

Kimberly Govea

Professor Jordan

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## Justice for the Homeless

### Introduction

They are all around us, most times unnoticed and almost all the time ignored; however, they are a large part of our population and with very little help from our government. The homeless population in the United States continues to rise each year and with current targeting laws towards the homeless, there is not much relief for the rising homeless statistics. In the year 2015, there were more than half a million people in America that were homeless and more than 200,000 homeless families<sup>1</sup>. As a country, we should be forced to examine what contributions our government has played in the homeless epidemic that continues to rise.

Although it has been believed that the homeless epidemic in America is a direct cause of their own negligent acts, there are current laws and the criminalization of our homeless population leave them in a revolving door never allowing them to leave the homeless lifestyle.

### Scope of this Paper

This article will discuss the current laws that inhibit the homeless population from ever advancing and making it out of the homeless lifestyle. Given the laws that are currently in place, this article will show the counterproductive nature in which these laws are being carried out and

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<sup>1</sup>"Snapshot of Homelessness." *National Alliance to End Homelessness*. 19 Nov. 2015.  
<[http://www.endhomelessness.org/pages/snapshot\\_of\\_homelessness](http://www.endhomelessness.org/pages/snapshot_of_homelessness)>

how these laws do not allow a homeless person to obtain a job, find housing or better their lives in general. The criminalization of these laws will show how they are in direct violation of their Constitutional Rights.

### Body of Paper

Unfortunately, those of lower statue in society, especially those living as homeless, are viewed as less than and are treated in such a way. The rights of the homeless are violated on a daily basis with no avail to their aid. States all across America have implemented laws that violate the civil rights of our citizens that are living as homeless.

### Panhandling in Public

California Penal Code §647(c) states that anyone “who accosts other person in any public place or in any place open to the public for the purpose of begging or soliciting alms” will be guilty of disorderly conduct, which is a misdemeanor<sup>2</sup>. This law not only prohibits homeless citizens to gain any type of aid, which could mean life or death to them, but it also criminalizes panhandling or asking for help. This law is a direct violation of the First Amendment of the right to free speech. In *Browne v. City of Grand Junction*, the federal court ruled that an ordinance created to ban panhandling was a direct violation of the First Amendment<sup>3</sup>. Not only would an ordinance banning panhandling be a violation of their First Amendment rights of freedom of free speech, but it would also create cruel and unusual punishment for those homeless citizens who sit at a freeway exit, silently, with a sign. The ordinance in Colorado that was to go into effect, would have made panhandling a crime punishable by up to a year in jail. A law designed to create punishment for the act of being homeless would not allow out homeless citizens the right to

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<sup>2</sup> "Code Section." *Law Section*. 1872. < [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=647.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=647.&lawCode=PEN)>

<sup>3</sup> *Brown v. City of Grand Junction*, Colorado, 27 F.Supp.3d 1161-Dist.Court, D. Colorado(2014)

better their lives, obtain employment or find housing and would make it even harder, if not impossible to leave the homeless life behind them. Spending a year in jail for asking for food or money, with no other opportunity to obtain it, would be cruel and unusual punishment for circumstances that most states have failed to acknowledge.

### Sleeping in Public

In a similar suit, *Jones v. City of Los Angeles*, a lawsuit brought on by six homeless citizens who claimed their Eighth Amendment rights were violated when the city of Los Angeles had made it a crime to sit, lie, or sleep on public streets and sidewalks. The court of appeals found that the city could not punish the “involuntary sitting, lying, or sleeping on public sidewalk that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles”<sup>4</sup>. Given that being homeless is not a choice, nor is it always within their control to be homeless, to punish a person for trying to find shelter and to sleep wherever they can, is a violation of their Eighth Amendment rights. Within the Eighth Amendment, there is a requirement of state of mind and a crime can be punishable for criminal conduct; however, being homeless is unavoidable and an act such as sleeping on a bench or finding shelter under anything they can, would constitute cruel and unusual punishment.

In Florida, *Pottinger v. City of Miami*, a District Court of Appeals found that the claims of a class action lawsuit on behalf of 6,000 homeless citizens, were to be awarded compensation and a change in the policies and laws in which the city of Miami were conducting. The homeless citizens claimed that the city had created laws which were specifically designed to “drive out” the homeless from the city. The city had a “custom, practice and policy of arresting, harassing

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<sup>4</sup> *Jones v. City of Los Angeles*, 444 F. 3d 1118, 1126 (9th Cir. 2006)

and otherwise interfering with homeless people for engaging in basic activities of daily life- including sleeping and eating in the public places where they are forced to live”<sup>5</sup>. The victory in these states has proven that these laws that were designed to drive out the homeless citizens within these cities, were unconstitutional. The challenge we face today would be to have every state following the way that these courts have paved by finding incidents like these, to be unconstitutional as well.

### Food Sharing

There are many cities who discourage feeding homeless people and have made it a crime to do so. The rationale behind the enforcement of these laws is that feeding homeless people will only encourage them to be homeless longer. It was also argued that giving out free meals would drastically increase the rate of crime, with homeless people hanging around longer in those areas designated to feed them<sup>6</sup>. Creating laws that criminalize the help and support to those who need it, can also interfere with religious groups who strive to help those in need. In *Big Hart Ministries v. City of Dallas*, a lawsuit was brought upon the city of Dallas on behalf of two religious organizations that challenged the anti-food sharing law. The court had ruled that the law had interfered with their religious expression that was protected under the Texas Religious Freedom Restoration Act<sup>7</sup>.

### Sweeps

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<sup>5</sup> *Pottinger v. City of Miami*, 801 F.Supp. 1551, 1571-1572 (S.D.Fla.1992)

<sup>6</sup> U.S. Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) [hereinafter *Searching Out Solutions*], available at [http://usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](http://usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf)

<sup>7</sup> *Big Hart Ministries Ass'n Inc. v. City of Dallas*, 2011 WL 5346109 (N.D. Tex. Nov. 4, 2011).

Most cities have made sleeping in public, lying or sitting in public a crime and even “camping” in public a crime; however, when a person has no place to find shelter, where are they expected to store their personal belongings? There are estimated that 26% of the homeless population is suffering from mental illness<sup>8</sup>. With the high number of mental illness homeless, it is common sense to acknowledge that these individuals would be under the advisement of some type of medication. With no place to live, homeless citizens are forced to store personal belongings, such as medication and clothing, in public places. Storing items in public, or leaving their possessions unattended at any time, could be viewed as violating California Penal Code §647(e) which states that it is a crime for anyone “who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it”<sup>9</sup>. Law enforcements efforts to prevent and “clean up” the possessions of homeless people, is to conduct “sweeps” where law enforcement, without notice, would have sanitation workers clear out any belongings or possession that were owned by homeless people. These possessions would then be destroyed and sent to the local sanitation yard where the homeless citizens would not be able to retrieve them. In *Kincaid v. City of Fresno*, Jeannine Nelson had filed suit against the city of Fresno after a police officer, in a “sweep”, had destroyed the asthma medication and nebulizer machine that Nelson needed in order to breathe<sup>10</sup>. The court ruled in Nelson’s favor and found that the “sweep” was in violation of her Fourth Amendment rights to be free from unreasonable searches and seizures.

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<sup>8</sup> U.S. Department of Housing and Urban Development, Office of Community Planning and Development. (2011). The 2010 Annual Homeless Assessment Report to Congress. < <https://www.hudexchange.info/resources/documents/2010HomelessAssessmentReport.pdf>>

<sup>9</sup> "California Penal Code - PEN § 647 | FindLaw. < <http://codes.findlaw.com/ca/penal-code/pen-sect-647.html>

<sup>10</sup> *Kincaid v. Fresno*, 244 F.R.D. 597 (E.D. Cal. 2007)

There is an obvious concern for those living in homeless conditions, yet our government and system fails to acknowledge that need, from time to time. In *Bell v. City of Boise*<sup>11</sup>, as well as *Church v. City of Huntsville*<sup>12</sup>, the laws created in each city were unconstitutional and were designed to drive the homeless citizens out of the city, yet the court of appeals did not rule in their favor, and once again, the homeless population, received no help from their government. These cases were not dismissed based on the unconstitutionality of the cases, but based on technicalities in the case and were remanded for further proceedings.

### Conclusion

Criminalizing the homeless population is not the solution to this ongoing problem within our country. Additional shelter with the help from our government and city officials needs to start. Without the help from our government, our country stands no chance to win this war against homeless. With the ongoing criminalization of homeless acts, as taxpayers we are paying more to house them in jail, than we are to actually helping them better their lives. It cost tax payers, roughly, \$87 a day to house an inmate<sup>13</sup>. The lives of the homeless population should not be ignored or walked past any longer. Access to free health care, substance abuse programs and job training classes need to be offered for free for our homeless citizens, in order to get them off the streets.

The problem is not something a single citizen can ignore. This problem isn't just a commercial on TV where we can change the channel and forget about it. The problem isn't across the world where we are not reminded about it. The problem is in our own backyards with people suffering every day, and now even more with the rise in laws that criminalize being homeless. There is a

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<sup>11</sup> *Bell v. City of Boise*, 834 F. Supp. 2d 1103, 1108 (D. Idaho 2011)

<sup>12</sup> *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir. 1994)

<sup>13</sup> U.S. Interagency Council on Homelessness, Opening doors: Federal Strategic Plan to Prevent and End Homelessness 18 (2010), available at [http://usich.gov/PDF/OpeningDoors\\_2010\\_FSPPreventEndHomeless.pdf](http://usich.gov/PDF/OpeningDoors_2010_FSPPreventEndHomeless.pdf).

direct need of a change of laws and for our government, as a whole, to find a solution to the homeless population rise and stability. Criminalizing homeless and trying to drive them off our streets is not a solution, and violates the civil rights of our citizens. Most of the homeless population are those of war veterans who fought for our freedom rights, yet our government repays them for simply trying to sleep or find food in any way possible. There is a major problem outside the doors of our capital, yet is ignored every passing day. Our laws need to reflect the urgency to this problem with a solution, rather than contributing to the problem.

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