



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

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,
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March 2014

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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.

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Acknowledgments

This report was written and researched by Julie Hunter, Paul Linden-Retek, and Sirine Shebaya, all members of the Allard K. Lowenstein International Human Rights Law Clinic at Yale Law School. Hope Metcalf, Clinical Lecturer at Yale Law School, supervised the research and edited the report. Eric Tars of the National Law Center was central to conceiving, planning, and editing the report.

The National Law Center on Homelessness & Poverty and the Allard K. Lowenstein International Human Rights Clinic at Yale Law School are grateful to the following individuals and firms for their tremendous contributions to the research, writing, and layout of the report:

The Law Center staff, especially Karen Cunningham, Maria Foscarinis, Heather Maria Johnson, and Jeremy Rosen for providing extensive comments and review of the report, and Eric S. Tars for supervising and editing this report through its development. Law Center interns Samuel Halpert and Kirsten Blume also provided expert assistance.

Dickstein Shapiro, LLP for providing pro bono assistance in the compilation of the media survey and research relating to the domestic legal section, in particular, supervising attorney Stuart van Leenen and paralegals Susan Dangelmajer, Jonathan Goodwill, Lorraine Corrales, and Stephanie Korchinski.

Yale Printing & Publishing Services, especially Lynne Reichentahl, Graphic Designer, and Mable Thorne, Customer Service Representative; with assistance from Adrienne Webb, Yale Law School.

The Law Center acknowledges with gratitude the generous support of the W.K. Kellogg Foundation, the U.S. Human Rights Fund and our anonymous donors.

The Law Center would also like to thank our LEAP member law firms: Akin Gump Strauss Hauer & Feld LLP; Covington & Burling LLP; Dechert LLP; DLA Piper; Fried, Frank, Harris, Shriver & Jacobson LLP; Hogan Lovells; Katten Muchin Rosenman LLP; Latham & Watkins LLP; Manatt, Phelps & Phillips LLP; Microsoft; Schulte Roth & Zabel LLP; Sidley Austin LLP; Simpson Thacher & Bartlett LLP; Sullivan & Cromwell LLP; and WilmerHale.

The Clinic would like to thank all the individuals who helped facilitate our site visits to the case study locations and who agreed to be interviewed for this report. Our research would not have been possible without the generous help of the advocates and the homeless and formerly homeless individuals who spent time with us in each of the four locations we visited. Their descriptions and insights are documented in the case studies and our conclusions in this report are heavily informed by their input. We especially thank and remember John Joyce, formerly homeless advocate, largely responsible for passing the Rhode Island Homeless Bill of Rights, who was instrumental to our research and who prematurely passed away in February of 2013.

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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:

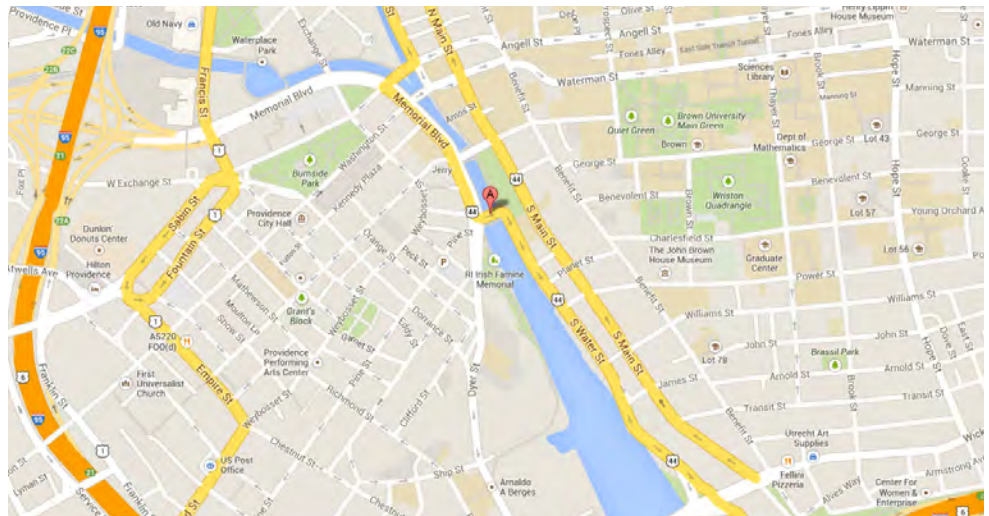
- **Huntsville, AL** has a semi-sanctioned camp below a viaduct which has been in existence for nine years. The camp is run by a local agency, pursuant to an agreement with police and the Alabama Department of Transportation. Individuals must register with a homeless services provider and obtain an ID. 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 interviews, 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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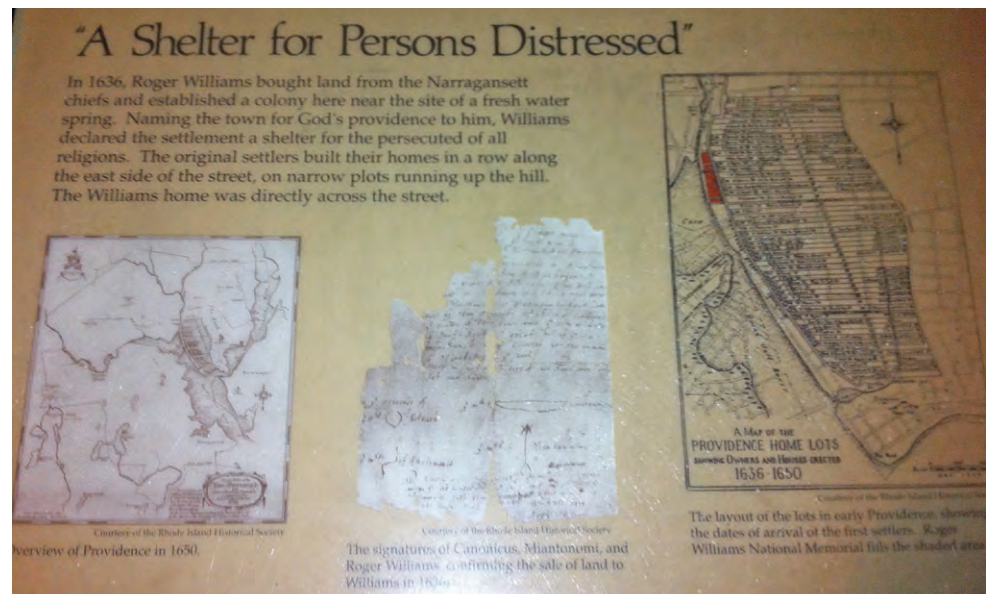
After the encampments were formed, the city passed an ordinance banning camping on city grounds.⁹⁴ The ordinance prohibits individuals from being in public parks between 9pm and 7am. The official response to the encampments, according to advocates and lawyers working with homeless people, was not about 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

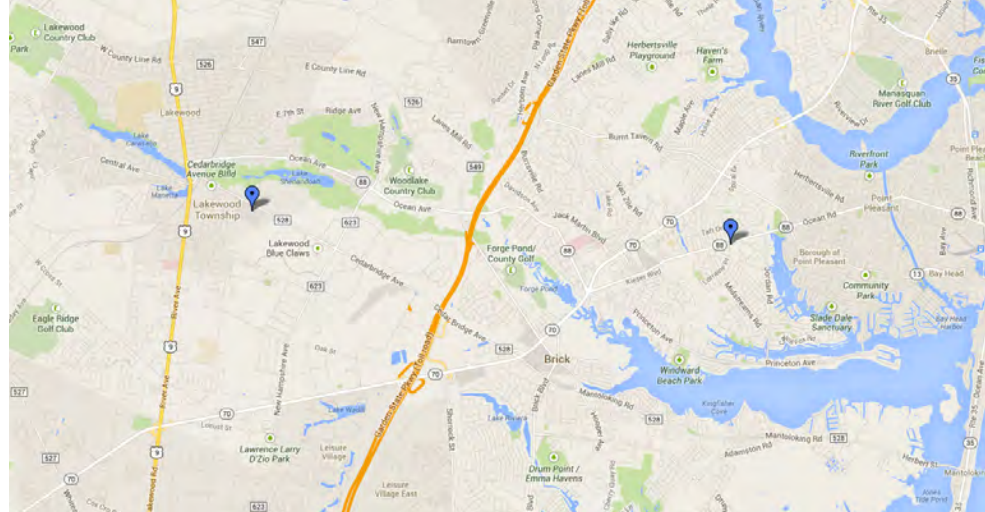
Interviewees expressed strong support for the Housing First program.¹²³ Ms. Smith noted that under the old system, individuals were kicked out onto the street if they did not follow their programs; as a result, only forty percent were able to maintain their housing.¹²⁴ Under the new system, the housing 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 ejectment 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

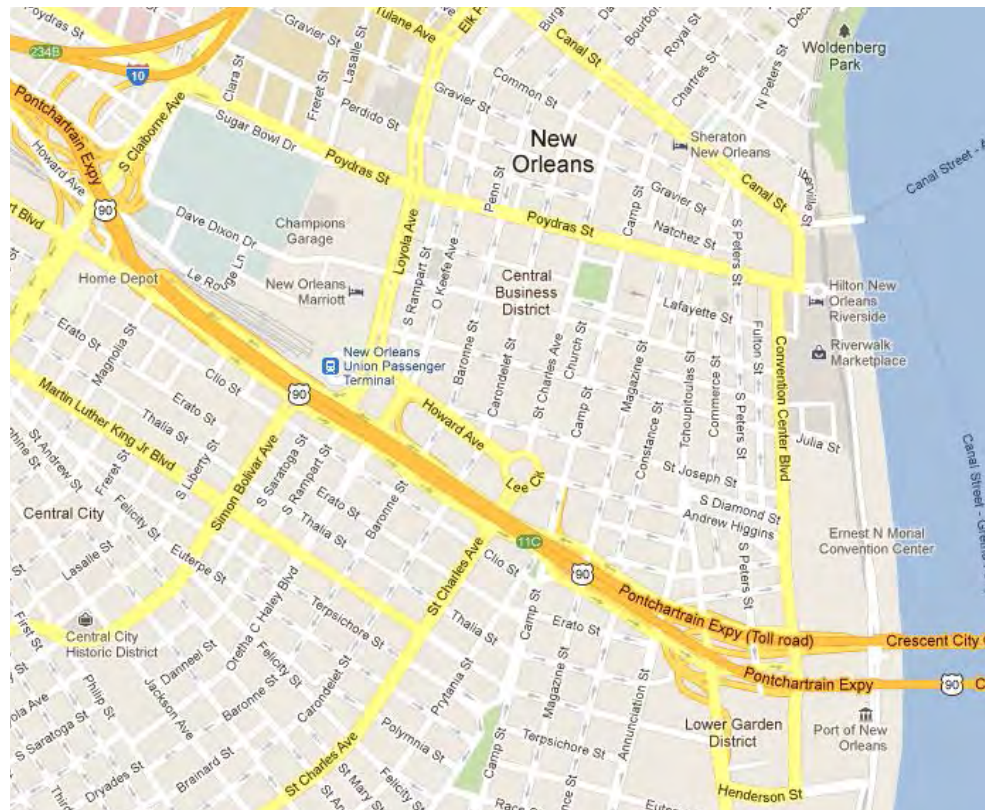
Interviewees (interviewed prior to the settlement) agreed that the ultimate solution to the problem of homelessness in Lakewood would be the provision of permanent affordable housing for all who need it, and the one year housing agreement comes close to achieving that goal. They also felt a homeless 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.”

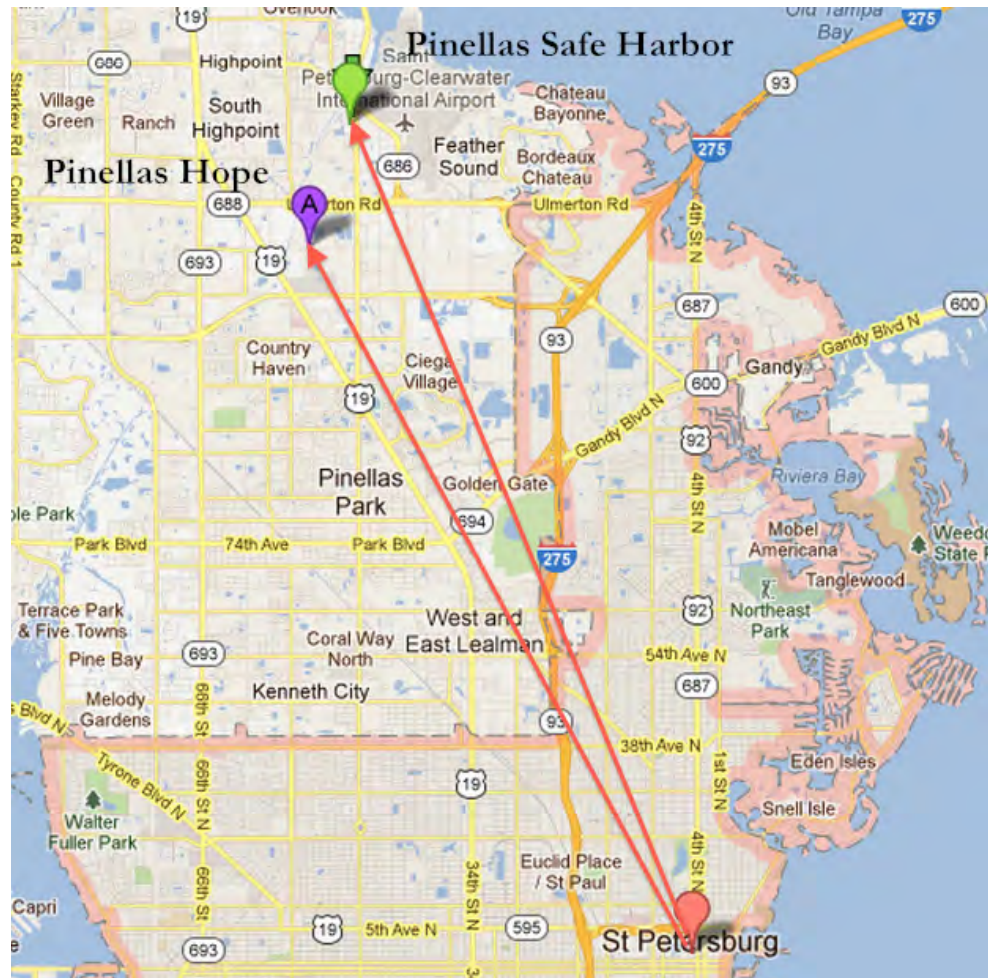
Having many low-wage workers dependent on tourism or other vulnerable industries, less than adequate health facilities, a shortage of affordable, low-income housing, discriminatory housing policies, a lack of shelter beds, and criminalization efforts directed towards homeless and poor people are factors 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.

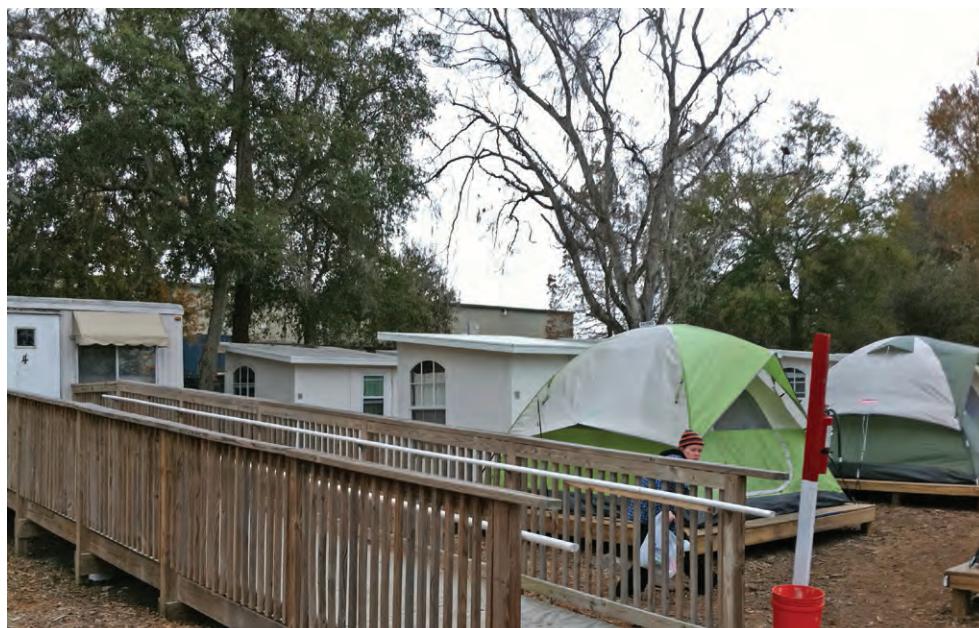
Many past residents lamented the prison structure and regimented constriction of “the jail-ter.”³²¹ It is certainly true that Safe Harbor has the feel of a jail and is, at the end of the day, a jail diversion program with “correctional” rules.³²² Advocates have pointed to the lack of privacy and constant 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 Jersey ⁴¹⁷ 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, much 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.

. . .

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.

. . .

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	Pedulah	Unknown	11 years	Evicted	Pedulah 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.
outh 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%5Cd datasets%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.nwsourc.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_282825719a42cdde1d000268503838f8.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>. ece 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. Safir*, 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. C09-1032 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.*, 8:02CV1955T3oTGW, 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/nstruments-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.

580 *Id.* at ¶66.

581 Port Elizabeth Municipality v. Various Occupiers, 2004 (12) BCLR 1268 (CC).

582 *Id.* at ¶39-47.

583 *Id.* at ¶59.

584 Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v. City of Johannesburg and Others (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC) ; 2008 (5) BCLR 475 (CC) (19 February 2008).

585 Rodrigo Uprimny, “The Enforcement of Social Rights by the Colombian Constitutional Court: Cases and Debates,” in Robert Gargarella, Pilar Domingo, Theunis Roux (editors), Courts and social transformation in new democracies (Ashgate, 2006), 135.

586 *Id.*

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588 Decision No. T-025 of 2004, the Colombian Constitutional Court, http://www.brookings.edu/~media/Files/Projects/IDP/Laws%20and%20Policies/Colombia/Colombia_T%20025_2004.pdf, 3.

589 *Id.* at ¶14.

590 *Id.* at 71.

591 Colombia: Improved government response yet to have impact for IDPs, Internal Displacement Monitoring Centre, Dec. 29, 2011, <http://www.internal-displacement.org/8025708F004CE90B/%28httpCountrySummaries%29/DB7CB20B984D6FC4C12579750049182C?OpenDocument&count=10000>.

592 *Id.*

593 *Id.*

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595 Victoria (City) v Adams, 2009 BCCA 563 (9 December 2009).

596 Canadian Charter of Rights and Freedoms, §7.

597 Victoria (City) v Adams, 2009 BCCA 563, ¶6-84.

598 *Id.* at ¶85-92.

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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