**[Date]**

**[Addressee]**

 **Re: Opposition to “Sweeps” at Homeless Encampments**

Dear\_\_\_\_\_\_\_\_\_\_\_,

**[I / Organization]** write to urge **[recipient]** to stop taking homeless people’s property and destorying it without notice or opportunity to be heard in **[name of town / city / county]**. Your **[department’s]** current practice runs afoul of multiple court decisions holding that the immediate destruction or seizure of a homeless individual’s property without adequate notice and opportunity to prevent the destruction violates the United States Constitution.

Numerous courts have held that sweeps of homeless encampments violate the constitutional prohibition against unreasonable seizures and due process rights if they result in the immediate destruction of individuals’ personal property.[[1]](#footnote-1) Courts recognize that homeless individuals have the same personal property rights as any other person.[[2]](#footnote-2) This property is still constitutionally protected even if it is temporarily left unattended, and the government may not simply assume that unattended property can be thrown away.[[3]](#footnote-3)

Additionally, *even if* an encampment violates one of **[municipality’s]** ordinances, that is not a justification to violate the rights of homeless residents to continued possession of their belongings. As the Ninth Circuit ruled in *Lavan*, “[v]iolation of a city ordinance does not vitiate the Fourth Amendment’s protection of one’s property. Were it otherwise, the government could seize and destroy any illegally parked car . . . without implicating the Fourth Amendment.”[[4]](#footnote-4)

Furthermore, a federal court recently ruled in *Ellis v. Clark County Department of Corrections* that, “the Fourth Amendment forbids . . . the destruction of a person’s property, when that destruction is unnecessary – i.e., when less intrusive, or less destructive alternatives exist.’”[[5]](#footnote-5) In that case, Clark County, Washington, was found liable for destroying unattended property at homeless encampments, and held that these sweeps were a violation of the Fourth and Fourteenth Amendments.[[6]](#footnote-6) You should be aware that failing to store property collected during sweeps for retrieval may leave you legally liable for the destruction of that property.

Courts have held that reasonable notice is required prior to confiscating a homeless individual’s property during a sweep.[[7]](#footnote-7) **[Municipality’s]** practice of clearing homeless encampments without providing any notice is illegal and should cease immediately.[[8]](#footnote-8) Courts have ruled that *insufficient* notice prior to conducting a sweep is also a constitutional violation, in addition to lack of any notice. The recent decision in *Ellis v. Clark County Department of Corrections* held that 10 minutes of notice was not sufficient to justify a sweep’s legality.[[9]](#footnote-9) Please also note that reasonable notice requires **[municipality]** to notify individuals where their property is being stored and how they may reclaim it.[[10]](#footnote-10)

**[I/We]** urge **[municipality]** to immediately end your practice of conducting illegal sweeps of homeless encampments. The government has an obligation to comply with the Constitution and ensure our homeless community members do not have their personal belongings destroyed. These belongings can include some of their most important possessions, including medicine, identification, and legal papers, which are not easily replaced. These actions not only violate the civil liberties of people living outdoors, they waste municipal resources, inflict harm on our most vulnerable neighbors, and are counterproductive to **[municipality’s]** goal of ending homelessness. **[I/We]** stress that the resources **[municipality]** expends could be directed toward ensuring your homeless residents have access to shelter, services, and eventually, permanent housing.

Sincerely,

**[NAME]**

1. *See generally*, *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 2855; *Ellis v. Clark Cnty. Dep’t of Corr.*, No. 15-5449 RJB, 2016 WL 4945286 (W.D. Wash. Sept. 16, 2016). [↑](#footnote-ref-1)
2. *Ellis*, 2016 WL 4945286, at \*11 (“[H]omeless persons’ unabandoned possessions are ‘property’ within the meaning of the Fourteenth Amendment.”); *Lavan*, 693 F.3d at 1031 (“[T]his case concerns the most basic of property interests encompassed by the due process clause: Appellees’ interest in the continued ownership of their personal possessions.”). [↑](#footnote-ref-2)
3. *Lavan*, 693 F.3d at 1027-33 (finding unattended homeless property subject to constitutional protections); *Ellis*, 2016 WL 4945286, at \*9 (citing *Lavan*). [↑](#footnote-ref-3)
4. *Lavan*, 693 F.3d at 1029. [↑](#footnote-ref-4)
5. *Ellis*, 2016 WL 4945286, at \*10 (quoting *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 977-78 (9th Cir. 2005)). [↑](#footnote-ref-5)
6. *See id.*, 2016 WL 4945286, at \*10-12. [↑](#footnote-ref-6)
7. *Lavan*, 693 F.3dat 1032 (“Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property.”). [↑](#footnote-ref-7)
8. *Ellis*, 2016 WL 4945286, at \*11 (work crews found liable for destruction of unattended homeless property when, aside from one instance, no evidence in record indicated notice of any kind was first provided). [↑](#footnote-ref-8)
9. *Id.*  [↑](#footnote-ref-9)
10. *Lavan*, 693 F.3d at 1032 (“[D]ue process requires law enforcement ‘to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return.’” (quoting *City of West Covina v. Perkins*, 525 U.S. 234, 240 (1999))). [↑](#footnote-ref-10)