

# *Sanchez v Caltrans*

## Constitutional Rights of Homeless Individuals

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### 1 Background

The homeless population in Alameda County was fairly steady from 2009 to 2015. In 2017 it jumped from around 4000 sheltered and unsheltered homeless individuals to nearly 6000. The Point-In-Time (PIT) Count is conducted across the US over the last 10 days in January under the assumption that any homeless individual will be out during that time. Alameda County EveryOne Home project counted over 8000 individuals at the end of January 2019, double the population that had been there just four years earlier.<sup>1</sup> Over 50% of respondents to a further survey also indicated that they lived either in a tent or on the street/outside. Although specific locations were not recorded in the survey, it seems likely that many of these are on Caltrans property next to or under freeways. Alongside the increase in homelessness has been an increase in Caltrans' spending on clearing homeless encampments off their property. In the 2015-2016 fiscal year, they spent about \$7.5 million; in 2017-2018, that number jumped to \$12.4 million.<sup>2</sup>

While no one should have to be living in these awkwardly reclaimed spaces, it's not surprising that, in an area with some of the most expensive housing in the world<sup>3</sup>, so many individuals are carving out whatever space they can. Otherwise unused spaces under freeways and in the loop of interchange cloverleaves are appealing for those with nowhere else to go. Although it may not be quiet, it's much more out of the way than a public park, where passersby and police can easily harass them.<sup>4</sup>

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<sup>1</sup> Laura Petry, "EveryOne Counts! 2019 Homeless Count and Survey," Alameda County Housing Instability Research Department, 2019, [https://everyonehome.org/wp-content/uploads/2019/07/2019\\_HIRDReport-Alameda\\_FinalDraft\\_8.15.19.pdf](https://everyonehome.org/wp-content/uploads/2019/07/2019_HIRDReport-Alameda_FinalDraft_8.15.19.pdf)

<sup>2</sup> Erin Tracy and Adam Ashton, "'You don't bulldoze people.' California highway homeless camps grow dangerous," *Sacramento Bee*, November 29, 2018, <https://www.sacbee.com/news/politics-government/the-state-worker/article222344385.html>

<sup>3</sup> "16th Annual Demographia International Housing Affordability Survey," Demographia and Performance Urban Planning, 2020, <http://www.demographia.com/dhi.pdf>

<sup>4</sup> Thomas Fuller, Tim Arango, and Louis Keene, "As Homelessness Surges in California, So Does a Backlash," *New York Times*, October 21, 2019, <https://www.nytimes.com/2019/10/21/us/california-homeless-backlash.html>

These issues are not unique to Alameda County, nor to California<sup>5</sup> – in addition to *Sanchez v Caltrans*, I will also look at cases in Los Angeles, CA; Puyallup, WA; and Houston, TX.

## 2 Sanchez v Caltrans - 2016

Caltrans has policies in place governing how they will notify residents of a sweep; those notices are supposed to have a date and time, phone number to call to reclaim any collected belongings, and information about how long Caltrans will hold onto those items before discarding them. *Sanchez v Caltrans* was brought in 2016 because that information was misleading in the rare instances that it was even provided, in clear violation of Caltrans policy and state law.<sup>6</sup> The plaintiffs also argue that the way Caltrans was conducting their sweeps was violating residents' Fourth and Fourteenth Amendment rights under the US Constitution, and several sections of the California Constitution as well as the State Highway Code.

There are five incidents cited in the case with named plaintiffs discussing action that Caltrans took that deprived them of property, the steps they took to recover their property, and Caltrans' response to those requests. Each of these separate actions by Caltrans resulted in the plaintiffs losing most of, if not all, of their personal belongings - including heirlooms, assistive devices, and medication - sometimes more than once over the course of one year. After the incidents described in the case, each plaintiff made an attempt to contact Caltrans to retrieve anything that may have not been destroyed along with an administrative claim for loss of property. All of these complaints were either denied or denied as matter of law by Caltrans; because the plaintiffs have exhausted all available administrative remedies, they can bring this suit.

Several of the sweeps that resulted in loss of property claims had been noticed by Caltrans, but this notice was sometimes non-specific. At other times, Caltrans workers showed up before the posted time and began work before everyone had to properly removed their property. Because

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<sup>5</sup> "State of Homelessness: 2020 Edition," National Alliance to End Homelessness, 2020, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2020/>

<sup>6</sup> Kimberlee Sanchez, James Leone, Scott Russel, Christopher Craner, and Patricia Moore, Homeless Action Center, Western Regional Advocacy Project, Susan Halpern, and Natalie Leimkuhler v. California Department of Transportation, No. RG16842117. (Alameda County Superior Court, 2016), <https://www.aclunc.org/our-work/legal-docket/sanchez-v-california-department-transportation>

other “individuals similarly situated” were also affected by these sweeps, many of whom were known to have filed administrative claims against Caltrans, the plaintiffs decided to bring this as a class-action suit. Inadequate notice and not abiding by posted times is a violation of internal Caltrans policy,<sup>7</sup> which had been established after similar cases were brought against Caltrans in 1992 (*Lee v Caltrans*<sup>8</sup>) and 2006 in Fresno (*Kincaid v Fresno*<sup>9</sup>). Both of those cases resulted in change to Caltrans policy about sweeps along with injunctions against sweeps until that policy was updated, but the terms of settlement from them have expired. The case explored here seeks to make those injunctions permanent.

## 2.1 The Legal Context - Federal

Both Fourth and Fourteenth Amendment rights under the US Constitution are also specified in the California State Constitution, in sections 13 and 7 of Article I respectively<sup>10</sup> and so the same arguments apply in regard to Caltrans’ actions under both constitutions. Because the two Constitutions are in agreement with each other in regards to the rights of individuals, arguments based on state and federal law compliment each other in this case and there is not an issue of pre-emption or federalism.

The actions listed as violating all of these laws are Caltrans’ “practices and conduct of taking and destroying the personal property of homeless individuals, without providing either adequate notice or the opportunity to retrieve personal possessions before they are destroyed”.<sup>11</sup> This case seeks to ensure that Caltrans policy governing how they conduct these sweeps complies with the law, and is also in fact being followed in every situation.

The Fourth Amendment of the US Constitution and Article I Section 13 of the California Constitution both guarantee the right of individuals “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”<sup>12</sup>. This very clearly covers

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<sup>7</sup> Tracy and Ashton, “‘You don’t bulldoze people.’ California highway homeless camps grow dangerous”

<sup>8</sup> *Lee v California Department of Transportation et al.*, No. C-92-3131 SBA (N.D. Cal. 1992)

<sup>9</sup> *Kincaid v City of Fresno*, No. 06-CV-1445 (E.D. Cal. 2006)

<sup>10</sup> Cal. Const., art. I, [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1)

<sup>11</sup> *Sanchez v Caltrans*, No. RG16842117.

<sup>12</sup> U.S. Const. amend. IV, <https://constitution.congress.gov/constitution/amendment-4/>

both the tents / structures that Caltrans is destroying in their sweeps, as well as individual's belongings. The only exception to the protection from search and seizure is if there is a warrant issued, which is not mentioned anywhere in the *Sanchez v Caltrans* case to have been executed. The actions of Caltrans that resulted in belongings being tossed into trash compactors while people were attempting to retain them is in clear violation of both of these constitutional rights. Even if proper notice had been given, if an individual is attempting to retain their personal belongings during a sweep any seizure of those belongings by Caltrans could easily be deemed "unreasonable."

The Fourteenth Amendment of the US Constitution and Article I Section 7 of the California Constitution both grant due process and equal protection under the law for all individuals. The section of the Fourteenth Amendment being used here is the first : "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."<sup>13</sup> It's obvious that Caltrans was in violation of both of these by showing up unannounced and pulling belongings out of people's hands to toss them into a trash compactor; the denial of administrative claims would also seem to be a violation of these rights.

## 2.2 The Legal Context - State

In addition to the California and US Constitution violations above, Section 52.1 of the California Civil Code is very explicit about the consequences of blocking an individual's "exercise or enjoyment" of their rights under either the California or US Constitution.

*If a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney*

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<sup>13</sup> U.S. Const. amend. XIV, <https://constitution.congress.gov/constitution/amendment-14/>

*may bring a civil action for injunctive and other appropriate equitable relief...*<sup>14</sup>

Caltrans is clearly interfering with the rights of homeless individuals, making this the legal basis under which this suit is being brought, and forming the foundation on which all other legal arguments are built.

In 1992, the *Lee v Caltrans* case also used CA Civil Code Section 52.1 as the basis of their argument concerning arrests of homeless individuals made on Caltrans property. In those situations, personal belongings were being removed and destroyed by the Oakland Police Department, and the settlement (in 1993) involved very specific stipulations about what additional rights an individual under arrest had. This included a provision of “reasonable time and reasonable opportunity” to gather up to two garbage bags worth of “portable personal property” provided those belongings were not illegal, presumed to be stolen goods, or dangerous.<sup>15</sup> That ruling in favor of the plaintiffs established precedent for *Sanchez v Caltrans*, where the same argument is being made under the same law (but against Caltrans instead of OPD and not under conditions of arrest). Caltrans is taking possession of items that do not belong to them, and providing owners with no way of retrieving the items and no compensation. Neither Caltrans nor OPD are allowed to do this, under any level of legislation or policy.

Section 52.1 also specifically allows “civil action for injunctive and other appropriate equitable relief.” This is a cornerstone of *Sanchez v Caltrans*, as well as the 2006 case *Kincaid v Fresno* - another class-action suit against Caltrans for the unlawful destruction of homeless individuals’ property. That case resulted in a five-year settlement during which Caltrans would follow notice procedures laid out and agreed to in the Settlement Agreement. Those procedures, included in the *Sanchez v Caltrans* initial filing, appear to simply be copied from the existing Caltrans Maintenance Manual; this case exposed inconsistencies and sought to remind Caltrans to follow their own internal procedures. The current case also seems to be doing the same thing; Caltrans knows what they’re supposed to be doing, but they’re not bothering to do it. Their policies have to be in line with the California Civil Code and the US Constitution, and not obstruct

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<sup>14</sup> Tom Bane Civil Rights Act, 52.1 (2018) (Amended by Stats. 2018, Ch. 776, Sec. 4. (AB 3250) Effective January 1, 2019.), [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=52.1](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=52.1).

<sup>15</sup> *Sanchez v Caltrans*, No. RG16842117.

others' rights. Both *Kincaid v Fresno* and *Sanchez v Caltrans* have resulted in cash payments to individuals both named in the suit and who file verified claims under the terms of the settlement, and specific housing assistance funds to homelessness support organizations.

Section 2080 of the California Civil Code is even more simple – anyone who finds something that does not belong to them is not required by law to do anything about it, but if they do take possession they are required to inform the owner in a reasonable time frame and “make restitution without compensation.”<sup>16</sup> After discussing constitutional rights violations, the argument that Caltrans was essentially stealing belongings from individuals seems secondary; however, I do not think that the plaintiffs would consider these concerns secondary.

The final state-level challenge was brought under Chapter 3, Section 720, of the California Streets and Highways Code which covers State Highways. Section 720 of Article 3 governs encroachments on State Highways - it specifically requires that notice will be given before the removal of any encroachments.<sup>17</sup> The plaintiffs argue that Caltrans is in violation of this rule for conducting sweeps with no notice.

## 2.3 Other Legal Challenges

*Sanchez v Caltrans* also brought up issues of conversion (wrongful destruction of another's property<sup>18</sup>), trespass to chattels (interference with portable personal belongings.<sup>19</sup>), and Duty of Care (“refrain from causing another person injury or loss”<sup>20</sup>). In addition to these general legal challenges, two home-owning residents of Alameda County are also named plaintiffs in this case - Susan Halpern and Natalie Leimkuhler. Under the 2017 California Supreme Court decision in *Weatherford v City of San Rafael*<sup>21</sup>, any individual who “paid an assessed tax to the

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<sup>16</sup> Lost Money and Goods, 2080 (1998) (Amended by Stats. 1998, Ch. 752, Sec. 9. Effective January 1, 1999.), [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=2080.&lawCode=CIV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2080.&lawCode=CIV)

<sup>17</sup> Nuisance and Penal Provisions, 720 (1937) (Amended by Stats. 1937, Ch. 931.), [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=SHC&division=1.&title=&part=&chapter=3.&article=3](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=SHC&division=1.&title=&part=&chapter=3.&article=3).

<sup>18</sup> “Civil Causes of Action - Conversion Law and Legal Definition,” USLegal, <https://definitions.uslegal.com/c/civil-causes-of-action-conversion/>

<sup>19</sup> “Trespass to Chattel,” USLegal, <https://trespass.uslegal.com/trespass-to-chattel/>

<sup>20</sup> “Common Duty of Care Law and Legal Definition,” USLegal, <https://definitions.uslegal.com/c/common-duty-of-care/>

<sup>21</sup> *Weatherford v. City of San Rafael*, C.A. 23, Ct.App. 1/1 A138949 (2017), <https://law.justia.com/cases/california/supreme-court/2017/s219567.html>

defendant locality” can sue them for illegally-spent tax dollars in that area. Because Caltrans is a California government agency,<sup>22</sup> it receives taxpayer dollars to fund operations.<sup>23</sup> Both of these aspects seem to be unique to this case, and did not come up in any of the other California cases that I found.

## 2.4 Outcome

On July 14, 2020, a final judgment came down in favor of the plaintiffs. A settlement agreement had been in place since February, and this settlement was the final approval that formally established both the settlement fund and the payment to the Homeless Action Center (HAC) to fund seven years of support work for the homeless communities in Berkeley, Oakland, and Emeryville.<sup>24</sup> The fund is specifically to process claims from individuals who were homeless between the end of 2014 and fall of 2019 who had belongings taken and destroyed by Caltrans. In the first two months, at more than 100 claims were filed and “several hundred more” are expected.<sup>25</sup>

It also established a four-year Pilot Project with Caltrans to log and report on all items collected during sweeps in Berkeley, Emeryville, and Oakland; whether any claims are filed to retrieve those items; and what happens with those claims and items. Even longer time-frames are given for training both internal and contract employees who are involved in the sweeps. And this reporting goes both ways - HAC will also be reporting to Caltrans on how they are using their settlement funds in support of individuals who are living on Caltrans property. Although this is not the permanent injunction that the plaintiffs set out for, a seven-year project of reporting and accountability on both sides is definitely a win.

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<sup>22</sup> “FAQ - What is Caltrans?,” Caltrans, <https://dot.ca.gov/programs/public-affairs/faqs>

<sup>23</sup> “Transportation Funding in California,” Caltrans, <https://dot.ca.gov/programs/transportation-planning/economics-data-management/transportation-economics/transportation-funding-in-ca>

<sup>24</sup> Sanchez v. Caltrans, No. RG16842117. (Final Judgement, 2016), <https://secureservercdn.net/50.62.88.87/i8q.f4e.myftpupload.com/wp-content/uploads/2020/07/Sanchez-v.-Caltrans-Final-Judgment-.pdf>

<sup>25</sup> Elisa Della-Piana, email message to the author, 2020-09-17

### 3 Other Cases

*Sanchez v Caltrans* is not a unique case - it was not the first, and unfortunately it will not be the last. The oldest case I could find, from 1987, is against the City of Los Angeles, and is referenced in the 2012 *Lavan v LA* case discussed below. The several cases against LA; Puyallup, WA; and Houston, TX; all relate to protection from unreasonable search and seizure and destruction of homeless individuals' property by city or other public agencies. A common theme in all three cases discussed below is that "Plaintiffs are present, pleading to spare their possessions and watching helplessly as what little they have is swept up and crushed..."<sup>26</sup>

#### 3.1 Lavan v LA - 2012

This case<sup>27</sup> builds upon several previous cases against LA, dating back to 1987. *Adam Young Bennion v City of Los Angeles*<sup>28</sup> involved the destruction of belongings that were deemed by the city to be illegally placed on a sidewalk under the Los Angeles Municipal Code Article 6 (Public Hazards) Section 56.11 (Storage of Personal Property).<sup>29</sup> It resulted in a restraining order that the city be required to provide 12 hours notice with information regarding the specific law that was being violated in that instance, before the situation could be corrected by the city or other agency. Because both this *Lavan v LA* case and others cited also reference this ruling, I understand that there is no expiration on this restraining order. In 2000, *Michael Justin v City of Los Angeles*<sup>30</sup> began with the destruction of belongings while the owners were present, and ended with an injunction that any belongings removed for violations would be retained for 90 days; it expired after only 48 months. Lastly, *Richard Noe v City of Los Angeles*<sup>31</sup> in 2006 was a personal loss suit that compensated the individuals in the class for belongings that were

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<sup>26</sup> Tony Lavan; Caterius Smith; Willie Vassie v. City of Los Angeles, U.S. (9th Cir. 2012), <http://cdn.ca9.uscourts.gov/datastore/opinions/2012/09/05/11-56253.pdf>

<sup>27</sup> *id.*

<sup>28</sup> Adam Young Bennion v City of Los Angeles, C637718 (LA Sup. Ct. 1987)

<sup>29</sup> Storage of Personal Property, 56.11 (2016) (Amended by Ord. No. 184,182, Eff. 4/11/16.), [https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lamc/0-0-0-138386](https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-138386)

<sup>30</sup> Michael Justin v City of Los Angeles, CV 00-12352 LGB (AIJx) (C.D. Cal. 2000), <https://www.casemine.com/judgement/us/59147d84add7b04934440e68>

<sup>31</sup> Richard Noe v City of Los Angeles, cv 05-08374 (LA Sup. Ct. 2006)

destroyed in a particular sweep in 2004.

All of these situations were the backdrop for the class action suit brought as *Lavan v LA*. The instances of property destruction cited by the plaintiffs in this case are both unattended and attended items. When a homeless individual goes into a facility to get a meal, use the bathroom, or attend a court date, they are often unable to bring their belongings with them and so leave them on the sidewalk. These items clearly have the same status as when someone leaves a dog or baby stroller outside a facility – it is not abandoned but temporarily unable to accompany the owner who will return for it when their task is done. In many instances cited in the case, belongings were removed and destroyed before the owner returned but sometimes the owner was present and the items were removed and destroyed anyway.

When the court ruled in favor of plaintiffs, LA appealed to the Ninth Circuit Court who denied the appeal because the city had failed to follow due process under the Fourteenth Amendment, and that the immediate destruction of belongings was unreasonable under the Fourth Amendment. It is also a clear violation of the still-standing injunction from *Young v LA*. LA attempted to argue that because the items had been left illegally, there was no expectation of privacy which the court very clearly stated was irrelevant to the issue of destruction of property.<sup>32</sup> The Court responded with some strong language about the City's actions :

*...the City seeks a broad ruling that it may seize and immediately destroy any personal possessions, including medications, legal documents, family photographs, and bicycles, that are left momentarily unattended in violation of a municipal ordinance. ... Even if we were to assume, as the City maintains, that Appellees violated LAMC § 56.11 by momentarily leaving their unabandoned property on Skid Row sidewalks, the seizure and destruction of Appellees' property remains subject to the Fourth Amendment's reasonableness requirement. Violation of a City ordinance does not vitiate the Fourth Amendment's protection of one's property.*<sup>33</sup>

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<sup>32</sup> Brandon Campbell, "Lavan v. City of Los Angeles," *Willamette University Law*, <https://willamette.edu/law/resources/journals/wlo/9thcir/2012/09/lavan-v-city-of-los-angeles.html>

<sup>33</sup> Lavan v. City of Los Angeles, 11-56253, 32 (9th Cir.Opinion 2012), <http://www.ca9.uscourts.gov/datastore/opinions/2012/09/05/11-56253.pdf>

## 3.2 Boyle v Puyallup, WA - 2018

The National Homelessness Law Center considered *Boyle v Puyallup*<sup>34</sup> a major win, citing changes made to rules about sweeps across the whole of Pierce County.<sup>35</sup> Again, this was a case based on the Fourteenth Amendment's protection for homeless individuals from unreasonable search and seizure where the plaintiffs' belongings were destroyed with no notice. The city offered a settlement holding themselves to guidelines about notice period before cleanup, and how long belongings will be held after, in lieu of an expensive trial.<sup>36</sup> (The cost of suits has been a sore spot in Puyallup, with numbers indicating that the city is spending 25% more on homeless-related lawsuits than on actual homeless aid.<sup>37</sup>)

The city of Puyallup contends that they did nothing wrong when they "cleaned up volumes of trash, waste and debris at encampments which had been established by trespassing individuals" and specifically called out issues of polluting local waterways.<sup>38</sup> They do not go so far as to invoke police power to protect public health, safety, and welfare<sup>39</sup> in their public statement since this is not a legislative issue. If they were to introduce legislation that could be applied to these spaces they could do so on the basis of those constitutionally-granted police powers. While other arguments could be made against those laws, I could see these being very similar to the arguments relating to police powers made for and against the new laws that have come into effect around COVID-19.<sup>40</sup> The next case also deals with this issue of local ordinances in relation to homeless individuals.

Monetary awards were made only to the named plaintiffs in this instance,<sup>41</sup>; this does not

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<sup>34</sup> *Boyle v City of Puyallup*, 3:18-cv-05750 W.D. Washington (Puyallup, WA 2018), <https://www.courtlistener.com/docket/7881424/boyle-v-city-of-puyallup/>

<sup>35</sup> "Favorable Settlement of Challenge to "Sweeps" in Pierce County, WA," National Homelessness Law Center, February 2020, <https://nlchp.org/ijt-february-2020/>

<sup>36</sup> Will James, "Puyallup settles with four homeless people who brought 'sweep' lawsuit," *knkx*, January 17, 2019, <https://www.knkx.org/post/puyallup-settles-four-homeless-people-who-brought-sweep-lawsuit>

<sup>37</sup> Josephine Peterson, "Puyallup has paid more to attorneys defending its homeless laws than to service providers," *The News Tribune*, September 24, 2019, <https://www.thenewstribune.com/news/local/community/puyallup-herald/ph-news/article234892647.html>

<sup>38</sup> "Puyallup Sued Over Homeless Encampment Clean-Ups," *City of Puyallup Statement*, September 21, 2018, <http://www.cityofpuyallup.org/CivicAlerts.aspx?AID=508>

<sup>39</sup> "Police Powers," Nolo, <https://www.nolo.com/dictionary/police-powers-term.html>

<sup>40</sup> Damon Root, "Police Powers During a Pandemic: Constitutional, but Not Unlimited," *reason*, March 18, 2020, <https://reason.com/2020/03/18/police-powers-during-a-pandemic-constitutional-but-not-unlimited/>

<sup>41</sup> James, "Puyallup settles 'sweep' lawsuit"

appear to have been a class-action suit. It also does not seem to directly benefit any of the local homeless support organizations. In any case, it's another successful example of individuals asserting their rights and the court siding with them.

### 3.3 Kohr v Houston, TX - 2017

This is the only case I found in which the court ruled against the plaintiffs. The case centers around two new Houston laws - one against camping, and the other against panhandling; as such it also brings in arguments under the First and Eighth Amendments to the US Constitution, in addition to the Fourth and Fourteenth. While it was brought as a class action, some of the specific arguments apply only to named plaintiffs.<sup>42</sup> As mentioned above in *Boyle v Puyallup* I could potentially see an argument here by the city that these laws were made under their police powers, and that this could generate some tension between constitutionally-granted police power and constitutional rights. But in what I was able to find, I do not see evidence that those arguments were made.

The argument for the two additional amendments relate specifically to the new city laws. Plaintiffs, on behalf of the class, argue that it is "cruel and unusual" under the Eighth Amendment to punish people who are "involuntarily in public" for doing what they need to shelter themselves – "By punishing the act of sheltering oneself in public, Houston's camping ban effectively punishes the status of homelessness."<sup>43</sup> The panhandling ban is challenged under the First Amendment's free speech guarantee. This one is claimed by only two of the named plaintiffs, Tammy Kohr and Robert Colton. The First Amendment claim that soliciting as a protected form of speech is the one that seems to be most widely discussed.<sup>44</sup> Houston argued that it was not a ban on speech but instead based on vehicle and pedestrian circulation issues;<sup>45</sup> many of the articles cited

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<sup>42</sup> Tammy Kohr; Eugene Stroman; Janelle Gibbs v. City of Houston, TXSD (Houston, TX 2017), [https://www.aclutx.org/sites/default/files/field\\_documents/kohr\\_v.\\_houston.\\_first\\_amended\\_complaint.pdf](https://www.aclutx.org/sites/default/files/field_documents/kohr_v._houston._first_amended_complaint.pdf)

<sup>43</sup> *id.*

<sup>44</sup> Cameron Langford, "Houston Blasted Over Laws Targeting Homeless," *Courthouse News Service*, May 15, 2017, <https://www.courthousenews.com/houston-blasted-laws-targeting-homeless/>; Andrew Kragie, "ACLU sues city over panhandling, camping ordinances," *Houston Chronicle*, May 16, 2017, <https://www.houstonchronicle.com/politics/houston/article/ACLU-sues-city-over-panhandling-camping-11148151.php>

<sup>45</sup> City of Houston, Texas, Ordinance No. 2017-256, 40–27 (2017), [https://library.municode.com/TX/Houston/ordinances/code\\_of\\_ordinances?nodeId=824996](https://library.municode.com/TX/Houston/ordinances/code_of_ordinances?nodeId=824996)

above contend that the panhandling ban is specifically targeting individuals in medians or doorways.

The Fourteenth Amendment argument in this case seems to hinge on enforcement of the panhandling ban as not providing equal protection to all citizens. This is also brought individually by only Tammy Kohr and Robert Colton, the same as with the First Amendment argument against the same law. The city argument in favor of the panhandling ban is that individuals block traffic and pedestrian circulation when soliciting, and that the city is enacting this to make sure that everything continues to move smoothly.<sup>46</sup>

Plaintiffs in *Kohr v Houston* bring up the issue of Houston's "three foot cube" rule for belongings in the context of Fourth Amendment search and seizure violations. If homeless residents are unable to fit their belongings into a space of that size (excluding medical equipment),<sup>47</sup> plaintiffs allege that these extra items have been taken and destroyed. Because this will directly impact anyone living on the street, and because similar incidents have happened before, this aspect has been brought on behalf of the class.

Although the plaintiffs were successful in getting a temporary restraining order against the city while the case worked its way through the courts, the order was dissolved by the courts a few months later.<sup>48</sup> In that dissolution decision, the courts also assessed that the plaintiffs had very little "likelihood of success on the merits"<sup>49</sup> - meaning that the court does not feel that the plaintiffs have much of a leg to stand on if this case were to go to trial.<sup>50</sup> Specifically, the court bases most of this decision on the fact that homeless encampments are a public health hazard and that the camping and panhandling bans are an effort to provide individuals with alternatives to such encampments. With these public health concerns in mind, the court found

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<sup>46</sup> Andrew Kragie, "Houston asks judge to toss ACLU lawsuit over homeless ordinances," *Houston Chron*, June 30, 2017, <https://www.chron.com/news/houston-texas/houston/article/Houston-homeless-ordinances-ACLU-lawsuit-ask-11257371.php>

<sup>47</sup> Langford, "Houston Blasted Over Laws Targeting Homeless"

<sup>48</sup> "Tammy Kohr et al v. City of Houston," ACLU Texas, <https://www.aclutx.org/en/cases/tammy-kohr-et-al-v-city-houston>

<sup>49</sup> Mike Dorf, "How to Think About Likelihood of Success on the Merits: Further Reflections on the Little Sisters and the Utah SSM Cases," USLegal, January 6, 2014, <http://www.dorfonlaw.org/2014/01/how-to-think-about-likelihood-of.html>

<sup>50</sup> Tammy Kohr; Eugene Stroman; Janelle Gibbs v. City of Houston, 4:17-cv-01473, 11 (United States District Court, Southern District of Texas, Houston Division 2017), [https://www.aclutx.org/sites/default/files/12.28.17\\_opinion\\_and\\_order.\\_kohr.pdf](https://www.aclutx.org/sites/default/files/12.28.17_opinion_and_order._kohr.pdf)

that the public health and welfare of the city outweighs the plaintiff's concerns,<sup>51</sup> the closest reference I could find to the earlier discussion of police powers.

## 4 Big Picture

Homelessness is an issue that is not going away in the US. As places have to grapple with expanding populations of people living outside the usual home or apartment form, more and more conflicts arise between the housed and the unhoused. However, they are still citizens with full rights and must be treated with dignity and respect. In 2012, there were 41.7 million renter households, including 10.3 million "extremely low income" (ELI) renters across America; data collected by the National Low Income Housing Coalition shows that no state could provide for more than 30% of their needed affordable units.<sup>52</sup> More than one in four of those who could afford a rental were spending more than 50% of their income just on rent,<sup>53</sup> creating another approximately 10 million households in precarious living situations.

All of the cases discussed here deal with a particular type of homeless individual - those who are unsheltered. This means that they are living in "places not meant for human habitation," like freeway underpasses or sidewalks.<sup>54</sup> The Fourth Amendment protections are even more important for these individuals, as they do not have anywhere other than what are otherwise considered public spaces to store their belongings. While three of the four cases above represent victories for some, there are another 200,000 people who are still facing daily challenges retaining things like life-saving medications, identification documents, and family heirlooms.

The victories in three of these four cases represent a small effort to ensure that the unsheltered homeless are treated with dignity in a few areas. It is unfortunate that it takes court cases for this to happen, but hopefully the national news attention when they do makes life a little easier for others "similarly situated" everywhere.

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<sup>51</sup> *Kohr v Houston*, 4:17-cv-01473, 11

<sup>52</sup> "The Affordable Rental Housing Gap Persists," *Housing Spotlight* 4.1 (2014), [https://nlihc.org/sites/default/files/HS\\_4-1.pdf](https://nlihc.org/sites/default/files/HS_4-1.pdf)

<sup>53</sup> "Homelessness in America : Overview of Data and Causes," National Law Center on Homelessness & Poverty, 2015, <https://nlchp.org/wp-content/uploads/2018/10/Homeless.Stats.Fact.Sheet.pdf>

<sup>54</sup> "State of Homelessness: 2020 Edition"