent.

iii) Community:

Encampments give people a sense of community as opposed to when people are alone and hiding from authorities. The benefits of this include increased mental health stabilization, decreased drug use, increased chances of being helped during an overdose, emotional support, someone to watch possessions if the person is required to leave the site to use a bathroom, attend a food bank, an appointment, etc. Encampments also decrease risk of sexual violence because community members look out for each other.

iv) Privacy:

Having a tent facilitates better sleep, the ability to store and use medications, to complete hygiene and other basic self-care. Tents also allow for privacy from the public gaze and abuse from the general public, which can be very detrimental to the mental health of unhoused people.

v) Place to store possessions:

There is often a sense of community that develops among encampment residents, and people come to rely on one another to watch their belongings when they leave the encampment site. Perspectives from individuals living in tent cities in the US have revealed that encampments can provide a sense of safety and autonomy that is not felt in shelters.³

vi) Minimizes sleep deprivation:

Many unhoused persons with nowhere to sleep, need to stay up at all hours due to their fear of violence and theft if they sleep in the open while alone. Encampments allow community members to sleep in shifts and protect the community belongings.

vii) Shelter from elements:

Tents used in encampments provide an essential layer of protection from wind, rain, snow and sun. Without this layer of protection, there is an increased risk of weather-related ailments such as frost bite.

³ Hunter, J., Linden-Retek, P., Shebaya, S., & Halpert, S. (2014). Welcome home: The rise of tent cities in the United States. National Law Center on Homelessness & Poverty, Allard K. Lowenstein International Human Rights Clinic, Yale Law School.

(Exhibit "A"). MJ
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✓ MJ

viii) Physical and mental rest:

It is both physically and mentally taxing to have to constantly move and search for new places to shelter. Being able to remain in one place such as an encampment gives people a chance to rest and focus on recovery.

Advantages of living in an encampment versus shelter

28. Although there can be safety risks in encampments, patients routinely make trade-offs between what the safest situation is given their options and personal circumstances.

i) Couples

In encampments, couples or “survival partners” can remain together. Almost always, there are insufficient shelter options for couples. This forces them to choose between separating in shelter or remaining together on the street. Separation causes stress, anxiety and panic in partners who can no longer protect each other. When couples or survival partners separate to move into shelter, a female identifying partner may not get into shelter resulting in them being outside alone and at serious risk of violence. As a result, the male identifying partner will usually elect to remain outside with the female identifying partner to provide them with safety and to avoid the emotional anguish of separating knowing that their loved one may be at serious risk of injury or death, or that reconnecting after they leave the shelter may be difficult if not impossible for days. Many unhoused do not have cell phones that would otherwise assist with reconnecting.

ii) Connection to pets

Most people with pets are unable to find shelter space that will accommodate their animals. People who are experiencing homelessness are often estranged from family and close friends and their pets can be their biggest source of emotional support. These people often turn down shelter space due to their overwhelming need to remain with their pet. Pets are sources of emotional support for the unsheltered population. Many rely on their pet as their single source of support and consequently the loss of their pets can be traumatizing for them and can lead to dysregulation.

iii) Continuity and ability to plan

Shelter stays are inherently unpredictable and precarious. Many people can find themselves abruptly evicted onto the street at any time of day and with any weather conditions. People who have routinely experienced shelter evictions will opt to remain in an encampment because they know it has the ability to provide more day-to-day stability.

iv) Harm reduction vs abstinence-based shelters

Many shelters, particularly shelters run by faith-based groups, do not allow substances to be used or stored onsite. These shelter spaces are often abstinence-based, refusing to adopt a harm reduction approach to provide increased safety and support for people who are housing deprived and using substances. Some shelters do not even allow for harm reduction materials, meaning that people with substance use disorders risk being kicked out of shelter if they are found with drug use paraphernalia that can keep their drug use safer. Having to hide one's

substance use in a shelter places people at grave risk of overdose as they cannot follow harm reduction best practices, and are often required to use alone or in hidden spaces such as showers or locked bathrooms. Such spaces inherently provide privacy and, therein, a space where response to accidental overdose would be greatly delayed or impossible in a timely manner. These structural barriers lead people to prioritize their safety by staying outside where they can access the support of peers and harm reduction services required to stay well and stay safe. In Edmonton, it is known that over 90% of emergency shelter beds are run by Christian charities that do not allow substances or substance use on-site, and that no overnight emergency shelter beds in Edmonton except approximately 70 beds at Hope Mission's intox space admit people who are under the influence of substances. Understanding that most unsheltered Edmontonians use drugs and/or live with a substance use disorder, it is reasonable to conclude that the available abstinence-based shelter spaces in Edmonton profoundly increase the risk of harms and mortality of unhoused people who use drugs if those people are forced to use these abstinence based shelter services.

v) Relief from physical burden of leaving and entering shelter every day

Given that shelters are routinely full and residents do not often have phones, they must walk with their possessions from shelter to shelter. It is very physically taxing, especially for those with physical disabilities to spend their days like this. It is less physically and mentally taxing to remain in a tent in one location.

Additionally, when people must leave the shelter in the early morning, they are left with nowhere to go to rest, decompress or re-group until they return at night

simply to attempt to sleep. As a population that experiences exceptionally high rates of physical disability (according to one study conducted in Toronto, 43% of homeless respondents reported arthritis or rheumatism, 23% reported problems walking, a lost limb, or another physical handicap, 20% reported heart disease, and 17% reported high blood pressure, among others) encampments can provide reprieve from the need to constantly be moving and carrying belongings.⁴

vi) Shelters can be re-traumatizing

People with a history of trauma or abuse may be triggered by a congregate setting of strangers. In particular, Indigenous people who are unhoused often struggle to find psychological safety in Christian based shelters due their own experiences of residential schools. In Edmonton, approximately 60% of unhoused people are Indigenous and most of those people have personal experience or had a family member experience residential schools, day school, or the Sixties Scoop. This is particularly problematic knowing that over 90% of shelter beds in Edmonton are run by Christian charities. Many people also have a valid fear of being a victim of an assault or sexual assault in shelter, or may have a history of these incidents during their stay at a shelter that reasonably precludes them from returning to shelter due to this trauma.

⁴ The Street Health Report 2007. The Health of Toronto's Homeless Population.
<https://homelesshub.ca/sites/default/files/2.2%20Street%20Health%20Report.pdf> at p. 16 (Exhibit 'E').

Experience attempting to access shelter for my patients

29. Clients with complex medical needs secondary to their experience of living rough are often precluded from accessing shelter supports as their needs are often interpreted as “outside of the scope” of these shelters where the norm is to provide a bed and space for the night with discharges often early in the morning. Traditional home care nursing, PSW and OT supports are often not open to providing service in these programs, resulting in gaps to therapeutic intervention even if a space is secured. In this way, housing deprivation leads to severe health complications which leads directly to further deprivation.
30. The institutional structure of traditional shelter programs can elicit a trauma response in clients accessing these services with limitations on the activities they can do, the self-care they can perform, the safety they can find and the privacy they can be afforded. Clients packed into these spaces can respond in defensive manners interpreted as aggressive, leading to eviction and, at times, long term bans.
31. There are people in the city of London who are banned from every shelter program that exists within the city for these concerns. The high turnover of staffing and capacity of these spaces means care planning has limited efficacy when looking to mitigate these concerns for an individual.
32. The need for shelter has burgeoned for decades, exacerbated further by the COVID-19 pandemic. In London, the number of people in need of space exceeds the amount of available emergency shelter spaces by hundreds. This means there are people who “fit” within the eligibility criteria for these spaces that are unable to access them due to overwhelming capacity issues. This is also true in Edmonton, where the number of

unhoused people has risen 71%, from 1820 people in 2021 to 3112 people in 2023, according to the Homeward Trust Edmonton by-name list. By-name lists that produce these counts of unhoused people are notoriously an undercount of the true number of unhoused persons in a community. Thus, the numbers produced by the City of Edmonton are very likely an undercount of all unhoused people in Edmonton.

33. The nature of survival places some people at risk for victimization in the community.

There is a large subset of people who refuse shelter referrals due to fear of physical safety.

34. It can be anything but straightforward to try to access a shelter bed. As an initial barrier, many people experiencing homelessness do not have a phone to call for a bed.

35. The Health Centre often tries to secure shelter beds for patients. Most often, we are not successful. The following is an example of an attempt to navigate the shelter admission process:

- i) Client presented in crisis and sleeping rough with 16 year old daughter. Systems Navigator (SN) placed call to Coordinated Access (CA) to secure a shelter bed, however CA intake was not timely and booked 6 days post call with client having no access to phone. SN placed call to London Cares day-time resting space, however no space was available at that time. SN placed call to CMHA Stabilization Space, however no space was available at that time. SN placed call to Anova (Violence Against Women shelter), however no space was available at that time. SN placed call to St. Thomas shelter with answer of “maybe” should client be able to secure independent transportation to city. SN placed call to Youth

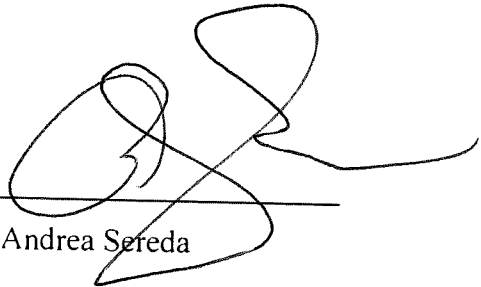
shelter, however daughter could access, but mother could not due to age limitations. SN placed call to London Cares again with answer of “maybe” but not the daughter due to lack of shelter capacity. Client leaves frustrated and back to street, to find encampment for the night. Client has never re-engaged after this experience.

36. I make this Affidavit in support of the Plaintiff Coalition for Justice and Human Rights Ltd.’s civil claim and application against the City of Edmonton.

37. I was not physically present before the commissioner, but was linked with the commissioner using video conferencing technology in accordance with the process described in Court of King’s Bench of Alberta’s Notice to the Profession and Public dated March 25, 2020 (NPP#2020-02).

AFFIRMED BEFORE ME at
Edmonton, Alberta this 5 day of
September, 2023.

Commissioner in and for the Province of
Alberta




Dr. Andrea Sereda

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AFFIRMED BEFORE ME at
Edmonton, Alberta this 5th day of
September, 2023.


Commissioner in and for the Province of
Alberta

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

Dr. Andrea Sereda

REMOTE COMMISSIONING CERTIFICATE

CANADA

PROVINCE OF ALBERTA

I, DEVYN TAYLOR ENS, a Commissioner for Oaths in and for Alberta, DO HEREBY CERTIFY that:

- 1 The process for remote commissioning of affidavits specified in Notice to the Profession and Public NPP#2020-02 dated March 25, 2020 (the "Process") has been followed for the attached affidavit; and
- 2 I am satisfied that the Process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and me to be physically present together.

DATED at Edmonton, Alberta this 5th day of September, 2023.



Devyn Taylor Ens
A Commissioner for
Oaths in and for Alberta

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

Dr. Andrea Michelle Sereda - CV
September 2022

London Intercommunity Health Centre
659 Dundas St, London, ON N5W 2Z1

1. Education

BSc (*honours*) Honours Microbiology and Immunology, University of Western Ontario
2003

MD Schulich School of Medicine & Dentistry, University of Western Ontario
2007

2. Qualifications

College of Physicians and Surgeons of Ontario (CPSO)
2007

Licentiate of the Medical Council of Canada (LMCC)
2009

Certification in the College of Family Physicians of Canada (CCFP)
Schulich School of Medicine & Dentistry, Rural Family Medicine stream
2009

Certification in the College of Family Physicians of Canada - Emergency Medicine (CCFP-EM)
Schulich School of Medicine & Dentistry
2010

This is Exhibit "A" referred to in the
Affidavit of
Dr. Andrea Sereda
Affirmed Sworn before me this 5. day
of September, 2023
A Notary Public/A Commissioner for Oath
in and for the Province of Alberta

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

3. Clinical Practice Experience

Current

Family Physician - London Intercommunity Health Centre, London, ON
Practice focus: Care for people experiencing homelessness (particularly women experiencing homelessness); care of people who use drugs
2013 – present

Lead Physician: Safer Opioid Supply Program, London Intercommunity Health Centre
2016 – present

Lead Physician: Street Level Women at Risk (SLWAR), London Intercommunity Health Centre
2016 – present

Past

Lead Physician: Transgender Health Program, London Intercommunity Health Centre
2016 – 2021

Emergency Medicine Physician - St. Thomas Elgin General Hospital
2010 – 2016

Family Physician - Centre of Hope Family Health Team
Practice Focus: Homeless healthcare, primary care
2010-2013

Hospitalist Physician - St. Thomas Elgin General Hospital
2009

4. Teaching Experience

London Intercommunity Health Centre
Medical Student and Resident placements focusing on homeless healthcare
2013 – present

Red Cross Emergency Medical Responder Instructor
Each fall, teach 80 hour course to Western Students who then go on to provide 911 response to the UWO campus
2008 - present

5. Administrative Positions

Governance Group Member, Executive Leadership Role, Street Level Women at Risk (SLWAR) program
2017 to present

Community Advisory Group, Street Level Women at Risk (SLWAR) program
2015 to present

Community Advisory Group, Youth Shelter Development, Youth Opportunities Unlimited
2017 to 2018

Community Advisory Group, Salvation Army Centre of Hope Homeless Shelter
2014 to present

Medical Director, Student Emergency Response Team, University of Western Ontario
2010 to present

6. Awards

Alumni of Distinction Award – Community Service Award
Schulich School of Medicine & Dentistry, Western University
2021

Health Equity Champion Award
Alliance for Healthier Communities
2020

Community Inspiration Award
Addiction Services of Thames Valley
2020

Canada's Top 40 under 40
Awarded for work with Street Level Women At Risk (SLWAR) program
2018

London's Top 20 Under 40
Awarded for work with Street Level Women at Risk (SLWAR) program
2018

CCFP Resident Research Award: "Healthcare for the Homeless"
Schulich School of Medicine & Dentistry, Western University
2009

7. Grants

Health Canada - Substance Use and Addiction Program (SUAP) grant
\$6.7 million to expand access to Safer Supply program, London Intercommunity Health Centre,
London, ON,
February 2020

Health Canada - Substance Use and Addiction Program (SUAP) grant
\$2 million to develop Safer Opioid Supply Community of Practice,
June 2020

8. Peer Reviewed Publications

Gomes, T, Kolla, G, McCormack, D, Sereda, A, Kitchen, S, Antoniou, T. (2022) Clinical outcomes and healthcare costs among people entering a safer opioid supply program in Ontario: a comparative time series analysis. In-press (publication date - 19 September 2022). *CMAJ: Canadian Medical Association Journal*. www.cmaj.ca/lookup/doi/10.1503/cmaj.220892

Glegg, S, McCrae, K, Kolla, G, Touesnard, N, Turnbull, J, Brothers, T, Brar, R, Sutherland, C, Le Foll, B, Sereda, A, Goyer, ME, Rai, N, Berstein, S, Fairbairn, N. (2022). "COVID just kind of opened a can of whoop-ass": The rapid growth of safer supply prescribing during the pandemic documented through an environmental scan of addiction and harm reduction services in Canada. *International Journal of Drug Policy*, 106, 103742. <https://doi.org/10.1016/j.drugpo.2022.103742>

Ryan, A., Sereda, A., & Fairbairn, N. (2020). Measures to support a safer drug supply. *CMAJ : Canadian Medical Association Journal*, 192(49), E1731–E1731. <http://doi.org/10.1503/cmaj.77303>

Formosa, E., Grainger, L., Roseborough, A. D., Sereda, A., & Cipriano, L. (2020). A Survey of Canadian, Student-Run Campus Emergency Medical Response Teams. *Journal of Collegiate Emergency Medical Services*, 3(2), 11-19. <https://www.collegeems.com/a-survey-of-canadian-student-run-campus-emergency-medical-response-teams/>

9. Clinical Guidelines

Hales, J., Kolla, G., Man, T., O'Reilly, E., Rai, N., Sereda, A. (2019) *Safer Opioid Supply Programs (SOS): A Harm Reduction Informed Guiding Document for Primary Care Teams*. Available online: <https://bit.ly/3dR3b8m>

10. Published Commentaries

Rai, N., Sereda, A., Hales, J. & Kolla, G (2019, June 19). Urgent call on clinicians: Prescribe alternatives to poisoned drug supply. *Healthy Debate*. <https://healthydebate.ca/opinions/safer-supply-opioids>

Wiltshire, K & Sereda, A (February 2019). Suffering in Silence: Intimate Partner Violence Amongst Physicians. *Vital Signs*.
<https://static1.squarespace.com/static/568eb5bbd82d5eecf06026c4/t/5c5dc7799b747a6e18de095f/1549649796829/VS0219.pdf>

11. Academic Conference Presentations

Kolla G, Gomes T, McCormack D, Sereda A, Kitchen S, Campbell T, Singh S, Antoniou T. 2022. *Health system utilization outcomes and healthcare costs among safer opioid supply program clients in London, Ontario: a population-based cohort study*. Canadian Society for Addiction Medicine 2022 Scientific Conference. Saskatoon, Canada. November 3-5, 2022.

Kolla, G, Gomes, T, McCormack, D, Sereda, A, Kitchen, S, Campbell, T, Singh, S, Antoniou, T. 2022. *Clinical outcomes and healthcare costs among safer opioid supply program clients in Ontario: a population-based cohort study*. Canadian Association of HIV Research Conference 2022 (virtual). April 28-29, 2022.

Sereda, A. 2022. *Safer Supply & HIV*. Building Enhanced Treatment Responses (BETR) Provincial Conference. February 2022

Sereda, A. 2021. *Stimulant Safer Supply*. Harm Reduction International Conference (virtual). November 2021

Sereda, A. 2021. *Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions*. Opioid Use Disorder in Primary Care Conference, Centre for Addiction and Mental Health (virtual). March 2021.

Sereda, A. 2020. COVID-19, Substance Use and Safer Supply. British Columbia Centre for Substance Use (BCCSU) (virtual). May 2020
<https://www.youtube.com/watch?v=an3yogOI5g0&t=85s>

Kolla, G., Sereda, A., Rai, N., Hales, J. 2020. *Building resources for Safer Opioid Supply prescribing to address the opioid overdose crisis in Ontario*. Canadian Public Health Association Conference, Winnipeg, Canada. April 28-30, 2020. (Conference cancelled due to COVID-19)

Sereda, A. 2019. *Harm Reduction 101*. Family Medicine Forum (FMF), Vancouver, Canada. November 2019

Sereda, A., Brothers, T., Kolla, G. 2019. *Initial impacts of a "Safe Supply" oral hydromorphone substitution prescribing initiative for people who inject drugs in London, Ontario*. Canadian Society of Addiction Medicine. Halifax, Canada. October 24-27, 2019.

Sereda, A. 2019. *Building Trust: Using Safer Supply to change the Opioid overdose epidemic*. Canadian Society of Addiction Medicine. Halifax, Canada. October 24-27, 2019.

Sereda, A. 2018. *Street Involved Sex Workers; A United Model from Streets to Homes*. Canadian Association to End Homelessness (CAEH). November 2018

Sereda, A. 2017. *Outreach Medicine and Street Level Women*. London Health Sciences Centre Vulnerable Populations Symposium. December 2017

12. Invited Presentations

Briefings for policy makers

Invited Speaker, "Safer Supply - a common sense approach to the overdose crisis" Briefing for the federal Minister of Mental Health and Addictions Health Carolyn Bennett. London, Canada. April 2022

Invited Speaker, "Introduction to Safer Opioid Supply". Timmins Mayor's Office
Timmins, Canada. May 2021

Invited Speaker, "Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions". Briefing for the Federal Opioid Response Team, Ottawa, Canada. October 2020

Invited Speaker, "Safer Opioid Supply in the Context of the Overdose Crisis". Briefing for the federal Minister of Health Patty Hajdu. 13 July 2020

Invited presentations at conferences, grand rounds or community organizations

Keynote, Safer Supply Community of Practice Regional Meeting, Toronto, Canada, 10 June 2022

Panelist, "The Future of Safer Supply". Alliance for Healthier Communities Conference. Toronto, Canada. 9 June 2022.

Invited Speaker, "Introduction to SOS". Thames Valley Family Health Team. London, Canada. April 2022

Invited Speaker, "Care of Marginalized Persons". Critical Care Rounds, London Health Sciences Centre, London, Canada. November 2021

Invited Speaker, "Safer Supply 101". Schulich School of Medicine & Dentistry, London, Canada. December 2021

Keynote, "Safer Supply 101". Neighbourhood Legal Annual General Meeting, Toronto, Canada. November 2021

Panelist, "Women & Safer Supply", Women and HIV/AIDS Initiative, Toronto, Canada. September 2021

Invited Speaker, "Introduction to Safer Opioid Supply". Hamilton Urban Core Community Health Centre, Hamilton, Canada. August 2021

Invited Speaker, "Introduction to Safer Opioid Supply". Sudbury Harm Reduction Network. Sudbury, Canada. July 2021

Invited Speaker, "Harm reduction, Marginalized Persons and SOS". Oncology Grand Rounds, London Health Sciences Centre, London, Canada. May 2021

Invited Speaker, "Introduction to Safer Opioid Supply". Timmins Public Health Unit, Timmins, Canada. April 2021

Invited Speaker, "Introduction to Safer Opioid Supply". London Children's Aid Society, London, Canada. April 2021

Invited Speaker, "Introduction to Safer Opioid Supply". Sudbury Drug Strategy, Sudbury, Canada. April 2021

Keynote, "Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions." University of Western Ontario Alumni Association. London, Canada. February 2021

Invited Speaker, "Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions". Chatham Kent Hospital Association. February 2021

Invited Speaker, "Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions". Thunder Bay Community Health Centre. February 2021

Invited Speaker, "Harm Reduction 101". University of Western Purple Hands. January 2021

Invited Speaker, "Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions". John Gordon Home HIV/AIDS Hospice, London, Canada. January 2021

Invited Speaker, "Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions". Internal Medicine Grand Rounds, London Health Sciences Centre, London, Canada. November 2020

Invited Speaker, "Fentanyl, the Opioid Crisis & the Injection Drug User: Re-Imagining Solutions". Family Medicine Grand Rounds, Schulich School of Medicine & Dentistry, London, ON. September 2020

Invited Speaker, "Safer Opioid Supply in the Context of the Overdose Crisis". Alliance for Healthier Communities Conference, June 2020

Invited Speaker, "Building Trust: Using Safer Supply to change the opioid overdose narrative". Psychiatry Grand Rounds, London Health Sciences Centre, London, Canada. February 2020

Invited Speaker, "Harm Reduction 101". Abuse Shatters Lives Conference, Timmins, Canada. February 2020,

Invited Speaker, "Safer Opioid Supply Programs in the Context of the Opioid Overdose Crisis." Grand Rounds, Sherbourne Health. Toronto, Canada. 20 January 2020.

Panelist, "Safer Supply". Addictions and Mental Health Ontario (AMHO) Leadership Panel. Toronto, Canada. November 2019

Panelist, "Safe Supply Community Summit". Community Forum for people who use drugs in the Downtown Eastside, Vancouver, Canada. November 2019

Invited Speaker, "Safer Supply". Pan-Canadian Opioid Prescribing Initiative, College Family Physicians of Canada, Toronto, Canada. October 2019

Keynote, "Harm Reduction and Palliative care for marginalized and vulnerable Londoners". University of Western Ontario Palliative Care, London, Canada. October 2019.

Panelist, "Safer Supply, Hepatitis C and drug-user health". Ontario Hepatitis C Teams Workshop. Toronto, Canada. 29 October 2019.

Keynote, "Safer supply in the context of the overdose crisis". Parkdale Queen West Community Health Centre Safer Supply Presentation. Toronto, Canada. 3 July 2020.

Keynote, "Safer Supply". Regional HIV/AIDS Connection, London, Canada. June 2019.

Invited Speaker, "Safer Supply & SLWAR". Emergency Medicine Grand Rounds, London Health Sciences Centre, London, Canada. March 2019

Invited Speaker, "Street Level Drugs of Abuse". My Sister's Place (Drop-in centre for homeless women), London, Canada. May 2016.



Maslow's Hierarchy of Needs

By [Saul McLeod](#), published May 21, 2018

Maslow's hierarchy of needs is a motivational theory in psychology comprising a five-tier model of human needs, often depicted as hierarchical levels within a pyramid.

Needs lower down in the hierarchy must be satisfied before individuals can attend to needs higher up. From the bottom of the hierarchy upwards, the needs are: physiological, safety, love and belonging, esteem and self-actualization.

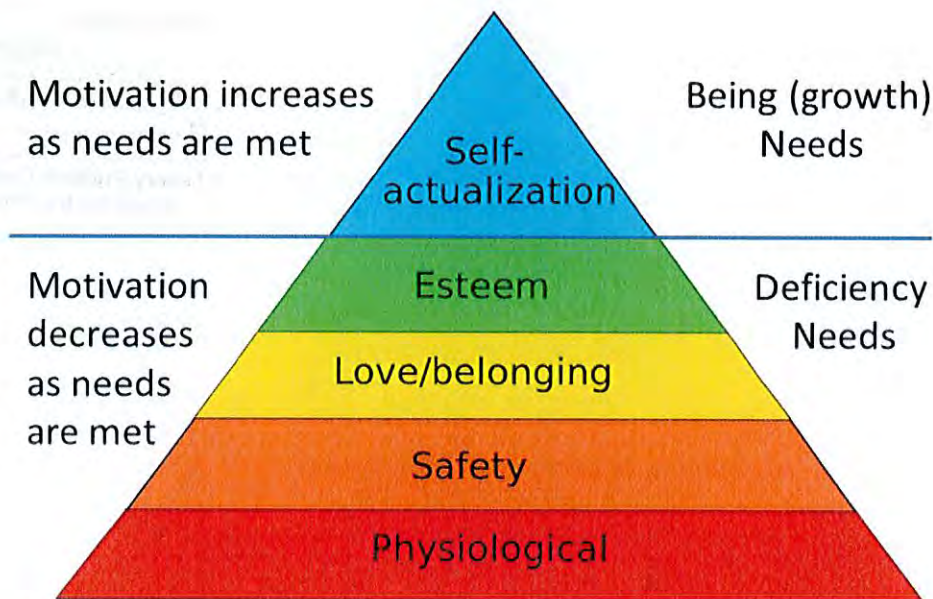


Deficiency needs vs. growth needs

This five-stage model can be divided into deficiency needs and growth needs. The first four levels are often referred to as deficiency needs (*D-needs*), and the top level is known as growth or being needs (*B-needs*).

Deficiency needs arise due to deprivation and are said to motivate people when they are unmet. Also, the motivation to fulfill such needs will become stronger the longer the duration they are denied. For example, the longer a person goes without food, the more hungry they will become.

Maslow (1943) initially stated that individuals must satisfy lower level deficit needs before progressing on to meet higher level growth needs. However, he later clarified that satisfaction of a needs is not an “all-or-none” phenomenon, admitting that his earlier statements may have given “the false impression that a need must be satisfied 100 percent before the next need emerges” (1987, p. 69).



When a deficit need has been 'more or less' satisfied it will go away, and our activities become habitually directed towards meeting the next set of needs that we have yet to satisfy. These then become our salient needs. However, growth needs continue to be felt and may even become stronger once they have been engaged.

Growth needs do not stem from a lack of something, but rather from a desire to grow as a person. Once these growth needs have been reasonably satisfied, one may be able to reach the highest level called self-actualization.

Every person is capable and has the desire to move up the hierarchy toward a level of self-actualization. Unfortunately, progress is often disrupted by a failure to meet lower level needs. Life experiences, including divorce and loss of a job, may cause an individual to fluctuate between levels of the hierarchy.

Therefore, not everyone will move through the hierarchy in a uni-directional manner but may move back and forth between the different types of needs.

The original hierarchy of needs five-stage model includes:

Maslow (1943, 1954) stated that people are motivated to achieve certain needs and that some needs take precedence over others.

Our most basic need is for physical survival, and this will be the first thing that motivates our behavior. Once that level is fulfilled the next level up is what motivates us, and so on.

The original hierarchy of needs five-stage model includes:

1. **Physiological needs** - these are biological requirements for Human survival, e.g. air, food, drink, shelter, clothing, warmth, sex, sleep.

If these needs are not satisfied the human body cannot function optimally. Maslow considered physiological needs the most important as all the other needs become secondary until these needs are met.

2. **Safety needs** - protection from elements, security, order, law, stability, freedom from fear.

3. **Love and belongingness needs** - after physiological and safety needs have been fulfilled, the third level of human needs is social and involves feelings of belongingness. The need for interpersonal relationships motivates behavior

Examples include friendship, intimacy, trust, and acceptance, receiving and giving affection and love. Affiliating, being part of a group (family, friends, work).

4. **Esteem needs** - which Maslow classified into two categories: (i) esteem for oneself (dignity, achievement, mastery, independence) and (ii) the desire for reputation or respect from others (e.g., status, prestige).

Maslow indicated that the need for respect or reputation is most important for children and adolescents and precedes real self-esteem or dignity.

5. **Self-actualization needs** - realizing personal potential, self-fulfillment, seeking personal growth and peak experiences. A desire “to become everything one is capable of becoming” (Maslow, 1987, p. 64).



Maslow posited that human needs are arranged in a hierarchy:

"It is quite true that man lives by bread alone — when there is no bread. But what happens to man's desires when there is plenty of bread and when his belly is chronically filled?

At once other (and "higher") needs emerge and these, rather than physiological hungers, dominate the organism. And when these in turn are satisfied, again new (and still "higher") needs emerge and so on. This is what we mean by saying that the basic human needs are organized into a hierarchy of relative prepotency" (Maslow, 1943, p. 375).

Maslow continued to refine his theory based on the concept of a hierarchy of needs over several decades (Maslow, 1943, 1962, 1987).

Regarding the structure of his hierarchy, Maslow (1987) proposed that the order in the hierarchy "is not nearly as rigid" (p. 68) as he may have implied in his earlier description.

Maslow noted that the order of needs might be flexible based on external circumstances or individual differences. For example, he notes that for some individuals, the need for self-esteem is more important than the need for love. For others, the need for creative fulfillment may supersede even the most basic needs.

Maslow (1987) also pointed out that most behavior is multi-motivated and noted that “any behavior tends to be determined by several or all of the basic needs simultaneously rather than by only one of them” (p. 71).

Hierarchy of needs summary

(a) needs human beings are motivated by a hierarchy of needs.

(b) needs are organized in a hierarchy of prepotency in which more basic needs must be more or less met (rather than all or none) prior to higher needs.

(c) the order of needs is not rigid but instead may be flexible based on external circumstances or individual differences.

(d) most behavior is multi-motivated, that is, simultaneously determined by more than one basic need.

The expanded hierarchy of needs

It is important to note that Maslow's (1943, 1954) five-stage model has been expanded to include cognitive and aesthetic needs (Maslow, 1970a) and later transcendence needs (Maslow, 1970b).

Changes to the original five-stage model are highlighted and include a seven-stage model and an eight-stage model; both developed during the 1960's and 1970s.

1. *Biological and physiological needs* - air, food, drink, shelter, warmth, sex, sleep, etc.

2. *Safety needs* - protection from elements, security, order, law, stability, etc.

3. *Love and belongingness needs* - friendship, intimacy, trust, and acceptance, receiving and giving affection and love. Affiliating, being part of a group (family, friends, work).

4. *Esteem needs* - which Maslow classified into two categories: (i) esteem for oneself (dignity, achievement, mastery, independence) and (ii) the desire for reputation or respect from others (e.g., status, prestige).

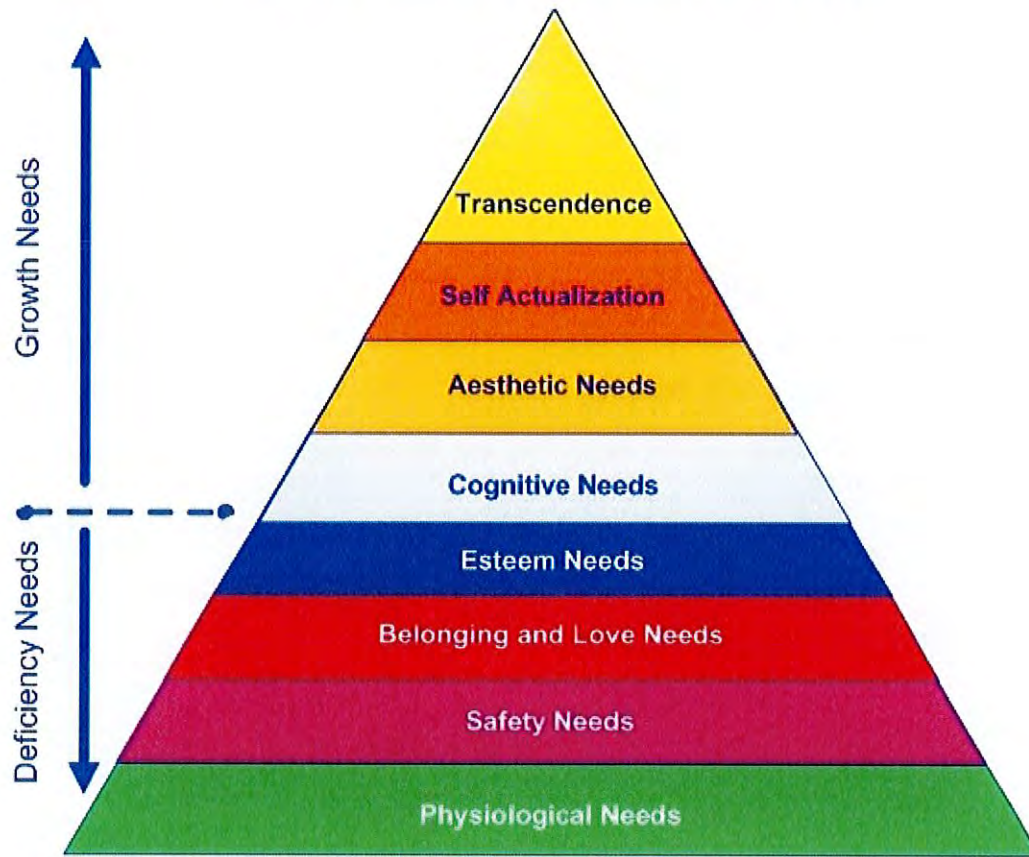
5. *Cognitive needs* - knowledge and understanding, curiosity, exploration, need for meaning and predictability.

6. *Aesthetic needs* - appreciation and search for beauty, balance, form, etc.

7. *Self-actualization needs* - realizing personal potential, self-fulfillment, seeking personal growth and peak experiences.

8. *Transcendence needs* - A person is motivated by values which transcend beyond the personal self (e.g., mystical experiences and certain experiences with nature, aesthetic experiences, sexual experiences, service to others, the pursuit of science, religious faith, etc.).

MASLOW'S MOTIVATION MODEL



Self-actualization

Instead of focusing on [psychopathology](#) and what goes wrong with people, Maslow (1943) formulated a more positive account of human behavior which focused on what goes right. He was interested in human potential, and how we fulfill that potential.

Psychologist Abraham Maslow (1943, 1954) stated that human motivation is based on people seeking fulfillment and change through personal growth. Self-actualized people are those who were fulfilled and doing all they were capable of.

The growth of self-actualization (Maslow, 1962) refers to the need for personal growth and discovery that is present throughout a person's life. For Maslow, a person is always 'becoming' and never remains static in these terms. In self-actualization, a person comes to find a meaning to life that is important to them.

As each individual is unique, the motivation for self-actualization leads people in different directions (Kenrick et al., 2010). For some people self-actualization can be achieved through creating works of art or literature, for others through sport, in the classroom, or within a corporate setting.

Maslow (1962) believed self-actualization could be measured through the concept of peak experiences. This occurs when a person experiences the world totally for what it is, and there are feelings of euphoria, joy, and wonder. It is important to note that self-actualization is a continual process of becoming rather than a perfect state one reaches of a 'happy ever after' (Hoffman, 1988).

Maslow offers the following description of self-actualization:

'It refers to the person's desire for self-fulfillment, namely, to the tendency for him to become actualized in what he is potentially.

The specific form that these needs will take will of course vary greatly from person to person. In one individual it may take the form of the desire to be an ideal mother, in another it may be expressed athletically, and in still another it may be expressed in painting pictures or in inventions' (Maslow, 1943, p. 382–383).

Characteristics of self-actualized people

Although we are all, theoretically, capable of self-actualizing, most of us will not do so, or only to a limited degree. Maslow (1970) estimated that only two percent of people would reach the state of self-actualization.

He was especially interested in the characteristics of people whom he considered to have achieved their potential as individuals.

By studying 18 people he considered to be self-actualized (including Abraham Lincoln and Albert Einstein) Maslow (1970) identified 15 characteristics of a self-actualized person.

Characteristics of self-actualizers:

1. They perceive reality efficiently and can tolerate uncertainty;
2. Accept themselves and others for what they are;
3. Spontaneous in thought and action;
4. Problem-centered (not self-centered);
5. Unusual sense of humor;
6. Able to look at life objectively;
7. Highly creative;
8. Resistant to enculturation, but not purposely unconventional;
9. Concerned for the welfare of humanity;
10. Capable of deep appreciation of basic life-experience;
11. Establish deep satisfying interpersonal relationships with a few people;
12. Peak experiences;
13. Need for privacy;
14. Democratic attitudes;
15. Strong moral/ethical standards.

Behavior leading to self-actualization:

- (a) Experiencing life like a child, with full absorption and concentration;
- (b) Trying new things instead of sticking to safe paths;
- (c) Listening to your own feelings in evaluating experiences instead of the voice of tradition, authority or the majority;
- (d) Avoiding pretense ('game playing') and being honest;
- (e) Being prepared to be unpopular if your views do not coincide with those of the majority;
- (f) Taking responsibility and working hard;
- (g) Trying to identify your defenses and having the courage to give them up.

The characteristics of self-actualizers and the behaviors leading to self-actualization are shown in the list above. Although people achieve self-actualization in their own unique way, they tend to share certain characteristics. However, self-actualization is a matter of degree, 'There are no perfect human beings' (Maslow, 1970a, p. 176).

It is not necessary to display all 15 characteristics to become self-actualized, and not only self-actualized people will display them.

Maslow did not equate self-actualization with perfection. Self-actualization merely involves achieving one's potential. Thus, someone can be silly, wasteful, vain and impolite, and still self-actualize. Less than two percent of the population achieve self-actualization.

Roger's Theory of Self-Actualization

Educational applications

Maslow's (1962) hierarchy of needs theory has made a major contribution to teaching and classroom management in schools. Rather than reducing behavior to a [response in the environment](#), Maslow (1970a) adopts a holistic approach to education and learning.

Maslow looks at the complete physical, emotional, social, and intellectual qualities of an individual and how they impact on learning.

Applications of Maslow's hierarchy theory to the work of the classroom teacher are obvious. Before a student's cognitive needs can be met, they must first fulfill their basic physiological needs.

For example, a tired and hungry student will find it difficult to focus on learning. Students need to feel emotionally and physically safe and accepted within the classroom to progress and reach their full potential.

Maslow suggests students must be shown that they are valued and respected in the classroom, and the teacher should create a supportive environment. Students with a [low self-esteem](#) will not progress academically at an optimum rate until their self-esteem is strengthened.

Maslow (1971, p. 195) argued that a humanistic educational approach would develop people who are “stronger, healthier, and would take their own lives into their hands to a greater extent. With increased personal responsibility for one’s personal life, and with a rational set of values to guide one’s choosing, people would begin to actively change the society in which they lived”.

Critical evaluation

The most significant limitation of Maslow's theory concerns his methodology. Maslow formulated the characteristics of self-actualized individuals from undertaking a qualitative method called biographical analysis.

He looked at the biographies and writings of 18 people he identified as being self-actualized. From these sources, he developed a list of qualities that seemed characteristic of this specific group of people, as opposed to humanity in general.

From a [scientific perspective](#), there are numerous problems with this particular approach. First, it could be argued that biographical analysis as a method is extremely subjective as it is based entirely on the opinion of the researcher. Personal opinion is always prone to bias, which reduces the [validity](#) of any data obtained. Therefore Maslow's operational definition of self-actualization must not be blindly accepted as scientific fact.

Furthermore, Maslow's biographical analysis focused on a biased sample of self-actualized individuals, prominently limited to highly educated white males (such as Thomas Jefferson, Abraham Lincoln, Albert Einstein, William James, Aldous Huxley, Beethoven).

Although Maslow (1970) did study self-actualized females, such as Eleanor Roosevelt and Mother Teresa, they comprised a small proportion of his [sample](#). This makes it difficult to generalize his theory to females and individuals from lower social classes or different ethnicity. Thus questioning the population validity of Maslow's findings.

Furthermore, it is extremely difficult to [empirically test](#) Maslow's concept of self-actualization in a way that causal relationships can be established.

Another criticism concerns Maslow's assumption that the lower needs must be satisfied before a person can achieve their potential and self-actualize. This is

not always the case, and therefore Maslow's hierarchy of needs in some aspects has been falsified.

Through examining cultures in which large numbers of people live in poverty (such as India), it is clear that people are still capable of higher order needs such as love and belongingness. However, this should not occur, as according to Maslow, people who have difficulty achieving very basic physiological needs (such as food, shelter, etc.) are not capable of meeting higher growth needs.

Also, many creative people, such as authors and artists (e.g., Rembrandt and Van Gogh) lived in poverty throughout their lifetime, yet it could be argued that they achieved self-actualization.

Psychologists now conceptualize motivation as a pluralistic behavior, whereby needs can operate on many levels simultaneously. A person may be motivated by higher growth needs at the same time as lower level deficiency needs.

Contemporary research by Tay and Diener (2011) has tested Maslow's theory by analyzing the data of 60,865 participants from 123 countries, representing every major region of the world. The survey was conducted from 2005 to 2010.

Respondents answered questions about six needs that closely resemble those in Maslow's model: basic needs (food, shelter); safety; social needs (love, support); respect; mastery; and autonomy. They also rated their well-being across three discrete measures: life evaluation (a person's view of his or her life as a whole), positive feelings (day-to-day instances of joy or pleasure), and negative feelings (everyday experiences of sorrow, anger, or stress).

The results of the study support the view that universal human needs appear to exist regardless of cultural differences. However, the ordering of the needs within the hierarchy was not correct.

"Although the most basic needs might get the most attention when you don't have them," Diener explains, "you don't need to fulfill them in order to get benefits [from the others]." Even when we are hungry, for instance, we can be happy with our friends. "They're like vitamins," Diener says about how the needs work independently. "We need them all."

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Related Articles

[Carl Rogers](#)

[Humanistic Approach](#)

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Population-Level Health Effects of Involuntary Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities

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IMPORTANCE At least 500 000 people in the US experience homelessness nightly. More than 30% of people experiencing homelessness also have a substance use disorder. Involuntary displacement is a common practice in responding to unsheltered people experiencing homelessness. Understanding the health implications of displacement (eg, "sweeps," "clearings," "cleanups") is important, especially as they relate to key substance use disorder outcomes.

OBJECTIVE To estimate the long-term health effects of involuntary displacement of people experiencing homelessness who inject drugs in 23 US cities.

DESIGN, SETTING, AND PARTICIPANTS A closed cohort microsimulation model that simulates the natural history of injection drug use and health outcomes among people experiencing homelessness who inject drugs in 23 US cities. The model was populated with city-level data from the Centers for Disease Control and Prevention's National HIV Behavioral Surveillance system and published data to make representative cohorts of people experiencing homelessness who inject drugs in those cities.

MAIN OUTCOMES AND MEASURES Projected outcomes included overdose mortality, serious injection-related infections and mortality related to serious injection-related infections, hospitalizations, initiations of medications for opioid use disorder, and life-years lived over a 10-year period for 2 scenarios: "no displacement" and "continual involuntary displacement." The population-attributable fraction of continual displacement to mortality was estimated among this population.

RESULTS Models estimated between 974 and 2175 additional overdose deaths per 10 000 people experiencing homelessness at 10 years in scenarios in which people experiencing homelessness who inject drugs were continually involuntarily displaced compared with no displacement. Between 611 and 1360 additional people experiencing homelessness who inject drugs per 10 000 people were estimated to be hospitalized with continual involuntary displacement, and there will be an estimated 3140 to 8812 fewer initiations of medications for opioid use disorder per 10 000 people. Continual involuntary displacement may contribute to between 15.6% and 24.4% of additional deaths among unsheltered people experiencing homelessness who inject drugs over a 10-year period.

CONCLUSION AND RELEVANCE Involuntary displacement of people experiencing homelessness may substantially increase drug-related morbidity and mortality. These findings have implications for the practice of involuntary displacement, as well as policies such as access to housing and supportive services, that could mitigate these harms.

+ Viewpoint and Editorial

+ Supplemental content

This is Exhibit "C" referred to in the
Affidavit of
DR. AMPARA SERRA
Affirmed Sworn before me this 5th day
of September 2023
A Notary Public/A Commissioner for Oath
in and for the Province of Alberta

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

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More than 500 000 people in the US experience homelessness nightly.¹ After decreasing between 2007 and 2016, estimates of homelessness have steadily increased since 2017.² Approximately two-thirds of people who are chronically homeless³ are unsheltered (ie, lack physical shelter).²

Although local shelters attempt to provide refuge and resources to people experiencing homelessness, shelters alone are inadequate to meet the needs of the population. Although temporary emergency shelter is a vital component of the social safety net, it is not a sufficient substitute for safe and affordable long-term housing.

Across the US, involuntary displacement that forces people experiencing homelessness to regularly relocate from one temporary location to another is common. Involuntary displacement may be operationalized or labeled differently depending on the city. Sometimes referred to as “sweeps,” “clearings,” or “cleanups,” displacement is often done without connecting people to services or housing and without regard for past trauma.⁴ People experiencing homelessness are often forced to disperse away from services, resulting in loss of personal belongings, medications, identification cards, and social support.⁵ Involuntary displacement may disproportionately impact people experiencing homelessness who use nonprescribed drugs⁶ because it can affect access to sterile injection equipment, naloxone, and medications for opioid use disorder (MOUD).^{7,8} Decreased access to support services and life-saving medications may increase overdose risk and death.⁹ This modeling study aimed to better understand the potential long-term health effects of involuntary displacement among unsheltered people experiencing homelessness who inject drugs in 23 US cities.

Methods

Model Description

A closed cohort microsimulation model was developed, validated, and calibrated to simulate the heterogeneous natural histories of injection drug use among people experiencing homelessness in 23 US cities. We sought to estimate the effect of involuntary displacement on overdose and serious injection-related bacterial infections (SIRIs), including infective endocarditis and severe skin and soft tissue infections, which account for substantial burden of the health effects among this population (Figure 1).¹⁰

A simulated individual enters the model and is randomly assigned an age, sex, and history of injection drug use. Among those who have a history of any injection drug use, the model then assigns a current injection status and injection-related behaviors. Injection status and behaviors, in turn, govern risk of overdose and injection-related infections. Individuals progress on a weekly timestep through a series of modules in which they encounter probabilities of SIRI and overdose (referred to as *sequelae*), hospitalization, and outpatient care. An individual's progression through these modules affects the transition probabilities among injection-related health states and the probability of death.

Key Points

Question What are the long-term health effects of involuntary displacement of people experiencing homelessness who inject drugs in US cities?

Findings This simulation modeling study of 23 US cities projects that involuntary displacement of people experiencing homelessness may yield substantial increases in morbidity and mortality over a 10-year period. Involuntary displacement is estimated to worsen overdose and hospitalizations, decrease initiations of medications for opioid use disorder, and contribute to deaths among people experiencing homelessness who inject drugs.

Meaning Ceasing involuntary displacement of people experiencing homelessness may mitigate some health-related harms associated with homelessness.

The model was used to simulate separate cohorts from 23 US cities because these cities participated in the 2018 cycle for the National HIV Behavioral Surveillance (NHBS), which focused on people who inject drugs (NHBS cities are listed in Supplement 1). NHBS is a comprehensive system for biobehavioral surveillance conducted since 2003 among populations with high a prevalence of HIV in annual rotating cycles. For each city, model cohorts were stratified by sex, age, and injection behavior profile (eTable 1 in Supplement 1). Only individuals with current injection drug use were at risk of sequelae. Probabilities of overdose, infective endocarditis, and severe skin and soft tissue infection risk were derived by age, sex, and injection behavior profile for each city. Individuals who developed sequelae had a probability of being hospitalized and treated. Individuals encountered probabilities of linking to outpatient care, which include MOUD with buprenorphine and methadone (eTable 2 in Supplement 1). Linkage to MOUD could happen after a hospitalization for sequelae or via a “background” mechanism. The background mechanism simulated the observation that some individuals link to outpatient addiction care spontaneously and without prior hospitalization.

In the model, individuals in each city faced a risk of death from sequelae as well as from age- and sex-related causes (ie, competing causes of death). The probability of overdose-associated mortality by age, sex, injection behavior profile (assuming intravenous opioid use), and probability of overdose was derived. Infective endocarditis and skin and soft tissue infection were both characterized as untreated, in treatment, or resolved, with mortality risk being lower when characterized as being in treatment or resolved. Probabilities of non-drug-related death from other causes by sex, age, and injection behavior profile were applied.

Model Parameterization and Calibration

A total of 23 separate cohorts were parameterized after calibration (see eTables 4-26 in Supplement 1 for city-specific calibration results); inputs were derived with city-level data wherever possible. Other inputs were derived from national estimates from primary data and published literature when

city-specific data were not available. Parameter source types (eg, city-specific) are summarized in the Table, and eTable 27 in Supplement 1 includes a complete list of sources for each parameter for each city.

City-level data obtained from NHBS¹¹ were used to inform the cohort characteristics. In this survey, people also provided their housing status (eg, homeless in the past 12 months) and cohorts were limited to those who reported homelessness. This meant that the entirety of the cohorts used to inform the model were people experiencing homelessness who had recent (past 12 months) injection drug use or a history of injection drug use. The individuals who reported that they had not injected drugs in the past 12 months were used to inform the “no current use” health state. Those who reported recent or active injection drug use were used to inform the “low frequency” and “high frequency” drug use health state cohorts. City-specific parameter estimates are included in eTable 27 in Supplement 1.

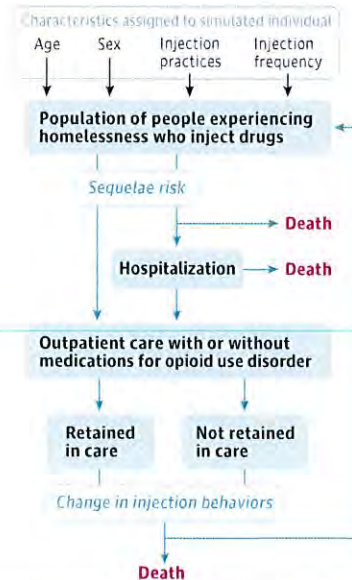
Both city- and national-level sources for overdose were used. We estimated the rates of fatal overdose from 2018 Centers for Disease Control and Prevention WONDER (Wide-ranging Online Data for Epidemiologic Research) data.¹² A combination of nationally representative published literature and NHBS city-specific sources were used to estimate the risk of nonfatal overdose. We used published literature that was not city-specific for SIRI estimates.¹³⁻¹⁶

“Community linkage” was derived from estimates from McLaughlin et al¹⁷ and Krawczyk et al.¹⁸ Based on these previous findings, people experiencing homelessness are approximately 0.46 times as likely as housed individuals to be linked to a health care provider. An assumption was made that all clinicians could prescribe MOUD (buprenorphine), although access to MOUD in the US is likely more limited. As such, a weekly probability of 0.81% linking to a clinician was calculated. MOUD use in 2021 from NHBS city-level data was used to estimate the probability of acceptance conditional on linkage to care.

US age- and sex-adjusted mortality from the National Vital Statistics System¹⁹ was used (with overdose removed) to derive the competing risks mortality. The increased risk of death among people experiencing homelessness was accounted for by using age group-standardized mortality ratios from the study by Nicholas et al.²⁰

The model was deterministically calibrated separately for each city to fit clinically relevant outcomes: percentage of deaths attributable to overdose, 1-year nonfatal overdose, life expectancy, and 6-month retention in MOUD treatment. Data from 2 US cities were used (Boston, MA, and Denver, CO) to develop the calibration target of 25% to 33% of deaths attributable to overdose.^{10,21} City-specific data from NHBS were used to develop the target for the percentage of people experiencing homelessness who experienced a nonfatal overdose in the previous year, which ranged from 15% to 51%. Several sources were used, including a systematic review, to develop a calibration target for mean life expectancy being approximately 50 to 59 years among this population.²²⁻²⁴ Finally, multiple published studies estimated that 6-month MOUD retention among people experiencing homelessness is between 18% and 30%,^{25,26} which is why this range was chosen as a calibration target. These data were

Figure 1. Model Schematic for Natural History of Injection Drug Use and Related Sequelae Among People Experiencing Homelessness



Using the model parameters specified in the Table, a microsimulation of the heterogeneous natural history of injection drug use among people experiencing homelessness was used. The schematic demonstrates how individuals “move through” different modules in the model related to sequelae of injection drug use, health care access, behavioral changes, and mortality. A comprehensive model description is included in Supplement 1.

used to estimate feasible ranges of parameter values and the model was then calibrated within those ranges to fit simulated outputs to observed targets. Simulated values were within 15% absolute error of observed targets.

Model Analyses

The model was used to generate potential health outcomes by 2028 for each city assuming, in the base case, that population was not subjected to continual involuntary displacement. Population-level health outcomes for each city were projected per 10 000 unsheltered people experiencing homelessness, including overdose mortality, SIRIs and SIRI-related mortality, hospitalizations, and initiations of MOUD. Mean per-person health outcomes, including mean number of total overdoses (fatal and nonfatal) and mean life-years lived over the 10-year period, were also projected. The population modeled was people experiencing homelessness who inject drugs or who have ever injected drugs.

A counterfactual simulation for each city was performed to assess the association of “continual involuntary displacement” on health outcomes. The policy of continual involuntary displacement was modeled as having a persistent risk of being forced to relocate with a disruption in health services. Operationally, in the model, this was simulated by a change in overdose probability, MOUD treatment initiation, and receptive syringe sharing. Because these are changes to individual probabilities, continual involuntary displacement was modeled such that everyone in the model was at risk of

Table. Model Parameters, Data Type Used to Inform Parameters, and Sampling Distributions for Probabilistic Sensitivity Analyses

Parameters	Data types ^a	PSA distribution ^b
Cohort characteristics among people experiencing homelessness who inject drugs		
Background mortality	National homeless, US Census	
Infection prevalence based on injection frequency	National inject, primary national inject, US Census	
Injection frequency stratified by age	City	
Proportion male	City	
Male age (mean/SD)	City	Normal
Female age (mean/SD)	City	Normal
Minimum age (mean/SD)	US Census	Normal
Needle sharing prevalence	City	Uniform
Skin cleaning prevalence	City	Uniform
Sequelae of drug use parameters		
Combined overdose prevalence (high)	National inject, national homeless, primary national homeless	Uniform
Combined overdose prevalence (low)	National injection, national homeless, primary national homeless	Uniform
Fatal overdose prevalence	National inject, national homeless	Uniform
IE prevalence	National inject	Uniform
Overdose history multipliers	National inject	Uniform
Infection history multiplier	National inject	Uniform
Mortality, untreated SSTI	National inject	Uniform
Mortality, inpatient SSTI	National inject	Uniform
Mortality, untreated IE	National inject	Uniform
Mortality, inpatient IE	National inject	Uniform
Mortality, inpatient overdose	National inject	Uniform
Inpatient parameters		
Inpatient linkage (SSTI)	National inject	Uniform
Inpatient linkage (IE)	National inject	Uniform
Inpatient linkage (overdose)	National inject	Uniform
Discharge against medical advice	National inject	Uniform
Inpatient SSTI duration (mean/STD)	National inject	
Inpatient IE duration (mean/SD)	National inject	
Outpatient parameters		
Linkage from inpatient to outpatient, with MOUD	National inject	Uniform
Background linkage to outpatient care	National inject	Uniform
MOUD acceptance	City, primary national homeless	Uniform
Unlinkage from care, with MOUD	National inject, national homeless	Uniform
Unlinkage from care, without MOUD	National inject, national homeless	Uniform
Transition probabilities		
Injection frequency transition probabilities	National inject, national homeless, primary national inject	Uniform
Needle sharing transition probabilities	National inject, primary national homeless	Uniform

Abbreviations: IE, infective endocarditis; MOUD, medications for opioid use disorder; SSTI, skin and soft tissue infection.

^a Data types were defined as follows: city, primary data from 2018 National HIV Behavioral Surveillance data on people who inject drugs and people experiencing homelessness in the last year from each of the 23 US cities being analyzed; national inject, data specific to people who inject drugs from published literature; national homeless, data specific to people experiencing homelessness from published literature; primary national inject, primary data from cohort studies, randomized clinical trials, and case-control studies about people who inject drugs processed to develop input parameters; primary

national homeless, primary data from cohort studies, randomized clinical trials, case-control studies about people experiencing homelessness processed to develop input parameters; and US Census, primary data from US Census processed to develop input parameters.

^b Probabilistic sensitivity analysis (PSA) was performed to characterize parameter uncertainty and create credible intervals for outcome estimates. The model was programmed to utilize normal, uniform, and log-normal distributions for PSA. Parameters with empty cells in the PSA distribution column were not included in the probabilistic sensitivity analysis.

displacement, but the experience of an individual was unique. This did not mean that displacement happened on a weekly basis, but that probabilities were applied to individuals based

on the cycle length (weekly). These changes did not abate over time. Empirical data collected from people experiencing homelessness who inject drugs in 2 cities in which data were

available (Los Angeles and San Francisco, California) were used to estimate the changes to model parameters to reflect the association of outcomes with displacement (eTable 3 in Supplement 1).^{9,27} For example, people who reported being forcibly displaced in the past 30 days had an adjusted odds ratio (aOR) of 2.50 (95% CI, 1.28-4.90) for nonfatal overdose compared with people who had not been displaced in the past 30 days. This aOR was then applied as a multiplier to the base case overdose probabilities. Similarly, people displaced in the past 30 days were less likely to initiate MOUD than people without recent displacement (aOR, 0.62 [95% CI, 0.42-0.89]). This was applied as a multiplier to the probability of initiation of MOUD. Finally, people who were displaced in the past 30 days were at higher odds of receptive needle/syringe sharing compared with people who were not displaced (aOR, 2.26 [95% CI, 1.18-4.32]). This was applied as a multiplier to the transition probabilities that characterize needle/syringe sharing in the model. Each of these multipliers was applied to the probabilities for each city and the simulation was run for 10 years. These outcomes were compared with those of the “no continual displacement” scenario and the percent change was calculated.

To estimate the potential contribution of continual displacement to mortality, the no displacement model fits for each city were run for 10 years, from 2019 to 2028, with each being compared with the counterfactual model scenario over that period. The population-attributable fraction (PAF) of displacement was calculated by comparing the number of deaths from all causes occurring over 10 years as

$$\text{PAF} = 100 - 100 \times (\text{deaths in base case/deaths in counterfactual}).$$

Sensitivity analyses were also performed on outcomes for a 5-year period.

Sensitivity Analyses

Because there was uncertainty regarding the empirical data used to inform the population cohorts and model parameters, particularly those related to the outcomes of displacement, probabilistic sensitivity analyses were performed to generate quantitative estimates of uncertainty in select simulated outcomes. For each probabilistic sensitivity analysis, 1000 simulations were performed on a cohort of 1000 people. Displacement parameters were included in the probabilistic sensitivity analyses. For each of the 23 cities, based on unpublished results and expert opinion, the displacement parameters varied through a range of 0.5 to 2.0 times the base case input and drew from a uniform distribution; 99.5% credible intervals (CrIs) were generated using probabilistic sensitivity analyses.

Because the OR estimates are crucial to the study findings, a number of deterministic sensitivity analyses on the displacement parameters were performed because displacement practices across the US may vary. First, for each city, scenarios were modeled in which 1 of the 3 displacement parameters—overdose risk, syringe sharing probability, or MOUD—was unchanged with displacement, while the other 2 were affected by displacement. Additionally, for each city, a 3-way deterministic sensitivity analysis was performed using

the upper and lower bounds of the 95% CIs from the study by Chiang et al⁹ on the aORs that were used for the primary analysis. All 3 parameters were varied simultaneously for a “worst-case” and a “best-case” scenario. For the best-case scenario, lower bounds for overdose and syringe sharing parameter estimates and the upper bound for MOUD initiation were used. For the worst-case scenario, the upper bound for overdose and syringe sharing estimates and the lower bound for MOUD initiation were used.

The Consolidated Health Economic Evaluation Reporting Standards guided writing of this article (eTables 58-59 in Supplement 1).

Results

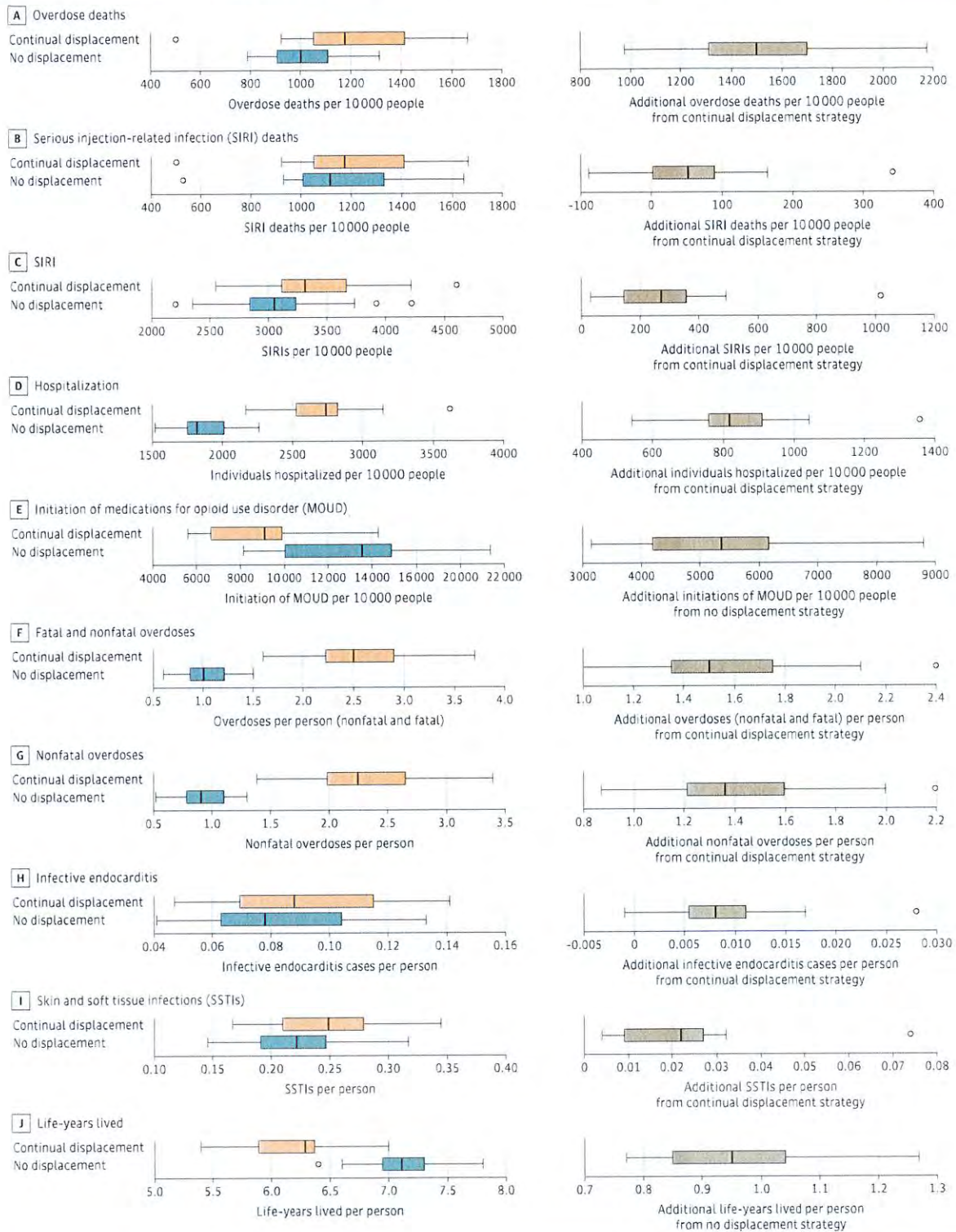
In the no displacement strategy over a 10-year period, the model predicted between 795 (99% CrI, 0-4198) and 1313 (99% CrI, 0-7433) overdose deaths per 10 000 unsheltered people experiencing homelessness who inject drugs, depending on the city. Furthermore, the model predicted 2204 (99% CrI, 637-5160) to 4220 (99% CrI, 597-5754) SIRIs and 528 (99% CrI, 70-1085) to 1647 (99% CrI, 0-2085) SIRI-related deaths per 10 000 unsheltered people experiencing homelessness who inject drugs, depending on the city. Also, per 10 000 unsheltered people experiencing homelessness who inject drugs, there was an estimated 1520 (99% CrI, 1089-3170) to 2263 (99% CrI, 826-4742) people hospitalized by city and between 7700 (99% CrI, 5319-8779) and 21731 (99% CrI, 14 512-24 778) initiations of MOUD by city.

In the no displacement strategy over the 10-year period, the mean estimated number of total overdoses varied by city, ranging from 0.6 (99% CrI, 0.04-1.4) to 1.5 (99% CrI, 0-4.2) per person. The mean estimated nonfatal overdoses ranged from 0.52 (99% CrI, 0.05-1.1) to 1.3 (99% CrI, 0-3.5) per person. Depending on the city, individuals lived between 6.4 (99% CrI, 3.0-7.9) and 7.8 (99% CrI, 5.9-8.6) years of the possible 10 years.

At the population level, the model predicted between 1851 (99% CrI, 1163-7958) and 3379 (99% CrI, 1715-8676) overdose deaths per 10 000 unsheltered people experiencing homelessness who inject drugs across cities for the continual displacement strategy (compared with 795 to 1313 per 10 000 in the no displacement strategy). The mean number of total overdoses per person in each city ranged from 1.6 (99% CrI, 0-3.8) to 3.7 (99% CrI, 0.5-6.0). Unsheltered people experiencing homelessness who inject drugs lived a mean of 5.4 (99% CrI, 0.6-6.7) to 7.0 (99% CrI, 4.4-8.1) years of the possible 10 years in the no displacement strategy (eTables 28-50 in Supplement 1).

The ranges of outcomes for each strategy as well as the differences between the 2 strategies are shown in Figure 2. Differences delineated by city are included in eFigure 1 in Supplement 1. At the population level, the model predicted between 974 and 2175 additional overdose deaths per 10 000 people experiencing homelessness who inject drugs, depending on the city, in the continual involuntary displacement strategy compared with no displacement. In 17 of 23

Figure 2. Ten-Year Modeled Clinical Outcomes for "No Displacement" and "Continual Involuntary Displacement" Strategies



Plots on the left show the ranges of the absolute numbers for each clinical outcome for the "no displacement" and "continual involuntary displacement" strategies and plots on the right show the absolute differences for each clinical outcome between the 2

strategies (medians noted with black lines). Boxes denote first to third quartiles. Whiskers extend to extreme observed values with 1.5 × the IQR of the nearer quartile. Circles denote outside values. An individual could have more than 1 MOUD initiation.

cities, SIRIs and SIRI-related mortality were estimated to be higher in the continual involuntary displacement strategy compared with the no displacement strategy (eFigure 1 in Supplement 1). In those cities with decreases in SIRIs and SIRI-related mortality, the model predicted particularly large increases in overdose-related mortality, which likely account for the SIRI decreases (ie, people die before they get infections). Compared with no displacement, the number of people hospitalized in each city was predicted to be higher in the continual displacement strategy, while initiations of MOUD were lower. eTable 51 in Supplement 1 denotes the percent differences between the 2 strategies, which are relative differences calculated as follows.

$$\frac{(\text{Outcome}_{\text{no displacement}} - \text{Outcome}_{\text{continual displacement}})}{((\text{Outcome}_{\text{no displacement}} + \text{Outcome}_{\text{continual displacement}})/2)} \times 100$$

Using this equation, the model predicted between a 71% and 94% within-city increase in overdose mortality in the continual involuntary displacement strategy compared with no displacement.

The model estimated potential all-cause mortality PAF estimates for all 23 cities. Continual involuntary displacement could contribute up to 24.4% (99% CrI, 22.9%-27.5%) of deaths among unsheltered people experiencing homelessness who inject drugs over a 10-year period compared with no displacement (eFigure 2 in Supplement 1).

Results of the deterministic sensitivity analyses in which displacement parameters were varied did not qualitatively change the findings (eTables 52-56 and eFigures 3-7 in Supplement 1). Changing the time period to 5 years (eTable 57 and eFigure 8 in Supplement 1) worsened SIRI mortality across the cities, but did not otherwise qualitatively change outcomes. The probabilistic sensitivity analyses demonstrated wide variation in the possible results (eTables 28-50 and eFigure 2 in Supplement 1), but all in the direction of worse health outcomes predicted for displacement.

Discussion

Based on these results, continual involuntary displacement of unsheltered people experiencing homelessness who inject drugs was associated with increased overdose and SIRI-related mortality and decreased 10-year life expectancy by 2028. Overall, the PAF of continual displacement to all-cause mortality among unsheltered people experiencing homelessness who inject drugs may reach as high as 25% by 2028.

As in all modeling studies, these estimates should serve as a broad guide rather than as a predictive tool and can be used to inform policy discussions and future research to reduce harm among this vulnerable population. It was projected that continual involuntary displacement could be associated with one-fourth of all deaths among people experiencing homelessness who inject drugs by 2028. Given the limitations of the underlying data used to inform this projection, it is not possible to know the actual effect of displacement in the next

10 years given the changing sociopolitical landscape, environmental conditions, and health care system.

Displacement also comes with costs.^{28,29} The main cost drivers are “encampment clearance,” “encampment prevention,” “outreach and housing navigation,” labor costs, and additional health care hospitalizations, which are incurred largely by public insurance, including Medicaid. According to a 2015 analysis,³⁰ a hospitalization for injection-related infective endocarditis in Miami may cost up to \$180 000 and a hospitalization for skin and soft tissue infection may cost up to \$100 000. In that same cohort of 349 people, over the course of 1 year, there were 35 cases of injection-related infective endocarditis and 170 severe skin and soft tissue infections among people experiencing homelessness who inject drugs. Using model estimates of the current study, displacement in Miami could result in an additional \$1.6 million in SIRI-related hospitalization costs over the next 10 years in addition to the costs of the sweeps themselves.

Limitations

This study has several potential limitations related to data quality and availability, as well as uncertainty, inherent in modeling studies. First, there are several assumptions on which the analysis is based, each of which could introduce biases. It was assumed that some parameter inputs were city specific, whereas others were more generalizable. Also, the empirical data used to estimate the changes to displacement model parameters were derived from a small subset of cities and might not be reflective of all cities included in the model. The population from which the displacement parameters were drawn is not necessarily representative of all people experiencing homelessness who inject drugs in the US. Second, the nature of the inputs to the model make it difficult to prove causality rather than association. An attempt to address this limitation was made by performing both deterministic and probabilistic sensitivity analyses. However, available data on forced displacement are limited. Although data are imperfect and the absolute effect of displacement policies are uncertain, no feasible scenario was found in which displacement was beneficial, or even neutral, to health outcomes.

Third, some of the associated effects on overdose reflect the fact that displaced individuals were also less likely to be receiving MOUD. Both outcomes were modeled independently, which may have led to an overestimation. It was also assumed that displacement did not abate over the course of the simulation. In reality, individuals may go through periods of stability in which displacement is not a threat, either because they are temporarily housed, have received support services, or have found a stable outdoor space. In such cases, the effect of displacement may have been overestimated. The model did not capture potential health outcomes other than overdoses and SIRIs, nor did it capture costs or quality of life. The analysis may be limited in that it did not stratify outcomes by race, even though there are increasing disparities in homelessness, overdoses, and SIRIs by race.^{1,16,31} Future work should stratify outcomes by race, particularly because of the social and structural context in which different racial groups experience homelessness and drug use.

Fourth, this was a closed cohort simulation that assumed that individuals who were homeless at the beginning of the simulation remained homeless throughout. This is a strong assumption that may bias the results toward worse outcomes. However, this is likely balanced with the fact that the model did not account for people who became newly homeless or newly initiated drug use. A manual calibration approach was used because the model was not structured, nor did it have the computational ability, to undertake an optimized calibration approach (eg, joint distribution sampling). As such, bias may have been introduced in the analysis, but a standardized approach to the manual calibration was developed to minimize such bias (Supplement 1). Fifth, the probabilistic sensitivity analyses showed that under different assumptions about parameter values, some of the city-based outcomes had wide ranges, with estimates for some outcomes in which CIs overlapped between the status quo and continual displacement sce-

narios. This draws attention to the need for better data and additional research on this vulnerable population and on how to improve health outcomes. In the absence of high-quality data, modeling studies such as this can provide information on the ranges of possible risks that can be useful to decision-makers considering such policies and potential interventions to mitigate risk.

Conclusions

Involuntary displacement of people experiencing homelessness may substantially increase drug-related morbidity and mortality. These findings have implications for the practice of involuntary displacement, as well as policies such as access to housing and supportive services that could mitigate these harms.

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Affidavit of
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Affirmed/ Sworn before me this 5... day
of September 2023.....
.....
A Notary Public/A Commissioner for Oath
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My Commission Expires January 1, 2024
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welcome home

The Rise of Tent Cities in the United States

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC
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Welcome Home
The Rise of Tent Cities in the United States

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National Law Center on Homelessness & Poverty

Allard K. Lowenstein International Human Rights Clinic,
Yale Law School

March 2014

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The National Law Center on Homelessness & Poverty is committed to solutions that address the causes of homelessness, not just the symptoms, and works to place and address homelessness in the larger context of poverty.

To this end, it employs three main strategies: impact litigation, policy advocacy, and public education. It is a persistent voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. It also produces investigative reports and provides legal and policy support to local organizations.

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The Allard K. Lowenstein International Human Rights Law Clinic is a legal clinic at Yale Law School that undertakes projects on behalf of human rights organizations and individual victims of human rights abuse.

The goals of the Clinic are to provide students with practical experience that reflects the range of activities in which lawyers engage to promote respect for human rights, to help students build the basic knowledge and skills necessary to be effective human rights lawyers and advocates, and to contribute to efforts to protect human rights through valuable, high-quality assistance to appropriate organizations and individual clients.

To that end, the Clinic undertakes a wide variety of projects every year, including fact-finding, drafting reports, amicus briefs, and legal manuals, submissions to various international human rights bodies, and other kinds of human rights advocacy.

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Executive Summary

This report, a joint effort of the Allard K. Lowenstein International Human Rights Clinic at Yale Law School and the National Law Center on Homelessness & Poverty (“the Law Center”), documents the rise of homeless encampments and “tent cities” across the United States and the legal and policy responses to that growth.

Because of the economic recession and the financial and mortgage foreclosure crises, homelessness has increased and intensified in the United States over the past several years. According to the U.S. Department of Housing and Urban Development, from the beginning of the recession in 2007 through 2010, family homelessness has increased by 20%, and the U.S. Department of Education reported that over a million schoolchildren were homeless in the 2011 to 2012 school year—close to a 75% increase since 2007. At the same time, there have been increasing reports of homeless encampments emerging in communities across the country, primarily in urban and suburban areas and spanning states as diverse as Hawaii, Alaska, California, and Connecticut. Our media survey of news reports from 2008 to July 2013 documents over 100 tent communities in 46 of 50 states and the District of Columbia.

Homeless encampments often reflect the lack of adequate housing or shelter in the community. Our research indicates that in addition to the simple lack of available beds, the shelter system often does not meet the needs of homeless individuals, especially over the longer term. For example, inability to accommodate couples; requiring families to separate; safety concerns; restrictions on storing belongings; and opening and closing times that conflict with work schedules can deter individuals and families from shelters. In some instances, tent cities can offer individuals and families autonomy, community, security, and privacy in places where shelters have not been able to create such environments.

Municipalities have responded to this trend in various ways. In eight of the surveyed camps, municipalities legalized the camps and allowed occupants to build more permanent structures in place of tents, with another three moving in that direction. Ten camps had at least a semi-sanctioned status, meaning that although not formally recognized, public officials were aware of the encampments and were not taking active steps to have them evicted. In most cases, however, municipalities have chosen to shut down camps without providing alternative housing or shelter, often arresting residents and destroying their property in the process.

With this report, we examine a few representative tent cities with the objective of illuminating the factors giving rise to their creation, the stories of their inhabitants, and the ways in which communities have responded. Given existing documentation of West Coast encampments, we focus primarily on East Coast and Southern tent cities—in particular, those located in Providence, Rhode Island; Lakewood,

New Jersey; New Orleans, Louisiana; and St. Petersburg, Florida. We also review the growing body of domestic and international law affirming the human right to housing, including the right not just to shelter, but to housing that is decent and affordable. While maintaining that the existence of tent cities itself reflects a severe lack of affordable housing—and thus a violation of the human right to adequate housing—we find that when adequate housing or shelter is not available, forced evictions of tent communities may violate human rights, and may also violate principles of domestic law. We end with several recommendations for best practices in dealing with tent cities and mitigating homelessness, including providing assistance to those living in tent cities and facilitating their transition to permanent housing.

Case Studies Our findings are detailed in the body of the report. The following is a brief summary:

We traveled to four locations to interview residents and former residents of tent cities, as well as homeless advocates, attorneys, service providers, and local officials working on homelessness issues.



Providence, RI

Two large tent cities emerged in downtown Providence between 2009 and 2010. “Hope City,” was founded by a homeless organizer, John Joyce, and a Brown University student, Megan Smith, in January 2009, initially to draw attention to the lack of available and accessible shelter. It grew to around 80 residents; some had been turned away from shelters because there were no beds available; others had been turned away or found ineligible due to substance abuse, behavioral, or mental health issues; and some were couples who would have been separated in the shelter system. Although Hope City provided a certain degree of autonomy and community to its residents, it had problems with safety and security. Camp Runamuck was started by a few homeless couples who began pitching tents in a park and eventually grew to about 100 residents. It had an official charter and a firm leadership structure; its residents do not appear to have faced the same safety and security issues that plagued Hope City.

Although both Camp Runamuck and Hope City received positive media attention and a flood of donations, the City persisted in efforts to remove the tent cities, eventually succeeding in evicting both encampments from their properties and obtaining injunctions to prevent residents from settling elsewhere. The City also passed an ordinance banning camping on city grounds. Nevertheless, it appears that in the wake of the publicity generated by the tent cities, the situation improved. A particular success is a Housing First program, established in 2009 and run by Riverwood Mental Health Services. The program places homeless individuals in permanent supportive housing, offering wraparound services including employment, mental health counseling, and substance abuse treatment, without forcing residents to comply with

particular programs as a condition of housing. Since the disbanding of Hope City and Camp Runamuck, most of the encampment residents have been housed. In June 2012, advocates were successful at the state level in passing a Homeless Bill of Rights – the first of its kind in the country – prohibiting discrimination against homeless persons, which may help to counter negative local responses. However, broader concerns about affordable housing and homelessness remain: the fair market rent for a one-bedroom apartment in Providence is over \$800 per month, essentially requiring individuals to be in a full-time job earning at or above \$19 per hour in order to be able to afford rent payments.



Lakewood, NJ

In a wooded area just off a side road in Lakewood, New Jersey, about seventy people have made their home. Tent City was started by Minister Steve Brigham in 2006, when a man asked the minister for help because he was unable to pay his rent and was about to lose his home. The encampment houses close to 100 individuals who asked Minister Steve for help, and even local police and social workers have sometimes referred homeless individuals to the encampment. Residents expressed their appreciation for the autonomy, security, and sense of community the camp provides.

Ocean County, of which Lakewood is a part, is one of the only counties in New Jersey without a shelter system. Housing is expensive in Lakewood, and most local jobs are very low-wage. Although the response by local community members to Tent City has largely been supportive, Lakewood City brought a lawsuit in state court seeking to evict Tent City residents from the woods under a New Jersey ejectment statute. On January 6, 2012, a New Jersey Superior Court denied Lakewood's motion for a court order allowing it to dismantle Tent City. In April of 2013, Lakewood and Tent City reached a settlement, under which Lakewood dismissed its charges concerning code violations and agreed that Tent City's current residents may not be ejected unless it provides them safe and adequate housing for a full year. Lakewood has also agreed to provide basic municipal services to Tent City residents until they depart.



New Orleans, LA

Between 2007 and 2011, there were three tent cities in downtown New Orleans, each different in size and nature. The Duncan Plaza tent city, while serving as a refuge for many homeless and disenfranchised people in the wake of Hurricane Katrina, also had an organizing element which coalesced into a group called Homeless Pride. The nearby Canal-Claiborne tent city grew following the disbandment of the Duncan Plaza tent city in late 2007; unlike Duncan Plaza, it lacked security and any organizing authority, leading to harmful health, sanitation, and safety conditions. It was closed in July 2008. The Calliope Street homeless camp emerged most recently and included semi-permanent homeless residents as well

as temporary residents coming from the overflow of the New Orleans Mission. At their peak, each homeless camp housed between 100 and 300 homeless residents.

While there continue to be small, informal encampments in and around the Greater New Orleans area, service providers and the City of New Orleans attempted to move residents in all three large camps to Permanent Supportive Housing (PSH). In the case of the Duncan Plaza and Canal-Claiborne tent cities, this move was part of an unprecedented relocation initiative spearheaded by UNITY of Greater New Orleans. The recent attempt to dismantle the Calliope Street homeless camp was led by the City of New Orleans as part of a new homelessness initiative. The city closed the Calliope Street encampment in November, 2012. Almost all of the remaining fifty-five residents received shelter. In a press release, the city said it would fence off the area to prevent the encampment's return. However, news reporting from early 2013 indicated that homeless individuals were returning to the area. The emphasis placed on creating over 400 new PSH units by both service providers and city officials was largely successful in positively addressing the immediate needs of those in the encampments, but many more homeless persons who were not in the organized encampments remain in need.



St. Petersburg/Tampa, FL

Since 2003, homelessness has increased steadily in St. Petersburg and surrounding Pinellas County. In the 2011 Point-in-Time count, County officials documented 5,887 homeless individuals. According to research by the Pinellas County Health and Human Services and University of South Florida, fifty-five percent of the homeless population cited the lack of affordable housing as their most important unmet need, higher than statewide averages.

From 2003 to 2006, homeless persons increasingly gathered in the downtown St. Petersburg area, and began to form various communities. In early 2006, the City of St. Petersburg sanctioned the creation of one temporary “tent city” in a lot adjacent to the St. Vincent de Paul shelter. While this arrangement lasted for several months, it was unable to accommodate the numbers of St. Petersburg’s homeless population, and additional tent cities were founded without official sanction. During this time, economic conditions in Florida began to decline and officials feared that homelessness would increase significantly and overwhelm shelter capacity.

In late December 2006, homeless individuals, many of who were working full-time, formed an impromptu tent city, “Operation Coming Up,” as an act of protest directed at the municipal authorities’ failure to provide adequate shelter. It was disbanded by the city, only to be replaced by several more tent cities in the downtown area. In an incident that was caught on videotape and publicized widely on the internet and in the national media, on January 19, 2007, local law enforcement dismantled one of the new tent cities by force, slashing and seizing at least twenty tents.

Following the slashing incident, two sanctioned tent city alternatives were established. The first, Pinellas Hope, is an institutionalized tent city and dry shelter run by Catholic Charities. It has a capacity of about 250 tents, with permanent housing units constructed on the periphery. The second, Safe Harbor, is a wet shelter, meaning that individuals do not have to be sober in order to enter. It includes an outdoor camping space and indoor dorm-like lodgings, and is strictly administered by local law enforcement and correctional officials. It is located in a converted minimum-security jail annex and serves as both a shelter and a jail diversion program for homeless persons, and has been criticized for jail like conditions by local advocates.

Although these options provide some degree of services not available at the time of the forcible evictions in 2007, there are still numerous ordinances that criminalize survival activities in Pinellas County, and suitable alternative housing options to tent cities remain elusive.

Legal Standards



A survey of relevant international and regional law indicates that the right to housing is well-established in international law, both directly and as a component of the right to life, the right to due process, the right to property and privacy, the right to nondiscrimination, the right to freedom of movement and choice of residence, the right to access public places and services, the right to be free from cruel, inhuman, and degrading treatment, and the right to services for disabled and mentally ill persons.

Domestically, some federal courts have found that the First, Fourth, Fifth, Eighth, and Fourteenth Amendments protect the rights of homeless individuals to perform survival activities in public spaces where no alternatives are provided; the rights of homeless individuals not to be deprived of their liberty or property without due process of law; the due process rights of homeless individuals to travel; and their rights to be free from cruel and unusual punishment. Additionally, in April 2012, the U.S. Interagency Council on Homelessness issued a report on constructive alternatives to the criminalization of homelessness recognizing both constitutional

and international treaty standards as potentially applicable to conditions that criminalize the basic survival activities of homeless persons. At the state level, the record is mixed in protecting homeless persons from eviction or harassment in tent communities, but some important precedents using principles of estoppel, unclean hands, and necessity exist.

Finally, comparative examples—including India, South Africa, Colombia, and Canada—illustrate how U.S. courts could interpret the right to housing, the right to life, the right to travel, and the right to due process if they were to seek conformity with universal human rights standards. Courts in these countries have interpreted constitutional protections similar to our own in line with human rights standards to include the right to shelter oneself in the absence of suitable alternatives and the right to be protected from eviction from temporary encampments or squats into shelter-less homelessness.

Summary Recommendations

Extrapolating from our fieldwork and interviews with tent city residents, homeless individuals, advocates, and community officials, we have collected the following recommendations, incorporating various best practices we witnessed and that were reported to us:

- Affirm and implement the human right to housing by increasing the availability of affordable, safe, high-quality housing.
- Work constructively with tent city encampments to support viable temporary solutions.
- Repeal or stop enforcing counterproductive municipal ordinances and state laws that criminalize homelessness; pass Homeless Bills of Rights in accordance with human rights standards.
- Prioritize the autonomy and dignity of homeless individuals in the provision of shelter and placement in affordable housing.
- Adopt the Housing First model wherever possible.
- Support innovative entrepreneurial education and employment programs for persons experiencing homelessness.
- Recognize and provide treatment for the psychological causes of homelessness, including the “trauma histories” that often result in diagnosable mental illnesses.

In general, tent cities are a result of the absence of other reasonable options — and from violation of the right to adequate housing. As such, they should never substitute for permanent housing or community investment in satisfactory long-term solutions. However, where there are insufficient alternative housing facilities, municipalities should work together with tent city residents in a manner that prioritizes the autonomy and dignity of homeless individuals and allows them to have a voice in the process. Rather than viewing tent cities as a threat to public safety, communities should view self-organization by homeless persons as an opportunity to provide services and to address the root causes of homelessness and guarantee the human rights of all their residents.

Introduction

Recent years have seen a marked increase in homelessness. In 2007, the Law Center estimated that, about 3.5 million people, among them 1.35 million children, were likely to experience homelessness.¹ Those figures have grown in the wake of the recent fiscal and foreclosure crisis. According to a 2013 report by the National Center on Homeless Education, the number of homeless children identified by schools has skyrocketed, increasing by almost 75% since the beginning of the economic crisis in 2007.² The National Alliance to End Homelessness reports that a majority of states saw an increase in their homeless populations, with rises in family homelessness reported at about four percent.³ Nearly four in ten homeless people were living on the street, in a car, or in other places not intended for human habitation.⁴ The report found worsening conditions in a study of four economic indicators that affect homelessness: housing affordability for the poor, unemployment, poor workers' income, and foreclosure status.⁵

A 2012 survey by the U.S. Conference of Mayors reached similar conclusions. The survey found that between 2011 and 2012 the majority of cities surveyed experienced a seven percent increase in homelessness, with an eight percent increase in homeless families.⁶ Survey cities also reported that an average of seventeen percent of homeless persons needing assistance did not receive it.⁷ In addition, sixty percent of survey cities expected an increase in the number of homeless families and fifty-six percent expected an increase in the number of homeless individuals.⁸

By contrast, only 12.5 percent of cities expected resources to provide emergency shelter to increase, and 58.5 percent of survey cities expect the resources to *decrease*.⁹ By one recent projection based on increased poverty and future economic trends, homelessness could increase by five percent in the next three years.¹⁰

The U.S. Department of Education, which uses a broader definition of homelessness that includes families who have lost their homes but are staying temporarily with friends or family or in motels due to economic hardship, has seen even greater increases. For the first time in the 2010-2011 school year, the number of homeless children identified by schools topped 1 million, and this number increased an additional ten percent in 2012.¹¹ This represents a twenty-four percent increase over the past three years, with ten states reporting more than a twenty percent increase in the last year.

Against this backdrop, media outlets have reported on the emergence of homeless encampments across the United States.¹² In order to better understand and analyze the extent and nature of these encampments, the National Law Center on Homelessness & Poverty and the Allard K. Lowenstein International Human Rights Clinic undertook to conduct a national survey of tent cities across the U.S., as well as in-depth case studies of four recent or currently existing encampments on the East Coast and in the Southern states.¹³ In each of our case studies, we have

attempted to elevate the voices of homeless or formerly homeless persons directly affected by the policies on tent cities, as well as those of service providers, city officials, and other advocates working with these populations. Our findings are detailed in this report.

While individuals may “choose” to live in an encampment, it is our collective choices as a society that force this choice due to failure to create adequate affordable housing solutions or even the basic safety net of adequate shelters.¹⁴ Our interviews with tent city residents and those who work with them suggest that the following factors tend to contribute to homeless individuals’ recourse to tent cities or encampments:

- A general lack of availability of shelter space compared to the number of homeless individuals in need of shelter;
- Inadequacies with the shelter system in certain locations, including safety concerns, a lack of a sense of community or participation, and logistical problems that hamper homeless individuals’ ability to seek employment or to carry out daily life activities;
- A pattern of criminalizing behaviors, such as public urination and sleeping in public, that homeless individuals engage in of necessity, because of their lack of access to shelter, with enforcement usually focused on driving homeless individuals out of the central city or other highly visible areas;
- An approach to the problem of homelessness focused not on solving the problem of homelessness but instead aimed largely at decreasing the visibility of homeless individuals and communities;
- A lack of attentiveness by service providers and state and local governments to the participation of homeless individuals in creating the solutions that are offered to them;
- A lack of political will to devote sufficient resources to addressing the problem in a long-term, sustainable manner, and a focus instead on short-term solutions that take homeless people off the streets but are not responsive to the needs of homeless people themselves or, indeed, to longer term community interests.

Against this backdrop, encampments and tent cities have emerged as a means of self-help for homeless individuals to survive and find shelter, safety, and a sense of community.

Ultimately, the solution to the proliferation of encampments across the United States is the provision of affordable housing. Housing is a fundamental prerequisite to stability, employment, self-sufficiency, health, mental health, and self-development. Federal, state, and local governments should prioritize solutions to homelessness and devote sufficient resources to provide homeless individuals with

permanent affordable housing. In the meantime, rather than attempt to disrupt the solution of last resort that homeless individuals have created for themselves, cities should work together with residents of tent cities and encampments to develop workable temporary solutions while working for sustainable, lasting solutions centered on housing.

The report begins in Section I with a short summary of the results of our national survey of new reports documenting tent cities across the country. The full table of collected survey data summarized in Section I is included as Appendix I. Section II contains case studies of recent or currently existing tent cities in four locations: Providence, Rhode Island; Lakewood, New Jersey; St. Petersburg, Florida; and New Orleans, Louisiana. Section III sets out international, regional, domestic, and comparative legal standards relevant to the rights of homeless individuals living in encampments where no alternative accommodations are available. Section IV provides recommendations for appropriate responses to the emergence of tent cities across the United States.

Methodology

This report was researched using a combination of desk research and fieldwork. The analysis is largely qualitative.

The media survey of homeless encampments focused on a period from early 2008 to April 2012. This national survey was conducted through extensive Internet searches (Google, Lycos, Yahoo). Search terms utilized included “Tent City” and “Homeless Camp” together with the name of the particular state being searched. Once a potential encampment was identified, additional searches using terms found in the articles were used to gather further information. Searches focused on news articles from 2008 onwards. Homeless camps that existed but were evicted prior to 2008, for example in Cleveland, Ohio, were not included in the chart. Temporary camps that did not last for longer than a few weeks or months generally were also not included (for example Santa Ana’s Necessity Village and Occupy Wall Street). The goal of the searches was limited to capturing the breadth of tent cities across the 50 states. Identifying the full extent of persons currently living in tent cities across the United States would require significant fieldwork beyond the scope of this current report. To include the most up to date information possible, we updated the table in July 2013, noting further results in *italics*.

The authors of this report conducted extensive research on news reports of tent cities across the United States and existing literature on the subject as well as telephone interviews with experts and service providers. Based on this preliminary research, the authors identified four sites for in-depth case studies. The sites were chosen based on their locations, the size and prominence of the former or current encampments they hosted, and their perceived usefulness for gaining a broader understanding of the causes of and responses to homeless encampments. The authors chose to focus on the East Coast because a report documenting tent cities on the Pacific Coast already existed.¹⁵

The fieldwork consisted of site visits to the encampments and interviews with homeless and formerly homeless individuals, residents and former residents of tent cities, service providers, lawyers, advocates, and individuals personally involved with the encampments in some capacity, as well as with academics working in the field.

In addition, the authors conducted legal research on international, regional, domestic federal, and comparative law relevant to homeless encampments.

Survey of Homeless Encampments in the U.S.

News reports of homeless encampments have become frequent in the media since 2008 in the wake of the financial downturn. While the number of reported homeless encampments represents only a small portion of tent cities, many of which by design attempt to evade public notice in order to prevent eviction, it does provide a starting point for analysis.

Our surveys found over 100 encampments reported in the 2008 to early 2013 time period. Tent cities have been reported in the majority of states, forty-six of fifty-one jurisdictions (including the District of Columbia).¹⁶ Of all of these, only eight encampments had a legalized status. Three more were moving in that direction, meaning that through municipal ordinance or formal agreement, the tent city had been sanctioned by the community and was either allowed to self-govern or was created by service providers working with the city. Ten tent cities had at least a semi-sanctioned status, meaning that although not formally recognized, public officials were aware of the encampments and were not taking active steps to have them evicted. Most sites are not sanctioned, are threatened with eviction, or have already been evicted.

The full survey is available as Appendix I. In each case, where available, we note the number of residents, the time the camp has been in existence, and the relative legal status of the encampment, ranging from legal to semi-sanctioned to evicted, and any updates as of July 2013. Many encampments reported here have gone from one status to another during the course of their existence. Indeed, our case studies in section II represent the full range of legal statuses, or have done so over the course of their existence. For example, the Lakewood, NJ encampment was both semi-sanctioned (police and social workers routinely referred homeless individuals to the camp) and threatened with eviction (the city and county filed a lawsuit to evict the campers and the case has since settled) at the same time. We also include explanatory notes or summaries of circumstances surrounding the encampments that may help explain some aspects of the status or conditions of the encampments. As explained by former residents of camps in the case studies in Section II, the public safety concerns offered by municipalities as reasons for evicting camps are not always consistent with the experiences of the camp residents themselves.

While numerous encampments emerged with the OCCUPY Wall Street protests across the country, these were excluded from our survey except in specified cases where protesters embraced the homeless fellow campers. However, it should be noted that in response to the OCCUPY protests, numerous municipalities have proposed anti-camping ordinances that would also affect non-protest-based encampments.

In addition to the tent cities covered in the case studies in this report, we found several instances of municipalities engaging constructively with tent cities that are worthy of highlighting:

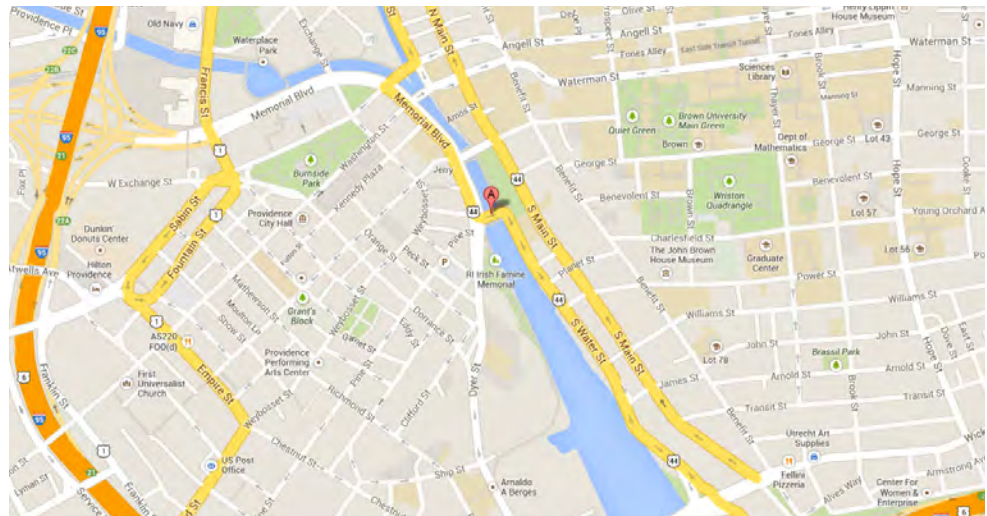
- **Huntsville, AL** has a semi-sanctioned camp below a viaduct which has been in existence for nine years. The camp is run by a local agency, pursuant to an agreement with police and the Alabama Department of Transportation. Individuals must register with a homeless services provider and obtain an ID. A tent, if one is available, is provided. A police officer is assigned to patrol the camp. Local service providers offer resources and referrals and monitor the conditions of the camp.
- **Las Cruces, NM** has a sanctioned camp on the Mesilla Valley Community of Hope campus, known as Camp Hope. It is sponsored by five local agencies where the city temporarily allows approximately 50 homeless people to camp.
- **Eugene, OR** had a homeless persons' encampment which was incorporated into the OCCUPY Eugene encampment. The OCCUPY activists, in agreeing to a peaceful eviction, worked with the city and local service providers to launch the Opportunity Eugene Task Force to address the situation of homelessness in Eugene. Recommendations from the task force were issued in April 2012, and are currently under consideration by the city council and administration. A limited car camping program is in place, a site for a permanent encampment has been identified, and a pilot program for additional legal, temporary encampments has been approved, though local enforcement of other anti-camping and anti-sleeping ordinances continues.
- **Puyallup, WA** in 2011 passed an ordinance allowing religious groups to host tent cities for up to 40 people, with a maximum stay of up to 90 days.

It bears repeating that many camps may not have been found by our media survey, and we encourage those with additional information to contact the Law Center.

Case Studies: Why Homeless Persons Resort to Encampments

This section provides in-depth case studies of four tent cities, in Providence, RI, Lakewood, NJ, New Orleans, LA, and St. Petersburg, FL. In each case study, we begin with a narrative background of the history and development of the tent city and discuss some of the reasons residents decided to or had no choice but to set up an encampment. We also discuss community and government responses to the encampments, including any legal or policy responses, and conclude with recommendations based on interviewee observations and our survey of existing laws and policies in each location. Throughout this section, we seek to elevate the voices of the residents themselves in voicing concerns and proposing solutions to their own problems.

A. Providence, RI



“Shelters? That’s not a solution to homelessness. That’s warehousing.” John Freitas, former Chief of Camp Runamuck.

1. Hope City and Camp Runamuck

At 4:30 am on January 25, 2009, John Joyce, then a homeless organizer and co-director of Rhode Island Homeless Advocacy Project, and Megan Smith, then a Brown University student and now the co-director of Rhode Island Homeless Advocacy Project, began setting up tents under a bridge, about five minutes away from the center of downtown Providence, Rhode Island. A few weeks earlier, a homeless man had frozen to death on the street.¹⁷ At the time, there were only fifteen emergency shelter beds available, and about thirty to fifty homeless individuals were reportedly sleeping on the streets on any given night.¹⁸ John Joyce and others decided that something had to be done to remedy the situation.

The first night, about ten people came to the encampment. Over the next few weeks their numbers grew, and Hope City, the first official encampment in

Providence, was established. At its peak, Hope City had about 80 residents. The encampment was founded partly out of a sense of outrage at the lack of availability of shelter space and the restrictions placed on people's ability to access them, and partly out of a desire to make homelessness visible, in hopes that this would spur some positive action by the City and State governments.¹⁹ In John Joyce's words, it was "ninety-eight percent necessity, two percent protest."²⁰

From the outset, Hope City decided to admit only individuals who had no other place to go; and not having a spot in the shelter system was the only requirement for entry. Mr. Joyce and Ms. Smith tried very hard to refer individuals to shelters wherever possible.²¹ As a result, Hope City residents were individuals who could not be in shelters, either because of substance abuse, behavioral, or mental health issues, or because they were couples who could not stay together in the shelter system.²²

Hope City set up a committee comprised of its residents and created rules of engagement, which were communicated to individuals as they arrived at the encampment. The committee ran the tent city and held regular community meetings. As Ms. Smith put it, they tried to create a system of "peer-to-peer advocacy." They did not have many rules, but there was a ban on weapons and excessive drinking or substance abuse within the encampment. Ms. Smith and Mr. Joyce managed to find case managers from small organizations who came to the tent city and worked with its residents on a day-to-day basis.²³

At its best, Hope City provided its residents with a sense of autonomy and community. It was an alternative to the perceived anonymity and regimentation of the shelter system — an opportunity for homeless individuals to live together as a community and to set up their own social system. Moreover, Hope City residents represented a category of individuals who effectively were denied access to the shelter system, because they had mental health problems that made them unable to tolerate the conditions in shelters, because they had substance abuse problems, or because they were couples. In that respect, Hope City served the necessary function of providing a more safe and structured alternative to attempting to live on the streets on one's own.

Ultimately, however, the situation in Hope City deteriorated.²⁴ Because of their proximity to nightclubs, residents experienced destructive behavior, and a few drug-related altercations occurred within the encampment.²⁵ According to one homelessness advocate working in the tent cities at the time, drug and alcohol consumption increased dramatically because of the stress of living in the tent city environment.²⁶ Residents did not adhere to the rules of engagement and as a result, there were many interpersonal conflicts and the encampment became difficult to manage. While living in Hope City had certain advantages, it ultimately became unsafe and "came at a great cost to people."²⁷ Mr. Joyce noted the inadequacy of living outside under public scrutiny, in tents and boxes, in a country that has the

resources to provide more adequate alternatives.²⁸ Ms. Smith noted that another tent city, Camp Runamuck, was more successful at maintaining internal organization, in part because the governance structure was more hierarchical.²⁹

Hope City existed in the same spot under the bridge from January 2009 until they were served with eviction notices in July of the same year. The official reason was that their location was the property of the Department of Transportation, which wanted to begin demolition of the bridge. Some Hope City residents attempted to move to an alternative location in Cumberland, Rhode Island, but the site turned out to be a toxic waste dump. As a result, the encampment disbanded “within a matter of hours.”³⁰

When state officials came in with the eviction notices, they were accompanied by social workers who could help provide services and help individuals find alternative accommodation.³¹ Mr. Joyce and Ms. Smith noted that the Providence encampments had been the target of extensive positive press attention and as a result, officials were on their best behavior.³² Most encampment residents were ultimately placed in alternative accommodations by drawing on pre-existing resources that were available, but prior to the encampments, insufficient effort had been made to reach out to the homeless individuals to find programs that would work for them.³³

. . .

At around the same time as Hope City was growing, John Freitas and Barbara Kalil, a homeless couple from Massachusetts, began to set up camp with three other couples in Roger Williams National Park every night. They put up their tents after the Park Rangers left for the evening, and they dismantled them before they came back in the morning. “If you sleep on a park bench in Rhode Island, you either get assaulted, urinated on, raped, or harassed by the police,” said Mr. Freitas. Living together in their small encampment provided them with a sense of community, and a feeling of security they had been unable to find on their own or in the shelter system. “We had each others’ backs,” said Mr. Freitas.³⁴

Gradually their numbers grew, and by April of 2009, Mr. Freitas and Ms. Kalil had become the informal leaders of a sizeable group of homeless couples and individuals. Mr. Freitas drafted an official Charter for the camp,³⁵ and with that, Camp Runamuck came into being under Point Street Bridge, across the street from Hope City. From the very beginning, Mr. Freitas made sure that every individual who wanted to live in the encampment read and signed the Charter and agreed to adhere to a reasonable code of behavior.³⁶ There were no restrictions on entry to the camp — anyone who wanted to live there could do so. However, individuals had to keep their problems off the campsite. Mr. Freitas noted that as long as individuals did not create problems for the community, they were free to do whatever they wanted to in their own tents.³⁷

Camp Runamuck had a Chief (Mr. Freitas), a Leadership Council, a Women's Council, and a War Chief, who basically played the role of a police chief. The Council ran the camp, and Mr. Freitas and Ms. Kalil appear to have played the role of coordinators and mediators, helping to establish a sense of community and to set norms for behavior within the encampment. As a way of maintaining internal order, camp residents could call a community meeting and vote an individual out of the camp if their behavior became extremely disruptive or violent. Mr. Freitas noted that they rarely had to resort to this measure. Instead, the camp policed its own issues internally.³⁸ As a result, they did not appear to have experienced the violence and disruptive behavior that were reported in Hope City.

Individuals who lived in Camp Runamuck described it as a positive and secure environment.³⁹ From the outset, Mr. Freitas decided that in order to avoid corruption and mistrust, the camp would not accept any form of cash donation and would instead take only in-kind supplies.⁴⁰ Donations were extremely generous. As a result, the encampment had portable bathrooms, at least two meals per day, and plentiful supplies of blankets, tents, and kitchen equipment. Individuals were able to leave their belongings in their tents and to leave the encampment for the day.⁴¹ This enabled them to look for employment, go to work if they already had a job, and lead reasonably normal, autonomous lives — something they uniformly described as impossible to achieve in the shelter system. Camp Runamuck provided all of its residents with two meals a day, and they put out snacks at around 9pm and 11:30pm “for the kids coming back from the clubs.”⁴² The camp appears to have developed into a real social community, and Mr. Freitas appears to have been remarkably successful at maintaining internal order.

From its humble beginnings in Roger Williams National Park, Camp Runamuck first set up its formal encampment at Point Street Bridge, across the street from Hope City, where it stayed until July of 2009 when they were served with Department of Transportation eviction notices.⁴³ At its peak, Camp Runamuck had about 100 residents.⁴⁴ Between July and mid-October, the camp moved to a few different locations. First, Camp Runamuck moved to a location under a bridge in East Providence. After they were evicted from that location, half the encampment residents moved to private land on Westminster Street, and the other half moved to an abandoned plot of city-owned land, setting up what became known as Camp Runamuck II.⁴⁵ Both new encampments were taken to court by the City of Providence at the same time: the City sought and obtained a preliminary injunction ordering encampment residents to vacate the properties.⁴⁶ Camp Runamuck II set up again on a plot of land in North Providence.⁴⁷ However, that land turned out to be privately owned and the encampment was finally disbanded in mid-October of 2009.⁴⁸



Mr. Freitas and Ms. Kalil said that they still encounter former Camp Runamuck residents who ask them when they are going to start another camp. “I hate to use the term golden moment, but it was,” said Mr. Freitas. “I mean it was the right people coming in at the right time. Peer pressure is important [to shape the behavior of people coming into the camp].”⁴⁹ The founders and early residents of Camp Runamuck appear to have managed to set a positive tone and to self-organize in a coherent and workable way. Jim Ryczek, the Executive Director of the Rhode Island Coalition for the Homeless, noted that Camp Runamuck had “impressive organization.”⁵⁰ They had storage facilities, sanitation, and a written statement of rights and responsibilities, which they went over with

everyone who came to the encampment and which provided a basis for having conversations about community norms and expectations.⁵¹ As a result, they do not appear to have experienced the problems and disruption that arose in Hope City.

. . .

Since the dismantling of Hope City and Camp Runamuck, there have been no large encampments in Rhode Island. As in many other cities, small informal encampments reportedly crop up in the summertime in secluded areas around the city.

2. Background: Why Live in Tents?

Before Hope City and Camp Runamuck, there had been a few informal encampments all around the city, but police reportedly disbanded them sometime in 2007.⁵² Four key factors appear to have contributed to the formation of the two large encampments in 2009: persistent problems with the shelter system; lack of availability of adequate alternatives; lack of responsiveness to the needs and preferences of homeless individuals; and a lack of coordination among service providers within Providence.

Several homeless and formerly homeless individuals said that the shelter system did not serve their needs.⁵³ One recurrent problem is the lack of availability of shelter space for couples, who have to separate in order to be able to make use

of shelter services.⁵⁴ Moreover, shelters only provide nighttime accommodation: homeless individuals using the shelter system have to vacate their beds in the morning and take all their belongings with them.⁵⁵ This complicates attempts to seek employment. One former resident asked, “How can you go looking for work with a backpack on your back and all your belongings?”⁵⁶ Homeless individuals who work a night shift or whose jobs end late at night are also unable to access the shelter system, which has cutoff times for entry and exit.⁵⁷

TO ALL PRESENT:

We, the undersigned, do hereby enter into this compact, that, in its completion, and with a majority of those residing affixing their signatures, shall now and forever establish the community to be known as Camp Runamuck

The community shall exist, relying on the good will of our neighbors and our individual contributions to sustain us. We shall share *equally* in our labors and *none* shall be tolerated as a member with good standing who shirks the labor for the common good.

Members of the community who *are* in good standing shall be afforded shelter, food, and security. All donations to the community shall be held *in trust for the use of the community, not for individual gain.* **NO ONE PERSON SHALL BE GREATER THAN THE WILL OF THE WHOLE.**

There shall be established a leadership council (selected by a majority vote) who will be tasked with the orderliness, cleanliness, and safety of the community.

A chief (elected by a majority vote) shall be tasked with the day to day camp administration. This includes, but *is not limited to:* assignment of shelter (and its location), and the assignment of duties/chores needed completed around the camp.

THE GOAL OF THIS COMMUNITY SHALL BE TO PROVIDE A *COMFORTABLE LIVING ENVIRONMENT TO ALL WHO SEEK SHELTER HERE.* None shall join who do not agree to these covenants by affixing their signature.

Homeless individuals also expressed safety concerns relating to their use of the shelter system. Mr. Freitas noted that the emergency women's shelter in Providence does not open until 9pm. As a result, women who want to use the shelter have to wander the streets in what he described as "the worst part of town." He and Ms. Kalil said they knew of fifteen unreported rapes in that area.⁵⁸ Others said that they did not feel safe even inside the shelters.⁵⁹ Mr. Joyce said that property often got stolen in the shelters, and it was "every man for himself."⁶⁰ Mr. Freitas also said that before the encampments, there was a "climate of fear" among homeless people that extended to the shelter system, because service providers would threaten to call the police if homeless individuals did not follow their rules.⁶¹

Ultimately, encampment residents appear to have preferred to live in tents because it provided them with a sense of autonomy and normalcy that they could not find within the shelter system.⁶² When asked why she chose to live in Camp Runamuck, Ms. Kalil said: "I think it's... feeling normal. In the shelter you don't feel normal. I mean, I'm 52 years old. And I have to be told what time to go to bed, what I can watch on TV, when I can eat, what time to go to the bathroom. Are you kidding me? I'd rather feel normal. And if that means sleeping in a tent that's my tent and I can go to bed when I want and do whatever I want... just like regular people."⁶³ Mr. John Joyce, who was formerly homeless and, at the time of these interviewed, served as Co-Director of the Rhode Island Homeless Advocacy Project and as PATH Director for Housing First at Riverwood Mental Health Services, expressed a similar view: "I'm a prideful man. Don't tell me when to eat, sleep, go to the bathroom, wait in line." As a result, he preferred to live outside when he was homeless.⁶⁴

Several interviewees also noted that the lack of coordination among service providers in Providence at the time exacerbated the problems.⁶⁵ However, Mr. Ryczek noted that this problem has improved since 2009, particularly with the establishment of a Universal Waiting List used by all service providers.⁶⁶ This appears to be facilitating the provision of housing to homeless individuals in a more systematic and equitable manner.⁶⁷ In addition, the Governor of Rhode Island has created an Inter-Agency Council on Homelessness, which advocates hope will lead to better communication and coordination.⁶⁸

Finally, interviewees said that the state is not providing sufficient resources to address the problems. Rhode Island is one of only nine states that do not have a dedicated funding stream for affordable housing or a voucher system within the state.⁶⁹ With rising unemployment and foreclosures, the amount of affordable housing available was and continues to be far below the level of need.⁷⁰ Mr. Ryczek said that his organization is attempting to convince the Governor of Rhode Island to put a dedicated funding stream in his budget for affordable housing.⁷¹ Affordable housing will always be necessary, according to Mr. Ryczek, because there will always be individuals at the lower end of the economic spectrum who simply do not make enough money to afford housing at market rates.⁷² Currently, the fair

market rent for a one-bedroom apartment in Providence is approximately \$800 per month, essentially requiring individuals to earn at or above \$19 per hour in a full-time job in order to be able to afford rent payments.⁷³

Several interviewees also emphasized the importance of visibility. Before the encampments, homelessness was an invisible problem.⁷⁴ As a result, there was no will to change the situation or to devote real resources to the problem. The encampments made homelessness visible.⁷⁵ This played an important role in creating a space for dialogue and opening the door to achieving better solutions.⁷⁶



3. Community and Government Responses to the Encampments

Hope City and Camp Runamuck attracted positive media attention.⁷⁷ The local community response was also largely positive, according to former residents of both encampments.⁷⁸ Both Hope City and Camp Runamuck residents described an “astonishing” flood of donations from private individuals.⁷⁹ The camps were so well-supplied that they donated overflow supplies to local shelters.⁸⁰ According to tent city residents and advocates, this may have been due to the increased visibility of the problem, and donors also liked the fact that it was direct giving, unmediated by service providers.⁸¹ Others noted that at that time, many people felt that they were not far from homelessness themselves. “Most of the donors weren’t wealthy,” said Ms. Smith. “They were the struggling-to-sustain middle class.”⁸²

As a result of this positive attention, it was not possible for city and state officials to forcibly dismantle the encampments through aggressive police action, as occurred, for example, in St. Petersburg, discussed below.⁸³ Ultimately, the Department of Transportation (DOT) evicted both encampments from its property. When Camp Runamuck moved to different locations, the City filed lawsuits in state courts seeking injunctions against the encampments. The City prevailed, obtaining a preliminary injunction to force residents off the property.⁸⁴

The City sued to clear under trespass and nuisance theories.⁸⁵ Previously, the State had sued to evict Camp Runamuck from its second location on DOT property in East Providence, but that case settled by a consent order, since Camp Runamuck residents agreed to vacate the property within thirty days.⁸⁶ When one part of the encampment moved to privately owned property, the City brought numerous zoning violation charges against the owner of the property.⁸⁷ That case also settled by a consent order and the group moved on within thirty days.⁸⁸

After being evicted from East Providence, Camp Runamuck II had resettled on park city property. The City sued for an injunction in Superior Court and obtained a preliminary injunction in September of 2009.⁸⁹ The Rhode Island Supreme Court affirmed the temporary injunction and sent it back to the trial court for trial on the permanent injunction.⁹⁰ The case ultimately settled and was dismissed as to all the Jane and John Does, although a permanent injunction issued against Ms. Barbara Kalil, who is forever enjoined and restrained from camping, living, occupying, using or otherwise trespassing on City park property.⁹¹

While most of the lawsuits have now resolved, there is a pending third-party claim from the original state case brought by Camp Runamuck residents against the City for failing to provide the necessary aid, comfort and support which their lawyers believe are required by Rhode Island statutes.⁹² The *pro bono* lawyers on the case, Mr. Peter DeSimone and Mr. Neville Bedford, asserted on behalf of the third-party complainants that under the Rhode Island Poor Laws, the city is failing to meet its obligation to provide aid and comfort to the poor and indigent.⁹³

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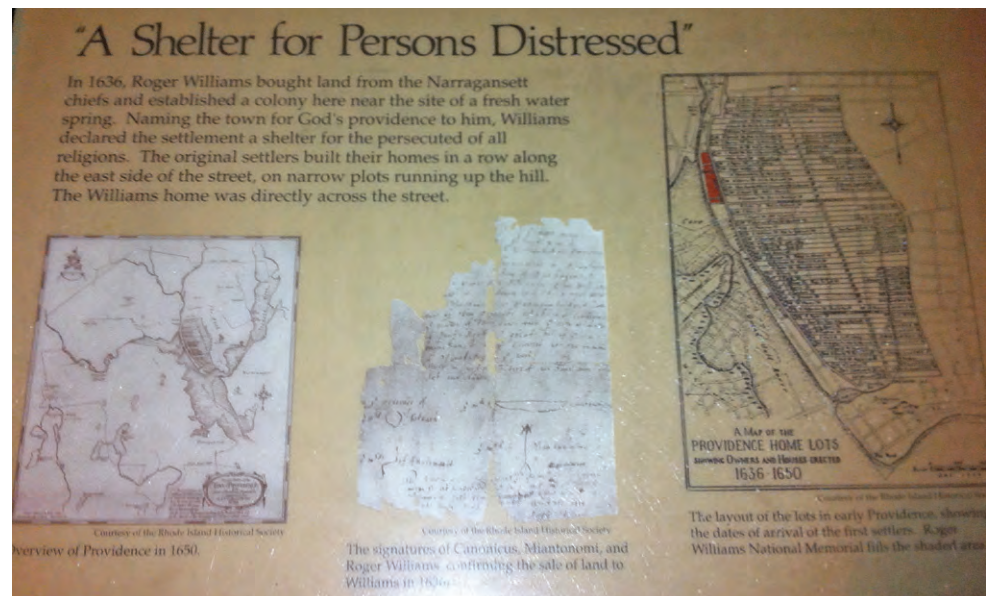
After the encampments were formed, the city passed an ordinance banning camping on city grounds.⁹⁴ The ordinance prohibits individuals from being in public parks between 9pm and 7am. The official response to the encampments, according to advocates and lawyers working with homeless people, was not about ending homelessness; it was focused only on getting the homeless out of sight.

However, because of the visibility of the encampments, the situation appears to have changed for the better since they were dismantled. Mr. Ryczek and Mr. Joyce both noted that coordination among service providers has improved in the intervening years.⁹⁵ The visibility of homelessness allowed advocates to seek and obtain more funding for permanent solutions.⁹⁶ Most of the encampment residents have since been housed, and Providence now has a Housing First program run by Riverwood Mental Health Services.⁹⁷

Mr. Freitas said that after the eviction, they were suddenly presented with a host of programs they never knew existed, even though they had been in the shelter system for two years by that point.⁹⁸ Mr. Joyce noted that part of their original purpose in setting up Hope City was to push service providers to use a “where

you're at" model: meeting homeless persons where they are with available services and solutions, rather than expecting people experiencing homelessness to come to them.⁹⁹ They have achieved some degree of success in changing the norms in the service provision community and creating a system that is more responsive to the needs and preferences of homeless individuals.¹⁰⁰ In the aftermath of the tent cities, some homeless service providers began to make more efforts to integrate homeless and formerly homeless individuals into their staff and to focus more on street outreach.¹⁰¹ At least within the service provision community, the tent cities therefore appear to have had some positive effects.

In 2012, local advocates, with the assistance from the National Law Center on Homelessness and Poverty, drafted and lobbied for a bill entitled the Homeless Bill of Rights,¹⁰² which prohibits discrimination against homeless people in access to voting, housing, public buildings, public transportation, social services, employment and law enforcement.¹⁰³ The Legislature passed and the Governor signed the bill into law in June 2012. While homeless individuals continue to report some problems, it nonetheless represents a positive, constructive step away from criminalization of homelessness.¹⁰⁴



4. Recommendations: Devote Necessary Resources and Institute “A System-Wide Respect for the Voice of Homeless Individuals”

When asked about appropriate responses to homeless encampments, interviewees focused largely on appropriate solutions to homelessness. They regarded the two as inextricably linked. Their perspectives focused on three general areas: the need for state and local governments to devote substantial resources to long-term hous-

ing solutions; the need for a change in service provision models; and the need for responsiveness to the voices of homeless individuals.

The Rhode Island Constitution does not explicitly provide for a right to shelter. Lawyers are developing arguments that cities do have an obligation to provide shelter under state law, and advocates are attempting to incrementally introduce greater protections for homeless individuals, for example with the Homeless Bill of Rights initiative. To date, however, Rhode Island does not have a dedicated funding stream for affordable housing, and advocates believe that a greater investment of resources is necessary for lasting solutions.¹⁰⁵

According to Mr. Ryczek, most of the current investment goes to systems that do not move people out of homelessness, such as the shelter system.¹⁰⁶ He therefore, along with several other interviewees, believes that the Housing First model, which places homeless individuals in permanent supportive housing, offering wrap-around services including employment, mental health counseling, and substance abuse treatment, without requiring residents to comply with a particular program as a condition of their housing, should be adopted more broadly.¹⁰⁷ Mr. Ryczek highlighted the long-term economic benefits of moving individuals off the streets, out of the shelter and emergency care system and into permanent housing.¹⁰⁸ However, he noted that states are unwilling to provide the up-front investment that is required to put such a system in motion.¹⁰⁹ In order for permanent housing solutions to work, an up-front investment of resources is necessary; but in the long run, permanent housing is a more viable economic solution.¹¹⁰

Moreover, according to Mr. Joyce, Rhode Island is a small enough state with low enough numbers of chronically homeless individuals that it could be possible to end chronic homelessness with the right investment of resources.¹¹¹ Mr. Ryczek agrees, and believes it is important to end the influx of people into chronic homelessness¹¹²: “It takes years to create a chronic person in the system. If [we] get everyone [who is currently chronically homeless] housed, then we can turn our attention to ... prevention. ... [W]e know what to do with the chronic population to at least retain ninety to ninety-five percent of them in housing. We just need the resources to do it.”¹¹³

If state and local governments are not willing to provide the resources for long-term solutions, however, Mr. Ryczek believes they have to take ownership of the fact that people will be living outside and will seek shelter in whatever ways they can, including in tent cities.¹¹⁴ States should not be able to “have it both ways. Either [they should] allow programs or strategies to get us from one place to the next in a temporary way, or [they should] acknowledge that there are people out there living in communities without any shelter whatsoever. You have to take ownership of that if that’s what your public policy is forcing.”¹¹⁵ Instead of opposing tent cities, state and local governments should acknowledge that they result from their own public policies.¹¹⁶

Ms. Smith shared the view that governments should be increasing access both to affordable housing and to treatment facilities of various kinds.¹¹⁷ She noted that instead of evicting the encampments en masse, state and local officials could have worked with service providers to come in to the tent cities and offer individuals the option of applying for different kinds of housing services based on their needs.¹¹⁸ In Ms. Smith's view, nobody really wants to live in a tent. They do it only because all their other options are even worse. The solution is therefore to provide them with better options.¹¹⁹

Several interviewees also said that service provision models should be more responsive to the real needs of homeless individuals.¹²⁰ The encampments provided an opportunity for service providers to learn how to be more effective in their provision of services, and Mr. Ryczek believes service providers should take this as a positive opportunity to communicate with the population they ostensibly are trying to serve.¹²¹ Mr. Joyce emphasized the importance of outreach to homeless individuals that meets them where they are on the streets, and the importance of providing solutions that go beyond nighttime shelter.¹²²

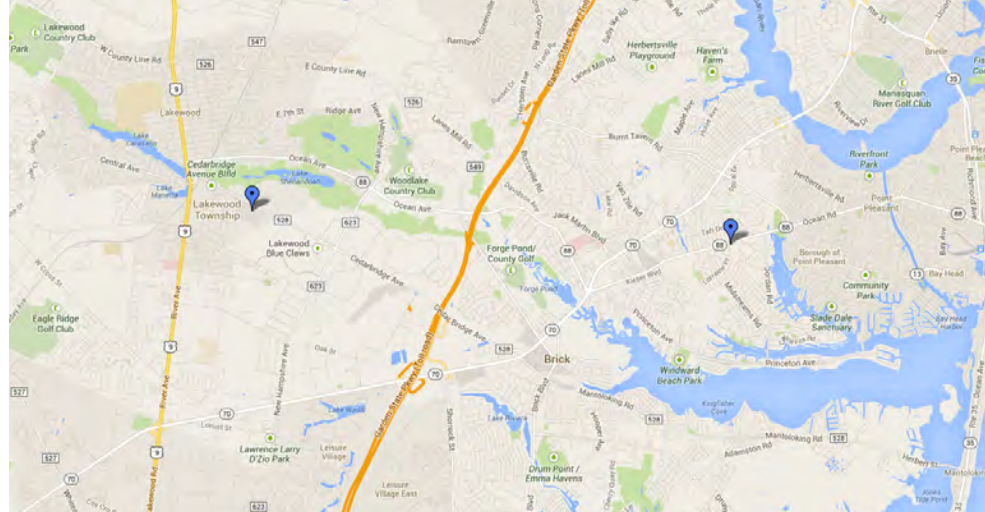
Interviewees expressed strong support for the Housing First program.¹²³ Ms. Smith noted that under the old system, individuals were kicked out onto the street if they did not follow their programs; as a result, only forty percent were able to maintain their housing.¹²⁴ Under the new system, the housing comes with no conditions, and the services are optional. As a result, Housing First has a ninety percent retention rate and costs far less than "placing people in warehouses."¹²⁵

In addition, interviewees lauded that "Housing First avoids [a] moralistic attitude."¹²⁶ By not requiring individuals to first meet a variety of externally-imposed conditions, Housing First provides individuals with stable housing, which in turn makes them more likely to succeed at overcoming substance abuse problems, finding employment, and accepting mental health treatment.¹²⁷

Tent cities have been an effective means of shining a spotlight on homelessness and thereby increasing the ability of advocates to push for sustainable solutions. In addition, they appear to provide a degree of autonomy and respect that some homeless individuals feel they lack in the shelter system. These insights, however, can and should be incorporated into the shelter system itself. According to Ms. Smith, even shelters, which are a worst-case option, can be run in a respectful manner that engages and invites the participation of homeless individuals in the way they operate.¹²⁸ Ms. Smith recently worked at a shelter that was run by House of Hope. She noted that most of the shelter's employees were formerly homeless individuals, and that the staff held committee meetings and advisory meetings and invited homeless individuals to provide input on their services. In addition, they encouraged regular honest communication between the staff and residents. According to Ms. Smith and Mr. Joyce, just by virtue of having a staff that respects

the residents and invites them to participate in its management, the environment in the shelter has changed dramatically since House of Hope took over. Ms. Smith believes these are best practices that should be followed in all shelters and that there should be “a system-wide respect for the voice of homeless individuals.”¹²⁹

B. Lakewood, New Jersey



*“Please don’t try to disturb somebody who’s just trying to survive out there in the woods.”
Minister Steve Brigham, Tent City resident and leader.*

1. Tent City¹³⁰

In a wooded area just off a side road in Lakewood, New Jersey, about 70 to 100 people have made their home in what one person described as the de facto shelter system for Ocean County, New Jersey.¹³¹ Minister Steve Brigham, a local minister who lives in and runs the encampment, started Tent City about six years ago.¹³² It began when a man asked him for help because he had lost his home and did not know what to do.¹³³ Minister Steve set him up in the woods with a tent and a propane heater. As more people began coming to Minister Steve with similar requests for help, he began placing individuals in several small locations in the woods. As their numbers began to grow, he realized they needed a larger area to accommodate them. He then looked for and found the plot of land on which the encampment is currently located.¹³⁴

Over time, the Tent City evolved into a more organized encampment with facilities for its residents. Minister Steve and some of the early residents built a bathroom and laundry room. They set up a kitchen with a donated lunch truck and several large grills. The encampment also has a common area and a chapel where residents can attend services. For the most part, individuals and couples each live in their own tents, and Minister Steve lives in an old school bus parked within the encampment.¹³⁵

The Tent City is located on public Lakewood property. Rumu Dasgupta, a Sociology Professor at the local Georgian Court University, notes that it is indeed public land — “and the public are here!”¹³⁶ Most Tent City residents are locals who lost their jobs or their housing and were unable to find shelter anywhere else in Lakewood.¹³⁷ As Tent City grew and began to attract media attention, homeless individuals from other areas began joining the community.¹³⁸ Marilyn Berenzweig, who at the time of the site visit had been living in Tent City with her husband for about two years, came to Lakewood from New York City after she lost her employment and housing. Marilyn compared living in the Tent City to homesteading and felt it was preferable to other alternatives that were available to her.¹³⁹

Minister Steve described the intake system as “very lax.”¹⁴⁰ Homeless individuals come to Minister Steve and tell him they would like to move in. He gives them a tent and sets them up in an area of the camp where he thinks they will be most comfortable. Residents are expected to take care of their tents and to keep the surrounding area clean, and when chores need to be done, Minister Steve asks people to help and they generally do. Minister Steve appears to make most of the decisions for the camp; he noted that “most people would come to me for the final say.”¹⁴¹

Minister Steve believes Tent City is better than shelters because it allows people to maintain their independence and to live within a community. “We consider this basic, but it’s keeping us from the rain, it’s keeping us warm, it’s meeting our basic needs of enough room to move around and do what we need to do. But they want to take it away from us. ... I believe my bus is adequate for me to live in. I don’t feel I need anything more than this bus. And for society to dictate what is adequate I think is wrong, when [the] only other alternative is the Rescue Mission 60 miles away [in Atlantic City].”¹⁴²





After years of tacit consent and even aid in the growth of Tent City, Lakewood officials filed a lawsuit to evict the residents in June, 2010.¹⁴³ In 2013, the town and residents settled the suit with Lakewood allowing the current residents to remain in Tent City until the town provides them with alternative housing for one year.¹⁴⁴ No new residents are allowed in the meantime, and the township plans to permanently prevent future camping on the site. Additionally, in October 2012, Ocean County, where Tent City is located, was the New Jersey county most heavily impacted by Superstorm Sandy, making the acute affordable housing shortage even worse, as many rental units have yet to be repaired, and displaced homeowners continue to occupy rental housing that otherwise would have been available.

2. Background: Why Live in Tent City?

Interviewees pointed to three factors that resulted in the growth of Lakewood Tent City: the economic downturn, which resulted in greater unemployment and underemployment and a rise in homelessness; the lack of a meaningful shelter system in Ocean County; and a severe shortage of housing subsidies and affordable housing sufficient to meet the needs of low and moderate income households, especially those with extremely low incomes.

According to Connie Pascale, Chief Section Counsel at Legal Services of New Jersey, Lakewood Tent City is one of several encampments in New Jersey.¹⁴⁵ Lakewood Tent City appears to be the largest and most prominent, but Mr. Pascale noted that there are several smaller more informal encampments in Ocean County, and others across the state of New Jersey, including one in Camden that has received significant press coverage.¹⁴⁶ According to Mr. Pascale, many people struggling with the effects of the economic downturn are in need of economic assistance but are not eligible for it for three reasons: first, a shelter system that is completely inadequate and, in many communities, nearly nonexistent; second, restrictive state eligibility criteria that leave many households ineligible for emergency public

assistance they desperately need; and third, a long-term failure to provide enough housing affordable to the most disadvantaged members of the community.¹⁴⁷ Minister Steve also noted that most available jobs in the surrounding areas are very low-wage and therefore insufficient to pay for local housing.¹⁴⁸

Mr. Pascale views the rise in tent cities as a natural response to economic disaster: individuals struggling with severe economic, social, and personal problems often come together and form a community in an attempt to ameliorate their situation.¹⁴⁹ Mr. Pascale noted the complete absence of a meaningful shelter system in Ocean County.¹⁵⁰ Given this situation, Tent City was the only temporary shelter, transitional housing, and even permanent housing for some people in Lakewood and the surrounding area.¹⁵¹

Mr. Pascale noted that hundreds of people are sheltered in the County using state and federal funds, provided they are categorically eligible for General Assistance, Temporary Assistance for Needy Families (TANF), or Supplemental Security Income (SSI). If they meet the eligibility criteria, they are able to receive emergency assistance for up to a year or more, largely by being housed in motels, although some people are able to use the funds for temporary rent subsidies instead. However, those who do not meet the categorical eligibility requirements are not entitled to extended assistance, although they are occasionally provided with short-term help such as a few days in a motel. This gap in local county and municipality housing programs and support services for those not meeting eligibility criteria is the most important element in creating the demand for tent cities, and where resources are most needed. And although several non-profit organizations and communities of faith are doing all they can to fill this gap,





the problem is too large and their resources are too limited to fill the void left by governmental inaction.¹⁵²

Because of the complete absence of alternatives, even County workers and police officers referred homeless individuals to Tent City.¹⁵³ Tent City consequently became the housing of last resort for many. More than just shelter, it offered homeless persons a measure of dignity and a sense of community that are worth at least as much to them as the thin but secure canvas roofs over their heads.¹⁵⁴

In addition to the economic downturn and the lack of availability of shelters or programs to bring people out of homelessness in Ocean County, community members believe that the unwillingness of the larger community to provide a sufficient supply of affordable housing and to distribute subsidized Housing Choice Vouchers (Section 8) in an equitable manner exacerbates the problem.¹⁵⁵

3. Community and Government Responses

Interviewees noted that the community response to Tent City has largely been positive. Students and professors from the local university have provided food and other donations to Tent City. One local resident goes around to pizza parlors every night of the year to collect leftovers and bring them to the Tent City residents.¹⁵⁶ Even police officers come by with leftovers or donations.¹⁵⁷ While the authors of this report were visiting Tent City, a group of students from Georgian Court came by with leftover food from their Athletics Department holiday party and spent some time chatting with Tent City residents. A local sociology professor, Rumu Dasgupta, helped show the authors around and spent a good part of the day with them. By and large, the surrounding community appears to have taken an interest



in Tent City and its survival and does not appear to have reacted negatively. Mr. Pascale believes that the outpouring of support for Tent City residents is in part due to the fact that their stories have become known, and in part due to people having a greater understanding of homelessness in tough economic times.¹⁵⁸

In contrast to the support their fellow community members have shown Tent City residents, their local government persistently sought to force them off the land. The Lakewood Township brought a lawsuit in state court seeking to evict Tent City residents from the woods under a New Jersey ejection statute.¹⁵⁹ Lawyers at Lowenstein Sandler LLP are providing *pro bono* representation to Tent City in this action and claimed that New Jersey statutes called the “Poor Laws,” which have been on the books since New Jersey was a British colony, provided a right to shelter.¹⁶⁰ According to Jeff Wild of Lowenstein Sandler, the only reason Tent City residents are in the woods is that Ocean County and Lakewood violated their duty under New Jersey law to provide homeless individuals with shelter, and the residents must be allowed to survive on public land until shelter is available.¹⁶¹ During the course of this report, the Lowenstein Sandler firm requested, and the authors provided, research and drafting assistance in including a human rights argument in this case.

A local government official noted that the municipality has tried to help Tent City residents find housing, and has contracted with a local organization called Solution to End Poverty Soon (STEPS) to place individuals in permanent housing.¹⁶² In addition, the city has been working with developers to build about 500 units of affordable housing.¹⁶³ Committeeman Raymond Coles noted that Lakewood is the poorest town in Ocean County, and that the County and the State should

be providing more resources to help deal with the problem of homelessness.¹⁶⁴ He also expressed the view that Tent City leaders are actively recruiting residents to increase the size of their encampment,¹⁶⁵ although this view was not shared by other interviewees, who felt that Tent City's population is growing because of the lack of other alternatives. In the year since these interviews, Mr. Coles has left the Committee, and it is not clear that any aspect of the affordable housing plan is moving forward; however, the Master Plan for Lakewood calls for the town to double in size over the next ten years, with no planning for affordable housing, making land—such as the land Tent City is on—now at a premium.¹⁶⁶

The Lakewood lawsuit later included a third-party class-action complaint by all homeless people in Ocean County against the County asserting an affirmative right to shelter under the New Jersey Poor Laws.¹⁶⁷ In addition, New Jersey case law provides for a right of recoupment: if a government agency is told that a person needs shelter and fails to provide assistance, another person who spends money to assist that individual has a claim for recoupment.¹⁶⁸ Because Ocean County had a practice of sending its homeless people to Atlantic City, the Atlantic City Rescue Mission also entered the litigation as a third-party complainant in this action against Ocean County seeking reimbursement of the expenses it has incurred providing assistance and shelter to homeless individuals from Ocean County.¹⁶⁹

On January 6, 2012, a New Jersey Superior Court denied Lakewood's motion for a court order allowing it to dismantle Tent City.¹⁷⁰ In April, 2013, Lakewood and Tent City entered into a Consent Order and reached a settlement: Lakewood has dismissed its charges concerning code violations and agreed that Tent City's current residents may not be ejected unless it provides them safe and adequate housing for a full year. Lakewood has also agreed to provide basic municipal services to Tent City residents until they depart.¹⁷¹ In the meantime, no new residents are allowed to join Tent City. As of November 2013, the parties remain in ongoing negotiations regarding the implementation of the Consent Order.

4. Recommendations for Moving Forward: Provide Affordable Housing

Interviewees (interviewed prior to the settlement) agreed that the ultimate solution to the problem of homelessness in Lakewood would be the provision of permanent affordable housing for all who need it, and the one year housing agreement comes close to achieving that goal. They also felt a homeless shelter or other entry point for those needing help is necessary to facilitate the transition to permanent housing, such a system remains a point of negotiation.¹⁷² Tent City residents also achieved their goal of securing an agreement that until the housing resources are available, residents will not be displaced from their current locations.¹⁷³

Prior to the settlement, one interviewee also felt that a temporary solution could be to provide some assistance to the existing Tent City and turn it into a sustainable living community.¹⁷⁴ Mr. Pascale believes that homelessness is ultimately a housing problem, and that solving the housing problem first puts individuals in a better situation to succeed in service programs designed to address any underlying difficulties they may be struggling with. However, where state and local governments are not willing to provide the resources for a permanent housing solution, they should either legalize the encampment or provide some alternative physical structure or location where residents can find shelter.¹⁷⁵ “Homelessness is one of the simpler problems because the solution is readily apparent,” said Mr. Pascale. “The worst poverty isn’t economic poverty; it’s the poverty of vision and spirit and compassion. That poverty is the one to overcome. If we overcome that we could solve all the others very easily.”¹⁷⁶

Minister Steve Brigham believes that an important part of any future solution is for communities to live up to their obligation to equitably provide permanent, affordable housing for everyone, including the lowest-income people.¹⁷⁷ “What I’d like to see in Lakewood is just . . . a fair portion for everybody . . . getting a place to stay.”¹⁷⁸ He also believes that every county should have its own shelter. However, he thinks shelters should be community-based and should include small shops or farms; “something that provides a greater sense of purpose and ownership.”¹⁷⁹ Having to walk the streets all day with one’s belongings in one’s hands, then go to a shelter for a mass meal and a bed — “that doesn’t fulfill the emotional needs we all have,” he said.¹⁸⁰

As the plaintiff’s attorney, Jeffery Wild, remarked after achieving the landmark settlement between Lakewood and Tent City, “[w]e’re not here to defend tent cities; no one should have to live in the woods. This is about the right of everyone to have housing.”¹⁸¹ While the Consent Order is still being implemented, and while the settlement only provides housing for one year, by preventing the eviction until adequate alternative housing is provided *and* mandating the provision of that alternative, the settlement does come close to an approach that implements housing as a basic right.

C. New Orleans



“Do you know what the worst feeling in the world is? It’s to walk out of a building or a house, to look behind you, in front of you, to the left and to the right, and it don’t make no difference because no matter what way you look you still have nowhere to go.”

— Donald Wilkerson, Founder, Exodus House

1. Tent Cities: Duncan Plaza, Canal Street & Claiborne Avenue, and Calliope Street

Between 2007 and 2011, there were three large homeless camps in downtown New Orleans: one at Duncan Plaza, directly across from City Hall; another under the interstate at the major city intersection of Canal Street and Claiborne Avenue; and one on Calliope Street, across from the New Orleans Mission homeless shelter.¹⁸² Described alternately as a “mess”¹⁸³ and a “festering conglomeration of human suffering,”¹⁸⁴ the encampments were different in size and nature: the Duncan Plaza tent city, while it became a refuge for many homeless and disenfranchised people in the wake of Hurricane Katrina, also had an organizing element which coalesced into a group called “Homeless Pride.” The Canal-Claiborne tent city lacked an organizing element and grew larger after the closure of the Duncan Plaza tent city; it, more than the other tent cities, was known for a complete lack of security which resulted in open-air drug dealing and a harmful situation for the homeless residents of the tent city. The Calliope Street homeless camp was the smallest and most recent of the three camps, and included semi-permanent homeless residents as well as periodic overflow from the New Orleans Mission.

The two tent cities at Duncan Plaza and Canal-Claiborne profiled here were dismantled and the majority of their homeless residents moved to permanent housing through an unprecedented re-housing initiative headed by UNITY of Greater New Orleans.¹⁸⁵ The Calliope camp was significantly reduced in size after the City of New Orleans, UNITY, and other service providers re-housed scores of people. Although two of the three encampments mentioned here were closed, at least temporarily, by forced eviction by the City, the City helped to fund and/or organize efforts to provide temporary or permanent housing to residents of the encampments.

New Orleans' unique response to its tent cities was only partially a result of the effects of Hurricane Katrina and the levee failures that ensued. While some may suggest the tent cities were only another Superdome-like manifestation of the devastation inflicted upon many of New Orleans' residents in Katrina's wake, this is an oversimplification. The flood's destruction of a huge quantity of housing stock in New Orleans is certainly one of the definitive contributing factors to homelessness in New Orleans, but there are additional factors common to most cities throughout the United States that also contributed to the housing crisis and make the response to these camps relevant to the experience of other cities across the nation. Our research indicates that underlying socioeconomic, racial, and urban realities appear to have influenced the direction of housing policy following Hurricane Katrina, and contributed in large part to the development of the tent cities. Hurricane Katrina may have created the perfect storm of homelessness, when it destroyed houses and apartments, disrupted social safety nets and the family and friend-dependent support system upon which many in the city relied, and created a great mental and physical health crisis. But Hurricane Katrina highlights the way in which moments of crisis — for example the financial crisis or the British Petroleum oil spill — can shine a spotlight on preexisting deficiencies in social and economic policies. If anything, the existence of tent cities in New Orleans post-Katrina is instructive in demonstrating how a precipitating factor, be it natural or human-made, can destroy social safety nets and propel those treading between poverty and low-middle income into homelessness.

1-a Duncan Plaza Tent City

The Duncan Plaza tent city began in July of 2007, nearly two years after Hurricane Katrina. The tent city grew out of a confluence of factors, including the return of long-time New Orleans' residents¹⁸⁶ to the city amidst a vast housing shortage, as well as a concerted effort among various advocacy groups including housing organizers from the People's Hurricane Relief Fund (PHRF), the Survivor's Village and the People's Organizing Committee (both public housing resident groups) to bring attention to the housing situation in New Orleans.¹⁸⁷ Placing the encampment in front of City Hall was a strategic choice made by the organizers of these groups; the site was already home to many homeless people and was also within sight



of (now former) Mayor Ray Nagin's office.¹⁸⁸ On July 4th, the organizers held a press conference to launch the homeless camp; within a few weeks, the number of people in the camp had swelled to thirty to forty, as members of advocacy groups continued to pass out fliers in homeless shelters to recruit people to relocate to Duncan Plaza.¹⁸⁹ Around the same time, the loosely organized leadership of the tent city began calling themselves "Homeless Pride."

In October 2007, the camp's numbers began to increase rapidly, with what is estimated to be over 250 full-time residents living in the tent city, in addition to people who frequented the camp but did not live there.¹⁹⁰ In part responding to a call from Homeless Pride to provide those in the encampment with housing, UNITY began a massive effort to re-house the homeless residents of the tent city before temperatures dipped below freezing, an effort that involved collaboration among the city's numerous homeless service providers and sending outreach workers, day after day, into the camp to assess residents' needs.¹⁹¹ The relocation involved first moving many of the tent city residents to hotels before the paperwork and logistics could be completed for their eventual move into apartments.¹⁹² Despite the eagerness of most homeless people to receive housing, some of the camp organizers were unhappy about the efforts to move residents out of the camp with the goal of eventually closing the camp, especially amidst the ongoing, heated debate surrounding the demolition of the Big 4 public housing developments.¹⁹³

On December 5th, the state of Louisiana told the city of New Orleans that it would be fencing off Duncan Plaza within one week in order to demolish a state building on the northern edge of Duncan Plaza that had been vacant for two years.¹⁹⁴ UNITY argued that it should be allowed to complete its work and

managed to gain time until the Friday before Christmas to complete the relocation of the camp's homeless residents.¹⁹⁵ On December 21st, 2007, UNITY held a press conference in which it noted that within one month, 249 people had been assisted by UNITY and member agencies to move out of Duncan Plaza into temporary housing.¹⁹⁶ Meanwhile, the remaining members of Homeless Pride vowed to move several blocks away to another homeless camp, now growing rapidly under the elevated highway at the intersection of Claiborne Avenue and Canal Street.¹⁹⁷

1-b Canal-Claiborne Tent City

The encampment under the busy intersection of Canal Street and Claiborne Avenue grew quickly to the point where it had about as many full-time residents and the same level of visibility as the Duncan Plaza encampment. However, most of the original Homeless Pride members had by now received temporary housing assistance, and made only brief visits in 2008 to the Canal-Claiborne camp.¹⁹⁸ The camp became largely anarchic, with no organizing authority.

Although the camp had a community of sorts with people watching out for each other and helping outreach workers assess who needed housing the most,¹⁹⁹ there were also high levels of crime and violence, including drug dealers “running an open-air crack-cocaine market.”²⁰⁰ The criminal elements largely did not actually live in the camp, but used the lack of security²⁰¹ and the vulnerability of the homeless people living in the camp to their advantage.²⁰²

Sanitation was also a problem. There were no sanitary facilities following the city's removal of the camp's portable toilets in February 2008. This, combined with the length of time the Canal-Claiborne camp existed (about 8 months, from December



2007–July 2008), led to rotting food, piles of human waste, and an abundance of rats.²⁰³ The camp became a public health hazard, with high risk of disease contraction for those who came into contact with the camp.²⁰⁴

According to UNITY's Deputy Director of Programs, Angela Patterson, who regularly visited the camp, there was "a horrendous degree of human suffering" at Canal and Claiborne.²⁰⁵ Unfortunately, following the closure of the Duncan Plaza camp, UNITY was temporarily depleted of resources. While Mayor Nagin and the City proposed various less permanent solutions, including giving those made homeless by Katrina one-way bus tickets out of town, and moving residents from the Canal-Claiborne camp to a large Quonset hut in Central City,²⁰⁶ outreach workers focused on building relationships with those in the camp and advocates lobbied for Permanent Supportive Housing vouchers from Congress.

As part of the outreach effort, advocates conducted regular surveys of the camp's residents.²⁰⁷ Among them, they found pregnant women, a paranoid schizophrenic with diabetes and two amputated limbs, a woman who was being taken to dialysis once a week, four mute people (including one who had to be hospitalized for severe depression), and a man from a nearby hospital with his IV still attached.²⁰⁸ On average, ninety percent of the camp's occupants were male, sixty-eight percent were forty-one years old or older, thirty percent were employed at least part-time, seventy percent were disabled, thirty-five percent suffered from mental illness, sixty-three percent were homeless for the first-time, eleven percent were veterans, sixty-two percent had come from an abandoned building, and seventy percent were New Orleans natives.²⁰⁹ Occasionally, women with small children would come to the camp; outreach workers would try to find them housing as quickly as possible.²¹⁰

Because of the risks inherent in living in the camp, people cycled through Canal-Claiborne, often returning to abandoned buildings when the camp became too dangerous.²¹¹ Between the Duncan Plaza and Canal-Claiborne camps, UNITY and its member organizations did intake assessments of 975 different, unduplicated people, but estimate that about 2,000 people had lived in either camp at some point.²¹² When the federal housing resources finally came in to close Canal-Claiborne, UNITY managed to house another 200 homeless people, bringing the total of people housed from both camps to 452.²¹³ The camp was closed, without being fenced off, in July 2008.

1-c Calliope Homeless Camp

After the closure of Canal-Claiborne, another homeless camp formed on Calliope Street, across from the New Orleans Mission homeless shelter.²¹⁴ The Calliope camp was never as big as Duncan Plaza or Canal-Claiborne; the number of people living in the camp was typically between fifteen to thirty. However, in October of 2011, the camp's numbers swelled to around 100, leading UNITY and the City to

once again prioritize housing the camp's residents over other homeless people scattered around the city. This time, the City held weekly meetings to mobilize a variety of service providers to move the camp's residents into temporary or permanent housing. According to Stacy Horn Koch, the Director of Neighborhood Services and Facilities and Mayor Mitch Landrieu's point person for homeless policy, the city moved approximately eighty-five people from the Calliope camp and offered housing resources to them.²¹⁵ The city closed the Calliope Street encampment in November, 2012. Almost all of the remaining fifty-five residents received shelter.²¹⁶ In a press release, the city said it would fence off the area to prevent the encampment's return; however, news reporting from early 2013 indicated that homeless individuals were returning to the area.²¹⁷

2. Background Context: More than just Katrina

The general sense among the individuals with whom we spoke in New Orleans was that these three visible, resource-consuming homeless camps were just the very tip of the iceberg. Homelessness statistics in the greater New Orleans area bear this assertion out. In 2009, the number of persons homeless on a given night in New Orleans and Jefferson Parish was estimated to be 11,500 — nearly double the pre-Katrina number of 6,300.²¹⁸ Three to six thousand of those people were living in New Orleans' abandoned buildings (there were over 55,000 abandoned commercial and residential buildings following Hurricane Katrina), eighty-seven percent of whom were disabled and seventy-five percent of whom were survivors of Hurricane Katrina.²¹⁹ As of 2011, this number had decreased slightly, and the numbers experiencing the most acute homeless situations declined twenty-three percent, in great part due to the 441 new units of permanent supportive housing.²²⁰ New Orleans may differ from other places in the United States because of the scale of its homelessness problem and how much of it was exacerbated by Hurricane Katrina. What is not different, however, are some of the underlying causal mechanisms of homelessness, which Katrina merely triggered. They include:²²¹

A High Proportion of Low-Income Earners and a Service-Based Local Economy
Pre-Katrina, New Orleans was one of the poorest cities in America. Its local economy depended primarily on tourism, meaning that many New Orleanians employed full-time were dependent on minimum wage and tips alone.²²²

Features of the Housing Market and Housing Administrative Agencies

New Orleans, unlike the rest of the U.S., has a higher renter to homeowner ratio: sixty percent of residents rent, and only forty percent own their properties (as opposed to a national homeownership rate of 67.4 percent as of 2009²²³). The

rental market is rife with discrimination, especially against those who are African-American, and now, in the wake of Katrina, against renters with housing vouchers.²²⁴ Tenants have very few rights, while landlords generally have free rein, with few accountability mechanisms in place to ensure they treat tenants fairly and do not evict for capricious reasons.²²⁵ The system has been exacerbated by a broken housing authority; the Housing Authority of New Orleans (HANO) has been a troubled agency since the 1970s, infamous for corruption and incompetence.²²⁶

Mental Health, Counseling, Shortage of Medical Care

There is a distinct shortage of mental health and substance abuse facilities in New Orleans and Louisiana as a whole. In 2006, there were only 22 psychiatrists in the whole NOLA metropolitan area²²⁷; according to local advocates, New Orleans has one of the lowest per capita psychiatrist-patient ratios in the country.²²⁸ There are also a high number of medically uninsured in New Orleans, and hospitals and the medical care system as a whole generally lack capacity and resources.

According to both Martha Kegel and Mike Miller of UNITY, New Orleans has a disproportionate number of severely developmentally disabled people who are homeless as a result of Hurricane Katrina, which destroyed the extended family networks on which many vulnerable people formerly had relied, often in lieu of government assistance.²²⁹ In addition, the stress of living through a disaster, combined with the uncertainty of return and inability to secure housing and employment, led to increases in substance abuse, depression, domestic violence, and mental illness which strained the already overburdened mental health and medical system.

Shortage of Affordable Housing/Shelters and Demolition of Public Housing

Pre-Katrina, it was relatively easy to find an apartment for under \$500 per month in New Orleans.²³⁰ In Orleans Parish, renters occupied more than 26,000 units priced below \$500.²³¹ The destruction of housing caused by Katrina, the decision to delay opening and to tear down or to not rebuild a substantial number of public housing units, and the federal housing vouchers issued at 130 percent of housing market value all combined to create a substantial rent spike, in some cases up seventy to eighty percent in the years after Katrina.²³² Currently, the fair market rental price for a one-bedroom apartment is \$875 per month, substantially more than an SSI check, and more than is affordable for someone working a full-time minimum wage job.²³³ Prior to Katrina, New Orleans had 837 emergency shelter beds. Despite a much higher homeless population now, the current number of emergency shelter beds is only about 550, although, as noted above, the number of permanent supportive housing units has increased by over 400.²³⁴

Criminalization

Finally, policies related to criminalization of homelessness, and high incarceration rates in general contribute to the ongoing cycle of homelessness in New Orleans. Louisiana has the highest rate of incarceration in the United States,²³⁵ effectively creating a large class of people who, when released from jail, will have additional difficulty finding housing. In addition, homeless people are frequently jailed for crimes such as public intoxication, obstruction of public passages, and trespass.²³⁶

3. Recommendations: Visibility Can Catalyze Search for New Resources; Housing as the Permanent Solution to Homelessness

Most of the above-mentioned phenomena are not New Orleans-specific. As Davida Finger, Assistant Clinical Professor for the Community Justice Clinic at Loyola Law School, notes, “[t]he way our housing system functions here [in New Orleans] is not that much different from the way it functions in other cities where it’s not a given that people should have access to fair and affordable housing, and fair market value is higher than what people can afford working minimum wage forty to fifty hours per week.”

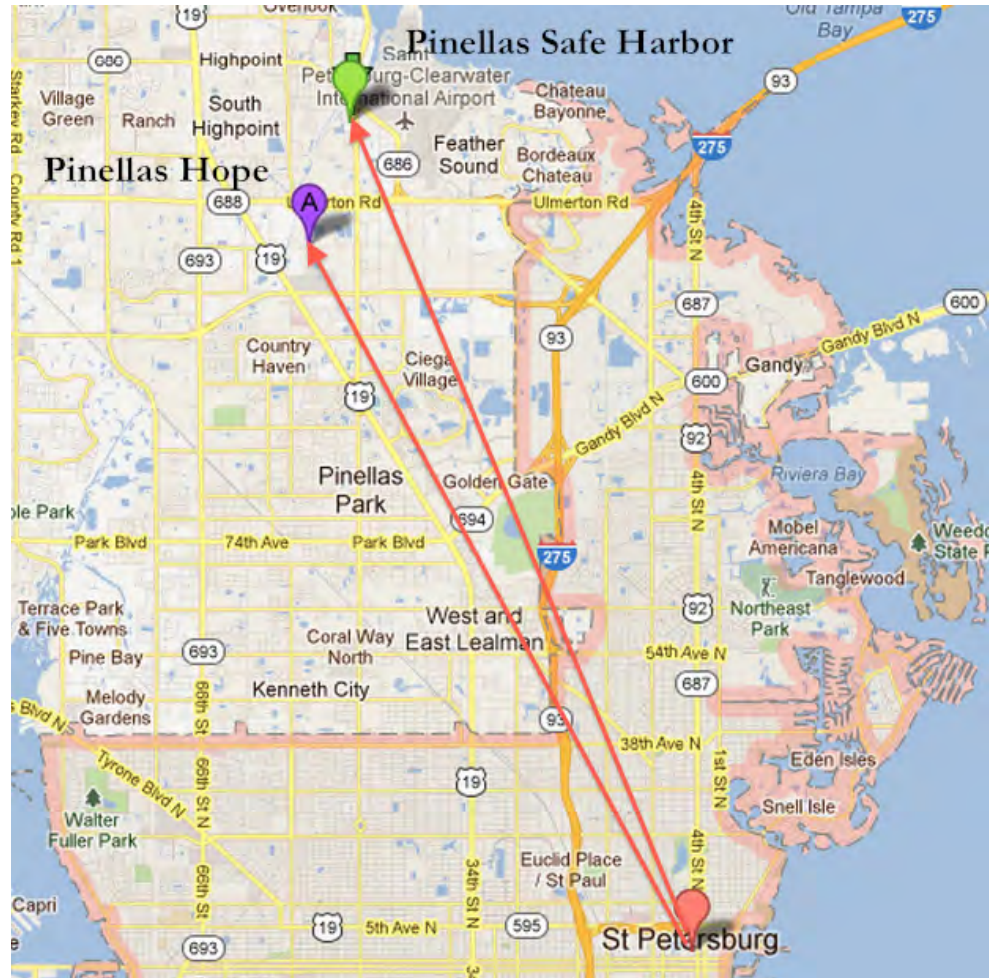
Having many low-wage workers dependent on tourism or other vulnerable industries, less than adequate health facilities, a shortage of affordable, low-income housing, discriminatory housing policies, a lack of shelter beds, and criminalization efforts directed towards homeless and poor people are factors that have affected homelessness in many other areas across the U.S., including some of the other tent city sites surveyed in this report. What is truly unique about the New Orleans tent cities is the response of both the City and service providers to those who were homeless and living in encampments: an effort to provide these individuals with permanent housing.

Adopting a Housing First model, UNITY and city officials fought hard to obtain the special federal funding and local political will to move those in the tent cities not merely out of the way, but into homes. The additional visibility was at once both a boon and a burden to service providers and the homeless population at large. On one hand, the situation of the camps quickly degenerated into an emergency which required the full attention and resources of organizations like UNITY, but succeeded in getting resources adequate to the scope of the problem. On the other hand, the great majority of homeless people in New Orleans remained outside of the camps, un-housed and largely neglected while service providers focused their energy on housing those in the camps. To Martha Kegel, Executive Director of UNITY, the takeaway was that homelessness should always be treated as an emergency, even if it does not come in the form of an encampment.²³⁷

The response to the encampments in New Orleans represents a best practice that other cities could emulate. As Mike Miller, Director of Supportive Housing Place-

ment at UNITY, puts it: “You don’t have to go ahead and arrest people. It can be solved by housing. It’s an awful lot more work—you have to garner resources; you have to put people on the streets who can figure out who’s out there, who needs what services to keep people housed—but it absolutely can be done. And it absolutely needs to be done.”²³⁸

D. St. Petersburg, FL



“We must make bottom-up solutions viable. The homeless must become an answer to their own prayers; as long as top-down solutions are preferred, the homeless will never get what they want; they’ll never get people to understand.”

— G.W. Rolle, Community Leader, St. Petersburg, FL

1. Homelessness and the Rise of Tent Cities in St. Petersburg

Homelessness has increased steadily in Pinellas County since 2003.²³⁹ In the 2011 Point-in-Time count, County officials documented 5,887 homeless individuals, up from 5,195 in 2007, and 4,540 in 2005.²⁴⁰ Fifty-five percent of the homeless popu-

lation cited the “lack of affordable housing as their most important unmet need, higher than statewide averages.”²⁴¹

From 2003 to 2006, homeless persons increasingly gathered in the downtown St. Petersburg area and began to form various communities there. In early 2006, the City of St. Petersburg sanctioned the creation of one temporary “tent city” in a lot adjacent to the St. Vincent de Paul shelter.²⁴² While this arrangement lasted for several months, it was unable to accommodate the numbers of St. Petersburg’s homeless population. Additional tent cities were founded without official sanction. During this time, economic conditions in Florida began to decline and officials feared that homelessness would increase significantly and overwhelm current shelter capacity.²⁴³

In late December 2006, homeless people formed a new impromptu tent city, differing from the city sanctioned tent city formed earlier in the year, which was located on the St. Vincent de Paul property in the 1400 block of Fourth Avenue North.²⁴⁴ The homeless community of over 100 persons, “Operation Coming Up,” was established by homeless individuals, Refuge Ministries, and a number of other local organizations, and was governed directly by the homeless residents.²⁴⁵ The group emphasized that the tent community was a temporary solution and a beginning; it was an act of protest with attendant demands for the municipal authorities:

All the groups involved, including the homeless are demanding that bathrooms that are public be opened 24/7, that more safe places be created for homeless to sleep, that homeless that are arrested for public trespassing, public sleeping, and other life sustaining needs cease [sic], and that at least



75 new beds be opened in St. Petersburg within 6 months, with the goal of more affordable housing. And, that the city of St. Petersburg adhere to the economic and human rights of all [its] citizens, especially the poor and homeless. Especially, understanding that this movement must be led by and informed by the poor and homeless.²⁴⁶

In early January 2007, citing city codes that prohibit living in tents (even if on private property), city officials gave St. Vincent de Paul one week to evict the occupants of the tent city.²⁴⁷ On January 13, St. Vincent de Paul decided to disband the tent city, not wanting to challenge the City in court.²⁴⁸ Social Services provided qualifying residents with one-month rent vouchers, though these could be used only at a limited number of sites.²⁴⁹ Organizers and residents of the tent city emphasized that more than 50% of the community had attained regular jobs or worked day labor and were close to saving sufficient money to pay for permanent housing,²⁵⁰ and a number of City Council members strongly opposed the eviction.²⁵¹ Moreover, the tent city was already a functioning community and working well on [its] own, [with its] own rules and organization.²⁵²

Departing residents of the tent city soon created two new tent cities: one immediately in front of St. Vincent de Paul at 15th Street and 5th Avenue North, and another at 9th Street and 5th Avenue North.²⁵³ On January 18, 2007, two homeless men, David Heath and Jeff Shultz, were murdered in apparent walk-by shootings.²⁵⁴ At least one of the men was a resident of the Operation Coming Up tent city and was working full time.²⁵⁵

The same day, the Fire Marshal and Police Department ordered the tents at both sites to be taken down, citing safety hazards in violation of the fire code: the tents were too close together, too close to public thoroughfares, and they didn't have fire extinguishers.²⁵⁶ Furthermore, the homeless residents had failed to get the required permits for their tents. However, the St. Petersburg Times noted that it was not clear if all the fire codes the city cited indeed applied. The code requiring a permit specifies tents greater than 120 square feet, which is larger than the tents used by most of the homeless residents.²⁵⁷

Residents re-pitched their tents to protest the actions of the Fire Marshal and tent city representatives agreed to meet with law enforcement to resolve the issue. At this meeting it was agreed that the tent site on 9th street would be taken down and moved to the other site and consolidated.²⁵⁸ However, this agreement notwithstanding, police and fire officials removed the tent city by force on the afternoon of January 19, 2007. Police — using scissors, box cutters and other blades — slashed and seized 20 tents.²⁵⁹ The episode was captured on tape and garnered national media attention, leading to a public outcry.

Following the tent slashing incident, tent city residents moved to various other sites in the downtown area and worked with a number of local churches and shel-

ter organizations.²⁶⁰ In each of these sites, tent city residents attempted to retain their sense of autonomy and self-organization, though not always successfully:

We have always been a self-governing community. We have our own contracts that we wrote for the residents of the original tent city. In the 4th Ave main tent city, we have had our own security that worked together with the City of St. Petersburg police force, and most importantly, we had a community that worked on consensus and respect. The residents of tent city made the decisions and took the responsibility, and the advocates who chose to help, worked WITH us to create a model community respected and listened to our wishes [sic].²⁶¹

2. Background: A ‘Patchwork of Ordinances’ that Criminalize Homelessness in St. Petersburg

In their negotiations with the city, advocates and tent city residents repeatedly argued against municipal ordinances that in effect criminalized homelessness.²⁶² These included open container laws, as well as ordinances on public urination, and trespassing. In the months following the tent slashing, St. Petersburg passed new ordinances specifically targeting the homeless and poor community. These included ordinances that outlaw panhandling throughout most of the downtown area, prohibit the storage of personal belongings on public property, and make it unlawful to sleep outside at various locations.²⁶³

Specifically, the panhandling ordinance was amended on January 10, 2008, to expand the no panhandling zone in downtown St. Petersburg. The ordinance already prohibited panhandling in a number of locations throughout the city, such as near sidewalk cafes, within fifteen feet of an ATM or bank entrance, at bus stops, and on public transportation vehicles. The ordinance also prohibits aggressive panhandling anywhere in the City and prohibits panhandling between sunset and sunrise each day.²⁶⁴

Furthermore, the City Council adopted Section 20-74 and Section 20-75 on March 15, 2007 concerning sleeping in the right-of-way. Section 20-74 makes sleeping in or on any part of the right-of-way unlawful; it also provides that if shelter space is available for a homeless individual, that individual must go to that shelter or risk being charged with violating the section. Section 20-75 makes it unlawful to sleep in the right-of-way contiguous to residential property lines.²⁶⁵

On March 15, 2007, the City Council adopted Section 20-76, which addresses the placement and use of temporary shelters. Pursuant to Section 20-76, it is unlawful to place, use, or occupy a tent, hut, lean-to, shack or other temporary shelter on public property unless a permit has been issued by the City, or on private property unless the property owner has consented, and the individual complies with the

City's Zoning Code. Section 20-76 also prohibits any of the temporary shelters being placed in the right-of-way without a permit.²⁶⁶

Finally, on January 24, 2008, the City Council amended the ordinance relating to outdoor storage. Any items of personal property, including clothing, bedding, materials, equipment, furnishings, furniture, appliances, construction materials, or any items not designated for outdoor use are not allowed to be stored on public property. Furthermore, any item determined to be junk, rubbish or garbage is subject to immediate removal and disposal.²⁶⁷

According to G.W. Rolle, a leader of the St. Petersburg homeless community (and a member of the Board of Directors of the National Law Center on Homelessness & Poverty), the clear aim of each of these ordinances was to remove the homeless population from the downtown area, especially in preparation for the baseball and high tourist seasons.²⁶⁸ The result was what Raine Johns, an Attorney and Director of Homelessness Outreach at the Pinellas County Public Defender's Office, refers to as a "patchwork of ordinances" that in effect makes a homeless person's very existence a crime.²⁶⁹ Activists and lawyers made various efforts to challenge the constitutionality of these ordinances, but many of these cases were eventually settled out of court.²⁷⁰

In an impassioned 2008 article, Rolle wrote:

Do you really believe the city has the right to seize a person's private property and destroy it? Do you really advocate that no one sleeps, lies, or reclines (huh?) on rights of way during daylight hours? The problem is, these rules were never meant to apply to everybody, because that would be foolish and untenable. But if these rules are only applied to some and not all, that equals discrimination.²⁷¹

In addition to the destruction of the tent cities, beginning in 2010, city law enforcement began taking property from homeless persons, under the illegal public storage of personal property ordinance, if they carried more than two bags and a backpack.²⁷² In one instance, a homeless man named Charles was saving extra blankets to give to families with children when they would come to City Hall to sleep. The city charged him with violating the ordinance.²⁷³

Activists and local lawyers argue that the anti-homeless ordinances create a vicious cycle in which homeless individuals exit the shelter system, are arrested, lose their belongings and identification—much of what was gained in the previous intake—and return to the shelter system at square one, or worse, given the demoralizing effects of this setback. This vicious cycle greatly increases the devastating recurrence of homelessness.²⁷⁴

Furthermore, the strict enforcement of ordinances and the clearing of tent cities in St. Petersburg have forced homeless persons northward to the wooded areas of

Pasco County, Florida. In Pasco, thousands of people – including a reported 400 children – live in the woods, either in small tent communities or in abandoned trailers with no electricity or water.²⁷⁵ Women with families in these circumstances are often afraid to come out to access services.²⁷⁶

Despite this, even as the City began to enforce and pass more criminalization ordinances, the City also decided to institutionalize tent cities by creating a new facility, Pinellas Hope, located about 10 miles from downtown.

3. Pinellas Hope: Fully Institutionalized Tent City

In August 2007, Catholic Charities President Frank Murphy and the Roman Catholic Diocese of St. Petersburg offered to provide Diocese land to house approximately 250 homeless adults in a contained campsite for a five-month pilot program, intended initially to operate only from December 2007 through April 2008 (believed to be the peak season of homelessness in Pinellas County).²⁷⁷

On September 25, 2007, the Pinellas County Board of County Commissioners approved funding for the Pinellas Hope Pilot Project: \$461,278 for the planned initial five-month duration.²⁷⁸ At opening, there were 250 tents on site, some with double occupancy.²⁷⁹ Pinellas Hope's stated goals were (1) to reduce street homelessness, and (2) to transition forty percent of Pinellas Hope residents into permanent housing.²⁸⁰

The Pinellas Hope site is located in an industrial area on 126th Avenue North in Pinellas Park,²⁸¹ approximately 10 miles from downtown St. Petersburg. Many residents walk this distance each day along 49th Street to the St. Petersburg center. The area surrounding the site is mostly an industrial manufacturing zone, with local businesses at first resisting the camp's opening. Over time, however, Catholic Charities and other Pinellas Hope organizers were able to create sufficient commitment from local residents to support the project.²⁸² In particular, organizers established arrangements for temporary employment for camp residents as part of the stabilization process.²⁸³

The site itself occupies swampland, with significant flooding during periods of heavy rain; heat and mosquitos are also typical discomforts.²⁸⁴ Tents are therefore placed on elevated wooden platforms and pathways are covered in mulch. Since its opening, the Pinellas Hope campsite has expanded to include semi-permanent, single-occupancy "casitas." These are intended either for (1) residents in need of medical respite or (2) those residents who have found employment and wish to pay a small fee for more permanent housing.²⁸⁵ Residents must go through the tent shelter before having access to the more permanent structures.²⁸⁶ Camp organizers

currently are constructing Pinellas Hope 2, further permanent transitional housing in the form of single-occupancy efficiency apartments in the rear of the camp.

Pinellas County Homeless Street Outreach Teams are the primary, if not sole, source of referral for placement into Pinellas Hope. Each team consists of a law enforcement officer paired with a social worker employed by Operation PAR, a homeless service provider.²⁸⁷ While Catholic Charities is ultimately responsible for admission decisions to Pinellas Hope, the Outreach Teams typically triage applicants before they arrive at the campsite.

Because Pinellas Hope is a dry shelter, the Outreach Teams perform a breathalyzer test before intake is started. Additionally, admissions criteria require a background check to screen for sexual predators or those with a history of violence.²⁸⁸ The teams also prioritize those who desire joint sleeping arrangements for couples, or private sleeping quarters, as those facilities do not exist at other area shelters.²⁸⁹ Couples often refuse placement in shelter systems where they are forced to live apart, or they become separated if there is room for the placement of only one of them. Other eligibility factors include the need for medical, mental health, or substance abuse treatment, the severity of medical conditions, and the applicants' "motivational level toward achieving self-sufficiency."²⁹⁰ In cases where the homeless person requires intensive treatment services for mental health and/or substance abuse or suffers from a medical condition that would be exacerbated by living outdoors, Pinellas Hope serves only as a backup placement option.²⁹¹

Residents of Pinellas Hope must abide by a range of formal and informal rules in order to remain at the campsite. These include volunteering for a specified number of hours at the camp, helping in the kitchen, caring for other residents, and clean-





ing the facilities and camp area.²⁹² Furthermore, all residents must post their location – on or off camp grounds – on a public monitoring board and be checked for illegal/unapproved substances upon each entry to the camp.²⁹³ Residents also are required to meet with a case worker on a regular specified schedule. Disturbances at the campsite are not tolerated, and on-site evening security is provided by the Sheriff’s office.²⁹⁴ Residents may be suspended from the camp for periods up to 30 days or expelled altogether, determined on a case-by-case basis.²⁹⁵

Following admission, Pinellas Hope provides each resident access to the following:

- 8x10 or 9x10 tent
- Sleeping bag, blanket, mat, and lock box
- Washing machines, dryers, and laundry detergent
- Personal hygiene items, including towels
- Modular toilet and sink units (disabled accessible)
- Modular shower units (disabled accessible)
- Meals: Dinner [is] served each day. Breakfast and lunch [is] served when food [is] available. Coffee and water [are] available throughout the day.
- Transportation: Bus passes [are] available to residents. A van [is] available when needed for door-to-door transportation.
- Communication: Computers and phones [are] available for use by residents.
- Recreational activities: A television [is] available in the main gathering tent, along

with books and board games. Special events such as a weekly movie night and holiday parties also [take] place.

- Clothing Closet: Provide[s] clothes to male and female residents in need.
- Security: Monitoring of persons entering and exiting the campsite during daylight hours [is] provided by on-site staff. An off-duty sheriff's officer provide[s] security from 8:00 p.m. until 6:00 a.m.²⁹⁶

Moreover, Pinellas Hope provides the following on-site services, either on a weekly or biweekly basis: case management services, alcohol/substance abuse services, mental health services, employment services, medical services, assistance with veteran's benefits, and legal services.²⁹⁷ While Raine Johns expressed some concerns about the adequacy of funding and of service provision,²⁹⁸ Pinellas County has continued to support the operation of Pinellas Hope with \$770,000 in FY 2008-2009 and \$500,000 per FY from 2009-2013.²⁹⁹ Nearby communities, too, are considering Pinellas Hope as a model for addressing the needs of homeless individuals.³⁰⁰

4. Pinellas Safe Harbor: 'Correctionalized' Shelter

In the years following the 2007 tent slashing and with the added economic effects of the recent global recession, homelessness in Pinellas County greatly increased. Because of the enforcement of St. Petersburg's "anti-homeless" ordinances, arrests of homeless persons by law enforcement flooded an already over-crowded and under-funded correctional system in Pinellas County.³⁰¹ In conjunction with municipal authorities, the Pinellas County Sheriff's Department put in place plans to convert a vacant minimum-security jail annex into a shelter and jail diversion program for homeless persons.³⁰² The Safe Harbor facility opened on January 6, 2011. It is located approximately 15 miles from downtown St. Petersburg.

Safe Harbor operates as a jail diversion program for homeless individuals, as well as a re-entry program for the Pinellas County Jail. The admission process is dependent on a Notice to Appear diversion process conceived by agreement between the Pinellas County Public Defender and the State Attorney's Office in conjunction with the Sheriff's Office and local police agencies. The process is meant in theory to secure a homeless individuals' voluntary admission to Safe Harbor following contact with law enforcement, upon violation of a municipal ordinance or commission of a general misdemeanor. Should individuals agree to be admitted to Safe Harbor, the police officer transports them to the facility and presents them with a Notice to Appear in lieu of arrest and booking. Then, the Public Defender's Office meets with the individual and recommends a psychological evaluation, drug evaluation, or community service. If the individual completes these requirements, only then is the Notice to Appear dismissed and no court hearings or sanctions follow.³⁰³



In most cases, individuals complete assigned community service hours through Safe Harbor without any jail time. In its first year of operation, Safe Harbor had approximately 600 clients with Notices to Appear and worked closely with the court system.³⁰⁴

However, advocates sharply criticize conceiving this admission process as truly voluntary in practice and, more fundamentally, have questioned whether there is authority for offering any such 'choice' under the Florida Rules of Criminal Procedure.³⁰⁵ The diversion process occurs under threat of arrest and involves the transportation to a non-jail institution typically many miles away from the point of contact with law enforcement. Indeed, advocates point to the discriminatory nature of this admission process: it is being applied to individuals who, were they non-

homeless, should receive Notices to Appear and be released without ever being threatened with arrest.³⁰⁶ It thereby becomes primarily a means to remove homeless individuals from the streets.³⁰⁷

Unlike other shelters in the area, Safe Harbor is a “wet” shelter, meaning that it will not turn people away if they come intoxicated or under the influence, or if they have criminal histories or backgrounds.³⁰⁸ At its entrance, Safe Harbor has an “Amnesty Box” into which residents can drop alcohol or weapons before entering the shelter. Non-certified Sheriff teams, alongside private security and two armed officers, operate the facility, and case management teams are available inside.

The facility has the look and feel of a low security correctional institution: concrete block, surrounded by high fences and wire. It includes 370 beds divided into four interior “pods”: three male and one female; two have 100 beds each and two have 85 beds each. Each pod includes bathrooms and recreational areas, including a fenced-in outside space, and the entire facility is air-conditioned. Residents sleep on the floor on assigned mattresses, which are collected and sanitized each morning. One of the pods includes more permanent bunk beds. Each pod also includes a telephone, providing free local calls from 8:00 am to 8:00 pm. In addition to the inside space, Safe Harbor also has an outdoor courtyard area with 100 beds covered a roof overhang.³⁰⁹ This outside area, however, is not protected by a screen from mosquitoes or from flooding during heavier periods of rain. Further, individuals outside are limited in the number of showers they may take.³¹⁰

Residents do receive a number of benefits from the shelter space. Each resident has access to three levels of storage: outdoor bulk storage, 35-gallon plastic tubs, and indoor personal lockers. Moreover, every resident can use Safe Harbor as a permanent address for the purposes of receiving mail. The facility includes a large collective communal area, washers/dryers, a room for medical care (in which the Pinellas County unit for homeless/low-income care works three times per week), and offices for the administration of case management. Case managers typically are responsible for 40-70 cases each. Case managers develop a progress plan for each resident as part of the criteria for remaining in Safe Harbor, along with a series of benchmarks for future progress.³¹¹

At intake, the individual supplies information on background; is assigned a bed, either immediately inside or in the outside courtyard area; and receives a Safe Harbor photograph identification card. Curfew is at 8:00 pm, unless the resident has employment and has arranged alternate entry times with Safe Harbor staff. There is no maximum stay period, and staff will work with the resident as long as necessary. However, if they qualify for placement into another shelter, including Pinellas Hope, residents must go.³¹²

Safe Harbor operates according to a graduated “level” system, in which residents move through various levels if they comply with rules and work with their case managers: outside mats, inside mats, and then the pod with more permanent sleeping arrangements (bunk beds, as opposed to floor mattresses). If residents return to Safe Harbor visibly intoxicated, they are relocated outside and must work their way back inside, while attending substance abuse counseling sessions. If residents break any of the facility rules, they also are relocated outside for a period of 5-15 days. Typical rule violations include failing to clean one’s space, disrespecting staff, drug abuse, graffiti, and intentionally damaging equipment. Other rule violations, however, that have resulted in moving individuals outside have included using more than one towel when taking a shower and failing to put away one’s mat quickly enough in the morning.³¹³ If a violation is particularly severe, staff will suspend a resident for a period of 5 to 30 days and, very rarely, indefinitely. Because of this, and because the facility is operated by the Sheriff’s Office with private security teams, the “shelter” feels more like a correctional institution than a real shelter and has earned itself the nickname: “jail-ter”.

The High Point community around Safe Harbor is largely residential and has expressed concerns about the number of homeless individuals brought into the neighborhood as a result of the facility.³¹⁴ Nevertheless, the Sheriff’s Department worked to increase patrols and establish personal relationships with the community through multiple public forums. Indeed, some local businesses do hire Safe Harbor residents who are identified by case managers.³¹⁵

Past residents of Safe Harbor have noted that it was understaffed at the beginning with insufficient services, but that this has since improved. One significant problem is with residents who are looking for employment: the facility’s strict hours and curfew make working jobs with odd hours difficult, and procedures for sign-out lists are burdensome, especially with staff changes.³¹⁶ Moreover, bus passes are no longer distributed at Safe Harbor, primarily as a result of insufficient funds. Because the facility is 15 miles from the downtown St. Petersburg area (and even further from other areas of Pinellas County), residents face significant challenges in finding transportation to make appointments and interviews.³¹⁷ Lt. McGillen indicated that a limited number of bus passes and bicycles are available for check-out from Safe Harbor, but that this arrangement must be made ahead of time.³¹⁸

April Lott, President of Directions for Mental Health, has argued that Safe Harbor is a “modified therapeutic community,” with peer direction driving community culture.³¹⁹ Raine Johns concluded that Safe Harbor was “on balance, a good thing” in that it offers basic services for people lacking them: a place to shower, eat, and sleep. She also noted how Safe Harbor has protected, in particular, the female homeless population and given them stronger support and social net-

works.³²⁰ More than a reflection on the adequacy of the “jail-ter”, however, these comments appeared to the authors to highlight the complete absence of other alternatives for everyone who ended up in the “jail-ter”, which made shelter of any kind appear preferable.

Many past residents lamented the prison structure and regimented constriction of “the jail-ter.”³²¹ It is certainly true that Safe Harbor has the feel of a jail and is, at the end of the day, a jail diversion program with “correctional” rules.³²² Advocates have pointed to the lack of privacy and constant security surveillance as factors that discourage residents’ commitment to remaining in Safe Harbor.³²³ Sarah Snyder, Executive Director of the Pinellas County Coalition for the Homeless, notes that Safe Harbor began with a culture of law enforcement and, because original grants were federal jail diversion grants, the law enforcement community was intimately involved with its founding. While some municipal pressure allowed homeless individuals to enter Safe Harbor apart from the jail diversion program – that is, voluntarily off the street for shelter and a meal – as St. Petersburg once again began to strictly enforce its municipal ordinances, the focus returned to diversion.³²⁴

5. Recommendations: Institutionalization of Tent Cities Comes at a Cost; Permanent Solutions Include Acknowledging Trauma Histories, Treatment, Dignified Employment, and Autonomy

Legalized, regulated tent cities represent a partial, positive response to the overwhelming problem of homelessness in St. Petersburg. To their credit, the city and county have aided hundreds of homeless individuals with the additional resources devoted to offering (at least some) shelter from the elements, a legal and safe place to call their own, and access to services. Other communities can and should take note from officials’ recent devotion of new resources to ensuring access to immediate shelter for homeless persons in a variety of life situations (i.e. singles and couples, wet and dry).

However, despite these new resources, advocates cite two problematic trends in Pinellas County’s response to homelessness: (1) the top-down “correctionalization” of the shelter system and service provision which disempowers homeless persons, and (2) the counter-productive criminalization of homelessness through municipal ordinances, which place additional barriers to finding permanent housing in the way of homeless victims.

From the beginning, activists and homeless persons have made clear that tents were not suitable alternatives to permanent housing. They were, rather, a form of protest and, often, a necessity given the condition of the shelter system.³²⁵ Advocates note that older shelter models – in which one sleeps on the floor, cannot bring one’s own blankets and instead receives foul-smelling sheets, and must abide by a strict curfew – do not offer the dignity that homeless individuals deserve.³²⁶ The great strength of the organic tent cities were their bottom-up nature and their



organization, in which homeless individuals could find community and autonomy.³²⁷ G.W. Rolle said, “Your most important task as resident of the tent city is to have high regard and respect for your neighbors.”³²⁸ He feels the City authorities betrayed this vision when they appropriated the tent city model and turned it into a regimented, top-down solution, as in Pinellas Hope.³²⁹ Previously, tent cities offered homeless persons a form of visible protest, group solidarity, self-determination, and safety in numbers.³³⁰

Similarly, Kirsten Clanton, director of Southern Legal Counsel’s Homeless Advocacy Project, argues that correctionalized shelters such as Pinellas Safe Harbor in some ways provide less dignity than even the older models, with strict curfews, relocations to isolated jail properties far from city centers, and a general perception of homeless persons as criminals.³³¹ Indeed, Clanton notes a perverse connection between correctionalization and criminalization, as correctionalized shelters provide a framework in which police can threaten homeless individuals with arrest in order to remove them from the community.³³²

In response, Rolle has proposed his own form of concerted activism, in which power is transferred by raising awareness among homeless people themselves: “We must make bottom-up solutions viable. The homeless must become an answer to their own prayers; as long as top-down solutions are preferred, the homeless will never get what they want; they’ll never get people to understand.”³³³ This form of autonomy and self-determination, symbolized by the organic tent cities, ought to be preserved in efforts fighting homelessness.

For example, Rolle has made several proposals to employ the 5,887 homeless persons in repairing and renovating some of the 14,996 abandoned homes in Pinellas

County. He is adamant that homeless persons be given the tools and skills to do the job and to be paid a living wage for it. Rolle notes that many of the abandoned houses in the county are currently fit for habitation, and many other properties require relatively minor repairs in order to be brought up to that condition, but he says the City Council has ignored his suggestions.³³⁴ He is currently working on a project helping homeless persons begin entrepreneurial businesses, including a food truck and a bicycle repair service. Rolle focuses on concrete programs to employ people, to provide preliminary employment as a future reference, to teach the skills necessary to remain employed, and thereby to lift individuals progressively from homelessness to stably-housed status. Rolle has founded a “University of the Poor” to teach scheduling and other skills to homeless persons in need of structure and guidance. The important aspect of these institutions, he says, is that they be personal and bottom-up, not fully integrated into the “correctionalized” service provision system.³³⁵ For Rolle, the attitude of existing government institutions is misguided: often, homelessness organizations are caught between advocating for the homeless and advocating for the service providers. In such a context, very little progress can be made.³³⁶

Rolle believes that the top-down model attaches stigma to homelessness; there is an assumption that homeless persons are incapable of doing things for themselves.³³⁷ Instead, homeless persons are defined as a “bundle of needs;” they are defined in the language of deficiencies.³³⁸ There must be a comprehensive plan to enable homeless persons to be self-sufficient when they leave the shelter system that goes beyond help with substance abuse and mental health issues.³³⁹ There currently remains a “stunning lack of access to transportation, knowledge of available jobs, and access to skill development.”³⁴⁰ Rolle emphasizes that, in addition to repealing anti-homeless ordinances, municipalities must change their mentality from recrimination/criminalization to constructive development.³⁴¹

Others urge attention to the role of “trauma histories” that result in diagnosable mental illnesses that can play a role in causing homelessness.³⁴² April Lott has emphasized the need for “trauma informed communities,” in which business people, educators, civil society groups, and law enforcement recognize the central place of trauma in causing homelessness.³⁴³ In her view, such an approach remains sensitive to the ways in which trauma makes retaining employment and reintegrating into society immeasurably more difficult.

Raine Johns also recognizes the need for a more constructive approach to homelessness that includes reforming current systems. “People talk about ‘frequent-flyers,’ those who cycle through shelters or mental health facilities. Instead, we should label ourselves ‘frequent failures.’ We are clearly missing a critical component if so many people are living in tents and in the woods and not turning to the formal agencies for help. People are completely frustrated by a system that does not help them, that does not satisfy their needs.”³⁴⁴

In particular, the criminalization of homelessness is not only unnecessary for the success of alternate shelter arrangements and the provision of affordable housing, but it is also severely counterproductive.³⁴⁵ Homeless individuals caught in the “web” of criminalization ordinances often lose their belongings and their long-sought identification documents. Moreover, unnecessary criminal histories and criminal debt (poor credit histories and liens on driver’s licenses) undermine homeless individuals’ abilities to attain the employment that will ultimately help them secure and stay in permanent housing.³⁴⁶

Instead of criminalization, municipalities ought to provide funding for quality case management, including an emphasis on mental health and comprehensive, longer-term substance abuse treatment.³⁴⁷ Johns also notes the importance of employment and commends the work of the Burton Blatt Institute of Syracuse University, whose model of customized employment for chronic homeless population is promising.³⁴⁸ Meaningful employment provides a sense of dignity and purpose, of contribution to the community.

In the final analysis, activists again and again emphasize the need for homeless individuals to participate actively in their own programs for reintegration, in their design and implementation.³⁴⁹



Domestic, International, Regional, and Comparative Legal Standards

This section sets out relevant international, regional, domestic, and comparative legal standards that either directly deal with homeless encampments or are relevant to the rights of homeless individuals living in encampments.

A. Legal Theories Used in the United States



In general, there is not an explicit, federally-protected right to housing in the United States;³⁵⁰ the U.S. Constitution does not explicitly include it.³⁵¹ While the Obama administration deserves praise for its stated commitment to ending homelessness,³⁵² that commitment is far from an enforceable right. As a result, litigation challenging the destruction or eviction of tent cities or homeless persons' encampments has relied on alternative Constitutional principles, federal civil rights legislation, and state law claims based on state constitutions, statutes, or principles of common law.

This section evaluates legal theories litigants in cases involving tent cities, or litigants in similar contexts, have applied with some degree of success. Often, these lawsuits have concerned local governments' attempts to disperse homeless individuals by citing or arresting individual campers under "quality of life" ordinances.³⁵³ While governments have targeted some tent cities with police "sweeps",³⁵⁴ municipalities have recently begun suing the residents of these encampments for trespass,³⁵⁵ nuisance,³⁵⁶ or encroachment.³⁵⁷

The rights of tent cities' hosts differ based on whether those hosts are religious or secular organizations. Courts have held both government sweeps and government litigation against homeless encampments likely to infringe on the First Amendment right to free exercise of religion of any faith-based organization hosting those encampments. Secular organizations hosting tent cities may have similar recourse in certain circumstances under the Fair Housing Act, although to date we know of no litigants who have made this argument.

The rights of homeless residents of encampments, on the other hand, vary depending on which strategy governments adopt to disperse them. Numerous courts have held that governments who pursue sweep-style tactics with little or no notice against tent city communities violate constitutional due process and property protections. However, where the government does provide adequate notice and protection for property, these provisions have not prevented the demolition of encampments. When municipalities file eviction suits, rather than sweeping without notice, homeless litigants have used affirmative defenses and counterclaims under state law or common law, including, promissory estoppel, the doctrine of unclean hands, and necessity, to varying degrees of success.

A-1. *Federal Constitutional Claims*

Homeless individuals and their supporters have a number of constitutional rights that are potentially implicated when governments act against them. In cases dealing with tent cities and analogous circumstances, homeless individuals have often brought overlapping claims under the Fourth, Fifth, Eighth, and Fourteenth Amendments on theories that the government has unlawfully seized or destroyed their personal property or infringed on their rights to due process of law, to bodily integrity, and to be free from cruel and unusual punishment. While courts have upheld these claims in the context of government's sweep-style tactics, they have been less willing to apply constitutional rights affirmatively to stop demolitions by state or local governments where due process and property protections are addressed. Religious hosts of homeless encampments, however, have been successful in both circumstances under a First Amendment theory that adverse government action infringed on their right to free exercise of religion.³⁵⁸

Homeless Individuals' Rights Under the Fourth, Fifth, Eighth, and Fourteenth Amendments

The Due Process Clause of the Fourteenth Amendment protects homeless individuals from state and local governments' undue interference with their lives, property, and liberty.³⁵⁹ The Fifth Amendment contains a similar provision restraining the federal government.³⁶⁰ Due process imposes an obligation on federal, state, and local governments to provide at least minimal procedural protections, such as adequate notice and an opportunity to comply with eviction orders, and may also impose more substantive protections of certain fundamental interests such as bodily integrity. The Fourth Amendment also provides protection from unreasonable searches and seizures of individuals and, importantly in this context, of their property.³⁶¹ The Eighth Amendment, which prohibits cruel and unusual punishment, has been found by some courts to protect homeless individuals engaged in otherwise innocent, necessary life activities in public places where no alternatives private place is available to them.³⁶² Homeless litigants have raised claims under each of these provisions in a number of cases, including several specifically concerning tent cities or encampments.

The Right to Personal Property (Fourth, Fifth, and Fourteenth Amendments)

Some courts have found Fourth and Fourteenth Amendment violations of individuals' right to personal property where police have destroyed or confiscated property without notice in the course of their sweeps of encampments.³⁶³ For example, in *Lavan v. City of Los Angeles*, the Ninth Circuit upheld a district court order restraining the city from summarily destroying personal possessions left on Skid Row sidewalks.³⁶⁴ Homeless individuals had brought a §1983 lawsuit challenging the city's practice of destroying their personal possessions when they momentarily left them on public sidewalks to perform necessary tasks such as showering, eating, and using restrooms.³⁶⁵

Another key case is *Cash v. Hamilton County Department of Adult Probation*, where homeless individuals brought a §1983 lawsuit against the Department of Adult Probation alleging that the destruction of their property during a community service cleaning of homeless sites violated their Fifth and Fourteenth Amendment right to due process.³⁶⁶ The district court granted summary judgment to the city.³⁶⁷ The Sixth Circuit reversed, noting that destruction of property without any notice and without the ability to reclaim their belongings would violate plaintiffs' right to due process.³⁶⁸ The court held that there were genuine issues of material fact as to whether their property was destroyed as part of an official city policy and as to whether adequate notice was provided.³⁶⁹

As previously noted, these cases are particularly relevant to situations where governments take enforcement actions such as sweeps or raids. A number of local governments have recently begun taking parties to court *in advance* of taking action, as in Lakewood, thus at least in principle meeting the basic requirements of due process. Precedents such as *Cash* and *Lavan* are not as immediately relevant in that type of situation; however, findings about the reasonableness of government interference and the adequacy of the *projected* procedures would still have to factor in the existence of adequate alternatives and the intrinsic right to personal property individuals continue to have in their items of value. While the holdings of *Cash* and *Lavan* most strongly protect the right to notice and an opportunity to be heard,³⁷⁰ they remain relevant in other contexts where fundamental property or survival interests are at stake.

State-Created Danger and the Fundamental Interest in Bodily Integrity (Fourteenth Amendment)

One recent district court decision suggests that when governments destroy homeless individuals' personal property, they may also infringe on their substantive due process rights.³⁷¹ Specifically, their actions may infringe on homeless individuals' Fourteenth Amendment fundamental interest in bodily integrity. Under the "State-Created Danger" doctrine, individuals' fundamental interest in bodily integrity is violated when the government deliberately exposes them to danger. This interest would require more than just notice and an opportunity to be heard in order to justify government action against homeless encampments.

Sanchez v. City of Fresno consolidates over thirty cases homeless plaintiffs brought against the city concerning its sweep actions against their encampments in late 2011 and early 2012.³⁷² The homeless individuals alleged the city intentionally demolished their encampments at the onset of winter – a time when they most needed their property to protect them from the elements.³⁷³ They argued the city infringed not only on their Fourth Amendment right against unreasonable seizure, but also on their Fourteenth Amendment substantive due process right to life.³⁷⁴

The city moved to dismiss the plaintiffs' Fourteenth Amendment substantive due process claim. It argued that because the Fourth Amendment protected their property on more specific grounds, any due process analysis was inappropriate.³⁷⁵ The homeless litigants opposed the city's motion, arguing that a Fourteenth Amendment claim was appropriate because the city's conduct "literally impaired [plaintiffs'] right to life."³⁷⁶ The court denied the city's motion. It ruled that the city's actions arguably triggered a doctrine which "provide[s] for liability under substantive due process where a state or local official acts to place an individual in a situation of known danger with deliberate indifference to their personal, physical safety."³⁷⁷

The doctrine upon which the *Sanchez* court relied is known as the "State-Created Danger" doctrine. It was developed out of dicta from a 1989 Supreme Court opinion.³⁷⁸ The Court's holding in that case, while denying any general duty for government to act to preserve the fundamental interests of its people,³⁷⁹ contained dicta³⁸⁰ that all circuits but one have subsequently used to carve out a narrow exception to that rule.³⁸¹ The Court's reasoning implicitly excepted circumstances in which the government played a role in creating or exacerbating the danger that threatened on a plaintiff's due process rights.³⁸² This duty to prevent harm exists, for instance, when police officers remove a belligerent drunk from a bar and leave him in sub-zero temperatures without a coat while banning him from either driving away or re-entering the bar.³⁸³ After *Sanchez*, it may also exist where police confiscate a homeless individual's tent at the onset of winter, similarly exposing that individual to the cold.

The *Sanchez* court's ruling has opened the door to arguments that some government actions against homeless encampments implicate residents' fundamental interest in bodily integrity. How far the "State-Created Danger" theory will ultimately carry the homeless plaintiffs in *Sanchez* as the case proceeds will likely depend on their ability to demonstrate that, in addition to creating the dangerous condition, the city behaved deliberately or in a manner that "shocks the conscience"³⁸⁴ and that the danger it created was particularized³⁸⁵ and foreseeable.³⁸⁶

Criminalization as Cruel and Unusual Punishment (Eighth and Fourteenth Amendments)

Some courts have also found that, where no alternatives exist, the criminalization of necessary, life-sustaining activities such as sitting, eating, or sleeping constitutes cruel and unusual punishment under the Eighth Amendment. The landmark case is *Pottinger v. Miami*, in which the district court found that ordinances criminalizing sitting, sleeping, eating, or congregating in public and confiscating or destroying homeless individuals' property violated the right to be free from cruel and unusual punishment under the Eighth Amendment.³⁸⁷

The *Pottinger* court relied centrally on the fact that the presence of homeless individuals and their performance of survival activities in public were involuntary because they had no alternatives:³⁸⁸ there was no shelter space available.³⁸⁹ The court granted an injunction prohibiting the city from enforcing the ordinance until it had established arrest-free zones for homeless individuals.³⁹⁰ The Ninth Circuit made a similar finding in an opinion that was later vacated and withdrawn as part of a settlement agreement between the parties.³⁹¹ Although a district court in the Ninth Circuit's jurisdiction has rejected this vacated opinion,³⁹² the Eleventh Circuit employed its logic when it denied homeless individuals' Eighth Amendment claim because shelter space *was* available.³⁹³

However, homeless litigants who have attempted to rely on the Eighth Amendment to prevent eviction or punishment before it happens, rather than after it has already occurred, have been less successful. The court in *Davidson v. Tucson*, for example, held that the "Eighth Amendment protection against cruel and unusual punishment can only be invoked by persons convicted of crime," and that since no named plaintiff at the homeless encampment at issue had yet been convicted under the trespass statute, "Plaintiffs cannot meet their burden of proving probable success on the merits of their Eighth Amendment claim."³⁹⁴ In *Veterans for Peace*, the court also found that the Eighth Amendment was not implicated because that Constitutional provision applies "only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions."³⁹⁵

Thus, as noted at the outset, the key element in Eighth Amendment challenges is government action criminalizing necessity or survival activities *in the absence of alternatives*. One possible area for further development in this context is to explore whether the adequacy or viability of proposed alternatives is a consideration courts would take into account under this Eighth Amendment theory.

Encampments' Religious Hosts' Right to Free Exercise of Religion Under the First Amendment

When governments act against homeless individuals encamped on the property of religious institutions with the permission of those institutions, they infringe on the institutions' First Amendment right to free exercise of religion. In *Fifth Avenue Presbyterian Church*, the Second Circuit upheld a district court grant of a preliminary injunction against the city preventing them from dispersing homeless individuals sleeping on church property.³⁹⁶ The Second Circuit found that the church was likely to prevail on the merits on its free exercise claim because preventing the church from using its own property to provide shelter for the homeless burdened its protected religious activity, and the city failed to show a compelling interest sufficient to outweigh this protected interest.³⁹⁷ It therefore upheld the preliminary injunction. While this case is not directly about a homeless encampment, it bears

on the question of whether religious institutions may host homeless individuals on their property, which is important for their ability to host encampments.

In a case directly addressing religious institutions' right to host homeless encampments, the Washington Supreme Court found that the city's refusal to process land use applications and allow a church to host an encampment on its property placed a substantial burden on the church's right to free exercise of religion under the Washington Constitution.³⁹⁸ This finding parallels the Second Circuit ruling that failing to allow religious organizations to host homeless individuals unduly burdens their First Amendment right to free exercise.³⁹⁹ Since the basis in these cases is the right to free exercise of religion, a court's holding likely will not significantly be affected by whether the government takes a direct enforcement action or sues for an injunction. The Washington court found that when the city refused to process the church's application, it "gave the Church no alternatives."⁴⁰⁰ Once again, this highlights the centrality of necessity arguments to courts' reasoning in all these cases, whether the primary challenge is based on the First Amendment or on due process or right to property considerations.

A-2. *Federal Civil Rights Claims (The Fair Housing Act)*

The First Amendment's Free Exercise Clause only protects homeless encampments' hosts when those hosts are religious organizations. However, the Fair Housing Act,⁴⁰¹ a federal civil rights statute, may be a tool for landowners or tenants generally to protect homeless encampments they host. While no litigation has presented this theory so far, the Fair Housing Act arguably allows the hosts of tent cities to sue governments that take action "mak[ing] unavailable or den[ying]" a "dwell[ing]" to renters or buyers on the basis of some protected status of its intended occupants.⁴⁰² The outcome would depend in part on whether encampments are dwellings under the FHA, which they may be.⁴⁰³ It would also depend on whether the statute applies to hosts who attempt to repurpose their own land, rather than renting or purchasing new property. While it arguably does apply in that context, the case law is not definitive on this point.⁴⁰⁴ Protected statuses most likely relevant to homeless individuals include race and disability,⁴⁰⁵ including mental illness, recovery from addiction, and alcoholism.⁴⁰⁶

Thus, under the FHA, encampment hosts might dispute the legitimacy of governments' actions against them under three theories: (a) those actions intentionally discriminate against homeless individuals because of the protected status of members of their group;⁴⁰⁷ (b) those actions have a "disparate impact" on members of a protected status group;⁴⁰⁸ and (c) those actions breach the governments' duty to make "reasonable accommodations" for individuals with disabilities.⁴⁰⁹ Since no one has litigated on behalf of encampments under this theory, further discussion of the merits of these claims would be premature.

A-3. *State Law Affirmative Defenses and Claims*

Because the federal constitution alone may provide insufficient protection, encampments facing government suits for trespass, nuisance, or encroachment may do better when they have alternative state law grounds on which to defend against such actions. Thus far, no encampments have asserted ownership of the land upon which they sit. However, some have argued they have the landowner's consent, or that the court should deny the landowner relief or grant them a privilege to remain on the basis of some equitable doctrine. Theoretically, particularly in the case of private land, a theory of adverse possession may in some instances have some merit, although it may be difficult for most encampments to meet the length of time requirements under most state statutes. For homeless encampments on public lands, where the government has tacitly consented to the encampment, promissory estoppel arguments have been successful, at least at early stages of litigation. Other arguments that some state law or policy requires the government to provide them with shelter, or that they may form an encampment without permission as an exercise of their right to survive may also be successful on the merits, or at least increase homeless individuals chances of settling their case on favorable terms.

Implicit Permission (Promissory Estoppel)

If a municipality has behaved in a way that suggests consent to allow a homeless encampment, and homeless individuals have relied on that behavior to establish one, the doctrine of promissory estoppel prevents (“estops”) that municipality from asking a court to eject the encampment. Depending on the factual circumstances, some homeless encampments will be able to employ this theory. In order to argue promissory estoppel, homeless encampments must show evidence of a promise and reasonable reliance on that promise. For example, in Lakewood, New Jersey,⁴¹⁰ Tent City's residents argued that police and other government officials had condoned their encampment and that they had relied on their assurances “by taking steps to make their encampment in the woods safer and a bit more livable.”⁴¹¹

When ruling on Lakewood's motion requesting summary judgment, the Superior Court for Ocean County, New Jersey relied on this theory of promissory estoppel. Lakewood had asked the court to determine that Tent City's residents had no right to interfere with Lakewood's possession of the property they were occupying.⁴¹² The court reasoned that a jury could “easily conclude” that Lakewood had encouraged people to live in Tent City if the defendants proved their claim that police had brought people to Tent City and provided Tent City with garbage disposal services.⁴¹³ On that basis, it denied Lakewood's motion because it felt the defendants had made out a plausible case for promissory estoppel.⁴¹⁴

While an attractive argument for homeless residents in cases where this tacit consent exists, caution should be exercised, as it may encourage other municipalities to take affirmative steps to demonstrate their lack of consent, including enforcing other criminalization ordinances or harassing tactics.

Unclean Hands and the Duty to Aid the Poor

When plaintiffs sue for trespass, nuisance, or encroachment, they ask courts to enjoin defendants from using land in a way that interferes with those plaintiffs' property rights.⁴¹⁵ The Doctrine of "Unclean Hands" prevents a court from granting an injunction to a litigant guilty of wrongdoing directly connected with the lawsuit.⁴¹⁶ In order to rely on an "Unclean Hands" theory, homeless encampments must show that the governments suing them have breached some duty they owe to the residents of those encampments. While "Unclean Hands" arguments have yet to be successful, they have elicited favorable dicta from courts that have considered them.

When they were sued, both Tent City in Lakewood, New Jersey⁴¹⁷ and Camp Runamuck, in Providence, Rhode Island,⁴¹⁸ argued "Unclean Hands" on the basis of statutes in their respective states creating a duty for cities to shelter the poor.⁴¹⁹ New Jersey requires its municipal directors of welfare to "render such aid and material relief as he may in his discretion deem necessary to the end that the person may not...be deprived of shelter."⁴²⁰ Rhode Island requires Providence's director of public welfare to "afford temporary relief to poor and indigent persons."⁴²¹

Each encampment argued that because their respective cities had failed to meet their legal obligations to aid the encampments' residents, courts should deny the cities' requests for injunctive relief.⁴²² In response, both Providence and Ocean County (in which Lakewood sits) pointed out that the statutes upon which Camp Runamuck and Tent City relied give municipal directors discretion to determine what relief is necessary to fulfill their duties.⁴²³

In both New Jersey and Rhode Island, the courts neither fully vindicated nor fully discredited either side's argument. Neither court expressly relied on a statutory duty to aid the poor in reaching its decision. The New Jersey court avoided ruling on the extent of Lakewood's responsibility by denying its motion for summary judgment on other grounds.⁴²⁴ The Rhode Island court did not find any of Camp Runamuck's arguments convincing enough to prevent it from granting Providence an injunction disbanding the encampment.⁴²⁵ It held that because the homeless defendants had not made applications for aid through the mechanism established in Providence's city ordinances,⁴²⁶ the city could not be held to its duty.⁴²⁷ On the other hand, neither court was willing to hold that its state statute provided cities enough discretion to vitiate their duties to the poor. The New Jersey court felt that "there is a governmental responsibility here to care for the poor at some level."⁴²⁸

The Rhode Island court was even firmer: “[Section] 45-1 [sic] isn’t discretionary. The city is required to relief [sic] and support.”⁴²⁹

Many states have legal provisions homeless encampments could rely on to assert an “Unclean Hands” defense. Many states have language in either their constitutions or their laws directing or empowering their legislatures to provide for the poor or for the public welfare; several more have constitutional statements of principle involving public welfare.⁴³⁰ In Indiana and Maine, courts have enforced municipalities’ duties under these laws, although under different circumstances.⁴³¹ Even when unsuccessful, homeless litigants employing this defense may elicit favorable dicta from courts.

Necessity (The Right to Survive)

The necessity defense applies when an individual is faced with some immediate harm and escapes it by engaging in conduct that would typically be illegal.⁴³² The defense is available in a number of cases involving homeless litigants: judges have recognized necessity when governments have cited encampments⁴³³ as well as individual campers.⁴³⁴ Homeless litigants have also argued necessity in response to government litigation to evict them from encampments.⁴³⁵ In order to prevail, homeless litigants defending their encampments must show that their trespass is justified because any harm they cause to landowners is outweighed by the harm their trespass avoids – an imminent threat to their own lives. Additionally, homeless litigants must show they had no legal alternatives to avoid this harm.⁴³⁶ Depending on the particular state constitutional provisions available, homeless litigants may be able to bolster the necessity defense (as litigants in the Lakewood Tent City case did) by asserting a “constitutional right to survive.”⁴³⁷

The leading case applying the necessity defense to tent cities is *In re Zeitler*.⁴³⁸ The case concerns several homeless encampments in Des Moines, Iowa. In January of 2013, the city posted notices at the encampments informing their inhabitants that they were “encroaching (living/residing and [sic] storage of personal property) on City of Des Moines property” and directing them to remove their personal property by a certain date lest the city dispose of it.⁴³⁹ The notice informed the residents of the encampments of their right to contest the city’s notice; the residents filed a notice with the city clerk doing so.⁴⁴⁰

In the resulting administrative hearing, the City of Des Moines Hearing Officer found that “taking the tents away from the homeless people living in the encampments...[w]ith no shelter beds available...would also deprive these people of the basic necessity of adequate sleep.” Therefore, the Hearing Officer found that “the defense of necessity operates in this case to justify the appellants’ lack of a license or lease for their encroachment.”⁴⁴¹

It is uncertain whether this administrative ruling from Des Moines will stand. The city has petitioned the Iowa District Court for Polk County, asking it to annul the defense of necessity, either because it improperly allowed a criminal defense to be asserted in a civil proceeding or because the homeless individuals failed to prove every element of their defense. The case is progressing, renamed *City of Des Moines v. Webster*.⁴⁴²

While *In re Zeitler* is the first opinion to allow homeless individuals to rely on a necessity defense in a civil context, the necessity defense is generally available in civil suits, as the City of Des Moines admits.⁴⁴³ The city's alternate theory – that the homeless individuals failed to prove every element of their defense – may be more plausible but is not certain to succeed. *In re Zeitler* relied on two California cases discussing how the necessity defense should apply to homeless individuals in a criminal context: *Tobe v. City of Santa Ana*⁴⁴⁴ and *In re Eichorn*.⁴⁴⁵ Both concerned the same underlying facts: Santa Ana's police sweeps of homeless individuals sleeping outdoors. *Tobe* concerned whether the anti-camping statute under which police had arrested the homeless plaintiffs was unconstitutional. *In re Eichorn* concerned whether the necessity defense was available to a particular *Tobe* plaintiff as he fought Santa Ana's attempt to convict him under the same statute. In both, the courts struggled not with the "legitimate harm" element of a necessity defense but rather with whether homeless individuals had legal alternatives available to avoid the harm.

In *Tobe*, the California Supreme Court acknowledged the possible viability of a necessity defense in certain circumstances. It rejected a facial challenge to Santa Ana's anti-camping statute, concluding that because homeless individuals could rely on the necessity defense, the law was not unconstitutional on its face.⁴⁴⁶ Then, the court went on to consider whether the necessity defense was available to each plaintiff, concluding that "they simply did not demonstrate that the ordinance had been enforced in a constitutionally impermissible manner against homeless persons who had no alternative but to 'camp' on public property in Santa Ana."⁴⁴⁷ Under the facts of that particular case, the court found that the plaintiffs were unable to show that they could not find lawful shelter, had been denied public assistance, or turned away from an emergency shelter on the night in question.⁴⁴⁸ Moreover, under the facts of that case, the court was unconvinced by a plaintiff's declaration that sleeping outdoors was "safer" than sleeping in the emergency shelter.⁴⁴⁹ In *Eichorn*, by comparison, the California Court of Appeals developed the standard somewhat more expansively, ordering a lower court to allow Eichorn to argue necessity before his jury and holding that that defense would require him to show that "[legal] alternatives were inadequate" in order to receive a jury trial.⁴⁵⁰ A key difference appears to be the nature of the alternative that would have been available in each of the cases – on the one hand an emergency shelter, and on the other trespassing on private property or walking to a different city.

The outcome in *City of Des Moines v. Webster* will impact whether homeless encampments can continue to rely on the necessity defense in response to government litigation, at least in Iowa, although it would not cut off the possibility of raising that defense in other jurisdictions. Until then, *In re Zeitler* stands as a favorable precedent that would allow homeless litigants to take advantage of the necessity defense to overcome initial trial motions and to proceed to discovery, thereby improving their bargaining position.

A-4. *Lessons from Domestic Tent City Cases*

Domestically, courts at both the federal and state level offer mixed results for residents of tent cities and their advocates. Where local governments attempt forced evictions through sweeps without notice, there is significant precedent indicating that such tactics violate the Fourth, Fifth, and Fourteenth Amendments of the U.S. Constitution. Where homeless litigants have attempted to employ these principles affirmatively to prevent future government action, their success has been more limited. Necessity and the existence of other alternatives has been a factor in federal court decisions across an array of constitutional claims, but has been central to claims under the Eighth Amendment. Litigants have also sometimes succeeded under First Amendment free exercise theories challenging government action against religious institutions hosting encampments on their property. State cases looking to equitable principles of promissory estoppel, the doctrine of unclean hands, and necessity also hold some promise. As with federal law, state law is mixed in this area. Consequently, all these theories can and should benefit from the complementary international and comparative law arguments described elsewhere in this chapter. These complementary arguments can be used persuasively to guide courts in interpreting either the vagaries of ambiguous Constitutional language or the unclear extent of equitable principles.

B. International Legal Standards on the Right to Housing: Declarations, Conventions, Treaties

Since 1948, numerous declarations and conventions have to varying degrees recognized a right to housing. These include the treaties of the International Bill of Human Rights (International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Rights; and Universal Declaration of Human Rights), as well as more recent international human rights instruments, such as the Convention on the Protection of Migrant Workers and the Declaration on Social Progress and Development. The legal status of these instruments varies: covenants, statutes, protocols, and conventions are legally binding for states that



ratify or accede to them. Over time, tenets of these legally binding agreements may become accepted principles of customary international law, a form of international common law.⁴⁵¹ Declarations, principles, guidelines, standard rules, and recommendations, on the other hand, have no binding legal effect on their own; however, such instruments are seen to have moral force, serve as evidence of emerging customary law, and to provide practical guidance to states in their conduct.⁴⁵²

This section provides an overview of those international human rights instruments that concern the right to housing in international law and that are relevant to the United States, its treatment of homeless individuals, and the rise of tent cities within its borders. These standards are a vital complement to domestic standards for several reasons.

First, courts are increasingly beginning to look to international standards for guidance, regardless of whether those standards are in binding agreements or not. Recent Supreme Court cases,⁴⁵³ as well as rulings by lower federal and state courts,⁴⁵⁴ have relied on international standards and rulings as persuasive authority, particularly as sources of “evolving standards of decency” in interpreting the Eighth Amendment.⁴⁵⁵

Second, federal policy advocacy adopting a human rights perspective on homelessness has shown increasing results. The U.N.’s first Universal Periodic Review (UPR) of the U.S. took place on November 5th, 2010, and included direct reviews on the U.S.’s performance in ensuring the right to housing under the UDHR, ICCPR, CERD, and CAT.⁴⁵⁶ A number of countries recognized generally the need to alleviate homelessness and protect the rights of homeless persons and to create and protect adequate housing.⁴⁵⁷ In response, the U.S. committed to “taking significant measures to ensure equal opportunities and access to areas including housing.”⁴⁵⁸ In addition, the U.S. has developed a comprehensive Federal Strategic Plan to Prevent and End Homelessness, *Opening Doors*, that makes ending homelessness in America a national priority.⁴⁵⁹ In its one-year follow up report on *Opening Doors*, the U.S. Interagency Council on Homelessness (USICH) cites the government’s participation in the Universal Periodic Review and its commitments as part of its progress in implementing the plan.⁴⁶⁰

Last, the above-described policy advocacy and litigation strategy may soon find confluence. In 2012, the USICH issued a report, *Searching out Solutions*, that criticizes criminalization measures and notes that they may violate not only federal constitutional rights but also our international human rights obligations under the ICCPR and CAT—the first time a federal agency report has addressed a domestic practice as a potential treaty violation.⁴⁶¹ This explicit acknowledgement in a federal agency report that governments have duties under human rights treaties that may be violated by criminalization practices provides significant persuasive weight for lawyers who want to incorporate international standards into their courtroom advocacy.

B-1. Legal Standards

*Universal Declaration of Human Rights (UDHR)*⁴⁶²

The UDHR is an expression of universal human rights principles by the international community and is considered to be a seminal human rights text. The U.S. played a major role in drafting and shaping the UDHR; Eleanor Roosevelt led the effort at the U.N. to adopt the Declaration, and President Franklin Roosevelt's four freedoms, "freedom of speech and belief and freedom from fear and want,"⁴⁶³ are incorporated into the Preamble. The UDHR, while only a declaration and therefore not technically legally binding on states, has been so firmly engrained into the norms of the international community that it is now considered to be a normative instrument which creates or reflects certain legal obligations for the member states of the UN.⁴⁶⁴ Moreover, some scholars argue that the repeated reliance on and resort to the UDHR by governments has given the Declaration and the rights it proclaims the status of customary international law.⁴⁶⁵

The UDHR contains both explicit and implied protections of the right to housing. Article 25(1) states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The UDHR also includes a broad range of civil, political, social and economic rights, which may be relevant to the rights of homeless persons living in tent cities.⁴⁶⁶ Article 9, which provides that no one shall be subject to arbitrary arrest, may protect homeless individuals from unreasonable seizure based on the performance of survival activities in a public space. Article 12, which guarantees freedom from interference with one's privacy or home, may protect homeless individuals from forcible ejection from their places of shelter without due process of law. Article 13 establishes freedom of movement and residence for all, including homeless individuals, and Article 17 protects homeless people's right to own property as well as the right not to be arbitrarily deprived of one's property. Articles 21 and 26 provide for the right of equal access to public service and education, and the right to social security, rights which homeless people and those living in encampments may be deprived of as a result of increased isolation from mainstream society.

*International Covenant on Civil and Political Rights (ICCPR)*⁴⁶⁷

The ICCPR is one of the foundational human rights treaties of modern international human rights law. Unlike the ICESCR, which calls for progressive implementation tied to available resources, the ICCPR imposes an immediate obligation "to respect and to ensure" the rights it proclaims and to take whatever other mea-

asures are necessary to bring about that result.⁴⁶⁸ As of October 2011[update], the Covenant had 74 signatories and 167 parties, including the United States, which ratified the ICCPR in 1992.⁴⁶⁹

The ICCPR does not enumerate a right to housing. However, like the UDHR, it includes other rights that are implicated in situations faced by persons living in tent cities or homeless encampments. Article 7 says that no one shall be subjected to “cruel, inhuman or degrading treatment,” while Article 9 highlights “the right to liberty and security of person” and the right to be free from “arbitrary arrest or detention.” Arbitrary arrests and degrading treatment of homeless individuals by law enforcement or other personnel, based on the performance of survival activities in a public space, violates these provisions.

More generally, the ICCPR also recognizes the right to life (Article 6), which has been interpreted by the Human Rights Committee, the treaty oversight body, to include right to shelter oneself from the elements.⁴⁷⁰ Article 7 of the ICCPR states that no one shall be subjected to “cruel, inhuman or degrading treatment.”⁴⁷¹ As will be discussed in further depth below, numerous human rights monitors have cited the criminalization of homelessness as potentially raising issues of violations of this right.

The ICCPR also enshrines the right to free movement and choice of residence (Article 12), and the right to be free from arbitrary or unlawful interference with one’s privacy, family, home or correspondence and protected by the law against such interference (Article 17). Article 26 of the ICCPR protects all persons against discrimination on the basis of race. In 2006, the Human Rights Council specifically raised the issue of disparate racial impact of homelessness on African American communities in the U.S. and called on the U.S. to “take measures, including adequate and adequately implemented policies, to bring an end to such de facto and historically generated racial discrimination.”⁴⁷² The ICCPR also protects the right to family (Article 23), which implicates housing rights as the separation and dissolution that families often face once they lose their homes, typically through forced gender and age segregation in the shelter system, is a direct threat to people’s rights to maintain and protect their family units.

These provisions may be regarded as providing, if not a right to housing, at least a right to choose one’s residence, to move freely from place to place, and to be free from interference in one’s home.

*International Covenant on Economic, Social and Cultural Rights (ICESCR)*⁴⁷³

The ICESCR makes up the final component of the International Bill of Human Rights and includes numerous socioeconomic rights. Although the U.S has not yet ratified the ICESCR, it is a signatory to it and therefore may not contravene the purposes of the treaty.⁴⁷⁴

Article 11(1) explicitly recognizes the right to an adequate standard of living that includes the right to adequate housing:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The right to housing in the ICESCR has been significantly developed through the work of the Committee on Economic, Social, and Cultural Rights and other human rights officials, as will be discussed in Section III.B.2.

Other Relevant Human Rights Treaty Provisions

Numerous other human rights instruments contain provisions that are relevant to homelessness generally and to tent cities specifically. Some treaties have been signed and ratified by the U.S.; others have not; other documents represent other forms of international law. However, all may be relevant to some degree in both legal and policy advocacy, and we attempt to provide a comprehensive in breadth, but summary in depth overview of some provisions of other international instruments that advocates may find useful, depending on the specific context of their work.

Article 5 of the Convention on the Elimination of all forms of Racial Discrimination (CERD)⁴⁷⁵ provides a broad range of protections and socioeconomic rights, including the right to freedom of movement and residence within the border of the State; the right to public health, medical care, social security and social services; and the right to equal participation in cultural activities. It also explicitly provides for the right to housing (Article 5(e)(iii)), and notably, “the right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.” The U.S. signed the CERD on September 28, 1966, and subsequently ratified the treaty on October 21, 1994.⁴⁷⁶ As noted in the above discussion of the ICCPR, and as will be elaborated below in the discussion of the Special Rapporteur on Racism, the racially disparate impact of homelessness in the U.S. is a concern under the treaty.

The Convention on the Rights of the Child (CRC)⁴⁷⁷, which the U.S. has signed, but not yet ratified,⁴⁷⁸ recognizes the right of every child to “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” (Article 27). Although the CRC recognizes that parents/guardians have the primary responsibility to secure those living conditions necessary for their child’s development, it also states:

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.⁴⁷⁹

The Convention Against Torture and other forms of cruel, inhuman, or degrading treatment or punishment (CAT), which the U.S. ratified in 1990, protects against cruel, inhuman, and degrading treatment (Article 16), a standard similar to our own Eighth Amendment.⁴⁸⁰ On November 21, 2002, the Committee against Torture, which oversees the CAT treaty, found the state-sanctioned destruction of a Roma tent city in the town of Danilovgrad, Montenegro to be cruel, inhuman, or degrading treatment or punishment.⁴⁸¹ The specific application of the “cruel, inhuman, or degrading” standard to the criminalization of homelessness and treatment of homeless persons is a developing field, repeated by numerous Rapporteurs as well, discussed below.

The Convention on the Rights of Persons with Disabilities (CRPD), signed but not yet ratified by the U.S.,⁴⁸² recognizes “the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and requires states to “take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability” (Article 28(1)). Article 28 goes on to further describe specific measures States Parties need to take, including measures “to ensure access by persons with disabilities to public housing programmes” (Article 28(d)). The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care⁴⁸³ declare that people with mental illness “have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment,” (Principle 1-3) that there should be “no discrimination on the grounds of mental illness,” (Principle 1-4) and that those with mental illness have the same rights as others, including “the right to live and work, as far as possible, in the community” (Principle 3). Given the high percentage of homeless people living with disabilities or mental illness or both,⁴⁸⁴ the rights of persons with disabilities or mental illnesses are certainly implicated in broader housing policy.

Article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴⁸⁵ provides that migrant workers should have “access to housing, including social housing schemes, and protection against exploitation in respect of rents” in the state of their employment, in addition to a wide range of other social protections. The U.S. has neither signed nor ratified this treaty.⁴⁸⁶

The Declaration on Social Progress and Development,⁴⁸⁷ adopted by the U.N. General Assembly on December 11, 1969, aims to raise the material and spiritual standards of living of all members of society, in part by “the provision for all, particularly persons in low income groups and large families, of adequate housing and community services.” It calls for “the adoption of measures to introduce, with the participation of the Government, low-cost housing programmes in both rural and urban areas” (Article 18). The Declaration on the Right to Development⁴⁸⁸ calls for states to undertake, “at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income... Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices” (Article 8).

The Convention on the Elimination of Discrimination Against Women (CEDAW), which the U.S. has signed but not yet ratified, provides for equal treatment for women and thereby protects against homelessness and the lack of housing, which have a disparate impact on women.⁴⁸⁹ Women who suffer domestic violence are at greater risk of becoming homeless.⁴⁹⁰ Once homeless, women experience increased vulnerability to physical and sexual violence as noted in the St. Petersburg case study.⁴⁹¹

B-2. *Development of Right to Housing Standards: ICESCR General Comments & Special Rapporteur Reports*

In addition to treaties and declarations, international law is developed and made more specific through the work of treaty monitoring bodies and Special Rapporteurs. Each treaty has a treaty monitoring body that oversees its implementation and develops guiding commentary called “General Comments” and analyses of state reports that interpret and clarify the meaning of many provisions of the treaties they oversee, such as agencies in the U.S. issue regulations or other official guidance on statutory implementation.⁴⁹² Special Rapporteurs are independent experts tasked by the U.N. Human Rights Council with reporting on, and developing new standards for, human rights specific thematic areas.⁴⁹³

ICESCR COMMENTS

The Committee on Economic, Social, and Cultural Rights (CESCR) monitors the implementation of the ICESCR. In CESCR General Comment 4 on the Right to Adequate Housing, the Committee recognized that “the human right to adequate housing, which is thus derived from the right to an adequate standard of living,

is of central importance for the enjoyment of all economic, social and cultural rights.”⁴⁹⁴ After examining seventy-five country reports on housing, the Committee concluded that wide gaps of implementation exist, and as a result issued the following conclusions and recommendations as part of General Comment 4, which states that the right to Adequate Housing:

- “The right to adequate housing applies to everyone.”⁴⁹⁵
- “The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the *right to live somewhere in security, peace and dignity*.”⁴⁹⁶
- “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities—all at a reasonable cost.”⁴⁹⁷
- The concept of adequate shelter also requires legal security of tenure, the availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy.⁴⁹⁸
- “Many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating ‘self-help’ by affected groups.”⁴⁹⁹
- “States parties must give due priority to those social groups living in unfavorable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”⁵⁰⁰

The Committee concludes that states need to adopt national housing strategies, and to provide regular monitoring and reporting on housing policies which address those most vulnerable groups. General Comment 4 has been cited in numerous right to housing cases, including the case of housing policy as it applies to Roma in various European countries (see Section III.D on Comparative Law below).

Of direct relevance to tent cities, CESCR General Comment 7, addresses the issue of forced evictions. The Committee observes that “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats,”⁵⁰¹ and concludes that forced evictions are *prima facie* incompatible with the requirements of the Covenant, and may violate civil and political rights, including the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.⁵⁰² The Comment states clearly:

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.⁵⁰³

Importantly, the Comment cross-references Article 17(1) of the International Covenant on Civil and Political Rights (a treaty ratified by the U.S.), which complements the right not to be forcefully evicted without adequate protection by recognizing “the right to be protected against ‘arbitrary or unlawful interference’ with one’s home.”⁵⁰⁴ By referencing the ICCPR, the Committee makes it clear that states have obligations with respect to forced evictions that are not qualified by considerations of available resources. The Committee also calls for “legal remedies or procedures ... [for] those who are affected by eviction orders,” based on Article 2(3) of the ICCPR, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated.⁵⁰⁵

The CESCR Comments illuminate the meaning behind the right to housing enumerated in the ICESCR and other human rights treaties and declarations. States have affirmative obligations to provide adequate housing to their inhabitants, in particular those who are most vulnerable and likely to be dispossessed of housing.

Special Rapporteur Reports

Special Rapporteurs bear a specific mandate from the United Nations Human Rights Council within the scope of “Special Procedures” mechanisms to investigate human rights situations and conduct fact-finding missions to countries.⁵⁰⁶ A 2006 Report by the former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, outlines “basic principles and guidelines aimed at assisting States and the international community in significantly reducing the practice of forced evictions.”⁵⁰⁷ The report states that “forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with international human rights law.”⁵⁰⁸ It further states that forced evictions “are often linked to the absence of legally secure tenure,”⁵⁰⁹ and “constitute gross violations of a range of internationally recognized human rights, including the human rights to ... freedom from cruel, inhuman and degrading treatment and freedom of movement.”⁵¹⁰

In 2008, the Special Rapporteur on Racism, Doudou Diène, visited eight cities across the U.S. on his first official mission to the country. Following testimony from the Law Center and site visit to Los Angeles’ Skid Row, his report raised con-

cern about reducing countering the racially disparate impact of policing patterns on homeless communities of color.⁵¹¹

In a report on her 2009 mission to the U.S., the current U.N. Special Rapporteur on the right to adequate housing Raquel Rolnik recommended that “[w]hen shelter is not available in the locality, homeless persons should be allowed to shelter themselves in public areas.”⁵¹²

The U.N. Special Rapporteur on extreme poverty and human rights Magdalena Sepúlveda Carmona, produced a specific report on the penalization of persons living in poverty, including criminalization of homelessness.⁵¹³ Among other beneficial language, the report states that “[o]wing to their lack of or limited access to housing, persons living in poverty rely ... heavily on public spaces for their daily activities” and that removal of persons living in poverty from urban spaces “without ensuring alternative housing or access to remedies and compensation” is a “flagrant violation of their right to adequate housing.”⁵¹⁴ She echoes the CESCR General Comments stating that “the concept of adequacy in relation to the right to housing requires [...] that factors such as the availability of services and infrastructure, affordability and accessibility be taken into account. It also requires States to refrain from forced evictions.”⁵¹⁵

Important for attorneys seeking to build an Eighth Amendment or necessity argument, the report states removal of tent cities without providing viable alternatives may be “cruel, inhuman, and degrading treatment” the international equivalent of a U.S. “cruel and unusual” standard. The report states, “where there is insufficient public infrastructure and services ... persons living in poverty and homelessness are left with no viable place to sleep, sit, eat or drink.... undermining their right to an adequate standard of physical and mental health and even amounting to cruel, inhuman or degrading treatment.”⁵¹⁶ As noted below, this statement has been echoed by other Rapporteurs, and is emerging as consistent theme as this issue is discussed at the international level.

The Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, conducted a mission to the U.S. in 2011 which included a visit with the Safe Ground tent community members in Sacramento, CA. , She echoed the Rapporteur on Extreme Poverty in addressing the lack of adequate sanitation in homeless encampments as cruel, inhuman, and degrading treatment, a call she repeated in her report the following year on stigmatization of people living in poverty⁵¹⁷ She concluded that “the United States, one of the wealthiest countries in the world, must ensure that everyone, without discrimination, has physical and economic access, in all spheres of life, to sanitation which is safe, hygienic, secure, socially and culturally acceptable, and which provides privacy and ensures dignity [...] The long-term solution to homelessness must be to ensure adequate housing.”⁵¹⁸

Following advocacy by the Law Center, the Special Rapporteurs on adequate housing, on water and sanitation, and on extreme poverty and human rights issued a statement welcoming the U.S. Interagency Council on Homelessness Report addressing homelessness as a human right violation and again confirming the interpretation that punishing people for basic human activities in the absence of alternatives is cruel, inhuman, and/or degrading.⁵¹⁹

B-3. *Application to and Implications for U.S. Federal and State Policy on Tent Cities*

Under international law, there is a clear and long-established right to housing. Through General Comments issued by the Committee on Economic, Social, and Cultural Rights and reports issued by Special Rapporteurs, the right to housing has been delineated to include not just any form of shelter but rather “adequate” shelter, with respect to its legal security of tenure, the availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy. As part of this growing body of housing rights, forced evictions have become tantamount to illegal action in cases where no alternative or emergency housing is provided. Most of the international treaties that provide a right to shelter or housing (the UDHR, ICCPR, and ICESCR) have the widespread support and endorsement of the international community.⁵²⁰

Given that the U.S. has ratified the ICCPR, CAT, and CERD and is a signatory to the ICESCR, the CRC, and the CRPD, the U.S. has affirmative obligations not to infringe upon certain freedoms of homeless individuals. Under its international legal obligations, many policies in the United States that currently relate to both homelessness in general and to tent cities and encampments in particular violate international law. There have been cases of forced evictions against tent city residents and tent city closures without the provision of adequate alternative or emergency housing (for example, in reports from St. Petersburg, Florida).⁵²¹ In other places, municipalities have institutionalized tent cities as a less expensive option than providing better, alternative housing. The existence of tent cities may itself, in some instances, be a facial violation of the right to adequate housing. While the right to housing is one that may progressively be realized, aspects of the right to housing should immediately be respected. Where federal and local governments do not provide alternative accommodations, it would be a violation of the human rights to life, to shelter, and to freedom from cruel, inhuman, and degrading treatment to interfere with homeless individuals’ ability to shelter themselves.⁵²²

In addition to direct violations of the right to housing, city and local governments are violating numerous other rights of homeless individuals, particularly in the context of homeless encampments. Freedom of movement and the right to travel, freedom from arbitrary arrest and interference with one’s home, as well as property

rights have been violated regularly, often by law enforcement or local government officials.⁵²³ The rights of certain subgroups of the population protected under international law, such as children or people with disabilities, are also implicated by the adverse treatment of homeless people and those living in encampments.

Although recent statements by members of the Obama administration make reference to this growing body of international law in a positive way,⁵²⁴ more needs to be done to ensure that the United States complies with its international law obligations to provide for adequate housing to all, and particularly to those “social groups living in unfavorable conditions.” In an April 2012 report, the U.S. Inter-agency Council on Homelessness acknowledged, “In addition to violating domestic law, criminalization measures [which include evictions and enforcement of anti-camping ordinances in absence of alternatives] may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”⁵²⁵

The United States has been a signatory to the ICESCR since 1979. Although it has not yet ratified the treaty, as a signatory, the United States is under an obligation to not contravene the purposes of the treaty.⁵²⁶ Moreover, President Obama recently committed his administration to ending homelessness,⁵²⁷ and the U.S. Department of Housing and Urban Development stated that human rights norms play a role in shaping housing policy.⁵²⁸ At least to this extent, there is a federal commitment to the progressive realization of a right to housing consistent with the ICESCR. While this commitment is not directly actionable in U.S. federal courts, it lays the basis for integration of other human rights standards as persuasive materials in court, and can be used in policy advocacy.

C. American and European Regional Conventions and Cases



In addition to international standards, significant developments have taken place in the regional human rights systems that may be persuasive in U.S. courts. This section explores the provisions of the American and European Conventions on Human Rights, as well as recent jurisprudence of the European Court of Human Rights, related to the right to adequate housing. It considers the applicability of prior case law to possible challenges to laws criminalizing homelessness or to failures of the State to provide adequate housing for its citizens.⁵²⁹

C-1. *American Declaration and Convention on Human Rights*

The American Declaration of the Rights and Duties of Man and the American Convention on Human Rights (ACHR) require states to respect and to ensure the right to housing in language that parallels that used to describe state obliga-

tions under the ICCPR.⁵³⁰ The central obligation is to give effect to these rights by all appropriate means, including by recognizing the rights in the domestic legal order, providing legal remedies for aggrieved parties, and ensuring government accountability.

The first time the Inter-American Commission on Human Rights (IACHR) ever addressed the American Declaration's housing provisions was in a March 4, 2005 hearing, coordinated by the Law Center, about the legal standards for the right to housing. Testifying on the legal standard that the IACHR should apply in evaluating compliance with the right to housing, Tara Melish, Counsel for Poor Peoples' Economic Human Rights Campaign, argued that the Inter-American instruments contain rights similar in content and in means of application to those found in United Nations human rights instruments, namely the ICCPR and the ICESCR.⁵³¹ Thus, the jurisprudence of the U.N. committees interpreting the right to housing should apply in the Inter-American system, as well. She stated:

With regard to housing rights the obligations to *respect* and *ensure* entail the obligation to take all necessary and appropriate measures to ensure the right to adequate housing, in its manifold dimensions, to all persons within a State's jurisdiction. That is, the right to adequate housing, like all human rights, includes a wide variety of negative and positive aspects – from negative liberties to be free from interference, to positive entitlements to have access to due process and judicial protection, to affirmative guarantees of legislative and policy protections.⁵³²

Framed within the “respect” and “ensure” paradigm, the obligation to respect the right to housing is primarily a negative obligation of noninterference by the state and, as such, does not generally involve the allocation of resources. The obligation to ensure the right to housing, however, is a positive obligation that requires resource expenditure and may be realized progressively. Nonetheless, the obligation to take steps towards realization of positive rights is immediately effective.⁵³³ While States have discretion in determining what “appropriate measures” to adopt to ensure these rights, certain steps are key and must be taken immediately: enacting appropriate legislation, providing effective remedies, and adopting a national housing strategy.⁵³⁴

Applicable Provisions of the American Declaration on the Rights and Duties of Man

Although the American Declaration is not a legally binding treaty, the jurisprudence of both the Inter-American Court of Human Rights (IACHR) and the Inter-American Commission on Human Rights consider it a source of binding international obligations for all Organization of American States (OAS) member countries.⁵³⁵ Indeed, the Declaration's articles remain enforced with respect to states that have not ratified the more specific provisions of the American Convention on Human Rights (discussed below), including the United States.

The relevant and applicable provisions of the American Declaration are the following: Article IX assures every person the “right to the inviolability of his home.” Article XI states, “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.” Article XXIII assures every person of the “right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.”⁵³⁶

Applicable Provisions of the American Convention on Human Rights

The American Convention on Human Rights, which has been signed, but not yet ratified by the U.S., includes the right to be free from “arbitrary or abusive interference” with life, family, and “home” (Article 11), and the right to the use and enjoyment of property (Article 21).

Article 26 of the ACHR is a provision of progressive realization, under which “States Parties undertake to adopt measures . . . with a view to achieving progressively . . . the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards” within the Charter of the OAS.⁵³⁷

Article 26, when linked to the OAS Charter, provides one of the clearest articulations of the right to housing in the Americas. Article 34(k) of the Charter states:

The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: (k) Adequate housing for all sectors of the population.⁵³⁸

The Charter has been interpreted as not containing rights in and of itself, but rather as articulating standards. Article 26, however, establishes the rights implicit in those standards. As such, Article 26 of the ACHR, when seen in concert with Article 34(k) of the Charter, could be effectively read to state: *The State Parties undertake to adopt measures . . . with a view of achieving progressively . . . the full realization of the right . . . [to] adequate housing for all sectors of the population.*

The Inter-American Court of Human Rights has considered relatively few cases that relate to housing rights claims under the ACHR. One important exception is the reaffirmation of the property rights of indigenous peoples in the landmark case of *Comunidad Mayagna (Sumo) Awas Tingni v. Nicaragua*⁵³⁹ of August 31, 2001 and subsequent decisions.⁵⁴⁰ Nevertheless, most other IACHR cases (and Inter-American Commission complaints) relate to similar claims of indigenous peoples and to the seizure or destruction of property by security forces in the context of military dictatorship and repression. While these kinds of demands for reparation

are unfortunately of limited relevance to developing support for a more obliging right to adequate housing, they may be instructive with regard to protection from forced eviction or minimum standards of human treatment when occupants do not hold formal property rights to the land on which they live, yet for whom property rights accrue by the nature or history of their tenancy on that land.

c-2. European Convention on Human Rights (ECHR)

The ECHR, while not legally binding on the U.S., provides a template of progressive human rights decisions that may be helpful in informing U.S. litigation and policy advocacy. Although the majority of the rights and, indeed, the general orientation of the ECHR, emerge from the liberal tradition of negative rights, since 1979 the Court has recognized the inter-relationship between negative and positive rights.⁵⁴¹ In *Airey v. Ireland*, the European Court of Human Rights (ECtHR) held:

Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers . . . that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention.⁵⁴²

These “implications of a social and economic nature” can be seen regularly in relation to cases on Article 1 of Protocol No. 1 on the appropriation of possessions.⁵⁴³ Indeed, the majority of cases in this area relate to restitution of property appropriated by states or payment of appropriate compensation in lieu. However, the positive obligation to protect property rights is also being translated into a limited positive obligation to prevent destruction of homes and other matters, as widespread home ownership is recognized.⁵⁴⁴

Relevant Provisions of the European Convention and Associated Case Law

The following sections explore the Court’s jurisprudence in greater detail, focusing on cases that may be particularly apposite to homelessness and the right to housing.

ARTICLE 8: RESPECT FOR PRIVATE LIFE AND HOME

Article 8(1) of the ECHR protects the right of individuals to “respect for” their private life, family life and “home.” While this is a right to access to, occupation of, and peaceful enjoyment of the home, the definition of “home” in the legal sphere rarely or with great difficulty represents meanings beyond the physical structure of a house (or its capital value).⁵⁴⁵

While Article 8 does not require States to provide a home for everyone, there are circumstances when the positive obligations of the Convention do gesture in this direction. Perhaps the most important recognition to date of a positive obligation

to provide housing assistance has come in *Marzari v. Italy*.⁵⁴⁶ Here, a severely disabled applicant considered an allocated apartment to be inadequate for his needs, and ceased to pay rent while requesting that certain works be carried out to make it suitable for him. The court held that while Article 8 does not offer a guarantee to have one's housing problems solved by the state, a refusal by the authorities to provide assistance to an individual suffering from a severe disability might in certain circumstances raise an issue under Article 8, because of the impact of such refusal on the private life of the individual, which could be relevant in the context of reasonable accommodation under the Americans With Disability Act.⁵⁴⁷

However, with regard to homelessness, the Court has shied away from discerning a right to housing in Article 8. In *Chapman v. United Kingdom*, the Court held that Article 8 did not give a right to be provided with a home, and this was a matter for political and not judicial decision.⁵⁴⁸ And in *Codona v United Kingdom*, the Court found that there could be a positive obligation to facilitate the Roma way of life under Article 8, but that obligation did not include providing "non-bricks and mortar" accommodations where there was none available.⁵⁴⁹

Nevertheless, tent city litigants may find hope in cases regarding other Roma encampments. In *Moldovan v. Romania*, 13 Roma houses belonging to the applicants were destroyed and they alleged the involvement of state officials.⁵⁵⁰ In invoking ECHR Articles 3 and 8, the applicants complained that, after the destruction of their houses, they could no longer enjoy the use of their homes and had to live in poor, cramped conditions. They claimed that the Romanian government had a positive obligation under Articles 3 and 8 to provide sufficient compensation to restore them to their previous living conditions. They contended that the Government's failure in respect of their positive obligations had resulted in families with small children and elderly members being forced to live in cellars, hen houses, stables, burnt-out shells, or to move in with friends and relatives in such overcrowded conditions that illness frequently occurred. On the issue of living conditions, the Court stated:

It furthermore considers that the applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement.⁵⁵¹

In outlining the general applicable principles, the Court stated:

The Court has consistently held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from

such interference. There may, in addition to this primary negative undertaking, be positive obligations inherent in an effective respect for private or family life and the home. These obligations may involve the adoption of measures designed to secure respect for these rights even in the sphere of relations between individuals.⁵⁵²

While this is a groundbreaking decision in terms of recognizing and enforcing the right to housing, the case only recognized the most severe cases of inadequate housing. Moreover, the circumstances did not deal with individuals who lacked housing due to personal reasons but rather due to the direct involvement of government officials.⁵⁵³ Therefore, the precedent created only applies to the most egregious cases of inadequate housing in Europe. The Court failed to define a standard of housing that the Romanian government (and other countries) would have to meet to fulfill its obligations under the ECHR.⁵⁵⁴ The Court's remedies were also limited. It ruled that Romania had to pay damages to each of the petitioners, but it was unable to create any systemic change within the country.⁵⁵⁵ Thus, Romanian citizens, as individuals, must still appeal violations of the right to housing to the European Court of Human Rights.

ARTICLE 6: FAIR AND PUBLIC HEARING AND OTHER PROCEDURAL REQUIREMENTS

Housing rights are largely interpreted as civil or property rights by the Court. Thus, the deprivation of a home requires a fair and public hearing and the other procedural requirements that have developed from the jurisprudence of Article 6 of the ECHR. The absence of any opportunity to defend summary possession proceedings in relation to the home was considered in *Connors v. United Kingdom* in 2004.⁵⁵⁶ In that case, a Roma family was accused of causing a nuisance and evicted from a licensed site after living there for 14 years. The Court found that the eviction was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with the applicant's rights, *though the Court formally settled this issue fully under Article 8.*⁵⁵⁷ The Court held that the existence of procedural safeguards is of crucial importance in assessing the proportionality of the interference. The necessity for a statutory scheme of summary eviction and the power to evict "without the burden of giving reasons liable to be examined as their merits by an independent tribunal has not been convincingly shown to respond to any specific goal."⁵⁵⁸

ARTICLE 14: NON-DISCRIMINATION

The Court has made clear that "Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and its Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions."⁵⁵⁹ The Court therefore hears Article 14 claims only in conjunction with claims of violations of other Convention provisions.

ARTICLE 3: FREEDOM FROM TORTURE AND INHUMAN OR DEGRADING
TREATMENT

The House of Lords in England in the milestone *Limbuela* case considered the state's positive obligations to destitute and failed asylum-seekers under Article 3.⁵⁶⁰ The question before the Court was when the duty of the State to act to prevent inhuman and degrading treatment arose. Lord Bingham stated that:

The answer must in my opinion be: when it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life. Many factors may affect that judgment, including age, gender, mental and physical health and condition, any facilities or sources of support available to the applicant, the weather and time of year and the period for which the applicant has already suffered or is likely to continue to suffer privation.⁵⁶¹

While the protections of Article 8 in relation to respect for the privacy of the home may in the future expand to encompass many new situations, this will likely be done incrementally and on the basis of single instances before the Court. Structurally, the ECtHR proceeds on the specific cases before it, rather than making broad pronouncements about rights; and procedurally, in Article 8 cases the Court has gradually expanded protection in certain situations, suggesting that it may continue to do so. Indeed, in general, the European Court of Human Rights is notoriously unwilling to elaborate general statements of rights. Specifically, the Court has not drawn on the developed jurisprudence of the European Social Charter, which has, through the European Committee on Social Rights (ECSR), examined many housing rights interpretations and legal definitions.⁵⁶²

In 2005, the European Federation of National Organizations Working with the Homeless (FEANTSA) filed a complaint against France for its violations of the right to housing under the Charter and Revised Charter.⁵⁶³ Article 31 of the European Social Charter provides the most explicit right to housing within Europe. It states that everyone has the right to housing and that each country needs to take steps to provide adequate housing, reduce homelessness, and provide housing to those who cannot afford it.⁵⁶⁴

In *FEANTSA v. France*, the ECSR found that France violated Article 31 by not making sufficient progress toward eradicating substandard housing, failing to pass legislation to prevent evictions, having an insufficient supply of social housing, and having a poor social housing allocation system.⁵⁶⁵ The decision in *FEANTSA v. France* is significant because ECSR ruled that to meet the obligations under Article 31, a State need not necessarily show "results," but must at least take "a practical and effective, rather than purely theoretical" approach to meeting them.

General Applicability of the ECHR to Homeless Encampments and Tent Cities in the United States

There are several points to consider with regard to the application of ECHR standards or jurisprudence in the assessment of obligations of the United States federal and state governments to the protection of homeless individuals and tent-city encampments.

First, the ECtHR in its Article 8 jurisprudence has repeatedly cited the importance of considering the degree of possible deprivation and harm to the individual in the case of State inaction to provide housing. This is of course an acute consideration with regard to homeless persons, with the erection of tent-cities as one of the only remaining available options for relatively secure and humane living. The Court has considered severe deprivation to be a basic threat to the dignity of individuals and to their enjoyment of home and private life. Yet, this has also been tempered with the acknowledgment that State obligation arises most clearly only when there are existing housing options available *and* these are denied by the State. In this sense, the ECtHR has linked deprivation directly to denial of permanent shelter and has not specifically considered temporary settlements erected by homeless persons in the interim. Nevertheless, it might be possible to draw an analogy with government action prohibiting or dismantling a tent city, if this action is similarly linked to resulting severe deprivation. Moreover, the cases most strongly supportive of State obligations to provide housing note that the status of individuals as physically or mentally handicapped is an important factor in the determination of any such obligation. This is related to the concern for the severity of the consequences, not only under Article 8 but also under Article 3.

Second, in cases of eviction or the destruction of property, the ECtHR has been clear on the importance of procedural safeguards in any proportionality analysis of the State's actions. The case law points to the concern with a violation of the 'home,' which has unfortunately not been defined generously beyond a physical, settled and stable space with sufficient and continuous links between person and property. However, by weak analogy, it could be argued to extend to cases in which significant private property is destroyed, indeed whether or not this concerns property on private or public land. Of course, the Court has not yet addressed this specific issue. In general, though, the requirement of appropriate safeguards for encampment cases would likely fall under a flexible proportionality review and not an enumerated due process requirement as with cases of permanent 'homes.'

Third, the cases most similar to that of tent-cities concern the rights of Roma, Gypsy, or Traveller communities to housing in accordance with their lifestyle. Thus far, however, the Court has found violations of the ECHR in Roma cases only when the procedural eviction safeguards were insufficient with regard to encampments on licensed municipal land – although it also noted the special minority status of the Roma.⁵⁶⁶ The comparative analysis thus faces a double layer of

complexity, with one aspect relating more to cultural rights and the other to more traditional civil and political due process protections. There are nevertheless two additional cases concerning eviction of Roma Travellers pending before the ECtHR that might be relevant to tent-city evictions in the United States.⁵⁶⁷

D. Comparative Law



Courts in several countries have taken a considerably more progressive approach to the right to housing and shelter. For example, the Indian Supreme Court has upheld the right to shelter under provisions of its constitution similar to the due process clause of the Fifth and Fourteenth Amendments and the right to travel. The South African Constitutional Court has found that homeless persons could not be evicted from sheltered spaces unless alternative sheltered spaces were made available to them. The Colombian Constitutional Court, in addition to articulating a right to dignified housing, has granted relief to thousands of middle-class Colombian mortgage-holders faced with the prospect of losing their homes because of economic recession and a mortgage-debtor crisis. In Canada, the British Columbia Court of Appeal held that a city bylaw that prohibited homeless people from erecting temporary shelter in a public park when shelter space was unavailable constituted a violation of the rights to life, liberty and security of the person. While made in different legal and political contexts than the U.S., these judgments provide instructive comparisons for the current U.S. context.

D-1. *India*

The Indian Supreme Court has articulated a right to shelter under various provisions of the Indian Constitution, including in particular Article 21, which provides that “[n]o person shall be deprived of his life or personal liberty except according to procedure established by law”, and Article 19.1.e, which provides that “[a]ll citizens shall have the right . . . to reside and settle in any part of the territory of India.”⁵⁶⁸ These findings are instructive because of the similarity between these provisions and the due process clause and right to travel guarantees under the U.S. Constitution.

In an early case challenging the eviction of slum and pavement dwellers, the Court held in *Olga Tellis v. Bombay Municipal Corp.* that Article 21 encompassed the right to livelihood and that this right was indivisible from the right to shelter: “Eviction of the petitioners from their dwellings would result in the deprivation of their livelihood. Article 21 includes livelihood and so if the deprivation of livelihood were not affected by a reasonable procedure established by law, the same would be violative of Article 21.”⁵⁶⁹ The Court directed that the challengers could not be evicted

unless they were provided with alternative accommodations, and that evictions must wait until the end of the monsoon season. In doing so, the Court established a high due process bar similar to the one articulated in *Pottinger v. Miami*.⁵⁷⁰

The Court had noted earlier, in a case about the rights of detainees, that “the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter...⁵⁷¹ The Court later noted, in *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.*, that the “[r]ight to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21 of the Constitution.”⁵⁷²

In *Chameli Singh and others v. State of UP*, the Court addressed the issue of a right to shelter at greater length. It held that the “[r]ight to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are the basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the UDHR and Convention or under the Constitution of India cannot be exercised without these basic human rights.”⁵⁷³ It went on to elaborate on the substance of the right to shelter:

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. ... [t]he State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting.⁵⁷⁴

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Others*, the Court further clarified the relationship between Article 19.1.e and the right to shelter, noting that “Article 19(1)(e) accords right to residence and settlement in any part of India as a fundamental right.” Under this Article and Article 21, it held that “it is the duty of the State to construct houses at reasonable rates and make them easily accessible to the poor. The State has the constitutional duty to provide shelter to make the right to life meaningful.” It further noted that “the mere fact that encroachers have approached this court would be no ground to dismiss their cases. Where the poor have resided in an area for a long time, the State ought to frame schemes and allocate land and resources for rehabilitating the urban poor.”⁵⁷⁵

These rulings are important for the U.S. because they illustrate that even in the absence of an explicit constitutional right to housing, the right to due process and to travel may be interpreted in a way that includes a substantive right to shelter for indigent persons.

D-2. *South Africa*

The South African *Grootboom*⁵⁷⁶ case is instructive in normatively framing what is at stake with regard to the long-term struggle for the right to housing and, more generally, for a more positive reception of socio-economic rights in the United States. In *Grootboom*, a resident of a shanty town brought suit on behalf of herself and 900 of her fellow residents against the government after being evicted from a squatting settlement while awaiting the promised construction of public housing. The Constitutional Court found the state housing program to be invalid insofar as it failed to provide for those individuals in the most immediate and desperate need. The focus on long-term housing construction at the expense of any interim measures fell short of the state's constitutional obligations. In the United States, an analogous shortcoming may exist where cities or states have failed to provide an interim solution to the plight of homeless individuals in the form of clean and safe facilities and temporary residence sites, apart from longer-term plans to construct permanent housing structures.

At the core of the *Grootboom* case is the following question: what is entailed by the obligation to take reasonable legislative and other measures, within the available resources of the state, so as to realize a socio-economic right—in this instance, the right of access to housing? In *Grootboom*, the government had understood this obligation in a particular way, namely, as requiring the progressive provision of 'permanent residential structures.' To this end, it had enacted legislation and instituted programs aimed at providing houses to an increasing number of people over time.

The Constitutional Court used the term "reasonable" to evaluate the government measures. According to the Court, reasonableness requires that a program for the realization of socio-economic right must be "comprehensive," "coherent," "balanced," and "flexible."⁵⁷⁷ More importantly, the Court insists that a "program that excludes a significant sector of society cannot be said to be reasonable,"⁵⁷⁸ and that:

[t]hose whose needs are most urgent and whose ability to enjoy all rights is therefore most in peril, must not be ignored by the measures aimed at achieving realization of the right. . . . If the measures, though statistically successful, fail to respond to the needs of the most desperate, they may not pass the test.⁵⁷⁹

On this basis, Justice Yacoob found the state housing program to be invalid to the extent that it failed to make provision for people in immediate and desperate

need. The program, although laudable, concentrated unduly on the goal of constructing permanent houses for as many people as possible over time, instead of providing some form of shelter for the desperate in the interim. In the words of the Court, “[t]he nationwide housing program falls short of obligations imposed upon national government to the extent that it fails to recognize that the state must provide for relief for those in desperate need.”⁵⁸⁰

The Court therefore held that, if the state was to meet its constitutional obligations, its housing program would have to be modified to include a component for those in immediate and desperate need, even if doing so detracted from the state’s long-term goals, or decreased the rate at which permanent houses could be constructed. The particular form this would take was left to the state, as was the exact proportion of the housing budget that should be allocated for that purpose.

After *Grootboom*, the South African Constitutional Court decided in a line of cases that homeless persons could not be evicted from sheltered spaces, public or private, unless alternative sheltered spaces were available to them. In *Port Elizabeth Municipality v. Various Occupiers*,⁵⁸¹ the Court found that given the special nature of the competing interests involved in eviction proceedings, it would not ordinarily be just and equitable to order eviction if proper discussions, and where appropriate, mediation with the affected community, had not been attempted. In appropriate circumstances the courts themselves should order that mediation be tried.⁵⁸² The Court concluded that, in light of the circumstances, it was not just and equitable to order the eviction of the occupiers.⁵⁸³

Similarly in *Occupiers of 51 Olivia Road, Berea Township and Another v. City of Johannesburg and Others*,⁵⁸⁴ the Court held that meaningful participation or engagement with rights-holders is constitutionally required. The Constitutional Court’s decision emphasized the need for the state always to engage meaningfully with inner city poor persons and to respond reasonably to their housing needs. Additionally, where it is clear that the proposed clearance of an unsafe building would lead to homelessness, the state should, within its available resources, provide somewhere safer and better for residents of unsuitable buildings to live.

These cases are particularly apposite to the American tent city context, in which the destruction or eviction of tent cities is often undertaken with no appropriate mediation with tent city organizers and without both plans for alternative immediate shelter and longer-term plans for permanent housing. The current problem of American tent city communities is the same as the one faced by the Constitutional Court: eviction from public land and from dwellings considered unsafe, lack of proper procedural safeguards and notice, and proposed relocation far from economically active city centers. Moreover, meaningful participation in the solution to the housing issue is one of the main demands of homeless activists and tent city leaders.

D-3. Colombia

The Colombian Constitutional Court has likewise articulated a right to housing in several cases, under the Colombian Constitution of 1991.

All Colombian citizens are entitled to live in dignity. The state will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs. (Article 51)

Due to the intensification of its lengthy internal armed conflict, Colombia has a high number of internally displaced peoples (IDPs), representing a “humanitarian tragedy of alarming proportions.”⁵⁸⁵ A number of IDPs began to file individual court actions (*tutelas*), claiming that their fundamental rights to housing and human dignity were being violated.⁵⁸⁶ The Court upheld several of these individual *tutelas*, and then responded with a general pronouncement that there existed an “unconstitutional state of affairs,’ given the inconsistencies in and precariousness of state policy regarding forced displacement.”⁵⁸⁷

In Decision No. T-025 of 2004, the Colombian Constitutional Court noted that “an important group of plaintiffs filed requests to gain access to housing aid . . . but months after filing their requests, they have not received a substantial response to their petitions . . . responses are limited to informing them that there are insufficient budgetary allocations to attend their requests Waiting periods have been extended for up to two years.”⁵⁸⁸ The decision recognized the “right to dignified housing”⁵⁸⁹ established in Colombian Constitutional Court Decision T-602 of 2003, and made various stipulations by which the state must abide with regards to applications for housing from IDPs, including “informing petitioners, within a period of 15 days” of the status of their application and “carrying out the necessary procedures to obtain the resources” for housing.⁵⁹⁰ In the wake of this procedural decision, Colombia’s governments have made some changes, but much work remains to be done. Although Colombia’s current government, led, has adopted a human rights-centered discourse, displacement has continued in 2011 at the same rate as in previous years, and IDPs continue to have only limited access to the basic necessities of life.⁵⁹¹

As a result, in October 2011 the Constitutional Court upheld its 2004 ruling that the government’s response to internal displacement amounted to an “unconstitutional state of affairs.”⁵⁹² The Court ordered the government to adopt a wide range of measures, and report on their implementation and outcomes, but progress remains slow.⁵⁹³

In addition to its rulings on the right to housing specifically, the Colombian Constitutional Court has also handed down several judgments providing relief to thousands of middle-class Colombian mortgage-holders, who in 1998 to 1999 faced the prospect of losing their homes as a result of an economic recession and mortgage-debtor crisis similar to the one the United States is currently facing.⁵⁹⁴

In guaranteeing the right to housing and addressing the special needs of groups such as internally-displaced persons, Colombia is taking progressive steps to realize its obligation to provide housing to all of its residents. Moreover, instead of penalizing those who become the victims of predatory lending schemes or of economic downturns, Colombian courts have affirmed their right to assistance and relief.

D-4. Canada

In *Victoria (City) v Adams*,⁵⁹⁵ the British Columbia Court of Appeal held that a city bylaw which prohibited homeless people from erecting any form of temporary shelter at night in a public park, in circumstances where the number of homeless people exceeded the number of shelter beds available, constituted a violation of the rights to life, liberty and security of the person.⁵⁹⁶

A group of homeless people erected overhead shelter in the form of tents, tarps and cardboard boxes at a local park in the City of Victoria. The City sought a permanent injunction requiring homeless persons to refrain from erecting shelters and a declaration that such structures contravened the Park Regulation Bylaw and the Streets and Traffic Bylaw. The City had a documented shortfall of spaces in homeless shelters and the defendants argued the bylaws were therefore unconstitutional, infringing “the right to life, liberty and security of the person” under section 7 of the Canadian Charter of Rights and Freedoms.⁵⁹⁷

The trial court agreed with the homeless residents and found the prohibition of temporary overhead shelter in parks to be unconstitutional where there was a lack of alternative shelter space. The court held the issue to be clearly justiciable because it dealt with the constitutionality of a legal prohibition. The court relied on the right to adequate housing under international human rights law as an interpretive aid.⁵⁹⁸ On appeal, the British Columbia Court of Appeal unanimously upheld the trial decision, citing, among other things, Canada’s international human rights obligations as they informed the Canadian Charter.

This decision may be viewed as a Canadian analog of the *Pottinger* decision in the United States.

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Courts in each of these countries were interpreting provisions particular to their constitutions and laws. However, many of the fundamental rights and entitlements on which they based the right to shelter can be transposed to the U.S. context. For that reason, it is instructive to look at the reasoning in those decisions as a model for U.S. jurisprudence were it to seek conformity with the requirements laid out in the ICESCR, ICCPR, UDHR, and other human rights instruments.

Recommendations

Many interconnected factors contribute to homelessness and to the recourse of homeless individuals to tent cities or encampments. However, our research has highlighted the following as the most serious contributing elements:

- Lack of affordable housing units;
- Insufficient shelter capacity in comparison with numbers of homeless individuals; Inadequacies of the shelter system, in which homeless individuals do not feel safe, dignified, reasonably autonomous, or able to seek employment successfully;
- A disturbing trend in municipal ordinances prohibiting activity inherent to the condition of being homeless (the criminalization of homelessness);
- Systemic disregard for the voice of homeless persons in the design and reform of existing shelter and service provision systems; and
- Lack of political will to devote sufficient public resources to providing health care (including mental health care), substance abuse programs, employment or entrepreneurial training, transitional housing, and permanent affordable housing as part of a comprehensive strategy to end homelessness.

A growing body of domestic and international law affirms the universal and comprehensive right to housing, including not simply the right to shelter but rather the right to *adequate* shelter—an affordable and safe home. Moreover, when such adequate, alternative housing is not made available by the state, many international and comparative law sources prohibit state eviction of homeless individuals from temporary shelters, even if those shelters are on public land.

Homeless encampments, while of course often a matter of necessity, are also a form of protest—a refusal to remain invisible. In tent cities, homeless individuals are able to form communities in which they can find companionship, respect, safety, autonomy, and a sense of dignity. But they remain adamant that tents are not the solution: no one willingly chooses to live in a tent.

As we endeavor to elevate the voices of those currently living in tent cities and those assisting them, we have collected the following recommendations to be implemented by local, state, and federal governments from our fieldwork and interviews, incorporating all observed best practices.

Recommendation 1: Affirm and implement the human right to housing by increasing the availability of affordable, safe, high-quality housing.

Housing is a human right, and governments at all levels should recognize this and hold themselves accountable for its implementation. It is clear that home-

lessness often begins when individuals are unable to find, unable to afford, and unable to remain in quality housing. Federal, state and local governments should make it a fundamental priority to increase the provision and maintenance of affordable housing so as to satisfy the needs of their populations. This can be done through public housing, vouchers, and incentives or requirements for the private development of affordable housing, and it usually requires participation and contribution from all levels of government. In particular, Congress should renew its investment in HUD programs and create a sustainable investment in the National Housing Trust Fund.

Recommendation 2: Work constructively with tent city encampments to support viable temporary solutions.

Where there is insufficient emergency shelter capacity and alternative housing facilities are unavailable, municipal governments should work together with tent city residents and advocates. While tent cities should never be viewed as a substitute for permanent housing or longer-term investment in housing and service provision, they can serve important immediate needs, and eviction of their residents is not the solution.

Recommendation 3: Repeal or stop enforcing counterproductive municipal ordinances and state laws that criminalize homelessness; pass Homeless Bills of Rights in accordance with human rights standards.

Governments and municipalities should rescind or not enforce ordinances that criminalize otherwise innocent behaviors performed by homeless persons in public places because there is no alternative private place for them. These include ordinances that make it a crime to sleep, sit or lie in public places, to store personal property in public places, and to beg in public places.

Rhode Island, Illinois, and Connecticut have passed Homeless Bills of Rights requiring non-discrimination against homeless persons, California and Oregon have introduced bills which require more of an affirmative commitment against criminalization and in favor of providing basic services. Passing Homeless Bills of Rights which emphasize the humanity and rights of homeless persons can be an important step toward a more just future.

Recommendation 4: Prioritize the autonomy and dignity of homeless individuals in the provision of shelter and placement in affordable housing.

Service provision and housing programs should be more responsive to the real needs and input of homeless individuals. Outreach programs that engage with homeless populations where they are and work with them to find solutions collaboratively ought to be a priority. Older shelter models in which homeless persons

sleep on the floor, cannot bring their own blankets, receive foul-smelling sheets, cannot maintain their family units, and must abide by a strict curfew do not offer the dignity that homeless persons deserve. Activists and tent city residents consistently report that one of the great strengths and appeals of the tent encampments is their bottom-up organization, in which homeless individuals can find community and autonomy. Service providers should constructively involve homeless representatives in decision-making processes.

In addition, federal, state and local governments should fund quality case management that includes an emphasis on mental health and comprehensive, longer-term substance abuse treatment.

Recommendation 5: Adopt the Housing First model wherever possible.

Many of the homeless individuals and activists we interviewed emphasized the promise of the Housing First model, in which individuals are placed in private apartments and provided wrap-around services, including medical care, mental health treatment, substance abuse treatment, case management, and support group care. These comprehensive measures help to ensure that formerly homeless individuals are able to stay in housing once they are placed into it and to maintain a sustainable lifestyle in new conditions. An important feature of the Housing First model is the respect that it provides its participants; namely, the placement in housing comes with no conditions and the services, while available, are not mandatory.

Recommendation 6: Support innovative entrepreneurial education and employment programs for persons experiencing homelessness.

The gaps in employment histories of homeless persons often present a barrier to their stable employment, and therefore their ability to afford housing. Educational employment programs, can both provide preliminary employment for use as a future reference and teach the skills necessary to remain employed, thereby helping lift homeless persons progressively from homelessness into safe and stable homes. It is important that these programs treat homeless individuals with respect, removing the stigma of uselessness and deficiency associated with many current models of service provision.

Recommendation 7: Recognize and provide treatment for the psychological causes of homelessness, including the “trauma histories” that often result in diagnosable mental illnesses.

As a part of this recognition, municipalities should encourage and fund support for “trauma informed communities,” in which business people, educators, civil society groups, and law enforcement recognize the central place of trauma in causing homelessness. Such an approach would be sensitive to the ways in which

trauma makes retaining employment and reintegrating into society immeasurably more difficult.

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The rise of encampments is a tragic symbol of the failure of our political will to provide a minimum standard of living for our fellow citizens. And, having failed to provide such a standard of living, the recent trend to evict or demolish existing tent cities is an insult to our own decency as a society. The solution is not to punish those whom society has left without any alternatives for creating self-help solutions. It is instead to provide them with better solutions that they have a role in shaping.

Appendix I: Media Survey of Tent Cities, 2008-2013

The below table was updated as of July, 2013.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Alabama	Huntsville (Sparkman Drive; Cleveland Avenue)	Unknown	Unknown	Unknown	News reported an assault/robbery at the Cleveland Avenue camp in November and an assault/attempted robbery at the Sparkman Drive camp in January 2012. More violence in February, May 2013.
Alabama	Huntsville (Below Viaduct)	Unknown	9 years	Semi-Sanctioned	Camp run by a local agency, pursuant to an agreement with police and the Alabama Department of Transportation. Individuals must register with a homeless services provider and obtain an ID. A tent, if one is available, is provided. A police officer is assigned to patrol the camp. Local service providers offer resources and referrals and monitor the conditions of the camp. In August 2012, the Alabama Department of Transportation closed gaps in fencing, making the camps harder to access.
Alaska	Anchorage	15	2 years	Evicted	ACLU successfully fought city law permitting clearing of camps on only 12 hours notice, however the city since has evicted them in accordance with new laws.
Arizona	Flagstaff	Unknown	Unknown	Evicted	A homeless camp at a Salvation Army was shut down in 2002. New law makes camping in public in Flagstaff trespassing and subjects violators to up to \$2,500 in fines and six months in jail. Adopted to eliminate litter, human waste and illicit campfires to promote public safety.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Arizona	Fort Smith	12-20	15 years	Evicted.	May, 2013 Kansas City Southern Railway Co. served eviction notices to "North Camp," 12-20 people living in an encampment along the Arkansas River in Fort Smith, Arkansas. The camp had been there for almost 15 years.
California	Fresno	At least 40	4 years	Illegal, routinely evicted	2008 evictions led to \$2.35 million settlement for destruction of property. In 2009, city officials reported three major encampments downtown and smaller settlements along highways. In October–December 2011, these encampments were cleared (last encampment given reprieve until March 2012, when bridge is slated to be destroyed). However, by January 2012, three new encampments had reappeared, despite city efforts to place homeless in apartments.
California	Hollywood	9	Unknown	Evicted	Evicted April 6, 2012.
California	Indio	40-50	4 years	Eviction Threatened	March 19, 2012 Formal Eviction Process begun by Bureau of Indian Affairs as tribe that owns the lot wants to develop it.
California	Long Beach	5	Unknown	Not Sanctioned	Killed by gang members in November 2008.
California	Los Angeles	30	10 years	Evicted	Known as the Cave, hidden under the 10 Freeway. It was evicted in May 2009.
California	Ontario (Temporary Homeless Service Area–THSA)	170 maximum	5 years	Semi-Sanctioned	The city approved the setting up of the camp, providing tents, toilets and water. The population swelled to over 400 and the city evicted 200 residents in 2008 who were not "Ontario residents".

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
California	Redding (Eastside Road and Technology Way)	20-30	At least a year	Illegal, routinely evicted	Homeless camp evicted for the second time in weeks January 2011. Recent 2012 reports note instances of assault and a murder at the camps.
California	Sacramento (Safe Ground)	125	At least 2 years	Evicted	Was featured on Oprah, which led to its demise. Moved to state fairground in March 2009. Smaller encampments continue to organize and are routinely evicted. Significant attention was directed at the ongoing plight of the homeless campers by the UN Special Rapporteur on the Right to Water and Sanitation through a visit, report, and letter to the mayor in 2011 and 2012.
California	Sacramento (Tent City)	150	Intermittently over three years	Evicted	Evicted in December 2012 with notices reading, "it is unlawful to camp in the city. This location is scheduled for immediate clean-up... Any items not removed will be considered abandoned and removed accordingly."
California	San Diego (Interstate 5)	Dozens	Unknown	Evicted	Evicted February 2012.
California	San Diego (Mission Valley)	12	Unknown	Evicted	Evicted November 2011. Camp was wired for power and had a generator.
California	Venice (300 Block 3rd Avenue)	Unknown	Since February 2012	Not sanctioned	Appeared after the LAPD started enforcing a municipal ordinance that prohibits overnight camping in Venice Beach Park. Significant community opposition.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
California	Ventura (River Haven)	25	7 years	Legal	Hosted by Turning Point Foundation. Camp has reinforced U-Dome tents with locking doors, windows and vents on a gravel and wood foundation. Established in response to nuisances created by homeless camps in the riverbed. City contributes \$14,000 a year. Proactive rules designed to transition to more permanent housing is an ideal model for other tent cities. The city presented a plan to remove the encampments in September 2012. Between September and January, the city removed 45 permanent camps and 100 individuals from the river bottom.
Colorado	Colorado Springs	600	Several years	Illegal, routinely evicted	City approved ordinance that banned camping on city public property in 2010. City officials clear out the camps monthly, but campers return.
Colorado	Denver	250	Several years	Eviction Threatened	City currently considering a ban on unauthorized camping, which the ACLU is fighting. The ban passed in May 2012. It was in force by June.
Colorado	West Haven	Unknown	Unknown	Evicted	Evicted August 2010. It was plagued by violence and drugs so police cleared it out. One resident was charged with assault, another was a registered sex offender.
Colorado	Danbury (Casper Street)	Unknown	At least a couple of years	Not Sanctioned	Article identifying camp dated June 2011.
Colorado	Waterbury	17	Unknown	Evicted	Tent City torn down December 2008. All 17 residents were provided with subsidized housing.
Colorado	Cape Henlopen State Park	Unknown	Unknown	Evicted	Nov, 2011: State park rangers removed a cluster of tents from Cape Henlopen State Park, citing homeless residents for illegal camping. They claim to have done so several times that fall.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
District of Columbia	Parcel 42 Tent City	A handful	3 months	Evicted	Evicted September 2010. Camp set up by Block Party for Housing Justice on a city-owned vacant lot to protest the reduction of low-income housing planned for the land.
Florida	Mims, Brevard County	n/a	n/a	n/a	In July 2011, Brevard County Commission was pushing to establish a tent city for homeless in a plan modeled after a site in Pinellas County. Community opposition killed this plan.
Florida	Indian River County	Up to 100	Not yet established	Will be legal	The Source, a Christian outreach center, is working to establish Camp Haven, a safe, legal and temporary tent community in Indian River County.
Florida	Clearwater, Pinellas County	Was 250, since reduced to 70	5 years	Legal	Pinellas Hope Homeless camp is run by Catholic Charities. Since it opened, 95 offenses or incidents have been reported at the camp, according to the Pinellas County Sheriff's Office (as of 2009).
Georgia	Dalton	Unknown	At least three years	Evicted	Deaths of two homeless men led to the vacate order of the Elk Street homeless camp by May 1, 2012.
Georgia	Athens	Up to 30	17 years	Semi-Sanctioned	On private property, can stay as long as the owner permits. In March 2008, residents too close to the highway were asked to move deeper into the woods by the police.
Hawaii	Honolulu (Waipahu)	60+	2 years	Illegal	Report suggests an additional 60 encampments in the surrounding area. Homeless persons are moving to urban areas after evictions from the beaches.
Hawaii	Kakaako	100	6 weeks	Evicted	Evicted March 2011. In 2010 state senator had suggested bringing a "Seattle style" homeless tent city to Kakaako.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Hawaii	Honolulu (Kapiolani Park)	40	8+ years	Evicted	Evicted December 2009, though encampments likely persisted. Honolulu adopted law prohibiting unauthorized tents and shopping carts in city parks in March 2010.
Hawaii	Oahu (Kea'au Beach Park)	202	15 + years	Evicted	Evicted on April 17, 2012. Many residents just moved to the other side of the highway.
Hawaii	Oahu (Waianae Coast)	350	At least 5 years	Evicted	Evicted July 2010. Honolulu considering bill to prohibit unlawful camping.
Hawaii	Honolulu (Ilalo Street)	100	At least 1 year	Evicted	Evicted March 2011.
Idaho	Coeur d'Alene	Unknown	Unknown	Unknown	June 2012, Coeur d'Alene Idaho: Stabbing at "one of many [camps] that serve[] as a home for the more than 400 [homeless] people in the region."
Illinois	Champaign	41	1 year	Not-sanctioned	"Safe Haven" was a self-governing community to serve as an alternative to sleeping on the street established by a group of homeless people. It was disbanded after the group's members "lost energy", lacked financial support, and a permanent location.
Indiana	Indianapolis	3 dozen+	2 years	Not Sanctioned	Under railroad bridge.
Indiana	Bloomington	25	2010	Semi-Sanctioned	In April 2010 Dr. Harold Taylor created a tent city in his backyard in a quiet neighborhood "to make a difference".
Iowa	Des Moines	Small	Unknown	Not sanctioned	Small camps under bridges and along rivers.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Kansas	Topeka	Small	Unknown	Not Sanctioned	Topeka housing supervisor with Valeo Behavioral Health Care notes "homeless camps are located throughout the city."
Kentucky	Peducah	Unknown	11 years	Evicted	Peducah police ordered vacation of property on 12/14/11 and threatened arrest to citizens for trespassing.
Kentucky	Louisville	Unknown	Established in 2009	Evicted	Disbanded by local police in 2009.
Louisiana	Baton Rouge (Mississippi River camps)	10-20 per camp	1 year	Not Sanctioned	Article notes that there are many camps that line the Mississippi river.
Louisiana	New Orleans (under Interstate 10)	50	2005-2008	Evicted	City assisted residents with relocation in 2008. Local government worked with New Orleans Mission and UNITY organization to move residents to shelter.
Louisiana	New Orleans (Duncan Plaza)	Up to 150	Established in 2011	Evicted	Occupy NOLA dismantled by city December 2011.
Maine	Portland	Unknown	Established in 2011	Evicted	Occupy Maine—City permitted camping in Lincoln Park but ultimately denied permit renewal and occupants were ordered to vacate. Occupants challenged the city in Superior Court and the court decided that the group did not have a right to protest all hours.
Maine	Skowhagen	Unknown	2 years	Not Sanctioned	Owner of private land opened 1/4 acre of property to serve as homeless "native park". Owner opened land to homeless because he was unhappy with zoning laws which prohibited him from building on the land.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Maryland	Glen Burnie	Up to 100	Established in 2011	Evicted	City ordered residents to leave in April 2012.
Maryland	Baltimore (Route 83 N-St. Vincent's Tent City)	30-60	1 year	Semi-Sanctioned	Hosted by St. Vincent's on private property.
Maryland	Baltimore (College Creek Bridge)	15-20	2 years	Not Sanctioned	Sponsored by We Care and Friends Stanton Community Center.
Massachusetts	Lowell	Unknown	Established in 2008	Evicted	Residents evicted by Lowell police on November 20, 2008.
Massachusetts	Cambridge	10-20	3 years	Legal	Public park open for public use; no specific code prohibiting people from taking residence there.
Michigan	Flint	14	10 years	Evicted	Inhabitants of Tent City forced to leave, ostensibly due to toxic chemicals on site.
Michigan	Grand Rapids	Unknown	9 years	Not Sanctioned	Some residents there for 5 years according to a 2009 article.
Michigan	Ann Arbor (Camp Take Notice)	40-50	3 years	Not Sanctioned	After a homeless man was charged with trespassing, the ACLU filed a brief arguing it is unconstitutional to arrest a person for sleeping on public land when there is no other place for him to sleep. Soon after, the criminal charges were dismissed and committees were formed to address both the short- and long-term issues surrounding these homeless individuals. Law enforcement has not moved to clear the encampment again. June 2012 Michigan DoT evicted the camp and erected an 8-foot fence.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Minnesota	n/a	n/a	n/a	n/a	No reported locations.
Mississippi	Jackson (4 sites)	Unknown	3 years	Not Sanctioned	
Mississippi	Tupelo	12	Unknown	Not Sanctioned	Abruptly closed May 2012
Mississippi	Biloxi	Unknown	Unknown	Not Sanctioned	Jan 2013: Following a stabbing, neighbors have talked the city into enforcing its code against the private landowner sponsoring the camp.
Missouri	St. Louis (Mississippi river camps)	75	3 years	Eviction Threatened	City officials say they will clear the camps by the end of May, because of violence in the camps. Some camps still present as recently as May 2013.
Missouri	Kansas City	12	5 years	Evicted	Kansas City police ordered residents to vacate the area in January 2012 or face possible arrest for trespassing, building fires and accumulating piles of trash on city property.
Montana	Butte	Unknown	Unknown	Unknown	Two men were charged with homicide in October 2011 after man found dead.
Montana	Missoula	50	Established in 2011	Evicted	Occupy Missoula evicted in January 2012 after Missoula County adopted a resolution banning camping without a permit on county property.
Nebraska	n/a	n/a	n/a	n/a	No reported locations.
Nevada	Reno (Record Street)	130	4 years	Semi-sanctioned	Rules established for encampment under self-government model. Site officially closed by the city in October 2011.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
New Hampshire	Keene	Unknown	2 years	Not Sanctioned	City has been issuing fines to private landowners due to illegal structures built by people occupying the land. Structures were still in place as of December 2011.
New Jersey	Camden (Transitional Park)	45	Unknown	Evicted	Evicted spring 2010. Was led by Lorenzo Banks, who purchased 40 tents and provided them to campers, and ran the camp with strict rules.
New Jersey	Camden (Backwoods Camp)	44	Established 2011	Not Sanctioned	
New Jersey	Lakewood (Tent City)	70	2006	Semi-sanctioned, eviction pending	Judge upheld preliminary injunction in favor of camp in January 2012; settlement in March 2013 preserved campers right to remain until suitable housing for one year is offered. Final settlement negotiations ongoing.
New Mexico	La Cruces	50	Established November 2011	Semi-sanctioned	Camp Hope is an arrangement with the City of Las Cruces temporarily allowing homeless people to camp on a piece of property owned by the city.
New York	Hamptons	At least 20	Established 2009	Not Sanctioned	Not clear whether camps still exist. 20 encampments in the woods reported in April 2009.
North Carolina	Charlotte	12	Several years	Semi-Sanctioned	Camp has been there for years, no one has bothered them.
North Carolina	Fayetteville	15	unknown	Eviction threatened	150 people stay under 2 dozen bridges. The city is considering a plan to make living under bridges on city property illegal.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
North Dakota	n/a	n/a	n/a	n/a	No reported homeless camps.
Ohio	Wayne County	10	7 years	Eviction threatened	
Oklahoma	Lawton	Unknown	1.5 years	Evicted	Evicted March 2011.
Oregon	Dignity City	60	2000	Legal	City-recognized "campground" as defined by Portland city code. Dignity Village is incorporated in Oregon as a 501(c) (3) membership-based non-profit organization and is governed by bylaws.
Oregon	Eugene	Unknown	Established in 2011	Evicted	Evicted January 2012. A homeless persons' encampment was incorporated into the OCCUPY Eugene encampment. The OCCUPY activists in agreeing to a peaceful eviction, worked with the city and local service providers to launch the Opportunity Eugene Task Force to address the situation of homelessness in Eugene. Recommendations from the task force were issued in April 2012, and are currently under consideration by the city council and administration, including a recommendation for a permanent camp.
Pennsylvania	Harrisburg	25-30	Established in 1995, evicted in 2010	Evicted	The evacuation was not launched from the mayor's office or the police, but rather the wishes of the property owners.
Pennsylvania	Bristol Township	25-30	3+ years	Evicted	A "handful" of locations are known to be popular with the homeless. Eviction slated for May 8, 2012.
Pennsylvania	Allentown	At least 5	2009	Evicted	Evicted May 2010. Camp was on private property, and the city was asked to intervene to evict.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Pennsylvania	Scranton	15-30	Unknown	Evicted	Evicted October 2010. 6 homeless encampments next to railroad tracks were bulldozed. Occupants were trespassing on Pennsylvania Northeast Regional Railroad Authority Property, and railroad officials raised safety concerns. Occupants were given a month to leave.
Pennsylvania	Frackville	3	Unknown	Evicted	Evicted April 2011. The camp was discovered when state police found the corpse of a 46 year old man. Police stated the camp was evicted for safety reasons. State police announced by loudspeaker the site would be cleared the next day.
Pennsylvania	Philadelphia (Port Richmond)	24	Established in 2011	Evicted	Occupy Camp evicted in December 2011.
Rhode Island	Providence (Camp Runamuck)	80	Established in 2009	Evicted	2009–Homeless sued city under a law that hasn't been used since 1873 2011–RI Supreme Ct denied appeal and let eviction stand.
Rhode Island	Providence (Hope City)	80	Established in 2009	Evicted	
Rhode Island	Providence (Camp Runamuck II)	30	Established in 2009	Evicted	
Rhode Island	Providence (Provitents)	18	Established in 2009	Eviction Threatened (likely effective in 2009)	Private land owner cited by the city because the property is not zoned for recreational camping.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Rhode Island	Cumberland	Up to 13	Established in 2009	Evicted	Town chief ordered eviction, noting the location is a toxic industrial site.
South Carolina	Myrtle Beach (Horry County)	30	At least 2 years	Evicted	A stabbing and a man set on fire led to the camp eviction in February 2012. 10 homeless arrested and jailed overnight in February 2012. Report notes at least 200 people living in similar encampments in the area.
South Carolina	Columbia	Unknown	Unknown	Evicted	Camp evicted April 2012. 2 dead bodies found near camp.
South Dakota	n/a	n/a	n/a	n/a	No reported locations.
Tennessee	Nashville	30	2010	Not Sanctioned	Reports of several tent cities in the state, one encampment was up for two decades, violence spread and it changed the dynamics some have moved. Pastor in conflict with city over attempt to set up tent city on his private land, zoned industrial.
Tennessee	Chattanooga (railroad track close to Onion Bottom)	30-40	2 years	Not Sanctioned; Eviction threatened	4 yrs. ago Norfolk Southern RR bulldozed tents (citing "safety concerns"). City refuses to tolerate tent city so tents have to be out of the way/hidden.
Texas	Amarillo	25-30	1 years	Legal	Sponsoring Entity Faith City Ministries 401 SE 2nd Avenue Amarillo, TX 79101.
Texas	Dallas (White Rock Creek: Interstate 30 and Lawnview)	10-20	1 years	Not Sanctioned	Some land owners have signed standing trespass affidavits for local police which allow the police to evict and arrest occupants without formal complaints from land owners.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Texas	Dallas (Garland Road)	10-20	1 years	Not Sanctioned	
Texas	Dallas (Matilda Bridge)	10-20	2 years	Not Sanctioned	
Texas	Dallas (Pioneer Park)	50-100	A few months	Evicted	Occupy movement received permit for camping from city but were evicted after permit was expired and not renewed.
Texas	Lubbock (13 th St) (Tent City)	30-50	Established in 2011	Illegal	Lubbock Zoning and Planning rejected rezoning request by Link Ministries (sponsor); Tent city is currently located in a heavy industrial zone -- Link Ministries sought to change status to a special-use heavy industrial zone to allow temporary structures and residents.
Texas	Lubbock (Avenue Q)	Approx. 30	2010	Not sanctioned	Created in response to curfew issued barring people from certain public areas between midnight and 5am. This lot was not included in public areas covered by curfew. City Parks Dept. ordered residents to move in 2011 because ground below needed to be treated. Residents relocated to 30th Street location with assistance from Link Ministries.
Texas	Fort Worth	60+	2010	Evicted	Evicted by local police in Jan 2011 who cited violations of local ordinances including violation of a "burn ban" due to campfires.
Utah	Salt Lake City	150	Established in 2011	Evicted after permit expired	Occupy Salt Lake movement. Park was cleared after permit expired due to safety concerns.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Vermont	Burlington	Unknown	Established in 2011	Evicted	Occupy Burlington—Occupants were on city property but were allowed to stay until a suicide occurred in the park. The protesters agreed to leave due to safety concerns following the suicide.
Virginia	Virginia Beach (Loretta Lane in Seatack)	20-30	Several years	Evicted	Evicted March 2011. Private property; property owner ordered the evictions.
Washington	King County (Tent City 4)	Up to 100	8 years	Legal	Permit issued by King County to operate from places of worship; Splinter group (Camp Unity) received temporary use permit February 2013)
Washington	Seattle (Tent City 3)	Up to 100	12 years	Legal	Hosted by churches and houses of worship.
Washington	Seattle	130	4 years	Legal	Seattle agreed to find permanent location for “Nickelsville” in October of 2010. Seattle seeks to evict Nickelsville by Sept. 1,
Washington	Olympia (Camp Quixote)	30	5 years	Semi-legal	Allowed as temporary shelter if hosted by religious organization but must move every 90 days.
Washington	Puyallup	n/a	n/a	Legal	City approved ordinance allowing religious groups to host tent cities. Camps permitted to serve a maximum of 40 people and last a maximum of 90 days. It is unclear from news sources whether a tent city has been established.
Washington	Spokane	Unknown	8 years	Semi-legal	Located on private property.
West Virginia	Huntington (Harris Riverfront Park)	150	1-2 years	Evicted	City evicted homeless from site near Ohio River in 2008.

STATE	LOCATION	RESIDENTS	TIME IN EXISTENCE	LEGAL STATUS	NOTES
Wisconsin	Waukesha	Unknown	1 year	Unknown	
West Virginia	Madison	~40	Since fall 2011	Evicted.	Started as Occupy Madison—permit for location expires on 4/30/12 and will not be renewed. City will re-open the winter shelter for the homeless displaced and attempt placement assistance. Camp remains.
Wyoming	n/a	n/a	n/a	n/a	No reported locations.

Endnotes

- 1 National Law Center on Homelessness And Poverty, 2007 Annual Report, 5 (2007), http://www.nlchp.org/content/pubs/2007_Annual_Report2.pdf.
- 2 National Center for Homeless Education, *Education for Homeless Children and Youths Program*, 4 (2013).
- 3 National Alliance to End Homelessness, State of Homelessness in America, 10 (2013), *available at* http://www.endhomelessness.org/page/-/files/SOH_2013.pdf.
- 4 *Id.*
- 5 *Id.* at 2.
- 6 U.S. Conference of Mayors 2012 Survey on Hunger and Homelessness, 2, (2012), *available at* <http://usmayors.org/pressreleases/uploads/2012/1219-report-HH.pdf>.
- 7 *Id.*, at 3.
- 8 *Ibid.*
- 9 *Id.*
- 10 Increases in Homelessness on the Horizon, Homelessness Research Institute at the National Alliance to End Homelessness, *available at* <http://www.endhomelessness.org/content/Art./detail/4226/>.
- 11 National Center for Homeless Education, *Education for Homeless Children and Youths Program*, 4 (2013).
- 12 *See* Section I, *infra*.
- 13 We focused on Eastern and Southern tent cities in part due to the existence of the excellent coverage of West Coast tent cities in Tent Cities in America: A Pacific Coast Report, National Coalition for the Homeless (2010).
- 14 *See id.* at 6, “Tent Cities are America’s de facto waiting room for affordable and accessible housing. The idea of someone living in a tent (or other encampment) in this country says little about the decisions made by those who dwell within and so much more about our nation’s inability to adequately respond to those in need.”
- 15 *See* National Coalition for the Homeless, Tent Cities in America: A Pacific Coast Report (2010), *available at* <http://www.nationalhomeless.org/publications/Tent%20Cities%20Report%20FINAL%203-10-10.pdf>.
- 16 Our research did not uncover any recent reported homeless encampments in Arkansas, Delaware, Idaho, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, or Wyoming.
- 17 Interview with John Joyce & Megan Smith, in Providence, R.I. (Nov. 15, 2011) (hereinafter Joyce & Smith interview, Nov. 15, 2011). John Joyce prematurely passed away in February 2013 after a struggle with cancer. For more on John Joyce’s life and contributions to the homeless community, *see* <http://www.rifuture.org/tag/john-joyce>.
- 18 *Id.*
- 19 *Id.*
- 20 *Id.*
- 21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

27 *Id.* (quoting Megan Smith).

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 Interview with John Freitas and Barbara Kalil, in Providence, R.I. (Nov. 15, 2011) (hereinafter Freitas & Kalil interview, Nov. 15, 2011).

35 See Appendix II, Camp Runamuck Charter.

36 Freitas & Kalil interview, Nov. 15, 2011.

37 *Id.*

38 *Id.*

39 Interview with former Camp Runamuck residents Mike McEwan, Ed, John Freitas, Barbara Kalil, and Elaine Spinney, in Providence, R.I. (Nov. 15, 2011) (hereinafter Camp Runamuck Residents interview, Nov. 15, 2011).

40 Freitas & Kalil interview, Nov. 15, 2011.

41 *Id.*

42 *Id.* (quoting John Freitas).

43 See Freitas & Kalil interview, Nov. 15, 2011; Smith & Joyce Interview, Nov. 15, 2011.

44 Freitas & Kalil interview, Nov. 15, 2011.

45 Smith & Joyce Interview, Nov. 15, 2011.

46 Rhode Island Coalition for the Homeless Roundtable, Providence, R.I. (Nov. 15, 2011) (hereinafter RICH Roundtable, Nov. 15, 2011). See also, *City of Providence v. John Doe et al.*, 21 A. 3rd 315 (2011).

47 Smith & Joyce Interview, Nov. 15, 2011.

48 *Id.*

49 Freitas & Kalil interview, Nov. 15, 2011.

50 Interview with Jim Ryczek, in Providence, R.I. (Nov. 15, 2011) (hereinafter Ryczek interview, Nov. 15, 2011).

51 *Id.*

52 Smith & Joyce Interview, Nov. 15, 2011.

- 53 Freitas & Kalil interview, Nov. 15, 2011; Smith & Joyce interview, Nov. 15, 2011; Camp Runamuck Residents interview, Nov. 15, 2011).
- 54 *Id.*
- 55 *Id.*
- 56 Camp Runamuck Residents interview, Nov. 15, 2011 (quoting Ed, former Camp Runamuck resident and cook).
- 57 For example, at the time he became homeless, Ed worked at a diner and did not get off work until 2 a.m. As a result, he was unable to use the shelter system. *See id.*
- 58 Freitas & Kalil interview, Nov. 15, 2011.
- 59 *Id.*; Smith & Joyce Interview, Nov. 15, 2011.
- 60 Smith & Joyce Interview, Nov. 15, 2011.
- 61 Freitas & Kalil interview, Nov. 15, 2011.
- 62 The authors of this report did not have occasion to interview individuals who chose to remain in the shelter system despite having access to encampments. Thus, the views described here only reflect the perspective of individuals who found themselves in encampments (either by choice or by necessity) and not of individuals who chose to remain in the shelter system. Ultimately, most if not all of those individuals we interviewed felt that they did not have meaningful access to the shelter system, either because they were couples or because there were no shelter beds available or for a number of other reasons described in this report.
- 63 *Id.*
- 64 Smith & Joyce Interview, Nov. 15, 2011.
- 65 *Id.*; RICH Roundtable, Nov. 15, 2011.
- 66 RICH Roundtable, Nov. 15, 2011; Ryczek interview, Nov. 15, 2011.
- 67 Ryczek interview, Nov. 15, 2011.
- 68 *Id.* *See also* Rhode Island Interagency Council Website, *available at* <http://www.csh.org/csh-solutions/community-work/systems-change/local-systems-change-work/ri-interagency-council>.
- 69 RICH Roundtable, Nov. 15, 2011 (quoting Jim Ryczek).
- 70 *Id.*
- 71 Ryczek interview, Nov. 15, 2011.
- 72 *Id.*
- 73 *See* FY2012 Fair Market Rent Documentation System, Providence, R.I., *available at* http://www.huduser.org/portal/datasets/fmr/fmrs/fy2012_code/2012summary.odn?INPUTNAME=METRO39300M39300*Providence-Fall+River,+RI-MA+HUD+Metro+FMR+Area&data=2012&year=2012&fmrtype=%24fmrtype%24&incpath=C:%5CHUDUSER%5CwwwMain%5Cdatasets%5Cfmr%5Cfmrs%5CFY2012_Code&selection_type=hmfa&path=C:%5Chuduser%5Cwwwdata%5Cdatabase.
- 74 Smith & Joyce Interview, Nov. 15, 2011; Ryczek interview, Nov. 15, 2011; Freitas & Kalil interview, Nov. 15, 2011.
- 75 *Id.*
- 76 Ryczek interview, Nov. 15, 2011.

- 77 See, e.g., Dan Barry, *Living In Tents, and By the Rules, Under a Bridge*, NY Times, July 20, 2009, available at <http://www.nytimes.com/2009/07/31/us/31land.html>; Chris Johnson, Activists Erect Tent City in Rhode Island, The Dreamer Propulsion Project, January 24, 2009, available at <http://bullsheet.wordpress.com/2009/01/24/activists-erect-tent-city-in-rhode-island/>; Michelle Smith, RI Tent City Residents Moving Again This Summer, Seattle Times, September 5, 2009, available at http://seattletimes.nwsource.com/html/nationworld/2009813410_apustentcity.html.
- 78 Smith & Joyce Interview, Nov. 15, 2011; Freitas & Kalil interview, Nov. 15, 2011.
- 79 *Id.*
- 80 *Id.*
- 81 *Id.*
- 82 Smith & Joyce Interview, Nov. 15, 2011.
- 83 Smith & Joyce Interview, Nov. 15, 2011; RICH Roundtable, Nov. 15, 2011.
- 84 *Id.* For the court decisions, see *City of Providence v. Kalil*, No. PC-09-5252 (RI Sup. Ct. 2011); *City of Providence v. John Doe et al.*, 21 A. 3rd 315 (2011).
- 85 RICH Roundtable, Nov. 15, 2011 (quoting Peter diSimone, *pro bono* lawyer for Camp Runamuck residents); see also, *id*
- 86 *Id.*
- 87 *Id.*
- 88 *Id.*
- 89 *Id.*
- 90 *Id.*; see also *City of Providence v. Kalil*, No. PC-09-5252 (RI Sup. Ct. 2011); *City of Providence v. John Doe et al.*, No. 2010-94 (RI Sup. Ct. 2011).
- 91 *Id.*
- 92 *Id.* The statutes are at R.I.G.L. 40-5 *et seq.*, available at <http://www.rilin.state.ri.us/Statutes/TITLE40/40-5/INDEX.HTM>; the case is *Sasse v. Doe*, No. PSC-09-4492.
- 93 RICH Roundtable.
- 94 Providence Mun. Code § 18-2, available at http://library.municode.com/HTML/11458/level3/PII_C18_AI.html#PII_C18_AI_s18-2.
- 95 RICH Roundtable, Nov. 15, 2011.
- 96 Ryczek interview, Nov. 15, 2011.
- 97 Smith & Joyce Interview, Nov. 15, 2011; Ryczek interview, Nov. 15, 2011; RICH Roundtable, Nov. 15, 2011.
- 98 Freitas & Kalil interview, Nov. 15, 2011.
- 99 Smith & Joyce Interview, Nov. 15, 2011.
- 100 RICH Roundtable, Nov. 15, 2011; Interview with Jim Ryczek; Smith & Joyce Interview, Nov. 15, 2011. Ms. Smith was careful to point out that although the encampments ultimately did lead to positive results, this “came at great cost to people.” A pregnant woman had her child taken away from her by social services because she had been living in the encampment before the child was

born. A man who stepped up and took a leadership role in his community was arrested on bogus charges and was smeared all over the news in retaliation for his advocacy on behalf of the homeless community.

- 101 RICH Roundtable, Nov. 15, 2011; Ryczek interview, Nov. 15, 2011; Smith & Joyce Interview, Nov. 15, 2011.
- 102 RICH Roundtable, Nov. 15, 2011.
- 103 David Klepper, *Rhode Island Lawmakers Consider Homeless Bill of Rights*, Boston Globe, January 17, 2012, available at http://www.boston.com/news/local/rhode_island/Art.s/2012/01/17/ri_lawmakers_consider_homeless_bill_of_rights/.
- 104 Erika Eichelberger, *Rhode Island's Homeless Bill of Rights*, Mother Jones, June 20, 2012, available at <http://www.motherjones.com/mojo/2012/06/rhode-island-homeless-bill-rights>; email from Jim Ryczek, Executive Director of the Rhode Island Coalition for the Homeless to Eric Tars, Oct. 6, 2013, on file with authors.
- 105 Ryczek interview, Nov. 15, 2011; RICH Roundtable, Nov. 15, 2011.
- 106 Ryczek interview, Nov. 15, 2011.
- 107 *Id.* See also Smith & Joyce Interview, Nov. 15, 2011; RICH Roundtable, Nov. 15, 2011.
- 108 Ryczek interview, Nov. 15, 2011.
- 109 *Id.*
- 110 *Id.* For studies showing the long-term economic benefits and greater effectiveness of Housing First models, see, e.g., Mary E. Larimer et al., *Health Care and Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons with Severe Alcohol Problems*, 301 J. Am. Med. Ass'n. 1349 (2009); Sam Tsemberis et al., *Housing First, Consumer Choice, and Harm Reduction for Individuals with a Dual Diagnosis*, 94 Am. J. Pub. Health 651 (2004); see also Joe Barrett, *Homeless Study Looks at Housing First*, The Wall Street Journal, March 6, 2008, available at http://www.aidschicago.org/pdf/2008/home_wall_street_journal.pdf (discussing Chicago Housing for Health Partnership study showing benefits of Housing First model).
- 111 Smith & Joyce Interview, Nov. 15, 2011.
- 112 Ryczek interview, Nov. 15, 2011.
- 113 *Id.*
- 114 *Id.*
- 115 *Id.*
- 116 *Id.*
- 117 Smith & Joyce Interview, Nov. 15, 2011.
- 118 *Id.*
- 119 *Id.* Note that the incremental approach suggested by Ms. Smith worked successfully in New Orleans, see *infra* at Section II, C.
- 120 RICH Roundtable, Nov. 15, 2011; Ryczek interview, Nov. 15, 2011; Smith & Joyce Interview, Nov. 15, 2011; Freitas & Kalil interview, Nov. 15, 2011. The authors acknowledge that our interviewees are individuals who spent time in tent cities often specifically because they objected to traditional shelter policies, and may not represent the voices of others for whom the shelter system works more successfully.
- 121 RICH Roundtable, Nov. 15, 2011; Ryczek interview, Nov. 15, 2011.

- 122 Smith & Joyce Interview, Nov. 15, 2011.
- 123 Smith & Joyce Interview, Nov. 15, 2011; Ryczek interview, Nov. 15, 2011; RICH Roundtable, Nov. 15, 2011.
- 124 Smith & Joyce Interview, Nov. 15, 2011.
- 125 *Id.*
- 126 *Id.*
- 127 *Id.*
- 128 *Id.*
- 129 *Id.*
- 130 For some media coverage of the Lakewood, N.J. Tent City, see, e.g., Kareem Fahim, *A Ministry in the Cold, With a Gospel of Propane*, NY Times, February 11, 2007, available at <http://www.nytimes.com/2007/02/11/nyregion/11homeless.html?pagewanted=all>; Robert Johnson, *A Gut-Wrenching Look Inside Lakewood New Jersey's Homeless 'Tent City'*, Business Insider, January 1, 2012, available at <http://www.businessinsider.com/robert-johnson-lakewood-new-jersey-tent-city-2011-12>; *The Tent City of New Jersey: Desperate victims of the economic slump forced to live in makeshift homes in forest*, Daily Mail Reporter, August 2, 2011, available at <http://www.dailymail.co.uk/news/Art.-2021173/Americas-city-broken-dreams-50-jobless-destitute-people-set-forest-community-New-Yorks-doorstep.html>; Jaweed Kaleem, *Lakewood Tent City, A Last Resort for the Homeless, Faces Eviction*, Huffington Post, January 5, 2012, available at http://www.huffingtonpost.com/2012/01/05/lakewood-tent-city-new-jersey-homeless_n_1174702.html; see also the entries and videos on the website of In The Woods, available at <http://inthewoodsdocumentary.com/wordpress/>.
- 131 Telephone interview with Connie Pascale (Nov. 28, 2011) (hereinafter Pascale Interview, Nov. 28, 2011).
- 132 Interview with Minister Steve Brigham, in Lakewood, N.J. (Dec. 13, 2011) (hereinafter Brigham interview, Dec. 13, 2011).
- 133 Brigham interview, Dec. 13, 2011.
- 134 *Id.*
- 135 *Id.*
- 136 Interview with Rumu Dasgupta, in Lakewood, N.J. (Dec. 13, 2011) (hereinafter Dasgupta interview, Dec. 13, 2011).
- 137 *Id.*
- 138 *Id.*
- 139 Interview with Marilyn Brenezweig, in Lakewood, N.J. (Dec. 13, 2011) (hereinafter Brenezweig interview, Dec. 13, 2011).
- 140 Brigham interview, Dec. 13, 2011.
- 141 *Id.*
- 142 *Id.*
- 143 *Township of Lakewood v. Steve Brigham, et. al.*, No. L-2462-10 (N.J. Super. Ct. 2013).
- 144 *Township of Lakewood*, No. L-2462-10 (N.J. Super. Ct. 2013).
- 145 Pascale interview, Nov. 28, 2011.

- 146 *Id.*
- 147 *Id.*
- 148 Brigham interview, Dec. 13, 2011.
- 149 *Id.*
- 150 *Id.*
- 151 *Id.*
- 152 Pascale interview, Nov. 28, 2011.
- 153 Pascale interview, Nov. 28, 2011 (county workers); Dasgupta interview, Dec. 13, 2011 & Brigham interview, Dec. 13, 2011 (police officers).
- 154 *Id.*
- 155 Brigham interview, Dec. 13, 2011.
- 156 Brigham interview, Dec. 13, 2011.
- 157 *Id.*
- 158 Pascale interview, Nov. 28, 2011.
- 159 Telephone Interview with Jeff Wild and Catherine Weiss (Nov. 29, 2011) (hereinafter Wild & Weiss interview, Nov. 29, 2011). The case is *Lakewood v. Steve Brigham, et al.*, No. L-2462-10 (N.J. Sup. Ct.). The attorneys also argued that the New Jersey Constitution provides a right to safety and survival, and that it would violate the Constitution to force residents to leave Tent City without providing them with a safe place to go, but the trial court dismissed the constitutional claim. The briefs and court orders in this case are available at http://www.njcoalition-homeless.org/Court_Filings.html.
- 160 Wild & Weiss interview, Nov. 29, 2011. *See also* Brief of the Homeless Individuals in Opposition to Lakewood's Motion for Partial Summary Judgment, *available at* http://media.wix.com/ugd//49b7d7_282825719a42ccdde1d000268503838f8.pdf.
- 161 *Id.*
- 162 Telephone Interview with Committeeman Raymond Coles (Mar. 22, 2012) (hereinafter Coles interview, Mar. 22, 2012).
- 163 *Id.* Committeeman Coles noted that Lakewood gave nonprofits and developers about 40 acres of land for affordable housing development. Logistical difficulties including problems with sewage access delayed the process, but they expect that the developments will begin to go up by this coming summer. Committeeman Coles noted that he negotiated with the developers to encourage them to increase the proportion of rental to ownership units in order to provide more affordable housing opportunities for individuals who are not in a position to purchase housing. *Id.* Local community members, however, felt that the affordable housing being built will not ultimately be accessible in an equitable fashion to all members of the community. Brigham interview, Dec. 13, 2011.
- 164 *Id.*
- 165 *Id.*
- 166 Email from Connie Pascale to Eric Tars, Nov. 7, 2013, on file with authors.
- 167 Wild & Weiss interview, Nov. 29, 2011.
- 168 *Id.*

- 169 *Id.*
- 170 See *Lakewood motion to evict denied: Tent City residents are safe for now*, Homeless in Ocean County, January 6, 2012, available at <http://ochomeless.blogspot.com/2012/01/lakewood-motion-to-evict-denied-tent.html>.
- 171 *Township of Lakewood*, No. L-2462-10 (N.J. Super. Ct. 2013); see also National Law Center on Homelessness & Poverty, *Criminalization of Homelessness: Local Impact, Global Issue*, (Apr. 8, 2013), <http://homelessnesslaw.org/2013/04/criminalization-of-homelessness-local-impact-global-issue/>
- 172 Pascale interview, Nov. 28, 2011; Brigham interview, Dec. 13, 2011; Dasgupta interview, Dec. 13, 2011.
- 173 Brigham interview, Dec. 13, 2011; Dasgupta interview, Dec. 13, 2011; Pascale interview, Nov. 28, 2011.
- 174 Dasgupta interview, Dec. 13, 2011.
- 175 *Id.*
- 176 *Id.*
- 177 Brigham interview, Dec. 13, 2011.
- 178 *Id.*
- 179 *Id.*
- 180 *Id.*
- 181 Associated Press, *Judge: Homeless at Lakewood's Tent City will be offered indoor housing instead of evicted*, Mar. 15, 2013, at http://www.nj.com/news/index.ssf/2013/03/judge_homeless_at_lakewoods_te.html.
- 182 This is not including the most recent Occupy Nola tent city, which once again occupied the space at Duncan Plaza.
- 183 Former New Orleans Mayor Ray Nagin, as quoted in Katy Reckdahl, *Social workers Clear Camp for Homeless*, July 18, 2008, A-12, *The Times-Picayune*.
- 184 Interview with Martha Kegel, Executive Director, and Angela Patterson, Deputy Director of Programs, UNITY of Greater New Orleans, in New Orleans, La. (Jan. 20, 2012) (hereinafter Kegel/Patterson Interview, Jan. 20, 2012).
- 185 UNITY is a nonprofit organization leading a coalition of 60 organizations providing housing and services for the homeless. Its mission is to coordinate community partnerships to prevent, reduce, and end homelessness in the New Orleans area.
- 186 "Before Katrina, New Orleans famously had the highest percentage of "native-born" residents of any major American city. In the 2000 census, for instance, 77 percent of New Orleanians were considered natives, defined as those born anywhere in Louisiana."
- Paula Devlin, *The Changing Face -- and Faces -- of New Orleans*, *The Times-Picayune*, August 23, 2009, http://www.nola.com/news/index.ssf/2009/08/the_katrinaimposed_exile_of_ne.html.
- 187 Evan Casper-Futterman, *The Operation was Successful but the Patient Died: The Politics of Crisis and Homelessness in Post-Katrina New Orleans*, University of New Orleans Theses and Dissertations, <http://scholarworks.uno.edu/cgi/viewcontent.cgi?Art.=2393&context=td>, 30.
- 188 *Hundreds of Homeless Camp Outside New Orleans City Hall, Urge Mayor to Offer More Housing*, Associated Press Financial Wire, November 16, 2007.

- 189 *Id.* One of the fliers reads “Don’t let them rebuild our city without us! Join the Survivors Village ... This weekend, come and sleep in Duncan Plaza, across from City Hall, to show the tourists that the ‘new’ New Orleans means new masses of homeless. On Sunday there will be a press conference to Expose City Hall Hypocrisy.”
- 190 Telephone interview with Martha Kegel, Executive Director, UNITY of Greater New Orleans (Dec. 19, 2011) (hereinafter Kegel Interview, Dec. 19, 2011).
- 191 Interview with Martha Kegel, Executive Director, and Mike Miller, Director of Supportive Housing Placement, UNITY of Greater New Orleans, in New Orleans, La. (Jan. 19, 2012) (hereinafter Kegel/Miller Interview, Jan. 19, 2012).
- 192 *Id.*
- 193 Kegel/Patterson Interview, Jan. 20, 2012.
- 194 Casper-Futterman, *supra* note 187, at 49.
- 195 Kegel/Patterson Interview, Jan. 20, 2012.
- 196 *Id.*
- 197 Casper-Futterman, *supra* note 187, at 50.
- 198 *Id.*
- 199 Kegel/Miller Interview, Jan. 19, 2012.
- 200 Reckdahl, Katy, *Last ‘Residents’ Moved from Homeless Encampment at Claiborne Avenue and Canal Street*, The Times-Picayune, July 17, 2008, http://www.nola.com/news/index.ssf/2008/07/last_residents_moved_from_home.html.
- 201 Kegel Interview, Dec. 19, 2011.
- 202 In addition to open drug dealing, there were reports of women being raped in tents, stabbings, and theft of people’s disability checks. *Id.*
- 203 Kegel Interview, Dec. 19, 2011; Kegel/Miller Interview, Jan. 19, 2012.
- 204 In a May 28, 2008 New York Times Art., Mike Miller was quoted as saying “Two outreach workers have tested positive for tuberculosis ... There’s hepatitis C, there’s AIDS, there’s H.I.V. Everyone out there’s had an eye infection of some sort. I got one.” Shaila Dewan, *With Resources Scarce, Homelessness Persists in New Orleans*, The New York Times, May 28, 2008, A14, <http://www.nytimes.com/2008/05/28/us/28tent.html?pagewanted=all>.
- 205 Kegel/Patterson Interview, Jan. 20, 2012.
- 206 Dewan, *supra* note 204, and Katy Reckdahl, *Those in Tent City Are Shelter Bound*, The Times Picayune, February 20, 2008, http://www.nola.com/news/index.ssf/2008/02/those_in_tent_city_are_shelter.html.
- 207 Kegel/Miller Interview, Jan. 19, 2012.
- 208 Dewan, *supra* note 204, and Kegel/Miller Interview, Jan. 19, 2012.
- 209 Reckdahl, *supra* note 206; Kegel Interview, Dec. 19, 2011.
- 210 *Id.*
- 211 Kegel/Patterson Interview, Jan. 20, 2012.
- 212 Kegel Interview, Dec. 19, 2011.
- 213 *Id.* Taking stock of who had actually been living long enough in the camp to be prioritized for housing required doing intakes at 4am. Kegel/Miller Interview, Jan. 19, 2012.

- 214 Some speculate that the camp sprung up as a result of the New Orleans Mission closing their third floor.
- Kegel Interview, Dec. 19, 2011.
- 215 Interview with Stacy Horn Koch, Director of Neighborhood Services and Facilities, City of New Orleans, in New Orleans, La. (Jan. 20, 2012) (hereinafter Koch Interview, Jan. 20, 2012).
- 216 NOLA Defender, *People Living Under Pontchartrain Expressway Moved From Encampment*, Nov. 16, 2012, <http://www.noladefender.com/content/homeless-pe45ople-liv67ing-under-pontchartrain-expressway-moved-encampment>.
- 217 See City of New Orleans, Office of the Mayor, City houses homeless individuals from under Pontchartrain Expressway, Nov. 16, 2013, <http://new.nola.gov/mayor/press-releases/2012/20121116-city-houses-homeless-individuals-from-und/>; WDSU, Homeless return after city clears out encampment, Feb. 1, 2013, <http://on.aol.com/video/homeless-return-after-city-clears-out-encampment-517660520/>.
- 218 Over the course of the year, the number of homeless people was estimated to be three times this figure—over 33,000 persons. UNITY and its member organizations provided housing and services to over 19,468 homeless people in 2009. *Welcome to UNITY of Greater New Orleans*, Informational Pamphlet. UNITY of Greater New Orleans.
- 219 *Search and Rescue Five Years Later: Saving People Still Tripped in Katrina's Ruins, A Report of the Abandoned Buildings Outreach Team*, UNITY of Greater New Orleans, August 2010, http://unitygno.org/wp-content/uploads/2010/08/UNITY_AB-Report_August2010.pdf.
- 220 *Homelessness in Greater New Orleans: Progress toward Ending Homelessness After the Nation's Largest Housing Disaster*, UNITY of Greater New Orleans, June 2011, <http://unitygno.org/wp-content/uploads/2011/06/PIT-2011-Report.pdf>.
- 221 The following is meant in no way to be a comprehensive survey of the underlying factors of homelessness in New Orleans; it is meant to provide a cursory overview for the purposes of this report.
- 222 Interview with Jim Kelly, Executive Director of Covenant House, in New Orleans, La. (Jan. 20, 2012) (hereinafter Kelly Interview, Jan. 20, 2012).
- 223 *Housing Vacancies and Homeownership*, U.S. Census Bureau, <http://www.census.gov/hhes/www/housing/hvs/annual05/anno5t12.html>.
- 224 Interview with Davida Finger, Assistant Clinical Professor, and students of the Community Justice clinic, in New Orleans, La. (Jan. 19, 2012) (hereinafter Finger et al. Interview, Jan. 19, 2012); Interview with Morgan Williams, General Counsel at Greater New Orleans Fair Housing Action Center, in New Orleans, La. (Jan. 20, 2012) (hereinafter Williams Interview, Jan. 20, 2012).
- Mr. Williams noted that a 2009 audit for discrimination against voucher holders in New Orleans found there was an eighty-two percent rate of discrimination for voucher-holders.
- 225 Finger et al. Interview, Jan. 19, 2012.
- 226 *Id.*
- 227 RH Weisler, JG Barbee, & MH Townsend, *Mental Health and Recovery in the Gulf Coast after Hurricanes Katrina and Rita*, 296 JAMA, 585, 587 (2006).
- 228 Kelly interview, Jan. 20, 2012.
- 229 Kegel/Patterson Interview, Jan. 20, 2012.
- 230 Jeffrey Meitrodt, *Rising Rent*, Times-Picayune, (New Orleans), Oct. 15, 2006, at National 1.

- 231 *Id.*
- 232 William Quigley, *Obstacle to Opportunity: Housing that Working and Poor People Can Afford in New Orleans Since Katrina*, 42 Wake Forest L. Rev. 393, 402 (2007).
- 233 Kegel Interview, Dec. 19, 2011.
- 234 Figures provided by Martha Kegel, Executive Director of UNITY of Greater New Orleans (email on file with authors).
- 235 Tim Morris, *Louisiana's Incarceration Rate is No. 1 in Nation*, The Times-Picayune, March 02, 2009, http://www.nola.com/news/index.ssf/2009/03/louisianas_incarceration_rate.html.
- 236 Kegel/Miller Interview, Jan. 19, 2012.
- 237 Kegel/Patterson Interview, Jan. 20, 2012.
- 238 Kegel/Miller Interview, Jan. 19, 2012.
- 239 Pinellas County Health and Human Services, Point in Time (PIT) Count of Homeless Individuals in Pinellas County, May 10, 2011, www.pinellascounty.org/humanservices/pdf/homeless-count.pdf; Pinellas County Health and Human Services & Univ. of South Florida School of Social Work and the Department of Mental Health Law and Policy, *Pinellas Hope: Reducing Street Homelessness* 4, October 2008, <http://www.pinellascounty.org/humanservices/pdf/hope.pdf>, hereinafter, *Pinellas Hope*.
- 240 *Pinellas Hope*, *supra* note239.
- 241 *Id.*
- 242 *Id.*
- 243 *Pinellas Hope*, *supra* note239, at 5.
- 244 Interview with G.W. Rolle, in St. Petersburg, Fla. (Jan. 17, 2012) (hereinafter Rolle Interview, Jan. 17, 2012).
- 245 *Id.* See also Message of Rev. Bruce Wright, Refuge Ministries, Dec. 2006, *available at*: <http://stpeteforpeace.org/tentcitypage2.html>.
- 246 Message of Rev. Bruce Wright, Dec. 2006.
- 247 Alisa Ulferts, *City to the Camp: Get Out* St. Petersburg Times, Jan. 5, 2007, http://www.sptimes.com/2007/01/05/Southpinellas/City_to_the_camp_Ge.shtml.
- 248 Statement from Rev. Bruce Wright, Jan. 13, 2007, *available at*: <http://stpeteforpeace.org/tentcitypage2.html>
- 249 *Id.* See also Rolle Interview, Jan. 17, 2012.
- 250 Statement from Rev. Bruce Wright, Jan. 13, 2007.
- 251 Alisa Ulferts, *City to the Camp: Get Out* St. Petersburg Times, Jan. 5, 2007.
- 252 Statement from Rev. Bruce Wright, Jan. 13, 2007.
- 253 Rolle Interview, Jan. 17, 2012.
- 254 Abhi Raghunathan & Alisa Ulferts, *Homeless Men Found Slain in Early Hours* St. Petersburg Times, Jan. 18, 2007, http://www.sptimes.com/2007/01/18/Southpinellas/Homeless_men_found_sl.shtml.
- 255 St. Pete for Peace, Tent City, <http://stpeteforpeace.org/tentcitypage2.html>.
- 256 Abhi Raghunathan & Alisa Ulferts, *Police Slash Open Tents to Roust the Homeless* St. Petersburg

- Times, Jan. 20, 2007, http://www.sptimes.com/2007/01/20/Southpinellas/Police_slash_open_ten.shtml.
- 257 *Id.*
- 258 Statement of Rev. Bruce Wright, Jan. 19, 2007, *available at*: <http://stpeteforpeace.org/tentcitypage2.html>.
- 259 *Police Slash Open Tents to Roust the Homeless* St. Petersburg Times, Jan. 20, 2007,
- 260 *See generally* <http://stpeteforpeace.org/tentcitypage2.html>.
- 261 New Tent City Formed, Press Release, Jan. 26, 2007, *available at*: <http://stpeteforpeace.org/tentcitypage2.html>.
- 262 Press Release, Mar. 8, 2007, *available at*: <http://stpeteforpeace.org/tentcitypage2.html>.
- 263 National Law Center on Homelessness and Poverty & National Coalition for the Homeless, *Homes not Handcuffs 11*, July 2009, *available at*: <http://www.nlchp.org/content/pubs/2009HomesNotHandcuffs1.pdf>.
- 264 St. Petersburg, Fla, Code § 20-79, (2008).
- 265 St. Petersburg, Fla, Code § 20-74 and 20-75, (2007) The “right of way” is defined as “any public sidewalk in the area from the northern right-of-way of Fifth Avenue North to the southern right-of-way of Fifth Avenue South and the western right-of-way of Sixteenth Street east to Tampa Bay and from the northern right-of-way of First Avenue North to the southern right-of-way of First Avenue South between Thirty-First Street and Sixteenth Street (prohibited zone) during daylight hours.” § 20-73(b).
- 266 St. Petersburg, Fla, Code § 20-76, (2007).
- 267 St. Petersburg, Fla, Code § 8-201, (2008).
- 268 Rolle Interview, Jan. 17, 2012.
- 269 Interview with Raine Johns, Pinellas County Public Defender, in St. Petersburg, Fla. (Jan. 18, 2012) (hereinafter Johns Interview, Jan. 18, 2012).
- 270 *Id.*
- 271 G.W. Rolle, *The Killer of the Sheep*, *The People’s Tribune* (2008), <http://www.peopletribune.org/PT.2008.02/PT.2008.02.4.html>.
- 272 Johns Interview, Jan. 18, 2012.
- 273 *Id.* Further, the City has used Section 20-30 of the City Code to issue warnings for trespass on public property, in particular for trespass on public parks. Individuals can be excluded from such public spaces for one to two years for a wide range of conduct and at wide discretion of city officials. Clanton Interview, Jan. 5, 2012. Southern Legal Counsel and the National Law Center on Homelessness and Poverty challenged a prior version of the ordinance in the case *Catron v. City of St. Petersburg*, 658 F. 3d 1260 (11th Cir. 2011). The Eleventh Circuit ruled people have a protected liberty interest to be in public places of their choosing and if the City takes away that right through issuance of trespass warnings, it must provide due process. After the decision, the City amended the ordinance to add an appeal process. *See* St. Petersburg, Fla, Code § 20-30 (2012). Trespass ordinances are becoming an increasingly utilized law enforcement tool, and sociologist Katherine Becket has characterized the use of trespass ordinances as the new ‘banishment’. *See* Steve Herbert and Katherine Beckett, *‘This is home for us’: questioning banishment from the ground up*, 11(3) *Social & Cultural Geography* 231 (2010).
- 274 Johns Interview, Jan. 18, 2012.

275 *Id.*

276 *Id.*

277 *Pinellas Hope, supra* note 239, at 8.

278 *Id.* at 5.

279 *Id.* at 8.

280 *Id.*

281 *Id.*

282 Interview with the Pinellas County Coalition of the Homeless [PCCH] and Homeless Leadership Network [HLN] (Sarah Snyder, Officer Richard Linkowitz, Rick Butler, April Lott, Allen Parks, and others), in St. Petersburg, Fla. (Jan. 17, 2012) (hereinafter PCCH and HLN Interview, Jan. 17, 2012).

283 *Pinellas Hope, supra* note 239, at 8.

284 PCCH and HLN Interview, Jan. 17, 2012.

285 Johns Interview, Jan. 18, 2012.

286 PCCH and HLN Interview, Jan. 17, 2012.

287 *Id.*

288 *Id.* See also *Pinellas Hope, supra* note 239, at 9.

289 *Pinellas Hope, supra* note 239, at 9.

290 *Id.*

291 *Id.*

292 *Id.*

293 *Id.*

294 *Id.*

295 PCCH and HLN Interview, Jan. 17, 2012.

296 *Pinellas Hope, supra* note 239, at 10-11.

297 *Id.* at 13.

298 Johns Interview, Jan. 18, 2012.

299 See Pinellas County Board of County Commissioners, Regular Agenda, Aug. 6, 2013, http://www.pinellascounty.org/bcc-agenda/2013_08_06/20.pdf.

300 See Susan Latham Carr, *City council will consider lease for homeless 'tent city'* Ocala Star Banner, June 3, 2013, <http://www.ocala.com/article/20130603/ARTICLES/130609942>.

301 Interview with Lt. Sean McGillen, Safe Harbor Superintendent, in St. Petersburg, Fla. (Jan. 17, 2012) (hereinafter McGillen Interview, Jan. 17, 2012).

302 Arielle Stevenson, *Pinellas County approves funds for jail-annex-turned-homeless-shelter, Pinellas Safe Harbor*, Creative Loafing Tampa Bay, Dec. 15, 2010, <http://cltampa.com/dailyloaf/archives/2010/12/15/pinellas-county-approves-funds-for-jail-annex-turned-homeless-shelter-pinellas-safe-harbor#.UGNVKqSe6kl>.

303 Interview with Kirsten Clanton, Director of the Homeless Advocacy Project, Southern Legal Counsel, by telephone (Jan. 5, 2012) (hereinafter Clanton Interview, Jan. 5, 2012).

- 304 McGillen Interview, Jan. 17, 2012. This process saves the state a significant amount of money, as it costs \$126/day to jail someone while only \$20-26/day to place them at Safe Harbor. *Id.* It should be recognized that this savings is a primary motivation for city and law enforcement officials for encouraging admission to Safe Harbor, but that this also is achieved through some sacrifice in services offered: unlike Pinellas County Jail, Safe Harbor does not house all individuals indoors, does not provide permanent beds to all individuals, and does not require the same form of medical care. Clanton Interview, Jan. 5, 2012.
- 305 Clanton Interview, Jan. 5, 2012. *See* City of St. Petersburg municipal trespass appeal hearing, Tr. (Dec. 27,2012).
- 306 Clanton Interview, Jan. 5, 2012. *See* City of St. Petersburg municipal trespass appeal hearing, Tr. 17: 6-14 (Aug. 15, 2013).
- 307 Clanton Interview, Jan. 5, 2012.
- 308 McGillen Interview, Jan. 17, 2012.
- 309 *Id.*
- 310 Clanton Interview, Jan. 5, 2012.
- 311 McGillen Interview, Jan. 17, 2012.
- 312 *Id.*
- 313 Clanton Interview, Jan. 5, 2012.
- 314 David DeCamp, *Safe Harbor neighbors accuse St. Petersburg mayor of shipping downtown's homeless*, Tampa Bay Times, Jul. 15, 2011, <http://www.tampabay.com/news/publicsafety/article1180608>.
e c c e s problem to their community,
- 315 McGillen Interview, Jan. 17, 2012.
- 316 PCCH and HLN Interview, Jan. 17, 2012.
- 317 *Id.*
- 318 McGillen Interview, Jan. 17, 2012.
- 319 PCCH and HLN Interview, Jan. 17, 2012.
- 320 Johns Interview, Jan. 18, 2012.
- 321 PCCH and HLN Interview, Jan. 17, 2012. *See also* Rolle Interview, Jan. 17, 2012.
- 322 PCCH and HLN Interview, Jan. 17, 2012.
- 323 Rolle Interview, Jan. 17, 2012.
- 324 PCCH and HLN Interview, Jan. 17, 2012.
- 325 *See generally* St. Pete for Peace, Tent City, <http://stpeteforpeace.org/tentcitypage2.html>; Rolle Interview, Jan. 17, 2012.
- 326 Rolle Interview, Jan. 17, 2012.
- 327 *Id.*
- 328 *Id.*
- 329 *Id.*
- 330 *Id.*
- 331 Clanton Interview, Jan. 5, 2012.

- 332 *Id.*
- 333 Rolle Interview, Jan. 17, 2012.
- 334 *Id.*
- 335 *Id.*
- 336 *Id.*
- 337 *Id.*
- 338 *Id.*
- 339 *Id.*
- 340 *Id.*
- 341 *Id.*
- 342 PCCH and HLN Interview, Jan. 17, 2012.
- 343 *Id.*
- 344 Johns Interview, Jan. 18, 2012.
- 345 See National Law Center on Homelessness And Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities* (2011), http://www.nlchp.org/Criminalizing_Crisis.
- 346 Clanton Interview, Jan. 5, 2012.
- 347 See National Law Center on Homelessness And Poverty, *Criminalizing Crisis*, *supra* note 345.
- 348 *Id.* Burton Blatt Institute, <http://bbi.syr.edu>.
- 349 PCCH and HLN Interview, Jan. 17, 2012; Rolle Interview, Jan. 17, 2012.
- 350 Numerous states have either constitutional or statutory provisions imposing a duty on governments to provide for the poor. Courts in Indiana and Maine have interpreted such laws in a manner that allowed plaintiffs to sue for housing in court. See National Law Center on Homelessness & Poverty, “Simply Unacceptable”: Homelessness and the Human Right to Housing in the United States (2011).
- 351 Some implicit right to housing may exist, but housing advocates have declined to argue for one since the Supreme Court rejected a particular formulation of the idea in 1972. See “Simply Unacceptable”: Homelessness and the Human Right to Housing in the United States (NLCHP 2011) 26-29.
- 352 See Asst. Sec. of State for Democracy, Human Rights, & Labor Michael Posner, *The Four Freedoms Turn 70*, (Mar. 24, 2011).
- 353 Bans on camping, loitering, and sitting or sleeping. This category of lawsuits is discussed at length in *Criminalizing Crisis*, *supra* note 345, at Advocacy Manual 19-22.
- 354 See e.g. *Kincaid v. City of Fresno*, 244 F.R.D. 597 (E.D.Ca. 2007) and *Sanchez v. City of Fresno*, No. 1:12-CV-00428-LJO-SKO, 2012 WL 6719556 (E.D.Ca. Dec. 26, 2012).
- 355 *Twp. of Lakewood v. Brigham et al.*, No. L-2462-10 (N.J. Super. Mar. 17, 2013) and *City of Providence v. Doe et al.*, 21 A.3d 315 (R.I. 2011).
- 356 *City of Providence v. Doe et al.*, 21 A.3d 315 (R.I. 2011).
- 357 *In re Zeitler*, (Iowa City of Des Moines Jan. 31, 2013) (Admin. Hr’g. Dec. & Order & Notice of Rt to Appeal) *rev. pending sub. nom. City of Des Moines v. Webster*, No. 05771-EQCE-073786 (Iowa Dist. Apr. 3, 2013).

358 Some courts have also relied on the First Amendment’s freedom of expression clause to overturn ordinances prohibiting certain forms of sitting or sleeping on public sidewalks. These cases, however, have focused on the rights of protestors to use public sleeping as a form of symbolic expression, and not on the rights of homeless individuals. For instance, the Southern District of New York has ruled that the government violated protestors’ right to freedom of expression when it banned all forms of sleeping on public sidewalks. *Metropolitan Council Inc. v. Saafir*, 99 F.Supp. 2d 438 (S.D.N.Y. 2000). The Ninth Circuit has upheld a city ordinance prohibiting anyone from sitting or lying on a sidewalk in a particular district during a particular period of the day against a facial challenge. *Amster v. Tempe*, 248 F.3d 1198, 1198 (9th Cir. 2001). The Ninth Circuit found that sitting and lying is “not necessarily expressive by itself” and “merely provides a mechanism by which protestors can engage in a certain form of conduct that is otherwise criminalized.” *Id.* at 1200.

359 U.S. Const. Amend. XIV ¶ 1.

360 U.S. Const. Amend. V.

361 U.S. Const. Amend. IV.

362 U.S. Const. Amend. VIII.

363 *See Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012) and *Kincaid v. City of Fresno*, No. 1:06-CV-1445-OWW-SMS, 2006 WL 3542732, (E.D.Ca. Dec. 8, 2006).

364 *Lavan*, 693 F.3d 1022.

365 *Lavan*, 693 F.3d at 1024.

366 388 F.3d 539 (6th Cir. 2004).

367 *Id.* at 540.

368 *Id.* at 542 (“There can be little doubt that the plaintiffs have a protected property interest in their own items of value.”) (*citing Harris v. City of Akron*, 20 F.3d 1396, 1401 (6th Cir. 1994).).

369 *Id.* at 543-544. *See also Kincaid v. City of Fresno*, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006).

370 *See Lavan*, 693 F.3d at 1032 (“The City admits that it failed to provide any notice and opportunity to be heard...before it seized and destroyed [plaintiffs’] property.”) and *Cash*, 388 F.3d at 544 (“The established precedent is that individuals whose property interests are at stake are entitled to a ‘notice and opportunity to be heard.’”) (*quoting U.S. v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993)).

371 As opposed to the procedural due process rights recognized in *Lavan* and *Cash* (*see supra* note 370).

372 *Sanchez v. City of Fresno*, No. 1:12-CV-00428-LJO-SKO (E.D. Cal. Dec. 26, 2012).

373 *See id.* at Doc. 46 *18.

374 *See id.* at Doc. 38 ¶33 and ¶36.

375 *See id.* at Doc. 45 *9.

376 *Id.* at Doc. 40 *17.

377 *Id.* at Doc. 46 *16.

378 *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989).

379 *Id.* at 196.

- 380 *Id.* at 201.
- 381 Laura Oren, *Deshaney and “State-Created Danger”*: Does the Exception Make the “No-Duty” Rule?, Admin. & Reg. L. News, Summer 2010, at 4 (finding evidence holdings that *DeShaney’s* dicta implies a “State-Created Danger” exception in all circuit courts but the Fifth Circuit).
- 382 *Id.* at 20.
- 383 *Munger v. City of Glasgow Police Dept.*, 227 F.3d 1082 (9th Cir. 2000).
- 384 Mere negligence causing unintended loss of or injury to life, liberty or property does not implicate the due process Clause, *Daniels v. Williams*, 474 U.S. 327, 328 (1986), but recklessness or “gross negligence” may. See *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). “Deliberate indifference” is certainly sufficient, see *Daniels*, 474 U.S. at 330-331 and *County of Sacramento*, 523 U.S. at 850, but in emergency situations in which deliberation is not possible, the standard of fault is higher. See *County of Sacramento*, 523 U.S. at 852-853.
- 385 See e.g. *Ruiz v. McDonnell*, 299 F.3d 1173, 1183 (10th Cir. 2002) (state’s improper licensure of a childcare facility “affected the public at large” and was therefore insufficiently particular to the plaintiff).
- 386 See e.g. *Dorothy J. v. Little Rock School Dist.*, 7 F.3d 729, 733 (8th Cir. 1993) (3rd party assault two years after state placed assailant in plaintiff’s special education program was “too remote a consequence” to satisfy the state-created danger doctrine). Note that the particulars of this doctrine vary somewhat from circuit to circuit. See e.g. *Ulrig v. Harder*, 64 F.3d 567 (10th Cir. 1995), *Kennedy v. City of Ridgefield*, 439 F.3d 1055 (9th Cir. 2006), *Estate of Smith v. Marasco*, 318 F.3d 497 (3d Cir. 2003).
- 387 810 F.Supp. 1551, 1554 & 1584 (S.D. Fla. 1996).
- 388 *Id.* at 1580-81.
- 389 See *infra* for discussion of *Joel v. Orlando*.
- 390 *Id.* at 1584.
- 391 See *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006) (finding that enforcement of ordinance criminalizing sitting, lying, or sleeping on public sidewalks violated Eighth Amendment prohibition against cruel and unusual punishment). But see *Joel v. City of Orlando*, 61 F.3d 442 (5th Cir. 1995).
- 392 See *Lehr v. City of Sacramento*, 624 F.Supp. 2d 1218, 1231 (“...despite any similarities between *Jones* and the instant case, this Court is not now bound by the majority’s rationale and cannot today accept its logic.”).
- 393 *Joel v. City of Orlando*, 61 F.3d 442 (5th Cir. 1995).
- 394 924 F.Supp. 989, 992-993 (D. Ariz. 1996).
- 395 *Veterans for Peace Greater Seattle, Chapter 92 v. City of Seattle*, No. Co9-1032 RSM, 2009 WL 2243796 (W.D.Wa. Jul. 24, 2009) at *6 (citing *Ingraham v. Wright*, 430 U.S. 651, 671 n. 40 (1977)).
- 396 293 F.3d 570 (2d Cir. 2002).
- 397 *Id.* at 575-576.
- 398 *City of Woodinville v. Northshore United Church of Christ*, 166 Wash.2d 633, 644-45 (Wash. 2009).
- 399 *Id.*

400 *Id.*

401 42 U.S.C.A. §§3601 *et seq.* (2013).

402 *See* 42 U.S.C.A. §§ 3604(a), 3604(f)(1), 3604(f)(3)(B) (2013).

403 *Cf. e.g., Woods v. Foster*, 884 F.Supp. 1169, 1173 (N.D.Ill. 1995) (homeless shelter was a dwelling because homeless individuals “have nowhere else to go.”) *and Lakeside Resort Enterprises, LP v. Board of Sup’rs. Of Palmyra Tp.*, 455 F.3d 154, 160 (3d Cir. 2006) (drug-and-alcohol treatment center was a dwelling because residents could (1) personalize their space, (2) receive mail/phone calls, (3) receive visitors, and (4) eat communally) *and Intermountain Fair Housing Council v. Boise Rescue Mission Ministries*, 717 F.Supp. 1101, 1111, (D.Id. 2010) (homeless shelter *not* a dwelling for similar reasons to those stated in *Lakeside Resort Enterprises*).

404 *Compare Schroeder v. De Bertolo*, 879 F.Supp. 173, 177 (D. Puerto Rico 1995) (recognizing cause of action under FHA against interferences with “the continuing right to use and enjoy the rental or purchased property”) *with Gourlay v. Forest Lake Estates Civic Ass’n of Port Richey, Inc.*, 8:02CV1955T30TGW, 2003 WL 22149660 (M.D.Fla. Sept. 16, 2003) (*vacated after settlement*) (recognizing cause of action under FHA against interferences with continuing use and enjoyment for claims based on disability, but not any other status).

405 *See* 42 U.S.C.A. §§3604(a) (race) and §§ 3604(f)(1), 3604(f)(3)(B) (disability) (2013).

406 *See* 42 U.S.C.A. § 3602(h) (2013).

407 *See* Robert G. Schwemm, *Housing Law and Litigation* § 10:2 (June 2013).

408 *See id.* at § 10:4.

409 *See id.* at § 11D:8.

410 *See* Lakewood Case Study, *supra* Sec. II.B.

411 *Twp. of Lakewood v. Brigham et al.*, No. L-2462-10, *Br. of the Homeless Individuals in Op. to Lakewood’s Mot. for Partial Summ. J.* (Dec. 6, 2011) at *2, *4-5 (N.J. Super.).

412 *Id.*, *Br. of Pl. Twp. of Lakewood in Support of Mot. for Partial Summ. J.* (Aug. 20, 2011) at *1 (N.J. Super.).

413 *See id.*, *Tr. of Mot. for Summ. J.* (Jan. 6, 2012) at *10-11.

414 *Id.* at *21.

415 *Cf.* 42 Am. Jur. 2d Injunctions § 53

416 4 A.L.R. 44(II)(a) (Originally published in 1919). Notably, this doctrine is rarely applied to governments. 28 Am. Jur. 2d Estoppel and Waiver § 131

417 *See* Lakewood Case Study, *supra* Sec. II.B.

418 *See* Providence Case Study, *supra* Sec. II.A.

419 *Lakewood*, No. L-2462-10, *Br. of the Homeless Individuals in Op. to Lakewood’s Mot. for Partial Summ. J.* (Dec. 6, 2011) at *19-22 *and City of Providence v. Doe et al. & Kalil*, No. PC09-5252, *Def.’s Mot. to Stay. Enforcement of Prelim. Inj.* (Sept. 25, 2009) at *2-3 (R.I. Super.).

420 N.J. Stat. Ann. § 44:1-88 (West).

421 R.I. Gen. Laws Ann. § 40-5-4 (West).

422 *See supra* Sec. II.A., B..

423 *See Lakewood*, No. L-2462-10, *Ltr. Br. of Ocean Cty. Bd. of Social Services in Resp. to Third Party Pt.’s, Homeless Individuals’ Cross-Mot.* (Mar. 11, 2013) at *10 (emphasizing discretion when restat-

ing the relevant New Jersey statute) and *Providence v. Doe*, No. PC09-5252, Ct. Hrg. (Sept. 14, 2009) at *217-218 (“[I]f the defendants are going to cite to that statute I just wanted the Court to know...it is, in effect, purely discretionary with the city.”). In other contexts, state courts in Kansas, New York, and West Virginia have denied claims based on a state duty to aid the poor on the basis of legislative discretion. See *Bullock v. Whiteman*, 254 Kan. 177 (Kan. 1993), *RAM v. Blum*, 103 Misc. 2d 237, 239 (Sup. Ct. N.Y. County 1980), and *State ex rel. K.M. v. West Virginia Dept. of Health and Human Resources*, 575 S.E.2d 393 (W.Va. 2002).

424 See Promissory Estoppel, *supra* Sec. III.A.3.i.

425 *Providence v. Doe*, No. PC09-5252, Ct. Hrg. (Sept. 14, 2009) at *228-242 (bench ruling).

426 See *id.* at *217 (citing *Providence*, Rhode Island, Municipal Code § 2-12-29 (2012)).

427 Cf. *id.* at *234.

428 *Lakewood*, No. L-2462-10, Tr. of Mot. for Summ. J. (Jan. 6, 2012) at *14.

429 *Providence v. Doe*, No. PC09-5252, Ct. Hrg. (Sept. 14, 2009) at *218.

430 **Mandatory constitutional provisions (creating some duty, but leaving significant discretion to the legislature):** Ala. Const. art. IV § 88; Alaska Const. art. VII § 5; Del. Const. art. XII §1; Idaho Const. art. X §1; Kansas Const. art. VII § 4; MCLS Const. art. 1, § 2; Missouri Const. art IV § 37; Nevada Const. art. 13 § 1; N.Y. Const. art. XVII § 1; N.C. Const. art. XI § 4; Okla. Const. art. XVII § 3; P.R. Const. art. II § 20; W.Va. Const. art. IX §2; Wyo. Const. art. 7 § 20. **Enabling constitutional provisions:** Cal. Const. art. XVI § 11; Ga. Const. art. III § 9; Hawaii Const. art. IX § 5; Ind. Const. art IX § 3; La. Const. art. XII § 8; Miss Const. art. 4 § 86; Mont. Const. art. XII § 3; N.M. Const. art. IX § 14; Tex. Const. art. III § 51-a. **Statutory poor laws:** AS §§ 47.25.120–47.25.300 (Alaska); Cal. Welf. & Inst. Code § 17000 (California); Colo. Rev. Stat. § 26-2-102 (Colorado); Conn. Gen. Stat. § 17b-190 through -219 (Connecticut; 31 Del. C. § 512 (Delaware); D.C. Code § 4-202.01 (District of Columbia); 20 HRS § 346-362 (Hawaii); 305 Ill. Comp. Stat. 5/6-1 through 5/6-12 (Illinois); Ind. Code § 12-20-1-1 through 12-20-28-3 (Indiana); IA Code § 252.25 (Iowa); Kan. Stat. Ann. § 39-701 to -709 (Kansas); Me. Rev. Stat. tit. 22. § 4307 (Maine); Md. Human Services Code Ann. § 5-403 (Maryland); Mass. Gen. Laws, ch. 118 § 4B (Massachusetts); MCLS § 125 (Michigan); Minn. Stat. § 256D.01 through 256D.21 (Minnesota); Miss. Code Ann. § 43-1-4(a) (Mississippi); Neb. Rev. Stat. 68-131 (Nebraska); NRS 428.010 (Nevada); N.H. Rev. Stat. Ann. § 165:1 (New Hampshire); N.J. Stat. 44:8-107 *et seq.* (New Jersey); N.M. Stat. 8.106.100 *et seq.* (New Mexico); N.Y. Soc. Serv. Law § 62(1) (New York); N.D. Cent. Code § 50-24.5-02 (North Dakota); Ohio Rev. Code Ann. § 5115 (Ohio); Okla. Stat. tit. 56, § 26.3 *et seq.* (Oklahoma); 62 P.S. § 432.1-432.24 (Pennsylvania); R.I. GEN. LAWS § 40-5-1 (Rhode Island); S.D. Codified Laws § 28-13-1 through 28-13-44 (South Dakota); Utah Code Ann. § 35A-3-401 through -402 (Utah); VT. STAT. ANN. tit. 33 § 2103 (Vermont); Va. Stat. 63.2 § 6 (Virginia); RCW § 74.04 (Washington). **Constitutional statements of principle:** Ill. Const. art. I § 2; R.I. Const. art. I § 2; S.C. Const. art. XII § 1.

431 *Center Township of Marion County v. Coe*, 572 N.E. 2d 1350 (Ind. Ct. App. 1991) (upholding trial court’s order directing township to provide shelter to homeless under Indiana’s poor laws, finding “[t]emporary lack of funds is not an excuse”) and *Beaulieu v. City of Lewiston*, 440 A.2d 334 (Me. 1982) (city ordinance that provided shelter assistance to renters but not mortgage payers violated Maine’s poor laws, finding “[t]here can be no doubt that shelter is a basic necessity essential to maintain a relief applicant, within the meaning of a general assistance program.”).

432 See *e.g.* 1 Wharton’s Criminal Law § 90 (15th ed.) and Rest. 2d Torts § 197 (1965).

433 See *In re Zeitler*, *supra* note 357.

- 434 *In re Eichorn*, 69 Cal.App.4th 382 (1998).
- 435 See e.g. *Lakewood*, No. L-2462-10, *Ltr. Br. in Support of Homeless Individuals' Cross-mot. for Interim Relief* (Mar. 4, 2013) at *9-10 (citing N.J. Const. Art. I § 1).
- 436 The standard to which they must prove this element is uncertain. See discussion *infra*.
- 437 *Id.*
- 438 See *In re Zeitler*, *supra* note 357.
- 439 *Id.* at *1.
- 440 *Id.*
- 441 *Id.* at *4.
- 442 *Id.*, *Pet. for Writ of Cert.* (Mar. 01, 2013).
- 443 *Id.*, at ¶22(D-F) (citing REST 2d TORTS § 197). See also AmJur 2d §158.
- 444 *Tobe v. City of Santa Ana*, 892 P.2d 1145 (Cal. 1995).
- 445 *In re Eichorn*, 69 Cal. App. 4th 382 (Cal. App. 1998).
- 446 *Id.* at 1088.
- 447 *Id.*
- 448 *Id.*
- 449 *Id.*
- 450 See *In re Eichorn*, 69 Cal. App. 4th 382, 390 (Cal. App. 1998). The Court felt that “neither trespassing on private property nor walking to a different city was an adequate alternative.” *Id.* at 391 n.4.
- 451 “International Law: The Core International Human Rights Instruments and their monitoring bodies,” Office of the High Commission for Human Rights. See <http://www2.ohchr.org/english/law/> (last visited November 13, 2011).
- 452 *Id.*
- 453 See, e.g. *Roper v. Simmons*, 125 S.Ct. 1183 (2005); *Lawrence v. Texas*, 539 U.S. 558 (2003).
- 454 See, e.g. *Brennan v. State of Florida*, 754 So.2d 1 (Fla. 1999) (Amstead, concurring). (A concurring judge considered the ICCPR in a case where the court struck down the juvenile death penalty under the Florida Constitution.); *Sterling v. Cupp*, 290 Ore. 611 (1981) & *Bott v. Deland*, 922 P.2d 732 (1996) (rev'd on other grounds). (In these cases, the courts considered international legal standards for the treatment of prisoners to determine whether their current treatment violated state constitutions.); *Moore v. Ganin*, 223 Conn. 557 (1995) (Peters, J, concurring). (The concurring judge used the ICESR and UDHR to support its interpretation that the Connecticut Constitution to provide social welfare requirement.); *Boehm v. Superior Court*, 178 Cal.App.3d 494 (1986). (The court cited to the Universal Declaration to support its interpretation of California's welfare statute to include food, clothing and housing allowances.).
- 455 See *Roper*, *supra* note 453, at 1198.
- 456 The Universal Periodic Review process provides every country in the world is reviewed for compliance with human rights standards generally every four years. See Eric S. Tars and Deodonne Bhattarai, *Opening the Door to the Human Right to Housing: The Universal Periodic Review and Strategic Federal Advocacy for a Rights-Based Approach to Housing*, 45 Clearinghouse Rev. 197 (Sept-Oct 2011).

- 457 National Law Center on Homelessness & Poverty, UPR: Recommendations to the United States Re: Housing and Homelessness Domestic Policies, <http://wiki.nlchp.org/download/attachments/12189726/UPR+++Recs+re+housing+and+homelessness+11-29-10.pdf?version=1&modificationDate=1291137754000>.
- 458 *Id.*
- 459 See U.S. Department of Housing and Urban Development Statement on the U.S. Participation in the United Nations' Universal Periodic Review, *available at* http://portal.hud.gov/hudportal/HUD?src=/press/speeches_remarks_statements/2010/statement-110510.
- 460 U.S. Interagency Council on Homelessness, *Opening Doors: Federal Strategic Plan to End Homelessness, Update 2011*, 30 (2011).
- 461 Interagency Council on Homelessness, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 8 (2012) (USICH and the Access to Justice Initiative of the U.S. Dep't of Justice, with support from the Department of Housing and Urban Development, convened a summit to gather information for this report).
- 462 Adopted by the U.N. General Assembly on December 10, 1948.
- 463 Franklin Delano Roosevelt, State of the Union Message (Jan. 6, 1941), in 1940, *The Public Papers And Addresses Of Franklin D. Roosevelt* 663 (1941).
- 464 Thomas Buergenthal, Dinah Shelton, David P. Stewart, *International Human Rights in a Nutshell*, 42 (4th ed. 2009).
- 465 *Id.* at 44. Customary international law is a sort of international common law, derived from consistent and generally accepted practices of countries, out of a belief that the law requires them to behave that way.
- 466 See pages 44, 48, and 58 of this report detailing the criminalization of the life-sustaining activities of homeless people, and page 47 detailing the seizure of property in the St. Petersburg tent slashing. See also Barbara Ehrenreich, *Is It Now a Crime to Be Poor?*, OpEd, NY Times, August 8, 2009, <http://www.nytimes.com/2009/08/09/opinion/09ehrenreich.html?pagewanted=all>; National Law Center on Homelessness And Poverty, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities* (2009), <http://www.nlchp.org/content/pubs/2009HomesNotHandcuffs1.pdf>; *Criminalizing Crisis*, *supra* note 345; and National Coalition for the Homeless, *A Dream Denied: The Criminalization of Homelessness in U.S. Cities*, (2006), <http://www.nationalhomeless.org/publications/crimreport/report.pdf>.
- 467 Adopted and opened for signature 16 December 1966; entered in force 23 March 1976.
- 468 Buergenthal et al., *supra* note 464, at 52.
- 469 U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992). The U.S. adopted a number of reservations, declarations, and understandings upon its ratification of the ICCPR, including the declaration "that the United States declares that the provisions of Art.s 1 through 27 of the Covenant are not self-executing" (Declaration #1). However, it also states that "this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant." (Understanding #5). Finally, there is a declaration to the effect that "it is the view of the United States that States Party to the Covenant should wherever possible refrain from

imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant” (Declaration #2). Given that none of the other reservations or declarations speaks specifically to the right to housing provided by the ICCPR, it can be assumed that the U.S. intends to recognize and protect that right.

- 470 UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Canada*, 7 April 1999, CCPR/C/79/Add.105, available at: <http://www.unhcr.org/refworld/docid/3df378764.html> [accessed 20 April 2012].
- 471 Some federal courts in the United States have recognized a similar right in the homelessness context. See *infra* Section III.C.
- 472 UN Human Rights Committee (HRC), *Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee (2006)*, 27 July 2006, CCPR/C/SR.2395, available at: <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>.
- 473 Adopted and opened for signature, ratification and accession on 16 December 1966; entered into force 3 January 1976.
- 474 UN Treaty Collection, Status of the International Covenant on Economic, Social and Cultural Rights; See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (last visited November 9, 2011). See Vienna Convention on the Law of Treaties, Art. 18 *Obligation not to defeat the object and purpose of a treaty prior to its entry into force*: “A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.”
- 475 International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212.
- 476 U.S. reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994).
- 477 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989).
- 478 UN Treaty Collection, Status of the Convention on the Rights of the Child; See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited November 9, 2011).
- 479 *Id.* at Art. 27(3).
- 480 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987; U.S. reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990).
- 481 Branimir Pleše, UN Committee Against Torture Finds Montenegrin Authorities in Flagrant Breach of Human Rights Standards, 10 May 2003, European Roma Rights Centre, <http://www.errc.org/Art./un-committee-against-torture-finds-montenegrin-authorities-in-flagrant-breach-of-human-rights-standards/1388>.
- 482 International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008; Office of the High Commissioner for Human Rights, Status of ratification of Human Rights Instruments, Feb. 13, 2013, <http://www.ohchr.org/Documents/HRBodies/HRChart.xls>.

- 483 Adopted by General Assembly resolution 46/119 on 17 December 1991.
- 484 See page 70 in the New Orleans case study; see also Ellen Bassik, Lenore Rubin, Alison Lauriat, Is homelessness a mental health problem? 141 *The American Journal of Psychiatry*, 1546, 1546 (1984) finding a ninety percent rate of primary psychiatric diagnoses among homeless persons at an emergency shelter; and National Coalition for the Homeless, Mental Illness and Homelessness: NCH Fact Sheet #5 (2006), http://www.nationalhomeless.org/publications/facts/Mental_Illness.pdf.
- 485 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, Dec. 18, 1990, entered into force July 1, 2003, 2220 U.N.T.S. 93, 30 I.L.M. 1517 (1991).
- 486 See Status of ratification, *supra* note 482.
- 487 Adopted by General Assembly resolution 24/2542 on 11 December 1969.
- 488 Adopted by General Assembly resolution 41/128 on 4 December 1986.
- 489 Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980); see Status of ratification, *supra* note 482.
- 490 See National Law Center on Homelessness and Poverty, Factsheet, "Some Facts on Homelessness, Housing, and Violence Against Women," http://www.nlchp.org/content/pubs/DVHomelessnessFacts_September20081.pdf.
- 491 *Id.*
- 492 Buergethal et al., *supra* note 464, at 74.
- 493 See Office of the High Commissioner for Human Rights, *Special Procedures of the Human Rights Council*, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.
- 494 U.N. Committee on Economic, Social, and Cultural Rights, General Comment 4: The Right to Adequate Housing (Art. 11.1) ¶ 1, U.N. Doc. E/1992/23, (1990).
- 495 *Id.* at ¶ 6.
- 496 *Id.* at ¶ 7, emphasis added.
- 497 *Id.*, quoting the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000.
- 498 *Id.* at ¶ 8.
- 499 *Id.* at ¶ 10.
- 500 *Id.* at ¶ 11.
- 501 U.N. Committee on Economic, Social, and Cultural Rights, General Comment 7: The Right to Adequate Housing (Art. 11.1): Forced Evictions ¶ 1, U.N. Doc. E/1998/22, annex IV (1997).
- 502 *Id.* at ¶ 4.
- 503 *Id.* at ¶ 16.
- 504 *Id.* at ¶ 8.
- 505 *Id.* at ¶ 13.
- 506 Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, <http://www2.ohchr.org/english/bodies/chr/special/index.htm> (last visited February 25, 2012).

- 507 U.N. Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, U.N. Doc. A/HRC/4/18, 2.
- 508 *Id.* at ¶ 24. The Special Rapporteur expands on this by saying that “the obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights. These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (Art. 11, para. 1), the Convention on the Rights of the Child (Art. 27, para. 3), the non-discrimination provisions found in Art. 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and Art. 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination” (14).
- 509 Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, U.N. Doc. A/HRC/4/18, ¶ 5.
- 510 *Id.* at ¶ 6.
- 511 U.N. Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009).
- 512 U.N. Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Raquel Rolnik, on her mission to the United States of America (22 October–8 November 2009)*, U.N. Doc. A/HRC/13/20/Add4, (Feb. 12, 2010) ¶ 95.
- 513 Report of the U.N. Special Rapporteur on extreme poverty and human rights, U.N. Doc. A/66/265 (2011).
- 514 *Id.*, at ¶ 34, 48.
- 515 *Id.* at ¶ 78.
- 516 *Id.* at ¶ 36.
- 517 U.N. Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America (22 February-4 March 2011)* U.N. Doc. A/HRC/18/33/Add.4, (Aug. 2, 2011); Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012).
- 518 *Id.* at ¶ 60.
- 519 Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, USA: “*Moving Away from the Criminalization of Homelessness, A Step in the Right Direction*” (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>.
- 520 There are 167 parties to the ICCPR and 74 signatories; the ICESCR has 160 Parties and 70 signatories. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (last visited February 25, 2012).
- 521 *Police Slash Open Tents to Roust the Homeless* St. Petersburg Times, Jan. 20, 2007.
- 522 See National Law Center on Homelessness & Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil & Political Rights* (2013).

- 523 See National Law Center on Homelessness And Poverty, *Criminalizing Crisis*, *supra* note 345.
- 524 According to the 2011 *Simply Unacceptable* report produced by the National Law Center on Homelessness and Poverty, “At the 2009 National Forum on the Human Right to Housing ... Fred Karnas, Senior Advisor to HUD Secretary Sean Donovan stated, “whether we formally acknowledge the ‘human right to housing’ or not, I believe it is our job to proceed to craft and implement national, state and local housing policies which uphold its spirit.” Karnas then went on to conduct a brief analysis of federal housing programs according to the seven elements of the right to housing. Although clearly not constituting an official recognition of the right, this application of the framework and acknowledgement of a spirit of compliance were important steps in that direction.”
- 525 United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness*, 8 (2012).
- 526 Asst. Sec. of State for Democracy, Human Rights, & Labor Michael Posner, *The Four Freedoms Turn 70*, (Mar. 24, 2011); Convention on the Law of Treaties Art. 18, May 23, 1969, 1155 U.N.T.S. 331.
- 527 United States Interagency Council on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* (2010), *available at* http://www.usich.gov/PDF/Opening-Doors_2010_FSPPreventEndHomeless.pdf.
- 528 See U.S. Department of Housing and Urban Development Statement on the U.S. Participation in the United Nations’ Universal Periodic Review, *available at* http://portal.hud.gov/hudportal/HUD?src=/press/speeches_remarks_statements/2010/statement-110510.
- 529 The right to housing, as any human right, cannot be viewed in isolation and is integrally linked to other human rights and fundamental freedoms derived from the UDHR, both social/economic and civil/political. Homelessness and poverty are inextricably linked because it is difficult to obtain and maintain a job without a place to live, and education is often impeded for the same reasons. Homelessness increases inequality in most aspects of life and leads to indignity in that everyday activities for the satisfaction of basic needs are turned into complicated and illegal actions. Cooking, urinating, washing and sleeping are often prohibited in public places, and the homeless person must spend considerable amounts of time searching for places where these basic functions can be performed safely and without interference. As Jeremy Waldron argues, “[A] rule against performing an act in a public place amounts *in effect* to a *comprehensive* ban on that action so far as the homeless are concerned.” Jeremy Waldron, *Homelessness and the issue of freedom*, in *Liberal Rights*, Collected Papers 1981-1991 (Cambridge: Cambridge Univ. Press 1993), at 332.
- 530 Org. of Am. States, *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, ch. 1, Art. XI, (1948); Org. of Am. States, *American Convention on Human Rights*, “Pact of San Jose”, Costa Rica, 22 November 1969, ch.1, arts. 1, 2, 26, *available at*: <http://www.unhcr.org/refworld/docid/3ae6b36510.html> [accessed 24 May 2012].
- 531 Tara Melish, Counsel, Poor Peoples’ Econ. Human Rights Campaign, *Situation of the Right to Adequate Housing in the Americas*, Testimony Before the Inter-American Commission on Human Rights 1-3 (Mar. 4, 2005).
- 532 *Id.* at 8.
- 533 Comm. On Econ., Soc., and Cultural Rights, *Report on the Fifth Session, General Comment 3: The Nature of States Parties’ Obligations (Art. 2(1) of the Covenant)*, ¶10, U.N. Doc. E/1991/23 Annex II (1990)

- 534 *See id.* at ¶3 (explaining the meaning of “appropriate measures”).
- 535 *See* IACHR, Resolution No. 3/87, Case 9647, *James Terry Roach and Jay Pinkerton* (United States), *Annual Report 1986-1987*, September 22, 1987, paras. 46-49; IACHR, Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra* (United States), *Annual Report 2000*, April 4, 2001; I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Art. 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89, July 14, 1989. Series A No. 10, paras. 35-45. *See also* Statute of the IACHR, Art. 20.
- 536 American Declaration, *supra* note 530, Arts. IX, XI, XXIII.
- 537 American Convention on Human Rights, *supra* note 530, Art. 26.
- 538 Org. of Am. States, *Charter of the Organisation of American States*, 30 April 1948, Art. 34(k), *available at*: <http://www.unhcr.org/refworld/docid/3ae6b3624.html> [accessed 24 May 2012].
- 539 Comunidad Mayagna (Sumo) Awas Tingni v. Nicaragua, Inter-Am. Ct. H.R., Ser. C No. 79. Judgment of Aug. 31, 2001.
- 540 *See, e.g.*, *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., Series.C No. 172, Judgment of Nov. 28, 2007.
- 541 *See* M. Emberland, *The Human Rights of Companies: Exploring the Structure of ECHR Protection* 42 (Oxford: OUP 2006).
- 542 *Airey v. Ireland*, App. No. 6289/73, 2 Eur. H.R. Rep. (ser, A) at 26 (1979).
- 543 Optional Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, Art. 1. (“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”) *See* *James v. United Kingdom*, 8 Eur. H.R. Rep. 123 (1986); *Broniowski v. Poland*, 40 Eur. H.R. Rep. 21 (2005). *See also* Optional Protocol 1, Art. 6 (on the right to a fair trial), Art. 11 (on freedom of assembly and association).
- 544 *See* *Oneryildiz v. Turkey* [GC] 41 Eur. H.R. Rep. 20 (2005).
- 545 *See* *Chapman v. United Kingdom*, 33 Eur. H.R. Rep.18 (2001).
- 546 28Eur. H.R. Rep.CD175 (1999).
- 547 *Id.* at 179.
- 548 33 Eur. H.R. Rep. 18 (2001).
- 549 App. No. 485/05, admissibility decision of Feb. 7, 2006.
- 550 44 Eur. H.R. Rep.16 (2005).
- 551 *Id.* at 110.
- 552 *Id.* at 93.
- 553 *Id.* at 103-7.
- 554 *See generally id.*
- 555 *Id.* at 141-53.
- 556 40 Eur. H.R. Rep. 9 (2004).
- 557 *Id.* at 95.
- 558 *Id.* at 94.

- 559 *Moscow Branch of the Salvation Army v. Russia*, 44 Eur. Ct. H.R. 828 (2006), ¶99.
- 560 *R. (on the application of Limbuela) v. Secretary of State for the Home Department* [2005] UKHL 66; [2006] 1 AC 396.
- 561 *Id.* at 8.
- 562 Eur. Soc. Charter, Council of Europe, *available at* http://www.coe.int/t/dghl/monitoring/social-charter/default_en.asp (last visited Nov. 9, 2011).
- 563 *FEANTSA v. France*, Complaint No. 39/2006, Eur. Comm. on Soc. Rts. (Mar. 19, 2007), *available at* <http://www.feantsa.org/files/housing-rights/instruments-and-mechanisms-relating-to-the-right-to-housing/Collective%20complaints/Report%20FEANTSA%20to%20CM.pdf>
- 564 Art. 31, Part I holds, “Everyone has the right to housing.” Art. 31, Part II states, “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1. To promote access to housing of an adequate standard; 2. To prevent and reduce homelessness with a view to its gradual elimination; 3. To make the price of housing accessible to those without adequate resource.” Eur. Soc. Charter, *supra* note 562, art. 31 (revised).
- 565 *FEANTSA v. France*, Complaint No. 39/2006, at 41.
- 566 *See, e.g., Connors v. United Kingdom*, 40 Eur. H.R. Rep. 9 (2004).
- 567 *Winterstein and Others v. France*, App. No. 27013/07, *communicated on* Sept. 9, 2009 (applicants – French nationals and mostly Travellers – were evicted from land in Herblay where they had stationed their caravans, without any alternative housing being offered to them) and *Yordanova and Others v. Bulgaria*, App. No. 25446/06, *declared admissible on* Sept. 14, 2010 (concerning authorities’ plans to remove a Roma settlement in Sofia).
- 568 The Constitution of India, *available at* http://india.gov.in/govt/documents/english/coi_part_full.pdf.
- 569 *Francis Coralie v. Union Territory of Delhi*, (1985) 3 SCC 545.
- 570 810 F.Supp. 1551 (S.D. Fla. 1996).
- 571 1981 AIR 746, 1981 SCR (2) 516, *available at* <http://indiankanoon.org/doc/78536/>.
- 572 1996 AIR 114, 1995 SCC Supl. (3) 456, *available at* <http://indiankanoon.org/doc/967399/>.
- 573 (1996) 2 SCC 549.
- 574 *Id.* The issue in that case was a government acquisition of land in order to build accommodations for the Scheduled Castes. The owner challenged the acquisition, and the Court ruled for the government by finding a right to shelter under Art. 21 of the Indian Constitution. *See also Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520 (affirming children’s right to adequate housing “The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home.”; “The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.”)
- 575 (1997) 11 SCC 121.
- 576 *Government of the Republic of South Africa & Ors v. Grootboom & Ors*, 2000 (11) BCLR 1169.
- 577 *Id.* at ¶40-43.
- 578 *Id.* at ¶43.
- 579 *Id.* at ¶44.
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- 581 Port Elizabeth Municipality v. Various Occupiers, 2004 (12) BCLR 1268 (CC).
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- 583 *Id.* at ¶59.
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- 599 Finger et al. Interview, Jan. 19, 2012.
- 600 Kelly interview, Jan. 20, 2012.
- 601 Kegel/Miller Interview, Jan. 19, 2012.
- 602 Koch Interview, Jan. 20, 2012.
- 603 Freitas & Kalil interview, Nov. 15, 2011.
- 604 Ryczek interview, Nov. 15, 2011.
- 605 Dasgupta interview, Dec. 13, 2011.
- 606 PCCH & HLN interview, Jan. 17, 2012.
- 607 Rolle Interview, Jan. 17, 2012.

Housing as a Human Right

John Freitas, former “Chief” of Camp Runamuck, Providence, RI

*The right to housing—let’s change it to a right to shelter. Housing can take many forms. If you can’t give me an apartment, then don’t stop me from setting up a tent. That’s the answer. Don’t tell me that we have this unused state land but you can’t use it.*⁶⁰³

Jim Ryczek, Executive Director of Rhode Island Coalition for the Homeless

*If we talk about stability and mental health and health and job training and employment—I mean, how can a homeless person have any stability in any of those other areas ... if [he or she] doesn’t have a place to go home and call [his or her] own and be sheltered from the elements? But [the right to housing is also] more [than that]. You get to realize self-actualization. It all starts with really having a dwelling that you can call your own. And you can’t do any of those other things if you don’t have that. We have a right to a public education. And we have a right to public safety. I think the right to housing is more on a par with those types of rights than a right to vote, free speech. ... These are things we should all have in order to be a healthy society.*⁶⁰⁴

Rumu Dasgupta, Sociology Professor, Georgian Court University

*Of course housing is a human right. There are five things every person has a right to just by virtue of being human. Food, housing, shelter, healthcare, education. These are five things where there can be no question about it. Every individual should have it. And if this country can’t provide it, who will?*⁶⁰⁵

Debbie Infante, Americorps VISTA Volunteer, Pinellas County Coalition for the Homeless

*I just wish that we could give everyone who calls us a house and give them the tools to maintain it. When I think of my daughter, with her own kids, we need to put her in a house, but that by itself won’t do any good. She needs support and services, someone to check up on her.*⁶⁰⁶

G.W. Rolle, St. Petersburg, FL

*Housing should be accessible to everyone, irrespective of their economic condition, mental condition, their motivational condition. Everyone deserves a roof over their heads, especially in this country where we have so many resources available. Food, clothing, and shelter are basic human rights.*⁶⁰⁷

Housing as a Human Right

At the end of each of our interviews, we asked our interviewees whether they thought housing is a human right and if so, what the human right to housing meant to them. Some of their responses are excerpted below:

Davida Finger, Assistant Clinical Professor, Loyola Law School

I think we should have housing as a human right; make it a real entitlement, we know there are other places in the world where that happens and there's no reason why we can't have that here, we would just have to shift the budget over.⁵⁹⁹

Jim Kelly, Executive Director, Covenant House

How is housing not a basic human right? I'm all for affordable healthcare and better schools, but in the day-to-day, where do you live? It's not just housing, it's decent, affordable housing that is a human right.⁶⁰⁰

Mike Miller, Director of Supportive Housing Placement, UNITY

Is housing a right? In an evolved society, we have a right to be safe. And to be in an environment that keeps us healthy (physically, mentally). Whatever that means to whoever... that's housing. We all have a right to see our potential out.⁶⁰¹

Stacy Koch, Director of Neighborhood Services and Facilities, City of New Orleans

Everyone has a right to feel safe; I do think housing is a right.⁶⁰²

Megan Smith, Co-Director of Rhode Island Homeless Advocacy Project

Housing is a foundation for so many other things. It's very hard to have a job when you don't have housing. It's very hard to support your family when you don't have housing. It's very hard to have good mental health when you don't have housing and therefore stability. Housing in a lot of really fundamental ways is stability, and so I think it needs to be a foundation of... a basic level of service provided to everyone.

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Chapter 2.2

The Health of Toronto's Homeless Population

THE STREET HEALTH REPORT, 2007

This is Exhibit "E" referred to in the
Affidavit of

Dr. AN. D. G. A. S. F. C. P. A.
Affirmed/ Sworn before me this 5 day
of September 2007

A Notary Public/ A Commissioner for Oaths
in and for the Province of Alberta

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta

My Commission Expires January 1, 2009
Appointee # 0761114

2009
DK

Homelessness is a devastating social problem in Toronto. In 2002, about 32,000 different people slept in one of the city's homeless shelters (City of Toronto, 2003). In 2006, about 6,500 individuals stayed in a shelter on any given night (Shapcott, 2006). In 1998, the City of Toronto endorsed a declaration acknowledging that homelessness is a national disaster.

Homeless people have much poorer health and higher mortality rates than the general population, and often experience difficulties obtaining the health care and social services they need. They are also largely excluded from broad-based government health and census surveys, which often depend on people having an address or telephone number. Even when these surveys reach homeless people, they do not address the unique circumstances of this group.

In 1992, Street Health, a community-based health agency serving homeless people in Toronto, decided to conduct its own study to explore the health status of homeless people and their ability to access the health care system (Ambrosio et al., 1992). It was the first report of its kind in North America and continues to be used today.

When the 1992 Street Health Report was published, Toronto was emerging from an economic downturn. Political and business leaders promised that economic good times would bring rewards for everyone.

The Street Health Report, 2007, The Health of Toronto's Homeless Population. In Hulchanski, J. David; Campsie, Philippa; Chau, Shirley; Hwang, Stephen; Paradis, Emily (eds.) *Finding Home: Policy Options for Addressing Homelessness in Canada* (e-book), Chapter 2.2. Toronto: Cities Centre, University of Toronto
www.homelesshub.ca/FindingHome

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ISBN 978-0-7727-1475-6

However, by 2007 the research wing of one of Canada's largest banks was reporting that social inequity and poverty were on the rise in the city (TD Economics, 2007). During the 1990s, the richest 10 percent of Torontonians saw their family income increase by about 8 percent while the poorest 10 percent had a drop of almost the same amount. Between 2001 and 2005, the bottom 20 percent of Canadian families saw an outright decline in their income (Shapcott, 2007).

In the years since the 1992 Street Health Report was published, homelessness and housing insecurity have increased in Toronto. The nightly count of people sleeping in homeless shelters has more than tripled. This increase reflects funding and program cuts at the federal and provincial levels, coupled with the downloading of responsibility for social programs to the province and city. Social assistance rates were cut and have not been fully restored, rents have risen, and very little social housing has been built. At the same time, new health issues have emerged in the homeless community. Street Health decided it was time to conduct another comprehensive study to fill a gap in current knowledge about the health status of homeless people in Toronto, find out how the health of homeless people had changed in 15 years, and create new evidence on which to ground our advocacy efforts and those of other community groups.

The 2007 Street Health Survey

The second Street Health Survey was conducted between November 2006 and February 2007. We surveyed a random sample of 368 homeless adults at meal programs and shelters across downtown Toronto about their health and access to health care. Homelessness was defined as: having stayed in a shelter, outdoors or in a public space, or with a friend or relative for 10 or more days in the 30 days prior to being surveyed. Of those interviewed, 73 percent identified as male, 26 percent as female, and 1 percent as transgender/transsexual. The average age of people interviewed was 42 years, and participants ranged in age from 19 to 66 years. More than three-quarters (77 percent) were between the ages of 25 and 49; 3 percent were under 24 and 20 percent were over 50.

Of the sample, 63 percent identified solely as Caucasian; 37 percent as non-Caucasian. Aboriginal people made up a much higher percentage

The Street Health Report, 2007
2.2 The Health of Toronto's Homeless Population

www.homelesshub.ca/FindingHome

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of our sample (15 percent) compared with the percentage they represent in the general population of Toronto (about 0.5 percent in the 2001 Census). Thirty-two percent were born in Toronto and an additional 45 percent were born in Canada outside of Toronto. Immigrants were under-represented in our sample (23 percent) compared to the general population of Toronto, where 49 percent were born outside the country (Statistics Canada, 2005).¹ Of those who were not born in Canada, 53 percent had Canadian citizenship, 36 percent were landed immigrants, 5 percent had refugee status and 5 percent had temporary or no status.

Seventy-two percent of our sample had lived in Toronto for 10 years or longer. The people interviewed in our study had lived in Toronto for a long time. They were typically not newcomers to the city who had just arrived and were getting settled. Only 15 percent had lived in Toronto less than five years.

Patterns of Homelessness

You can't get out of poverty, no matter how you try. Nothing works together. They have systems but they don't work together. Believe me, I have tried every possible way, but you can't. For three years I've been going around in a circle. And I can't get out of it. I'm very resourceful, I'm intelligent, and I'm not lazy. I'm sure people give up, but I keep going.
(Survey Respondent)

For survey participants, homelessness was not, on average, a short-term crisis. People in our survey had been homeless an average of 4.7 years. The length of time that participants in our survey had been homeless throughout their lives ranged from two weeks to 50 years. Seventy-eight percent had been homeless for one year or longer and 34 percent had been homeless for five years or longer.

¹ Our main source of information on the general population is the Canadian Community Health Survey (CCHS) Cycle 3.1, Public Use Microdata File (Statistics Canada, 2005), which contains anonymized data. All computations on these microdata were prepared by Street Health and the responsibility for the use and interpretation of these data is entirely that of the authors.



Main reasons respondents gave for becoming homeless	%
Economic reasons (cost of rent, low income, unemployment)	52%
Unsafe or poor living conditions	31%
Eviction or conflict with landlord	25%
Respondent's own drug or alcohol use	23%
Relationship or family breakdown	20%
Institutionalization (went to hospital, substance treatment program, jail)	13%
Neighbourhood was inappropriate or too isolated	3%
Lack of support to keep housing	2%

Survey participants were also asked the two main reasons preventing them from finding and maintaining housing right now:

Main reasons respondents gave for remaining homeless	%
Economic reasons (cost of rent, low income, unemployment)	78%
Mental and physical health conditions	33%
Lack of suitable housing (unsafe or poor living conditions, bad landlords)	24%
Waiting list too long	11%
Lack of adequate support to find and keep housing	10%
Discrimination (against welfare recipients, people with criminal records)	7%
Lack of person identification	6%

Our findings are consistent with other studies, which have also found that poverty is the leading cause of homelessness in Canada. Poverty is a concern for many Canadians, and 49 percent of the population feel they are always just one or two paycheques away from being poor (Canadian Centre for Policy Alternatives, 2006). Official estimates from 2001 suggest that 1.7 million Canadian households were at risk of homelessness (Engeland, 2004).

Key changes to social policies in recent years have a direct connection to some of the most common reasons that people became homeless:

- *A Shortage of Social Housing:* From the 1960s until 1993, roughly 20,000 units of social housing were built each year with the help of government funding, most of which came from the federal government. In 1993 the federal government withdrew its funding of social



housing, and in 1995 the province of Ontario did the same. As a result, throughout most of the 1990s, very little affordable, supportive housing was built.

- *Cuts to Social Assistance:* Throughout the 1990s, the federal government made major cuts in social program funding for the provinces. In real dollars, Ontario welfare benefits are now roughly half what they were in 1995 and disability benefits are roughly 22 percent less (Task Force on Modernizing Income Security, 2006). It has been estimated that the 21.6 percent cut to social welfare benefits in Ontario pushed 67,000 families out of their rental housing (Falvo, 2003).
- *Easing of Rent Controls:* Since 1998, the City of Toronto has lost 85 percent of its one-bedroom apartments renting at or below \$700 a month (City of Toronto, Shelter, Support & Housing Administration, 2006). Rents have gone up at a faster rate than incomes. In the late 1990s to early 2000s, rent increases averaged 5 percent higher than wages. While average rents in Toronto grew by 30 percent between 1997 and 2002, from \$751 to \$976, real wages (adjusted for inflation) decreased for those earning minimum wage (City of Toronto, 2003).
- *Decreased Tenant Protections:* New laws were introduced in Ontario in the 1990s that decreased tenant protection and made eviction easier. The Ontario Rental Housing Tribunal received over 30,000 eviction applications by landlords to terminate tenancies in 2005; of these 86 percent were because of rental arrears (City of Toronto, Shelter, Support & Housing Administration, 2006). It is likely that many of the people in our survey were evicted because they couldn't afford the rent.

Many of the reasons homeless people in our survey gave for why they are unable to find or maintain housing point to the lack of adequate help to find housing and the lack of subsidized and supportive housing options that are available: 47 percent said they were not currently getting help to find housing and 44 percent were on the waiting list for social housing.

As of December 31, 2006, there were 67,083 households in Toronto on the waiting list for social housing (Housing Connections, 2006). The length of time on the social housing waiting list for survey respondents ranged from 1 day to 20 years. Fifty-two percent have been on the social



housing wait list for six months or less. This large portion of people who have been on the wait list a very short time is probably a reflection of stepped-up efforts by the City of Toronto's housing workers, as well as its new plan to address homelessness, which requires every homeless person they work with to apply for social housing. Among the 48 percent who have been on the wait list for longer than 6 months, the average wait time was 4.6 years.

Income, Benefits, and Money Management

The homeless people we surveyed report extremely low incomes: 36 percent live on \$200 a month or less. Formal employment was a source of income for 20 percent of survey respondents: 11 percent did casual or piece work; 5 percent did part-time work; and 4 percent did full-time work.

Informal work includes panhandling, sex work, selling scrap metal or bottles and other street-involved work: 19 percent of respondents cited income from informal employment. Panhandling was the most common type, cited as a source of income by 9 percent of survey respondents. However, it is likely that informal work was underreported because many forms are illegal or stigmatized.

In terms of access to government income supports, 52 percent received no major government benefits, 27 percent received support through Ontario Works (OW)², 16 percent through Ontario Disability Support Program (ODSP),³ and 5 percent received other government benefits such as government pensions, federal disability benefits, unemployment insurance, and workers' compensation benefits.

Although 74 percent of the people we surveyed have at least one serious physical health condition, only 22 percent of those with serious illnesses are getting either ODSP or federal disability benefits. Thirty-

-
- 2 In Ontario, government welfare benefits are obtained through the Ontario Works (OW) program. OW benefits are for people who need money because they are unable to find work or are temporarily unable to work.
 - 3 The Ontario Disability Support Program (ODSP) is the provincial government program that offers long-term disability benefits to people with serious disabilities who have little or no other way to support themselves. The basic rate for a single person on Ontario Works is approximately \$548 per month. For ODSP, the rate is \$979.



eight percent of all respondents felt that they were eligible for ODSP, but were not receiving it, for various reasons: 50 percent had not applied; 19 percent had their application rejected; 17 percent could not complete the application process; and 12 percent had applications still in process.

What we heard about ODSP is consistent with a separate study conducted by Street Health, which specifically examined the barriers homeless people face when attempting to secure disability benefits (Street Health, 2006). The study found that homeless people with disabilities cannot navigate the overall ODSP application process without help, due to its complexity. Certain disabilities such as mental illness, developmental disabilities and learning disabilities make this system even more difficult to navigate. In the study, participants were provided with intensive, one-on-one support with all aspects of the ODSP application process and their related income, housing and legal needs. As a result, 93 percent of participants secured ODSP benefits and 100 percent of those were then able to get housing.

Many survey respondents cited smaller streams of government benefits that provide important, but inadequate, supplemental support. Only 11 percent of respondents said they received the GST credit, despite the fact that the vast majority live on extremely low incomes and should therefore be eligible. This poor access to the GST credit is likely because of the barriers inherent in a tax return-based benefit, such as not having the resources to file your income tax.⁴

Thirty-four percent of respondents said they received Personal Needs Allowance (PNA) benefits. PNA is a stipend given to people staying in shelters to help meet incidental needs other than those provided for by shelters and was worth \$3.90 a day at the time of the survey, or \$109 to \$120 a month. People cannot receive other social assistance benefits at the same time that they are receiving PNA.

Most homeless people do not use bank services. Requiring multiple forms of personal identification to open a bank account is a significant barrier for people who are homeless. Therefore, 60 percent of those in

4 The amount of the GST credit is based on factors such as net income and number of children. A single adult earning \$400 per month could expect to receive approximately \$60, four times a year, in GST credits.



our survey used cheque-cashing services. These services typically charge fees of \$2.50 per cheque, plus an additional 3 percent of the total cheque amount. This means, on a welfare cheque of \$548, the service takes about \$19. Because these companies do not provide savings accounts, individuals have no choice but to receive the entire value of their cheque in cash. This makes money management difficult and leaves people at risk of being robbed.

The Daily Lives of Homeless People

It's hard to want to stay healthy when you have to walk round the streets in the cold, rain, snow, broke. It's part of life. It's something I live with.
(Survey Respondent)

Almost all (96 percent) of the homeless people in our survey reported using shelters at least once in the past year. Of those who use shelters, 55 percent said that they had been unable to get a shelter bed at least once in the past year, on average 20 times, and of those, 74 percent said that this had happened at least once in winter months.

Places respondents stayed overnight in the past month	%
Shelter	88%
Outside (e.g. parks, streets, bus stops)	32%
Friend's or relative's place	26%
Hotel, motel, rooming or boarding house	10%
Hospital or treatment program	8%
Car or abandoned building	7%
Place of business (e.g. coffee shop, laundromat)	6%
Jail	4%

Shelters in Toronto range from approximately 25 to 750 beds. While many are doing their best with limited resources, a typical Toronto shelter is still a crowded place full of bunk beds, with a shared washroom for dozens of people, and few food choices. Some shelters have maximum lengths of stay, forcing people to be constantly on the move. Some require people to leave early in the morning, leaving people with no place to rest during the day.



Out of the Cold programs are meal and shelter services run by faith-based groups and community centres across Toronto during the winter (mid November to mid April). These programs are generally volunteer-run and often operate only one day a week. The shelter that these programs provide is sometimes just a mat and a blanket on the floor of a church basement. Out of the Cold Programs provide accommodation for approximately 200 people per night.

During the time that this study was conducted, three shelters in the downtown core closed. In addition to providing a place to sleep, shelters are also an important source of food. Fewer shelter beds also mean fewer meals for homeless people.

Some homeless people avoid the shelter system altogether. We asked people who had not stayed in a shelter in the last 10 days why they chose not to.

Common reasons respondents gave for avoiding shelters	%
Bed bugs	34%
Crowded conditions	31%
Fear of getting sick	23%
Fear of violence	20%
Fear of theft	15%

Bed bugs have become a common problem for homeless people in Toronto. Bed bugs hide in cracks and crevices in beds, flooring and walls. Their bites can cause clusters of small but extremely itchy red bumps. Although bed bugs are not known to transmit infectious diseases, they cause physical discomfort and emotional distress (Hwang et al., 2005).

Sleep

You can't go to sleep because you don't know what's going to happen from minute to minute. So you just keep staying up and staying up and staying up. And I noticed that physically – I had clumps of hair coming out ... and memory loss. I don't know if it's just exhaustion or nerves. But that's how it's affected me. (Survey Respondent)



Survey respondents reported low levels of sleep. Forty-six percent got an average of six hours or less per night. The most common problem was too much noise or light. Other reasons included being woken up by others, crowded conditions, the cold, bed bugs, and unclean conditions. Others cited nightmares, bad nerves, pain, and other physical health problems as reasons they could not get enough sleep.

Lack of sleep can have many important impacts on physical health, psychological well-being, and energy levels. More than half of respondents (54 percent) said that in the past month, they had been so tired that they did not have the energy to walk one block or do light physical work. Sleep disturbances also contribute to the development, or increase the severity, of various medical and psychiatric conditions, including heart attacks and depression (Zee & Turek, 2006).

Hygiene

When survey respondents were asked about some essential daily hygiene activities, 32 percent said they sometimes or usually had difficulty finding a place to use the washroom; 25 percent said they sometimes or usually had difficulty finding a place to bathe; and 41 percent said they sometimes or usually had difficulty getting their clothes washed.

Hygiene is an important part of overall health and is particularly important for some health issues. Getting rid of bed bugs requires exposing them to very high or very low temperatures. People are usually advised to put their clothes and bedding in the dryer at a high temperature if they have a bed bug problem. Almost half of the people we interviewed would have difficulty following this advice.

Hunger and Nutrition

I don't eat at all, some days. Sometimes the food is not available, you know, especially on the weekends – it's hard. A lot of places ain't open as frequently as they are through the week. So, I just do whatever I can. I see the health bus, I get vitamins. (Survey Respondent)

Sixty-nine percent of homeless people in our survey had experienced hunger at least one day per week in the past three months because they could not get enough food to eat.



Homeless people rely heavily on meal programs, because they do not have places to store or cook food, and 96 percent of respondents said that they regularly used meal programs at a shelter, drop-in, or other organization. Even so, homeless people are clearly not getting their food needs met by these programs: 58 percent reported that in the past three months they had still been hungry after going to a meal program.

Not including Out of the Cold Programs (which operate only in the winter months), there are approximately 80 programs in Toronto that provide meals to homeless people outside of the shelter system. Of these programs, about two-thirds provide only a single meal a day, and more than three-quarters are closed on Saturday or Sunday. An analysis of the meals served in a sub-sample of 18 of these programs found that the average energy content of meals served was half of what a healthy adult would require for minimal physical activity during the day (Tarasuk, 2007.)

Many homeless people in our survey had special dietary needs, mainly for health reasons. Of the 33 percent of respondents who said they were supposed to be following a special diet, 53 percent said they were able to follow it less than once a week. Through the Ontario government's Special Diet Supplement, people receiving social assistance are eligible for additional income (up to a maximum of \$250) if they can provide evidence that they have a medical condition that requires a special diet, but 70 percent of respondents who were supposed to follow a special diet were not receiving the Special Diet Supplement, for various reasons.

Common reasons respondents gave for not receiving Special Diet supplement	%
had not applied (because they did not know about it, did not know how to apply, or could not navigate the application)	55%
had been cut off from the supplement due to changing eligibility criteria	14%
had not been able to get the form filled out by a health care provider	10%
had applied, but had been turned down	9%
could not get the supplement because they were not receiving social assistance	9%



In 2006, new regulations by the provincial government made access to the Special Diet Supplement even more difficult, and reduced the amount that many people were already receiving. Everyone receiving the supplement was required to re-submit their applications on new, more restrictive eligibility forms. Additional diet income is now tied directly to specific medical conditions and, in some cases, to how sick you are as a result of the condition. For example, if you have diabetes, you are eligible to receive an additional \$42, while the amount someone receives if they HIV/AIDS varies between \$75 and \$240; depending on how much weight they have lost.

Of the 9 percent of respondents who were getting the Special Diet Supplement at the time of the interview, more than half reported that the amount they receive had been reduced in the 12 months prior to the survey, by an average amount of \$147.

Social Isolation

Social exclusion has a major negative impact on health, increasing one's risk of disability, illness, and addiction (Marmot & Wilkinson, 2003). Homeless people in our survey experience low levels of social support and high levels of social isolation: 37 percent said they had no one to help them in an emotional crisis and 38 percent said that they often feel very lonely or remote from other people.

Poverty creates social exclusion because it denies people access to decent housing, education, and other factors that are important to full and equal participation in society. Discrimination, hostility, unemployment, and stigmatization also contribute to social exclusion and are part of the daily reality of the homeless people we interviewed.

Injury and Violence

Without their own private or safe spaces to go and stay, many homeless people are forced to live much of their lives in public, putting them at greater risk for injuries and accidents. Almost one in ten (9 percent) of survey respondents had been hit by a car, truck, public transit vehicle, or bicycle in the past year. Rates of physical violence are also very high. Thirty-five percent of homeless people in our survey had been physically



assaulted in the past year. Of those, 68 percent were assaulted more than once, on average six times. This is much higher than among the general population of Toronto, where less than 1 percent reported a physical assault to the police in 2005 (Toronto Police Service, 2006).

Who respondents reported being assaulted by the past year	%
Stranger	56%
Acquaintance	38%
Police	35%
Another shelter resident	27%
Partner or spouse	21%
Shelter staff	6%

Three-quarters of respondents in our survey who had been assaulted by police said they did not lodge a formal complaint. The main reasons cited were related to fear of repercussions (46 percent), and feeling that it would not accomplish anything (46 percent).

Respondents were also asked if they had been sexually assaulted or raped in the past year, defined in our survey as unwanted touching and/or sexual intercourse. Of the entire group, 7 percent said they had been sexually assaulted in the past year, but this statistic was higher for women, 21 percent of whom had been sexually assaulted in the past year. Even though these rates are extremely high, it is likely that sexual assault was under-reported in our survey, due to the personal nature of the issue and the stigma that surrounds it.

General Health & Well Being

It is widely recognized that homeless people have much poorer health than the general population. Other studies have found that people living in poverty are more likely to die from certain diseases, including cancer, diabetes and respiratory diseases, and particularly cardiovascular disease (Raphael, 2002). Our findings on health and well-being speak overwhelmingly to the overall poor physical and mental health of homeless people.



When asked to think about the amount of stress in their lives, 44 percent of respondents said that most days were quite a bit or extremely stressful. In comparison, 24% of people in Toronto reported the same (Statistics Canada, 2005). Stress has an important impact on health and well-being. High levels of stress can contribute to conditions such as high blood pressure, heart disease and stomach or intestinal ulcers. Chronic stress over long periods of time compromises the immune system, making people more susceptible to a range of other health conditions.

Self-rated health and mental health: Homeless people in our survey compared with the general population

		Street Health Survey	General population
Physical health	Very good or excellent*	29%	61%
	Good	29%	30%
	Fair or poor*	40%	9%
Mental health	Very good or excellent*	33%	74%
	Good*	27%	21%
	Fair or poor*	38%	5%

*statistically significant difference

Source of information on general population: Statistics Canada. Canadian Community Health Survey (CCHS) Cycle 3.1 (2005). Public Use Microdata File.

Pain

Regular experiences of pain were common among homeless people. Forty-one percent of respondents said that they were usually in some pain or discomfort. Fourteen percent of all respondents said that this pain is severe. These high levels of pain and discomfort suggest that many people may have disabilities and medical conditions that are not acknowledged, diagnosed, or treated. Experiences of pain can also lead to low energy levels, which in turn limit people's ability to care for themselves and participate economically and socially in the community. Pain also affects one's ability to sleep. Almost one third (30 percent) of respondents said that they found it hard to sleep because of pain or discomfort.



Physical Health Conditions

Of the homeless people we interviewed, 74 percent had at least one serious physical health condition,⁵ and 52 percent had two or more. We also found that for people without any serious health conditions, the average time homeless was 3.7 years, whereas the average length of time homeless for people with at least one serious health condition was 5.1 years. The significant difference between these two averages suggests that being homeless for a longer period increases one's likelihood of serious illness.

The homeless population carries a disproportionate burden of many serious health conditions compared to the general population. In the areas for which we have comparable data (Statistics Canada, 2005), our results show that homeless people are:

- 20 times as likely to have epilepsy as members of the general population;
- 5 times as likely to have heart disease;
- 4 times as likely to have cancer;
- 3½ times as likely to have asthma;
- 3 times as likely to have arthritis or rheumatism;
- twice as likely to have diabetes.

Moreover, we would expect many of these conditions to be more common among older adults, yet the average age of survey respondents was 42, and the oldest person interviewed was 66.

5 A "serious physical health condition" was defined as any of 22 serious conditions, including: cardiovascular and respiratory diseases, hepatitis and other liver diseases, gastrointestinal ulcers, diabetes, anemia, epilepsy, cancer, and HIV/AIDS.



Chronic or ongoing physical health condition	Street Health Survey	General Population
Arthritis or rheumatism*	43%	14%**
Allergies other than food allergies*	33%	24%**
Migraines*	30%	11%**
Liver disease*	26%	10%*** in Canada
Hepatitis C*	23%	0.8%† in Canada
Problem walking, lost limb, other physical handicap	23%	n.a.
Asthma*	21%	6%**
Heart disease*	20%	4%**
High blood pressure*	17%	13%**
Chronic obstructive pulmonary disease	17%	1%**
Stomach or intestinal ulcers	15%	2%**
Skin disease (e.g. eczema, psoriasis)	13%	n.a.
Angina*	12%	2%†† in Ontario
Anemia	11%	n.a.
Diabetes	9%	4%**
Heart attack in lifetime	7%	2%†† in Ontario
Inactive or latent tuberculosis	7%	n.a.
Epilepsy*	6%	0.3%††† in Canada
Fetal alcohol spectrum disorder	5%	1%
Stroke in lifetime	4%	n.a.
Hepatitis B*	4%	0.7-0.9%‡ in Canada
Cancer*	4%	1%**
Congestive heart failure*	3%	1%†† in Ontario
HIV positive*	2%	.006%‡‡
AIDS	1.1%	n.a.

Unless otherwise noted, comparisons are to the general population of Toronto.

* Statistically significant.

** Source: Statistics Canada, 2001.

*** Source: Canadian Liver Foundation, 2006.

† Source: Public Health Agency of Canada, 2003.

†† Source: Chow et al., 2005.

††† Source: Statistics Canada, 2005.

‡ Source: Public Health Agency of Canada, 2007.

‡‡ Estimated prevalence of 15,300 in Toronto. Source: Remis et al., 2006.

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Emergent Health Issues

There are several health conditions that have emerged as important health issues among the homeless population in recent years.

Tuberculosis (TB) is a contagious disease that had almost disappeared in Canada, but that has re-emerged in recent years. TB bacteria commonly attack the lungs but can infect other parts of the body. People can have active or inactive TB. Inactive TB means that you have the TB bacteria in your body but it is not making you sick. Inactive TB can become active TB if the immune system is somehow damaged. TB is a major cause of death for people who also have HIV. Seven percent of the people we surveyed said they had inactive TB. It is likely that the reported rate of inactive TB among homeless people in our sample is an underestimation, as many respondents may not know they have it.

While the majority of active TB cases in Toronto are among people who have travelled or lived in areas where TB is common, one-third of recent cases were among homeless and underhoused people living in shelters or rooming houses (Toronto Public Health, 2007). Crowded conditions in these living situations put this population at high risk for infection. Although TB is preventable and curable, and despite recent scaled up efforts by Toronto Public Health, it is still not easy for homeless people to get tested for TB or to access treatment.

Hepatitis C is a viral infection that attacks the liver and is transmitted through blood to blood contact. While 23 percent of our survey sample reported having Hepatitis C, it is likely that this number is even higher. Hepatitis C progresses slowly and most infected people do not experience symptoms for many years. The Ontario Ministry of Health estimates that one-third of people living with Hepatitis C do not realize they are infected. Despite a high need among this group, homeless people experience major barriers to accessing treatment or even acquiring basic information about the disease. Without education, many people are transmitting the disease unwittingly.

Hepatitis C can be effectively treated, but the treatment is difficult and requires stability and support. Treatment requires following a strict schedule of medication and monitoring by a physician for at least six months. The side effects can be debilitating, and include depression, hair



loss, flu-like symptoms, and nausea. Many health care providers are unwilling or unable to provide the extensive support that homeless people need to successfully undergo treatment. Without treatment, Hepatitis C can cause liver disease, including cirrhosis and cancer. Without adequate shelter, and nutritious food, homeless people are even more susceptible to some of these negative outcomes. Further, it is estimated that in Ontario, 25 percent of people with HIV also have Hepatitis C (Public Health Agency of Canada, 2001). HIV and Hepatitis C co-infection is problematic, because each disease makes the other worse and it is hard to treat both simultaneously.

HIV/AIDS has disproportionately affected homeless people relative to the general population. The prevalence of HIV is over 300 times higher among homeless people than in the general population in Toronto. It is possible that this condition was under-reported by survey respondents, due to the stigma attached to the disease and because some respondents may not know their HIV status. Homeless people with HIV are at extremely high risk for many other medical conditions. In addition to having a compromised immune system due to HIV, homeless people tend to have their immune systems even further weakened by the harshness of their daily lives, which includes fatigue, poor nutrition and high levels of stress. In addition, homeless people are regularly exposed to countless communicable diseases and infections in crowded spaces such as shelters.

The Impact of Living Conditions on Homeless People's Health

In addition to poverty, stress and social isolation, key aspects of homeless people's unique living situation that affect their health are:

- *Food:* Homeless people lack control over the food they eat, and lack access to healthy food, which may contribute to, or make worse, conditions such as diabetes and stomach ulcers.
- *Violence and Injury:* Homeless people are more likely to be injured or assaulted, which often includes head injuries. Head injuries can lead to seizures. Violence also has a broad range of negative physical and psychological effects.

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- *Density and Crowding:* Crowded conditions in shelters put homeless people at risk for infectious diseases like the flu and TB, as well as problems like lice, scabies and bed bugs.
- *Exposure to the Elements:* Homeless people are also far more exposed to the urban environment and the elements than the average person. Many homeless people spend a major part of the day outside, exposing them to damp, cold, extreme heat and pollution. This prolonged exposure may put homeless people at higher risk for arthritis, pneumonia, allergies and asthma. Foot problems among homeless people are common because so many homeless people spend a large part of their day walking or standing, and because homeless people often have to spend the day with cold and wet feet.
- *Heat:* Climate change is starting to have a dramatic impact on homeless and poorly housed people. In 2005, Toronto's Medical Officer of Health reported that more Torontonians are dying prematurely of heat-related causes in the summer than of cold-related causes in the winter (McKeown, 2006). Homeless and poorly-housed people, who have very few options to escape the heat, are among those at greatest risk for heat-related illness. The number of smog and extreme heat days reached an all-time high in 2005. Rising temperatures due to climate change threaten to make this problem even worse.

Mental Health

Mental "illness" does not cause homelessness; poverty does. A 1998 Toronto study that examined the societal and personal factors that precipitate homelessness concluded that mental illness cannot be seen as a primary pathway to homelessness (Tolomiczenko & Goering, 1998). Their report argues that broader systemic factors need to be taken into account and uses an analogy of "musical chairs." As chairs (that is, jobs and affordable housing) become scarce, it is not surprising to find people with mental and physical health problems among those without a chair.

You get a sense of despair; your self worth goes to hell.
(Survey Respondent)

Suicidal thoughts were significantly more frequent among the respondents in our survey than among the general population in Toronto,



where 7 percent reported having suicidal thoughts in their lifetime (Statistics Canada, 2004). The high levels of depression, anxiety and suicidal ideation in our sample reflects the harsh reality of homeless people's daily lives, and the lack of hope that many homeless people feel.

Respondents were asked if they had ever been given a diagnosis for a mental health problem by a doctor or psychiatrist. Thirty-five percent of our sample has received such a diagnosis. The table below shows the prevalence of the most common mental health diagnoses in our sample, compared with that of the general population in Canada.

	Street Health Survey	General population**
Depression*	17 %	8 %
Anxiety*	11 %	1 %
Bipolar*	8 %	1 %
Schizophrenia*	5 %	1 %
Post-traumatic stress disorder	5 %	n/a

* significant difference

** Source: Health Canada, 2002.

Not reflected in these numbers is the reality that many people with mental illness are initially misdiagnosed and that determining a diagnosis and a treatment plan is often an ongoing process, negotiated between specialists and clients. Many homeless people, because they do not have stable health care, are unable to go through this process and often live with misdiagnoses and inappropriate treatments.

Mental health problems affect people of all income levels. It is estimated that one in five Canadians will experience mental illness during his or her lifetime (Health Canada, 2002). Mental health problems do not directly cause homelessness. People with mental health issues become homeless when they lack income stability and appropriate supports. Many of the factors that compromise mental health, such as instability, social isolation and violence, are also part of the daily reality of homelessness. Many people experience mental health problems, or have existing problems become worse, only after they become homeless.



While for some people, mental health issues may be one of the factors that contribute to becoming homeless, it is likely just one of many. Although many survey participants experience mental health issues, very few (5 percent) cited mental health issues as the reason they lost housing or the reason they were unable to find or maintain housing. Addiction issues came up as a more prominent reason for losing or not being able to get housing (cited by 23 percent for both questions).

Our study did not explore the prevalence of concurrent disorders, the term used when people have a combined mental health and substance use problem. However, other studies estimate that 30 percent of people diagnosed with a mental health disorder also have a substance use disorder at some point in their lives (CAMH, 2006). Having a concurrent disorder can make it even more difficult to access treatment. Many mental health services refuse treatment to a person with an active drug or alcohol addiction and some addictions services will not treat people for substance use problems until their mental health problem is treated.

Learning Disabilities

Learning disabilities are disorders that affect the acquisition, organization, retention, understanding, or use of verbal or nonverbal information. These are lifelong disorders that can affect self-esteem, work, and relationships. Difficulties faced by adults with learning disabilities may include finding or keeping a job, time management, budgeting and managing money.

Homeless people report significantly higher rates of learning disability. Sixteen percent (16%) of our sample said they had been diagnosed with a learning disability, compared to only 2% of the general population in Toronto (Statistics Canada, 2005).

Substance Use

Many homeless people smoke cigarettes: 87 percent of respondents said they currently smoke cigarettes, compared to 18 percent of the general population of Toronto (Statistics Canada, 2005).

The proportion of homeless people who had consumed alcohol in the last year (77 percent) is almost identical to that of the general population of Toronto, 70 percent of whom reported using alcohol at least once in the past year (Statistics Canada, 2005). Differences in patterns of alcohol use between homeless people in our sample and the general population occur mainly in the percentage of heavy drinkers. Seventy-two percent of people in our survey who reported drinking alcohol, reported heavy drinking (five or more drinks on one occasion) at least once in the past year, compared to 44 percent of the general population (Statistics Canada, 2005). Of those who said they had consumed alcohol in the past year, 55 percent reported heavy drinking, more than once a month in the past year. In the general population of Toronto, 22 percent reported the same (Statistics Canada, 2005).

Our survey also found that 7 percent had consumed non-beverage alcohol in the past year and four people said that they do this almost daily. Non-beverage alcohol is alcohol in a form that is not meant to be consumed and includes things like mouthwash, hand sanitizer, cooking wine, and rubbing alcohol. Homeless people may drink non-beverage alcohol because it is less expensive and easily available. Some types of non-beverage alcohol (like methanol, found in anti-freeze) are extremely toxic and can cause blindness or death. Dangerous toxic health effects also result from the mix of other chemicals present in these products.

I've been looking for counselling and I haven't been able to find any. I lost my kid in the past year. My coping mechanism ... I'm embarrassed to say it ... but I've turned to street drugs. ... Marijuana is illegal but it seems to ease my depression, which makes me eat. If it helps, it helps.
(Survey Respondent)

Of the people we surveyed, 59 percent use at least one illicit drug regularly (three or more times a week), other than marijuana. Twelve percent use marijuana only and 28 percent said they had not used any illicit drugs regularly in the past year.

Nearly half of our total sample reported regular crack use. This is very high compared to the crack use rate of 1 percent reported by the general Toronto population (City of Toronto, 2005). Crack use presents many serious health risks, including Hepatitis, HIV, and respiratory



problems. There is also intense stigma surrounding crack use and few treatment or support options are available. More than 1 in 10 of our total sample, or 23 percent of those who had used any drugs regularly, reported having injected drugs in the past year. Sharing contaminated needles makes injection drug use one of the leading causes of HIV, hepatitis and other blood-borne infections.

Drugs used regularly by respondents in the past year	%
Crack	49%
Marijuana	48%
Cocaine	30%
Opiates/analgesics (other than Oxycontin)	16%
Sedatives, hypnotics or tranquilizers (other than downers)	16%
Oxycontin	15%
Morphine	10%
Heroin	7%
Hallucinogens	7%
Methamphetamines (crystal meth, uppers, speed)	4%
Downers	6%
Methadone	5%
Amphetamines (Benzedrine, Ritalin)	4%
Solvents and other inhalants	2%

People of all income levels use drugs for a variety of individual and systemic reasons. Drugs are often used to help people to cope with illness, trauma, stress or pain, and to relieve isolation and boredom. This is probably the case for many of the people we interviewed, 73 percent of whom said that they had used alcohol or drugs in the past year to relieve stress or pain or to feel better about their life. It is likely that many people in our survey are “self-medicating” themselves to relieve symptoms of problems for which they cannot get medical treatment, and using illegal drugs because they are easier to obtain than prescription medications.



Access to Health Care

Homeless people often experience difficulties obtaining the health care they need. One in ten reported not using any health care services at all in the year before the survey. Also, 59 percent do not have a family doctor, compared to only 9 percent of Toronto population (Statistics Canada, 2005). Hospital emergency departments were the most frequently used source of health care for homeless people in our survey and many had been hospitalized in the past year.

Sources of health care used by respondents in the past year		
	%	Aver. # of times
Emergency Department	54%	5
Doctor's office	44%	12
Services at shelters, drop-ins, health bus	42%	15
Community Health Centre	31%	11
Walk-in Clinic	29%	4
Hospitalization (at least one night)	24%	2
Hospital Outpatient Clinic	13%	9
Aboriginal health centre	6%	7
Alternative health centre	1%	10

Community health centres are a model of health care designed to promote access to health for people facing barriers to care, and address a wide range of health-related needs. This makes them well-suited to provide health services to homeless people, but barriers still exist, such as the lack of walk-in services and community health programs that do not focus on the specific needs of homeless people. Only 16 percent of those in our survey cited community health centres as one of their usual sources of care.

Outreach-based services are designed to address the barriers of the mainstream health care system. In 1989, there were perhaps four or five street nurses, but today there are more than a hundred street nurses working across Canada (Crowe, 2007). Street nursing services are delivered outside mainstream health care settings, in places where homeless



people spend time and where they feel comfortable. Some shelters and meal programs also offer on-site nursing care during set times each week. Some health agencies operate mobile health vans or buses that drive around the city offering care at specific spots and along the way. Outreach workers and nurses take knapsacks and walk around parks, beneath bridges and in ravines, to reach people who might not otherwise be able to access health care on their own.

While many homeless people rely on these services for health care, they are not intended to provide comprehensive care or to replace the mainstream health care system. The increase of this type of health services is a reflection of increasing homelessness and homeless people's poor access to the mainstream health care system.

Almost one-third (29 percent) of homeless people in our survey said that they did not have a usual source of health care. They gave us the following reasons for this situation.

Reasons given by those respondents with no usual source of health care	%
Seldom or never get sick	42%
Don't use doctors or treat self	24%
Don't have a health card	19%
Move around a lot within Toronto	15%
Negative past experience	12%
Recently moved to Toronto	11%
Don't know where to find care	10%

Many respondents cited not needing health care as a main reason for not having a stable health care provider. This is surprising and unlikely, considering that three-quarters of respondents have at least one serious physical health condition. This suggests that some homeless people have a lower sense of entitlement and lower expectations about their health and their right to access care. This is also related to homeless people's difficult living situations, where they often have to prioritize more immediate needs such as shelter, and do not have the luxury of addressing preventive health care.



Barriers to Health Care and Social Services

Multiple barriers affect homeless people's access to various types of health care, including hospitals, primary health care, eye doctors and dentists. Many of these barriers relate specifically to homeless people's poverty and the difficulty of life without a permanent home. Economic barriers include not having money to get to medical appointments or to pay for prescriptions. Other barriers include not having a telephone or stable address and needing to prioritize survival needs such as food and shelter.

Health care providers remain a critical access point for a multitude of health and social benefits. Forty-one percent of survey respondents said they had needed a health care provider to fill out a form in order to obtain health or social benefits in the past year. But 59 percent of our sample doesn't have a regular family doctor to sign their forms. Some doctors also charge a fee for getting forms signed, which presents an additional barrier. The burdensome and complicated process of having to get medical forms filled out in order to receive social assistance has been cited as a major barrier that prevents homeless people from receiving Ontario Disability Support Program benefits, in a separate study conducted by Street Health (Street Health, 2006).

Ontario Health Cards

Twenty-eight percent of all respondents had been refused health care in the past year because they did not have an Ontario Health Card, and 34 percent did not have such a card. Of those without health cards, only 7 percent (9) said they were not eligible for one. The other reasons for not having a card were: 66 percent had either lost it or had it stolen; 14 percent were waiting for a card they had applied for; and 4 percent said their health card had expired.

Several respondents said that they had lost their identification as a result of being arrested, going to jail or because the police had taken it from them and had not returned it. Having identification taken by police or losing track of it while in the prison system was also noted in a 2006 Toronto study on homelessness and the criminal justice system (Novac et al., 2006).



Beyond health cards, other forms of identification are essential for accessing a wide range of social services and resources. Among our survey respondents, 50 percent did not have a Social Insurance Number⁶ card and 29 percent did not have identification that provides proof of citizenship, such as a birth certificate, citizenship card, record of landing and passport. While not having a health card can prevent people from accessing health care, lack of a Social Insurance Number can stop people from accessing income support, training, housing, and from getting a job. Citizenship documents are particularly important, because they enable people to apply for all other pieces of identification.

People in our sample cited many essential services that they were not able to access due to lack of identification documents.

What respondents could not get due to lack of identification	%
Ontario Works (welfare) benefits	18%
Employment	14%
Food bank	12%
Housing	11%
Training/education	6%
Ontario Disability Support Program benefits	4%

Discrimination in Health Care

Once they see that you're homeless, their attitude goes from caring to "get out of here." (Survey Respondent)

Forty percent of those we interviewed said that they had been judged unfairly or treated with disrespect by a doctor or medical staff at least once the past year.

Discrimination and poor treatment indicate that, at best, many homeless people are not having their health problems taken seriously or investigated adequately. At worst, it means that they may not be having their health problems treated at all. Discrimination and negative experi-

6 A Social Insurance Number is required to work in Canada and to receive government benefits.



ences are real and serious barriers to health care, and prevent many homeless people from getting much-needed care.

Reasons respondents felt they experienced discrimination by health care providers	%
Homelessness	66%
Respondent's use of alcohol or drugs	53%
Perception that respondent was drug-seeking	47%
Gender	14%
Race or ethnic background	13%
Ability to speak English	7%
Sexual orientation	5%

I was helping my friend and he was dirty and did not look good, so [hospital] security gave us a hard time and told us to go away.
(Survey Respondent)

Negative experiences with hospital security were also commonly reported by people in our survey, with twenty-one percent of respondents having had at least one such experience:

- 12 percent had been denied access or told to go away;
- 12 percent had been threatened or verbally assaulted;
- 8 percent had been physically removed;
- 5 percent had been physically assaulted.

These hospital security findings are even more startling and significant when we consider that homeless people use hospitals and emergency departments at very high rates.

Conclusion

Overall, homeless people in Toronto have much poorer health than the general population. Homeless people in our study carry an alarmingly high burden of many serious physical and mental health conditions. The most important factors impacting the health of homeless people are the result of social policy decisions that have been made by our governments in the past 15 years, particularly the cuts to social assistance and the lack of investment in new affordable social housing. Some of the key cuts over the years are outlined below:



- 1993: The federal government cancelled all funding for new affordable housing.
- 1995: The Ontario government cancelled its funding for new affordable housing, and 17,000 homes already approved for development.
- 1996: The federal government downloaded responsibility for affordable housing to the provinces and territories, and began a steady decline in federal housing spending.
- 1998: The Ontario government downloaded responsibility for affordable housing to municipalities.

Starved of funding and programs by the provincial and federal governments, and forced to take on the responsibility for affordable housing, the City of Toronto has a poor record of developing much-needed affordable housing. In the past decade, Toronto has completed only about 1,500 new affordable homes. In 23 of the city's 44 municipal wards, not a single new affordable home has been completed (Wellesley Institute, 2006).

There is an urgent need to take action to:

- Address the poverty and inequality that underlies homelessness;
- Improve access to affordable and appropriate housing;
- Improve immediate living conditions for homeless people;
- Improve access to health care and support for homeless people.

Although adequate incomes and housing are the core solutions to improving homeless people's health and health care access, homeless people need good access to quality health care now. Proper access to good primary and mental health care, dental and vision care, as well as prescription drugs, prevent illnesses from becoming more serious and costly to the health care system. There is an immediate need to address barriers in the health care system for homeless people, and to assist homeless people in navigating the complex systems that deliver health and related services.

This chapter is drawn from The Street Health Report 2007, published in Toronto, September 2007, and prepared by Erika Khandor (Research & Evaluation Coordinator, Street Health) and Kate Mason (Street Health Survey Coordinator, Street Health). The research team also included Laura Cowan (Executive Director, Street Health) and Dr. Stephen Hwang (Research Scien-



tist, Centre for Research on Inner City Health, St. Michael's Hospital). To read the full report, go to www.streethealth.ca.

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