



April 18, 2016

Chief David Brown
Dallas Police Department
Jack Evans Police Headquarters
1400 South Lamar Street
Dallas, Texas 75215

Dear Chief Brown:

We write concerning Dallas's plans to require residents of Tent City, an encampment of homeless Dallas residents, to leave their encampment. Policymakers are understandably concerned about the safety and dignity of people living in Tent City. It is easy to agree that the conditions in Tent City are not acceptable, but the plan to improve these conditions must respect the civil rights of the homeless.

Dallas Police Must Ensure Minimal, Fair, and Respectful Police Interaction During the Closure

We understand that the Dallas Police Department has an encampment closure protocol that calls on caseworkers to direct residents to move their possessions, and officers to make arrests at their discretion. We also understand that officers will also act as security to prevent people from reentering the encampment. We are glad to hear that the Dallas Police Department shares advocates' goal of avoiding arrests during the closure.

This encampment closure is one of many that have occurred in the past several decades in the Dallas area and across the United States. Closure driven by the threat of criminal charges is not the only model: while caseworkers have made a herculean effort to formulate housing plans with Tent City's 175+ residents in advance of the closure, ideally, Dallas would make more consistent investments in street outreach and permanent housing. But if police will be involved in closure within the week, we are hopeful that the police department will take steps to avoid constitutional violations common to closure of homeless encampments.

Avoiding these constitutional violations requires proactive planning. We understand that the Department has asked other cities such as Seattle and San Francisco for guidance, and we hope the Department is taking steps to follow these cities' recently reported practices of closing encampments with minimal police interactions and without arrests. To accomplish this goal, the Department must prepare officers on the ground for a unique, logistically complicated, and potentially tense situation. The Department should remind officers about the importance of de-escalation and establish guidelines for referrals to the Crisis Intervention Team. The Department should educate officers about constitutional violations common to encampment closures. The Department should institute practical plans for assessing whether property is abandoned and whether to discard property, returning seized property to its owner, and assisting homeless residents who have difficulty moving their property. Finally, to minimize arrests, it is crucial for the Department to guide officers by articulating a continuum of graduated responses to homeless residents who decline to move, and identifying preferable alternatives to arrest.

There are other steps the Department can take to improve public confidence in this process. The Department should conduct a pre-enforcement review of its closure protocol to ensure that it complies with evolving professional standards, including applicable principles from the President's Task Force on 21st Century Policing¹ and PERF'S 30 Guiding Principles for Use of Force.² The Department should inform the public of the specific date and time of each closure phase, and invite a member of the Citizens Police Review Board to observe the closures in real time. The Department should also establish criteria for evaluating the success of the protocol, conduct a review of the protocol after each phase of the closure, and share that review with the public.

Because of the history of civil rights violations during encampment closures throughout the country, we are distributing know your rights pamphlets to the residents of Tent City in advance of the first closure phase, both to ensure that residents understand their rights during police encounters and to help prevent escalation of police interactions. We will also be monitoring the closure for constitutional violations, including the following rights that are commonly ignored:

1. **Homeless residents have the right to be free from unreasonable searches:** Homeless residents are protected by the Fourth Amendment, and they have a right to be free from unreasonable searches.³ Homeless residents have the right to refuse consent to search. As is true for any other person, an officer can search a homeless person or that person's possessions only if the officer has a warrant, or if the officer has probable cause and an exception to the warrant requirement applies. All searches must be reasonable—officers must take care to avoid unnecessary humiliation to residents or destruction of personal property.

With respect to use of force, Dallas police officers interacting with homeless residents should anticipate the possibility of opposition to the clearance. Officers should actively employ de-escalation tactics in their interactions to avoid encounters requiring use of force.

2. **Homeless residents have property rights:** During encampment clearances, homeless residents often suffer from the permanent seizure and/or destruction of their personal property, including identification, medications, family memorabilia, cell phones, and sleeping bags. Unfounded deprivation of property, without any process for returning that property, violates homeless residents' Fourth and Fifth Amendment rights.⁴ During the clearance, officers should permit

¹ PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (May 2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

² POLICE EXECUTIVE RESEARCH FORUM, USE OF FORCE: TAKING POLICING TO A HIGHER STANDARD (Jan. 29, 2016), <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

³ See, e.g., *Smith v. Ohio*, 494 U.S. 541 (1990) (per curiam) (holding that setting down property in a public place does not defeat reasonable expectation of privacy); *United States v. Voice*, 622 F.3d 870 (8th Cir. 2010) (rejecting, in dicta, abandonment argument implying that homeless people essentially lose Fourth Amendment rights).

⁴ See, e.g., *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir. 2012) (granting a temporary restraining order on Fourth Amendment grounds enjoining the city from summarily destroying the homeless plaintiffs' property); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1573 (S.D. Fla. 1992) (holding that the seizure and destruction of the homeless plaintiffs' personal property violated the Fourth and Fifth Amendments). See also *Mitchell v. City of Los Angeles*, No. 16-cv-1750 (C.D. Cal. Apr. 13, 2016); *Johnson v. Bd. of Police Comm'rs*, 351 F. Supp. 2d 929, 949 (E.D. Mo. 2004).

residents to bring their belongings with them. Where that is impossible, officers should tag the belongings and provide information concerning place of pick-up, along with transportation to the pick-up location.

3. **Homeless residents have the right to disengage from police encounters:** Officers commonly arrest people who refuse to produce identification or disclose their name, residence, or date of birth. Texas law requires a person to disclose their name, residence, and date of birth only if that person is already under arrest. Officers should not arrest anyone who simply refuses to answer an officer's questions.⁵

Dallas Police Must Avoid Arresting People for Homelessness

Again, we are pleased to hear that the Dallas Police Department's goal is to minimize arrests during the Tent City closure. We hope that, during and after the closure, the Department also exercises its discretion to refrain from arresting homeless people for sleeping in public or soliciting donations. We also hope that the Department supports policy initiatives to confront the challenges of homelessness, so that officers are not pressured to resort to costly and ineffective referrals to the criminal justice system. The City has repeatedly called on the Dallas Police Department to clear homeless encampments without making a serious investment in ending the root causes of homelessness. Attempting to prohibit activities associated with homelessness without addressing these causes—including lack of affordable housing, unaffordable or inaccessible physical and mental health care, job markets limited by criminal history considerations, and wealth disintegration by predatory housing and personal lending—will merely perpetuate the cycle of homelessness and lead to future encampments just like Tent City.

The criminalization of homelessness is a problem across the United States. Dallas is no exception. Tent City residents who want to comply with the mandate to leave have few options. While we understand that a handful of people have been connected to permanent housing, the only immediate alternative for the remainder of Tent City's 175+ residents is temporary shelter. On the short timeline to clear Tent City, nonprofit organizations have coordinated a concerted effort to soften the blow, including the addition of temporary shelter beds at existing homeless shelters. Even if there are temporary beds for all Tent City residents, the consensus is that these beds are not a solution for fixing Dallas's long-term policy problem. While we understand that many shelters have pledged to temporarily liberalize their admission requirements, issues like addiction, serious mental disabilities, criminal history, identification requirements, and strict time restrictions can keep people from accessing shelter beds.

If a Tent City resident cannot access a shelter bed after Tent City closes, that person's very presence in Dallas is criminalized. Dallas has made it illegal to sleep in a public place. Dallas has made it illegal to ask for food or water in many areas throughout the city. These ordinances violate the constitutional rights of homeless people in Dallas, such as the right to free speech, the right to travel, and the right to be free from cruel and unusual punishment.

⁵ See, e.g., *Huang v. Harris Cnty.*, 264 F.3d 1141, 2001 WL 822534, *7 (5th Cir. 2001) (“[Plaintiff] was not under arrest at the time she refused to give her information to [an officer]. Therefore, we cannot find as a matter of law that a reasonable officer could have believed the arrest to be lawful, in light of clearly established law and the information the arresting officers possessed.” (quotation marks, alterations, and citations omitted)).

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In addition to these civil rights violations, arresting homeless people adds another obstacle to stability and housing. Arrests interfere with housing and employment prospects. Depending on the offense, a homeless person who is arrested may face a longer stay in jail: people without a shelter address face an uphill battle arguing for release on personal recognizance, and they cannot afford to pay bail. Instead, they are likelier to sit in jail while waiting for trial. Jail coerces homeless people into pleading guilty, resulting in a lengthier criminal record—another barrier to housing and employment. Moreover, jail is particularly dangerous for people with serious mental disabilities, who are overrepresented in the homeless population.

We believe that the Dallas Police Department wants to ensure that the Tent City closure process respects the personal rights and dignity of its homeless residents. We hope to be an additional resource to the Dallas Police Department in this effort, and we welcome any questions about the rights described in this letter, or alternatives to threatening criminal prosecutions as the tool for improving quality of life for Tent City residents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Trisha Trigilio'. The signature is stylized with a large 'T' and a long, sweeping flourish.

Trisha Trigilio
Staff Attorney
ACLU of Texas