



# El Segundo Police Department

## Training Section

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## TRAINING BULLETIN

July 14, 2024

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### Homelessness and Anti-Camping Ordinances

Homelessness has been a serious social problem in the United States for some time. It has been estimated that on any given night (understanding that the number fluctuates on a daily basis), somewhere around 653,104 people could be classified as homeless in the United States (Per Google; at least in the year 2013). And it's only getting worse. California in particular has borne the brunt of homelessness, with about half of the homeless in this U.S. living in what was once considered to be the "Golden State." The other four states with the highest rates of unsheltered homelessness in the country include Oregon, Hawaii, Arizona, and Nevada. Along with Idaho, all lie within the American West, and all coming under the jurisdiction of the federal Ninth Circuit Court of Appeals. And only to aggravate the whole problem, it has been estimated that around 78% of the unsheltered suffer from mental-health issues, while 75% struggle with substance abuse.

Just about every level of California's various governmental entities (not to mention those of the other western states, including Idaho) has been experimenting with the best way to deal with the homeless in a manner that both protects the rights and welfare of the homeless as well as the rights of everyone else who have to live and work amongst them. This has proven to be a very difficult—if not impossible—task. Ignoring the various government entities' largely counterproductive—but certainly controversial—attempts to at least control the problem by providing the homeless with free needles, free drugs, free alcohol, free food, and free housing, some of these same entities have sought other ways to get a handle on the issue through the enactment of ordinances seeking to outlaw the very act, in effect, of being homeless.

The bulk of the homeless tend to live in tents, cardboard boxes, sleeping bags, and other makeshift covers protecting the individual from the elements to the extent possible. Some simply live out in the open, finding shelter wherever they can, such as under freeway overpasses or in abandoned vehicles. Either way, groups of homeless are spreading uncontrollably like a viral infection across a city's sidewalks, parks, and public buildings. The lack of available sanitation facilities result in fecal matter, used needles, and other forms of debris and trash piling up throughout such homeless communities.

Recognizing the destructive nature of such a blight, the City of Boise, Idaho, sought to control its homeless problem via two city ordinances; a disorderly conduct ordinance and a camping ordinance, both of which criminalized sleeping outside on public property. The Ninth Circuit

Court of Appeals stepped in, however, when it decided the case of *Martin v. City of Boise* (9th Cir. Apr. 1, 2019). In *Martin*, the Court prohibited the enforcement of such ordinances under the Eighth Amendment's "cruel and unusual" clause, insofar as such ordinances imposed criminal sanctions on the homeless under those circumstances when there were insufficient alternative shelters available for the homeless to go.

Similar to what occurred in Boise, the City of Grants Pass, Oregon, attempted to resolve its homeless issue by implementing and enforcing ordinances and criminal trespass laws restricting camping within the city limits. Certifying Grants Pass's 600 homeless persons as a class, thus allowing for a class action lawsuit, the Ninth Circuit again stepped in to hold that the city's anti-camping ordinances violated the Eighth Amendment's "cruel and usual" prohibitions. In *Johnson v. City of Grants Pass* (9th Cir. July 5, 2023), the Court held that the city's anti-camping ordinances violated the Eighth Amendment to the extent they prohibited homeless persons from "taking necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available." Using its own *Martin v. City of Boise* as its authority, the Court held that the only plausible reading of *Martin* was that it applies to the act of "sleeping" in public, including the use of articles (tents, sleeping bags, etc.) necessary to facilitate sleep.

So why not find an abandoned motor vehicle and live in it? It really matters not whether the vehicle might be functional, so long as it serves the purpose of getting at least one homeless person up and off the sidewalk and out of the elements. With the added benefit that the occupant is provided with some overhead protection from the weather, what could go wrong? This way of thinking, of course, led to lines of trashed motor vehicles lining the streets without solving the sanitation and other related issues that surround the homeless no matter where they might seek refuge. San Francisco, as a result, attempted to head off this problem by impounding lawfully parked motor vehicles on their streets, using as the legal reason for doing so the number of unpaid parking tickets most, if not all, of these vehicles would accrue over time. This practice, however, also did not sit well with the courts. In *Coalition on Homelessness v. City and County of San Francisco* (July 21, 2023), decided only two weeks after Grants Pass, the Ninth Circuit Court of Appeals again thwarted attempts to control the homeless issue by ruling that the warrantless impoundment of a vehicle for unpaid parking citations violates the Fourth Amendment's "Community Caretaking Doctrine." The Court held that the fact that the parking tickets were piling up on a vehicle, and that statutes allowed for the towing of such vehicles, does not, by itself, provide an exception to the Community Caretaking requirement that in order to lawfully impound a motor vehicle, it must first be established that the vehicle in question is parked illegally, blocking traffic or passage, is a hazard, or stands at risk of being stolen or vandalized. As noted by the Court, the deterrent effect of towing vehicles with unpaid parking citations is insufficient to bring it within the scope of the Community Caretaking exception.

## **The U.S. Supreme Court has finally chimed in.**

In an appeal from the Ninth Circuit's Grants Pass decision, in a ruling that also extensively discusses *Martin v. City of Boise*, the High Court decided the case of *City of Grants Pass v. Johnson* (June 28, 2024). In this decision, the Court determined only that the Ninth Circuit was wrong in invalidating Grants Pass's ordinances in issue. At least by implication, the Supreme Court's *Johnson* decision also reversed the Ninth Circuit's ruling in *Martin v. City of Boise*, where Boise's ordinances were also invalidated by the Ninth Circuit. The Court was also critical of the Ninth Circuit's power to condition one's right to camp upon the existence of available housing. In sum, a majority of the Supreme Court (the decision being decided by a

6-to-3 majority) found that the anti-camping ordinances enacted by both the cities of Boise and Grants Pass did not violate the Eighth Amendment's Cruel and Unusual Punishments Clause, contrary to the Ninth Circuit's rulings. None of the sanctions imposed by the City of Boise or Grants Pass for camping illegally can be considered either "cruel" or "unusual," as provided for under the Eighth Amendment, and as this country's Founders intended these words to be interpreted. The Ninth Circuit, in both decisions, also failed to focus on whether a government entity has the power to criminalize particular behavior in the first place, such as camping that is otherwise lawful; something to be considered on remand.

In summary (if I'm interpreting it correctly, the Court's analysis being very confusing), the Supreme Court ruled simply that "(t)he Constitution's Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation's homelessness policy." With this decision also fell the Ninth's Circuit's rule that local anti-camping ordinances cannot be enforced against the homeless unless and until provisions are first made for where to house them in the alternative. The court therefore reversed the Ninth Circuit's Grants Pass decision and held that the ordinances in issue that sought to outlaw public camping by the homeless do not, in fact, violate the Eighth Amendment's "cruel and unusual" provisions. Again, the City of Boise decision has also been reversed, at least by implication. The matter was therefore remanded to the lower courts for further proceedings consistent with this opinion.

So where does this leave us on the issue how to handle the homeless problem? The Supreme Court offers no solutions to this issue, determining only that the Ninth Circuit's proposed solutions are not legal. So it looks like we're right back to where we started—square one—leaving it to the individual municipalities, counties, and/or perhaps states, to figure it out.