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**Police Interaction with Homeless Persons:
An Update on Recent Developments**

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❖ **Introduction**

Ten years ago, in the fall of 2008, this journal published two articles focusing on some significant case law on police interaction with homeless persons. See [Police Interaction with Homeless Persons – Part I – Sleeping and Possessions](#), 2008 (7) AELE Mo. L.J. 101 and [Police Interaction with Homeless Persons – Part II – Panhandling and Use of Force](#), 2008 (9) AELE Mo. L.J. 101. In the intervening decade, there have been a number of significant lawsuits asserting various claims on behalf of homeless persons.

In a number of such cases, various courts have sometimes taken an expansive view of the rights of such persons, entertaining some claims that may earlier have been dismissed out of hand. This brief article attempts to update the earlier two articles. Clearly, the social, economic, and law enforcement issues arising from homelessness continue to be challenging and unresolved. At the conclusion of this article, there is a listing of some useful and relevant resources and references.

❖ **Begging, Solicitation, and the First Amendment**

While courts have generally upheld law enforcement efforts to curtail “aggressive” panhandling/begging, there have been a number of instances in which a uniform ban on all such solicitation has been viewed as potentially running afoul of the First Amendment.

An example of this is [*Speet v. Schuette*](#), #12-2213, 726 F.3d 867 (6th Cir.2013), finding that a Michigan state anti-begging statute under which two homeless adults were arrested violated the First Amendment. The statute was facially invalid since begging was a form of solicitation protected by the First Amendment and the law prohibited a substantial amount of solicitation by beggars but allowed other solicitation based on its content.

One arrestee had been holding signs saying “Cold and Hungry, God Bless” and “Need Job, God Bless.” The second arrestee, a veteran who needed money for bus fare, asked another person on the street whether they could “spare a little change.” While there was a substantial state interest in preventing duress and fraud, the law was not narrowly tailored to serve those interests, the court concluded.

Similarly, in [*Reynolds v. Middleton*](#), #13-2389, 779 F.3d 222 (4th Cir. 2015), a homeless man who supports himself by soliciting donations filed a federal lawsuit challenging a county ordinance prohibiting solicitations on county roadways. A federal appeals court found that the county had the burden of showing the constitutionality of the ordinance, which the plaintiff showed limited his ability to collect donations because he was forced to move to locations where it was more difficult for drivers to give him money.

The court further ruled that the county failed to show that the ordinance was content neutral and was a narrowly tailored time, place, and manner restriction on free speech, or that it left open ample alternative channels of communication. While the county showed that the ordinance materially advanced its interest in roadway safety, it failed to show that it had tried to improve safety by prosecuting those roadway solicitors who actually obstructed traffic or had thought about barring solicitations only at certain locations where it could not be done safely.

On the other hand, in [*Thayer v. City of Worcester*](#), #13-2355, 755 F.3d 60 (1st Cir. 2014), a federal appeals court ruled that a trial court properly denied a preliminary injunction to prevent enforcement of most provisions of an ordinance aimed at

aggressive panhandlers, other solicitors, and demonstrators seeking the attention of motorists (other than a ban on nighttime solicitation). The ordinance was challenged by homeless people who solicited donations from city sidewalks and a person who displayed political signs near traffic during election campaigns.

The restrictions in the ordinance were not aimed at the content of speech, the court found, and did not appear to violate the First Amendment. And as homelessness and wealth were not suspect classifications for equal protection purposes, the ordinance would only have to survive rational basis scrutiny.

In [*The Contributor v. City of Brentwood*](#), #12-6598, 726 F.3d 861 (6th Cir. 2013), First Amendment claims by homeless persons resulted in a modification of an ordinance restricting solicitation. The case was filed by a street newspaper devoted to educating people about homelessness, which used homeless people as street vendors. It challenged an ordinance that two of its vendors were cited for violating that barred using any part of the city street, alley, sidewalk, or public right of way to sell any goods or materials.

The city altered the ordinance so that it did not bar the sale or distribution of publications or handbills. Under the revised ordinance, those activities were prohibited, however, on any portion of the street. The revised ordinance also barred handing such materials to an occupant of a motor vehicle on the street or taking action reasonably intended to cause a vehicle occupant to hand anything to the person selling or distributing the materials. The federal appeals court upheld a determination that the ordinance, as revised, did not violate the First Amendment and left open adequate available alternative channels of communication.

❖ **Camping Out and Living in Vehicles**

Where to sleep is a constant issue for homeless persons. A good number of prior cases upheld restrictions on camping out overnight on public property or sleeping on city sidewalks, as illustrated by [*Foley v. Kiely*](#), #09-1250, 602 F.3d 28 (1st Cir. 2010). In this case, a homeless man claimed that he was unlawfully detained and arrested by two Massachusetts state troopers and a state police officer for trespassing in a public park after it closed at night. Upholding summary judgment for the defendants, a federal appeals court found that it was reasonable for them to suspect,

at 10:30 p.m., that the plaintiff was in a restricted area and therefore trespassing, based on signs designating the closing time of the park.

Additionally, the area was known by the defendants to be one in which crimes had been reported, and the plaintiff's attempts to avoid contact with the officers, combined with his inability or unwillingness to provide his Social Security number, gave the officers reasonable grounds to investigate his past criminal history. This reasonable suspicion justified his one-hour detention for a warrant check, and the Florida state warrant found was sufficient to give them probable cause for his arrest.

The case of [*Allen v. City of Sacramento*](#), #C071710, 234 Cal.App.4th 41, 183 Cal.Rptr.3d 654, 2015 Cal. App. Lexis 116, however, involved the consented use of private property. The owner of this private property agreed to let 22 homeless persons and two persons providing services to them camp on his lot, located in a light industrial area of the city. Police then informed all concerned that the camping was in violation of a city ordinance that required a permit for extended camping on public or private property. Police removed camping gear from the site and issued two citations for an ordinance violation.

When the campers brought in more gear and continued their activities, they were arrested. An agreed judgment was entered against the plaintiffs' challenge to the ordinance as unconstitutional, in order to facilitate an appeal. The federal appeals court found that the plaintiffs had stated a triable claim for declaratory relief challenging the ordinance as applied on the basis of equal protection. The plaintiffs forfeited, however, their claims for arbitrary and discriminatory enforcement, violation of substantive due process, and impermissible vagueness.

Some homeless persons have attempted to live in a vehicle. In [*Desertrain v. City of Los Angeles*](#), #11-56957, 754 F.3d 1147 (9th Cir. 2014), a federal appeals court found that an ordinance prohibiting the use of a vehicle as living quarters was void for vagueness in violation of due process since it offered no guidance as to what conduct was prohibited and failed to clearly divide criminal and innocent conduct. As written, it could be broad enough to apply to any driver who transported personal belongings or ate in his vehicle, but it apparently was only applied to homeless persons, opening the door to arbitrary and discriminatory enforcement. Summary judgment for the defendants was reversed and further proceedings were ordered.

❖ Property and Pets

To the extent that homeless persons manage to acquire any possessions, retaining and safeguarding them is a difficult proposition. In [*Lavan v. City of Los Angeles*](#), #11-56253, 693 F.3d 1022 (9th Cir. 2012), homeless persons sued a city, claiming that it violated their rights under the Fourth and Fourteenth Amendments by routinely seizing their unabandoned personal property temporarily left on public sidewalks and immediately destroying it. A federal appeals court upheld a preliminary injunction against these practices granted by the trial court.

The injunction required that unabandoned personal property seized could not be destroyed without giving the owners a prior meaningful notice and opportunity to be heard. The homeless persons' property was protected from unlawful seizure by the Fourth Amendment and could not be destroyed without complying with due process requirements.

What about animals, including pets? In [*Recchia v. Los Angeles Dept. of Animal Services*](#), #13-57002, 889 F.3d 553 (9th Cir. 2018), a homeless man was living on the streets of Los Angeles, and caring for 20 birds when animal control officers showed up at his tent to investigate complaints about the animals. Officers found 18 pigeons, a crow, and a seagull in boxes and cages in his home on a sidewalk, all in various states of health. The city decided to seize all of the animals, giving the man 10 days to request a hearing to regain custody.

But before that deadline was up, a city veterinarian euthanized all the pigeons, claiming they could've been carrying pathogens without ever testing their blood. The man sued the city, and his case was dismissed by a trial court. But a federal appeals court revived some his claims, saying his constitutional rights might've been violated.

It upheld a grant of summary judgment on the Fourteenth Amendment due process claim against the officers and dismissal of the state law claims, but vacated the trial court's grant of summary judgment on the Fourth Amendment claim challenging the seizure of the birds because there were genuine issues of material fact as to whether plaintiff's healthy-looking birds posed any meaningful risk to the other birds or humans at the time they were seized.

It further instructed the trial court to consider whether the officers were entitled to qualified immunity because any constitutional violation was not clearly established at the time it was committed.

❖ Feeding the Homeless

A number of municipalities have taken actions designed to limit the public feeding of homeless persons on public property by charitable groups. In [*First Vagabonds Church of God v. City of Orlando*](#), #08-16788, 638 F.3d 756 (11th Cir. 2011), a federal appeals court upheld the constitutionality of a municipal ordinance that limits the number of feedings of large groups that any person or organization can sponsor in parks within a two-mile radius of City Hall.

The court rejected the argument of an organization calling itself “Food Not Bombs” that it had a First Amendment right to feed large groups of homeless people in any park as often as it likes. The court found that the ordinance was a reasonable time, place, and manner regulation, assuming, for purposes of argument, without deciding, that such feedings were expressive activity.

❖ Use of Force

The use of force, deadly and otherwise, by the police against homeless persons has led to a number of lawsuits. In [*Tchayou v. City of Los Angeles*](#), #CV16-06073, (May 10, 2018, U.S. Dist Court, C.D. Calif.), the city of Los Angeles, California on May 10, 2018, reached a \$1.9 million settlement with the plaintiff family in a federal lawsuit brought over the police shooting and killing of a homeless man. The shooting took place in 2015 and was viewed online by many in a [YouTube video](#).

A jury in the federal lawsuit, just before the settlement, found that two officers were liable for the death of the 43-year-old decedent, [Charley “Africa” Keunang](#). The jury found that the shooting officer used excessive force and that his supervising sergeant was also liable for failing to intervene. A third officer present was found not liable. The decedent was shot as he “scuffled” with the officers as they responded to a report of an attempted robbery outside of a rescue mission. The county district attorney’s office declined to charge the three officers, and in a 2016 report stated that they were justified in using lethal force because the homeless man had nearly gotten

hold of an officer's holstered gun as they fought. The decedent reportedly had a history of violent, erratic behavior, and had served time in prison for bank robbery.

See also [*Williams v. DeKalb County*](#), #07-14367, 327 Fed. Appx. 156,2009 U.S. App. Lexis 9839 (Unpub. 11th Cir.), in which a homeless arrestee claimed that he was picked up by an officer for loitering, and then taken to a wooden area where the officer beat and stabbed him. A federal appeals court ruled that a claim by the arrestee that the county was liable for his injuries because it has an unwritten policy that homeless people should be relocated to other counties should have survived summary judgment because evidence was presented of five officers who allegedly knew of the policy.

Additionally, there was expert testimony that such a policy made violations of the rights of homeless persons foreseeable. A claim against the county for negligent hiring of the officer was rejected because the only violent act in the officer's record was the shooting of a home invader. The appeals court also rejected a claim against the county for inadequate training or supervision.

There was evidence that revealed that the county investigated reports concerning the officer's handling of arrests, provided the officer with counseling and retraining, and subjected him to discipline, which did not show "deliberate indifference" to a known problem.

❖ **Liability for Crimes by the Homeless?**

What about potential liability for crimes committed by homeless persons? Ordinarily, under federal civil rights law, there is no liability on the part of police or other governmental actors for failure to prevent private violence by third parties. Rare exceptions may be found where there is a "state created danger," when arguably the government's actions enhanced the danger to the injured party, or in which a "special relationship" was created imposing a duty to protect, such as when explicit promises of assistance are made in a manner that is relied on and which may encourage those who receive such promises of assistance to stop seeking other assistance.

In [*Doe v City of New York*](#), 2008-09461, 67 A.D.3d 8542009 N.Y. App. Div. Lexis 8419 (2nd Dept.), a woman sued a transit authority and railroad, seeking damages

for an attack she suffered on their property when she was attacked by a group of homeless men living there. The basis of her complaint was the failure of the defendants to remove the homeless encampment from the property, and the alleged failure to consider safety problems that could arise from their “homeless outreach” program.

Rejecting liability, an intermediate New York appellate court found that the defendants made a discretionary governmental policy decision in enacting a “social outreach” program rather than using force to oust the homeless group from the premises. As a result, there could be no liability under state law for the allegedly resulting attack.

See also [*Alava v. City of New York*](#), #3807, 103339/04, 54 A.D.3d 565, 2008 N.Y. App. Div. Lexis 6546 (A.D. 1st Dept.), in which an employee working for a private company providing data entry services for a city department of homeless services was allegedly assaulted by a person she was registering for services as a prospective client of a homeless shelter.

She sued the city, but an intermediate New York appeals court ruled that the city was entitled to summary judgment because it had not assumed any special duty to protect the employee, nor had the plaintiff shown that she had reasonably relied on any direct promise to provide her with such protection. While security officers who were usually outside the intake office were not present on the day of the incident, there was no evidence that they were ever in the intake office with the employee.

❖ Resources

The following are some useful resources related to the subject of this article.

- [City of San Diego Homeless Outreach Team.](#)
- [City of Wichita Homeless Outreach Team.](#)
- [Fort Lauderdale Police Department Policy on Homeless Persons.](#)
- [HOMELESS OUTREACH TEAM: ANOTHER WAY TO FIGHT CRIME
Houston Police Department, Houston, Texas](#)
- [Homeless Persons.](#) AELE Civil Case Summaries.

- [Homelessness: Litigation and Policy: Civil Rights Claims](#), University of Missouri School of Law. (online bibliography).
- [Los Angeles Police Department Homeless Outreach and Proactive Engagement Team Special Study](#).
- [Opposing the Criminalization of Homelessness; Building a Human Rights Network](#) (Listing of Law Review articles and other publications).
- [Police Department Homeless Outreach Programs](#).

❖ **Relevant Monthly Law Journal Articles**

- [Police Interaction with Homeless Persons – Part I – Sleeping and Possessions](#), 2008 (7) AELE Mo. L.J. 101.
- [Police Interaction with Homeless Persons – Part II – Panhandling and Use of Force](#), 2008 (9) AELE Mo. L.J. 101

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2. [New policing division focuses on homelessness, neighborhood issues](#), by Gary Warth, San Diego Union Tribune (March 13, 2018).
3. [Almost No Choice. Homelessness and the Law](#), Harvard University Civil Rights Civil Liberties Law Review (Dec. 4, 2017).
4. [Law Enforcement is a Critical Component of the Coordinated Effort to End Homelessness](#), Community Policing Dispatch (December 2015).
5. [A Homeless Bill of Rights \(Revolution\)](#) by Sara Rankin, Seattle School of Law Digital Commons Faculty Scholarship 45 Seton Hall Law Review 383 (2015).
6. [Police role with homeless population: enforcers or helpers?](#) by Marielle Segarra, WHYY (March 19, 2015)

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