

What did the Ninth Circuit Federal Court of Appeals rule in the *Martin v. City of Boise* case?

In April 2019, the Ninth Circuit Federal Court of Appeals case ruled the U.S. Const. Eighth Amendment's prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to (such as space in a shelter or a legal place to rest).

Note, in footnote 8 of the *Martin* case, the court set forth limits on the scope of its ruling:

1. The ruling does not cover individuals who have access to adequate temporary shelter but choose not to use it.
2. Even when shelter is unavailable, an ordinance may prohibit sitting, lying, or sleeping outside at certain times or in certain locations.
3. An ordinance may prohibit obstruction of rights-of-way or the erection of certain types of structures.

Does the *Martin* ruling apply to the City of Chico?

Yes. California is part of the Ninth Circuit, so this decision applies to California municipalities, including the City of Chico.

Can the City of Chico seize personal property at encampments?

Yes, so long as those seizures adhere to the requirements set forth in a different Ninth Circuit case, *Lavan v. City of Los Angeles*, which addresses due process requirements for the removal of unauthorized encampments on public property. Under the *Lavan* ruling, prior to clearing encampments, local governments must provide notice to camp residents -- 72-hour minimum notice is common. (It is also important to have outreach personnel present during encampment removal, whose job it is to help individuals in an encampment identify shelter options or alternative locations to go to. Personal property found during the encampment removal must be held for a certain amount of time so that the owner may claim it. Storage of 60 days is common.)

Have anti-camping ordinances similar to the City of Chico's been upheld in other Federal Court of Appeals Circuits?

Yes. In *Joel v. City of Orlando*, the Eleventh Circuit upheld an anti-camping ordinance against an Eighth Amendment challenge, which is one of the causes of action in the *Warren* lawsuit. **In *Joel*, the City of Orlando presented unrefuted evidence that the homeless shelters in the City of Orlando had never reached capacity and that the plaintiffs had always enjoyed access to shelter space.** Those unrefuted facts were critical to the court upholding the constitutionality of the City of Orlando's anti-camping ordinance.

What have the plaintiffs alleged in the *Warren* lawsuit?

Based on the *Martin* ruling, the plaintiffs in the *Warren* case have alleged the Eighth Amendment's prohibition on cruel and unusual punishment bars the City of Chico from prosecuting people criminally for violating its Municipal Code for sleeping outside on public property when those people have no home or other shelter to go to.

Based on the *Lavan* ruling, the plaintiffs in the *Warren* case have alleged the City of Chico has violated due process requirements for the removal of unauthorized encampments on public property. Under *Lavan*, prior to clearing encampments and personal property in them, the City of Chico must provide notice (72-hour minimum notice is common).

What is the status of the *Warren* case?

To give the parties more time to discuss, negotiate and reach a resolution that will allow the City of Chico to enforce its Municipal Code and to alleviate the need for a preliminary injunction hearing, the parties continued the hearing on the Preliminary Injunction hearing to June 25, 2021 at 10:00 a.m. (and the Temporary Restraining Order ("TRO") related to it).

Under the TRO, what is the City of Chico restrained from doing?

1. Enforcing or threatening to enforce the 72-Hour Illegal Encampment Notifications at Comanche Creek Green Way in Chico, California;
2. Issuing or enforcing any other 72-Hour Illegal Encampment Notifications as to unhoused persons on public property in Chico, California;
3. Enforcing or threatening to enforce the Chico Municipal Code sections 12R.04.340, 12.18.430, 9.20.010 through 9.20.060; and 9.50.030.
4. Enforcement and threat of enforcement of § 9.20.030 (Unlawful Camping) is only restrained on public property.
5. Enforcement and threat of enforcement of § 9.50.030 is limited to §§ 9.50.030 (B) - (E) (Waterways Ordinance - Camping, Staying, Storage of Personal Property, Entering and Remaining);
6. Enforcing or threatening to enforce California Penal Code § 647(c), as listed on Illegal Encampment Notifications; and
7. Destroying property of unhoused persons seized by the City of Chico, even if the City values the property at less than \$100 or determines it is not of reasonable value.