

A major U.S. court recently ruled in *Martin v. Boise* that criminally punishing a homeless person for sleeping, sitting or lying down in public in the absence of any alternative violates the U.S. Constitution. This is a major victory in the fight against criminalising homelessness, and for the right to housing. Here is how it happened.

# MARTIN V. BOISE: A VICTORY IN FIGHTING THE CRIMINALISATION OF ROUGH-SLEEPING



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## ABOUT OUR WORK

The mission of the National Law Center on Homelessness & Poverty is to use the power of law to end and prevent homelessness in the United States. With the support of a large network of pro bono lawyers, and working with a wide range of non-governmental organizations as well as government agencies across the country, we address the immediate and long-term needs of people who are homeless or at risk through outreach and training, advocacy, impact litigation, and public education. We appreciate the work of FEANTSA and all of our colleagues around the world: homelessness is a global crisis and we are all working in solidarity.

A major, current priority at the Law Center is fighting against the criminalisation of homelessness and fighting for the right to housing. In 2016, together with over 100 partner organizations, we launched the Housing Not Handcuffs Campaign to mobilize for that goal; it now has over 1,000 endorsers. The Campaign is staffed by the Law Center; we use a variety of strategies—litigation, legislative advocacy, coalition building, and public education—to carry out its goals. Our litigation strategy to challenge criminalisation of homelessness saw a major victory with the recent court ruling in *Martin v. Boise* that criminally punishing a homeless person for sleeping, sitting or lying down in public in the absence of any alternative violates the U.S. Constitution.

## ABOUT THE CASE

On December 16<sup>th</sup>, the U.S. Supreme Court denied a petition to review *Martin v. Boise*, a case that the Law Center has along with local partner Idaho Legal Aid Services and pro bono partner Latham & Watkins.

By denying the petition, the high Court left in place a ruling from the federal court of appeals for the Ninth Circuit stating that “[a]s long as there is no option of sleeping indoors, the government cannot criminalise indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” This ruling is binding on the nine states in Circuit--Washington, Oregon, California, Nevada, Idaho, Hawaii, Montana, Arizona, and Alaska—and sets precedent that is persuasive in courts nationally. It’s a victory for everyone fighting against the criminalisation of homelessness and for the basic human rights of our unhoused neighbors.

The Law Center and our partners first took up this case, then known as *Bell v. Boise*, to represent plaintiffs who had been cited by Boise police for violation of Boise’s citywide anti-camping ordinance while sleeping outdoors overnight. Plaintiffs alleged that enforcement of the ordinance criminalising sleeping in public is unconstitutional cruel and unusual punishment, under the 8th Amendment of the U.S. Constitution, when there is no alternative. The case was heard and, in September 2018, was ruled on by the United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”), sitting as a three-judge panel. The City of Boise petitioned the panel to rehear the case, and the entire court to rehear the case *en banc*<sup>1</sup>. The panel declined to rehear the case, and despite some vigorous dissents, the court also declined the request for *en banc* review, allowing the original decision to stand. In a final effort to overturn the ruling, Boise petitioned the Supreme Court to review the case, but the Court denied the request without comment. The ruling now stands as law in the Ninth Circuit and as precedent nationally.

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<sup>1</sup> An *en banc* session is a session in which a case is heard before all the judges of a court (before the entire bench) rather than by a panel of judges selected from them.



## THE IMPACT OF MARTIN V. BOISE – EXTENDING ITS REACH

The impact of *Martin v. Boise* is far reaching. First, the Law Center is actively working with allied groups to ensure compliance with the decision in cities within the Ninth Circuit, and to extend its reach outside the circuit as persuasive precedent, and this effort is having an impact. For example, In Modesto, California, city officials ceased enforcement of a panhandling ordinance and created a temporary legal camping area while they work to create permanent shelter. In Austin, Texas, the city modified its anti-camping ordinance to require the offer of shelter before enforcement could take place. *Martin* prompted the Los Angeles Homeless Services Authority to issue new guidelines on encampments, for which they turned to the Law Center for consultation. California’s legislature is now considering bills that move beyond a right to shelter, but that encompass a full right to housing.

In Denver, which is in the Tenth Circuit, *Martin* was cited in a successful defense in a case alleging violation of that city’s anti-camping law by a homeless resident. In another case, this time in the Fourth Circuit, *Martin* helped overturn a law criminally punishing “habitual drunkenness,” applied primarily against homeless alcoholics. The Law Center has recently launched a HNH Justice Network of lawyers challenging laws criminalising homelessness, backed up by an online resource bank, to strategize and collaborate; together, we are pursuing additional uses of the precedent within and outside the Ninth Circuit as well as new strategies.

## THE IMPACT OF MARTIN V. BOISE – MAKING OURSELVES HEARD

Second, we are promoting media and social media attention, helping to amplify the impact of the ruling. The Law Center tracked more than four hundred mentions of *Martin v. Boise* in national, local and regional news outlets over the past year—including more than 60 articles specifically about the *Martin v. Boise* case—and media interest remains ongoing and high. For example, a single tweet sent by the Law Center on December 16<sup>th</sup>, when the Supreme Court denied the petition to hear the case, had an astounding 28,966 impressions and over 700 likes, replies, or retweets.

## THE IMPACT OF MARTIN V. BOISE – INFLUENCING THE POLITICAL AGENDA ON HOMELESSNESS

Third, the case has impacted election outcomes and high-profile political decisions. In Boise, the case and how the city was addressing homelessness were the top issue in the last mayoral election, and a new mayor, more aligned with constructive approaches to homelessness—as opposed to criminalisation-- prevailed. And at the federal level, the ruling has been cited as a key feature in stopping the Trump Administration’s planned Executive Order on homelessness, which leaks indicated could have included plans for razing homeless encampments and forcibly relocating their residents to internment camps.



By making clear that punishing people for living in public is unconstitutional when no alternatives are available, the court ruling adds a powerful tool for fighting harmful criminalisation. The Ninth Circuit ruling is a landmark legal victory—and it is also a critical opportunity for progress. Ultimately, of course, our goal is not to establish a right to live on the street—it is to establish the human right to housing here in the United States. Striking criminalisation as a response to homelessness is a significant victory, both legal and practical. Now we are working with our allies to capitalize on this success by building support for the human right to housing.

## BEYOND MARTIN V. BOISE – KEEPING UP THE FIGHT AGAINST THE CRIMINALISATION OF HOMELESSNESS

At the same time, we continue to fight against laws that criminalise homelessness—to implement the court ruling and to fight efforts by cities to work around it. We are also advocating for a range of

constructive alternatives to criminalisation, recognizing that while permanent housing, recognized as a right, is the true solution, it is likely to take time. Meanwhile, shorter term approaches—such as tiny home villages, low barrier shelter, and legalized encampments—are more constructive than criminalisation, provided they are in the context of an overall plan for permanent housing.

Criminally punishing homeless people for sleeping on the street when they have nowhere else to go is inhumane, ineffective and wastes resources. We are grateful that the Ninth Circuit has recognized that it is also unconstitutional, and set precedent to which other courts can look. But the work is not done yet—not until everyone has a safe, decent, affordable housing.

## REFERENCES

The 9<sup>th</sup> Circuit court’s decision can be read [here](#). The denial of en banc denial review is [here, and the](#) Supreme Court’s denial of review is [here](#).

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