

# Meiklejohn Civil Liberties Institute

Human rights advocacy and education since 1965

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Mayor Libby Schaaf  
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October 21, 2018

## **Re: Open Letter to Libby Schaff and the City of Oakland to End the Criminalization of Homelessness and Homeless Sweeps Which Are Civil Rights and Human Rights Violations**

Dear Mayor Libby Schaaf,

The Meiklejohn Civil Liberties Institute (MCLI) writes you today to call upon you to stop any further sweeps of homeless encampments in the City of Oakland.

MCLI has been informed that the City of Oakland plans to expand sweeps of homeless encampments to the Lake Merritt area. On September 17, 2018, MCLI informed the City Council that these planned sweeps violate the U.S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment pursuant to the Ninth Circuit Court of Appeal decision on September 4, 2018 in *Martin v. Boise*<sup>1</sup>. The council discussed *Martin v. Boise*, but there was no indication that the City of Oakland would desist with their policy of sweeps.

In *Martin v. Boise* the Ninth Circuit Court of Appeal stated:

“[T]he Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. As *Jones* reasoned, “[w]hether sitting, lying, and sleeping are defined as

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<sup>1</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018) (See: <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf>)

acts or conditions, they are universal and unavoidable consequences of being human...”

“...As a result, just as the state may not criminalize the state of being ‘homeless in public places,’ the state may not ‘criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.’”<sup>2</sup>

Currently, the City of Oakland’s policy is to evict homeless encampments under threat of arrest in violation of *Martin v. Boise*. Further, the personal property of unhoused residents is being destroyed in violation of *Lavan v. City of Los Angeles*<sup>3</sup>.

Since 1965, MCLI has advocated to end civil rights and human rights violations by local, state, and federal governments within the United States. Based in the S.F. Bay Area, MCLI has worked with members of the local community to promote the exercise of human rights. This work includes working with human rights monitoring bodies to respond to human rights grievances. For example, in June of 2018 we filed a community based report to the U.N. Committee on the Elimination of Racial Discrimination<sup>4</sup>. As discussed below, MCLI agrees with the U.N. Special Rapporteurs on Extreme Poverty and Adequate Housing who conclude that the City of Oakland’s treatment of the homeless violates numerous human rights laws.

MCLI has worked with local leaders in efforts to create policies that conform with Human Rights Law. MCLI is willing to work with you and other leaders in the City of Oakland to end the criminalization of landless people as we establish both short and long term plans for shelter and housing that ensure human dignity.

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<sup>2</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) (See: <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf>)

<sup>3</sup> *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012) (See: <https://cdn.ca9.uscourts.gov/datastore/opinions/2012/09/05/11-56253.pdf>)

<sup>4</sup> See: <http://www.mclihumanrights.org/wp-content/uploads/2018/06/2018.06.01-MCLI-Report-to-CERD-1.pdf>

On Monday, October 15, 2018, you spoke at a press conference at city hall. I called upon you to stop the sweeps of homeless encampments and stop forcing unhoused people into the so-called “Tuff Shed encampments”. I provided you a copy of the Declaration of Campaign for the Human Rights of Landless People with a list of demands from MCLI and our homeless allies.<sup>5</sup> You stated that you would read the Declaration, but we have not heard a response from your office.

Earlier this year, UN Special Rapporteur on Adequate Housing, Leilani Farha, visited homeless encampments in San Francisco and Oakland and stated “There’s a cruelty here that I don’t think I’ve seen.” She also stated that the City of Oakland was failing to fulfill their human rights obligation because “[i]n international human rights law, providing shelter to people who are homeless is the absolute minimum standard for any country, regardless of resources.”<sup>6</sup>

In her final report to the U.N. General Assembly, Leilani Farha highlights the cruelty she witnessed in Oakland as follows:

“Attempting to discourage residents from remaining in informal settlements or encampments by denying access to water, sanitation and health services and other basic necessities, as has been witnessed by the Special Rapporteur in San Francisco and Oakland, California, United States of America, constitutes cruel and inhuman treatment and is a violation of multiple human rights, including the rights to life, housing, health and water and sanitation. Such punitive policies must be prohibited in law and immediately ceased.”<sup>7</sup>

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<sup>5</sup> See: <http://www.mclihumanrights.org/sign-declaration-of-campaign-for-the-human-rights-of-landless-people/>

<sup>6</sup> Gee, Alastair, “San Francisco or Mumbai? UN envoy encounters homeless life in California”, The Guardian, January 22, 2018 (See: <https://www.theguardian.com/us-news/2018/jan/22/un-rapporteur-homeless-san-francisco-california>)

<sup>7</sup> Paragraph 46, Farha, Leilani, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context”, United Nations General Assembly (See: <http://www.undocs.org/A/73/310/rev.1>)

On October 23, 2018, MCLI and our allies will distribute her final report prior to the upcoming sweeps scheduled at Lake Merritt.

U.N. Special Rapporteur on Extreme Poverty Philip Alston echoed Leilani Farha in his report on May 4, 2018, where he stated:

“In many cities, homeless persons are effectively criminalized for the situation in which they find themselves. Sleeping rough, sitting in public places, panhandling, public urination and myriad other offences have been devised to attack the ‘blight’ of homelessness. The criminalization of homeless individuals in cities that provide almost zero public toilets seems particularly callous.”<sup>8</sup>

In addition, the so-called “Tuff Shed encampments” are wholly insufficient as an alternative. These camps do not provide sufficient shelter space under *Martin v. Boise* which states that “‘so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],’ the jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and sleeping in public.’”<sup>9</sup>

Additionally, these camps do not fulfill the basic standards for refugee camps,<sup>10</sup> much less the standards for temporary housing in a community such as ours that has abundant resources.<sup>11</sup>

On September 17, 2018, the City Attorney and the company contracted to run these camps clarified that homeless sweeps will be forcing some people into these camps against their will.

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<sup>8</sup> Paragraph 44, Alston, Philip, “Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America” United Nations General Assembly, May 4, 2018. (See: <https://daccess-ods.un.org/TMP/2759397.62592316.html>)

<sup>9</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) (See: <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf>)

<sup>10</sup> <https://emergency.unhcr.org/entry/45582/camp-planning-standards-planned-settlements>

<sup>11</sup> [https://www.bea.gov/system/files/2018-01/gdp\\_metro0917.pdf](https://www.bea.gov/system/files/2018-01/gdp_metro0917.pdf)

MCLI finds a disturbing analogy between the Trump administration’s “Muslim Ban” and your administration’s policies criminalizing homelessness. Both policies criminalize individuals based upon their status. As the City of Oakland’s current policies violate *Martin v. Boise*, Trump’s “Muslim Ban” was also deemed illegal in *Trump v. Hawaii* by the U.S. Supreme Court.<sup>12</sup> MCLI finds that forcing people into camps, based upon a discriminatory class status, is disturbingly reminiscent of other collective traumas experienced by marginalized communities at the hands of repressive governments both in the U.S. and around the world.

All of the aforementioned activities criminalizing homelessness violate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>13</sup> which is monitored through the U.N. Committee Against Torture which begins its monitoring process in November of 2018. MCLI will continue to monitor this situation as we compile information to be included in our report to be submitted to the U.N. Committee Against Torture in 2019.

In conclusion, MCLI demands that the City of Oakland cease and desist the criminalization of homelessness including all sweeps of homeless camps and begin a policy in conformity with human rights standards.

Sincerely,

A handwritten signature in blue ink that reads "Steven DeCaprio". The signature is written in a cursive style and is contained within a light blue rectangular box.

Steven DeCaprio  
Interim Executive Director  
Meiklejohn Civil Liberties Institute

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<sup>12</sup> *Trump v. Hawaii*, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018) (See: [https://www.supremecourt.gov/opinions/17pdf/17-965\\_h315.pdf](https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf))

<sup>13</sup> Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (See: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>)