



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

October 3, 2023

Balakrishnan Rajagopal
Special Rapporteur on the right to adequate housing
Geneva, Switzerland

Oliver De Schutter
Special Rapporteur on extreme poverty and human rights
Geneva, Switzerland

Dear Special Procedures Mandate Holders,

Attached please find the U.S. response to your call for input regarding the decriminalization of homelessness and extreme poverty.

Sincerely,

A handwritten signature in black ink, consisting of the letters 'BR' followed by a long, horizontal, slightly wavy line extending to the right.

Branka Bell
Acting Deputy Permanent Representative
Human Rights Delegation

Input from the United States
Questionnaire on Decriminalization of Homelessness and Extreme Poverty issued by the UN
Special Rapporteur on the Right to Adequate Housing and the UN Special Rapporteur on
Extreme Poverty and Human Rights

September 2023

Response to Question 4: Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.

Information from the U.S. Department of Justice:

The [Office for Access to Justice](#) (ATJ) and the [Civil Rights Division](#) (CRT) at the U.S. Department of Justice (Department or DOJ) actively seek to combat economic barriers and pursue access to justice for all. As stated in the Department's Fiscal Year 2022–2026 Strategic Plan, “[t]he Department will advance equal access to justice by promoting the accountability and integrity of justice systems. ATJ will work to combat economic barriers, such as unjust fines and fees, and will pursue equal access to economic justice systems, including in bankruptcy, consumer protection, and eviction and foreclosure proceedings. ATJ will strive to remove obstacles that prevent meaningful access to counsel and courts for members of underserved communities and will oppose laws and policies that criminalize poverty.”

CRT actively protects the constitutional rights of people experiencing homelessness. In addition to the protections afforded by the U.S. Constitution, CRT enforces several civil rights laws, including the Fair Housing Act, which prohibits housing discrimination on the basis of race, color, national origin, religion, disability, sex, and familial status, all of which could lead to housing insecurity for the victims of discrimination, and the Religious Land Use and Institutionalized Persons Act (RLUIPA), which has been used to protect the rights of religious exercise land use that may involve outreach and services to people who are homeless.

In pursuit of these goals, DOJ is undertaking a series of actions which are detailed below.

Addressing Issues Related to the Criminalization of Poverty

- **Issuing “Dear Colleague Letter” Regarding Fines and Fees for Youths and Adults:** In April 2023, DOJ issued a [“Dear Colleague Letter”](#) regarding the assessment and enforcement of court-imposed fines and fees that cautioned against practices that may be unlawful, unfairly penalize individuals who are unable to pay, or otherwise have a discriminatory effect. The letter was issued by DOJ’s ATJ, CRT, and Office of Justice Programs (OJP). Specifically, the letter:

- Provides a framework for judges and court administrators:* Grounded in constitutional principles (i.e., the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution) and federal non-discrimination statutes (i.e., Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968), the letter provides a framework for judges and court administrators to assess their jurisdiction’s court-imposed fines and fees practices—cautioning against procedures that may be unlawful, unfairly penalize individuals who are unable to pay, or otherwise have a discriminatory effect.
- Presents recommendations:* The letter emphasizes the importance of implementing meaningful ability-to-pay mechanisms to preemptively avoid adverse failure-to-pay consequences; considering alternatives to fines and fees; guarding against excessive penalties; and ensuring due process, including by appointing court-appointed counsel when appropriate.
- Highlights obligations:* The letter reminds court systems and other federal financial assistance recipients of their ongoing obligations not to discriminate based on race, color, national origin, religion, sex, and disability; provide access options to individuals with limited English proficiency; and ensure appropriate recordkeeping to help identify and avoid potential violations of federal non-discrimination laws.
- Calls for further action:* The letter notes ongoing action to address the impact of fines and fees, including a forthcoming best practice guide that is being developed by ATJ. The guide will highlight innovative work and reform efforts by states, municipalities, and court leaders in this area. OJP also released a solicitation seeking a training and technical assistance provider to help jurisdictions (1) reduce the use of unjust fines and fees; and (2) redirect the resources used in these systems into activities with a greater return on public safety.
- Filing Statements of Interest in Fine and Fee-Related Litigation in the United States:** DOJ files “statements of interest” in local U.S. cases to outline the United States’ position on fines and fees and to remind litigants, judges, and other justice system actors of relevant U.S. constitutional principles. In 2016, for example, DOJ filed a [statement of interest](#) in a case alleging that Virginia automatically suspended drivers’ licenses of people who failed to pay fines and fees. The statement noted that

“[a] driver’s license is often essential to a person’s well-being, including [the] ability to maintain a job, pursue educational opportunities, or care for children or other family,” and that penalizing people for their poverty violates the Fourteenth Amendment to the U.S. Constitution. More recently, in 2022, ATJ partnered with CRT to issue a [statement of interest](#) in a case against the Town of Brookside, Alabama. According to the plaintiffs, both fines and fees collection and vehicle seizures ballooned between 2018 and 2020. The town saw a nearly eight-fold increase in traffic citations. By 2020, revenue from fines, fees, and forfeitures made up around 49% of Brookside’s annual revenue. DOJ’s statement noted the constitutional protections under the Fourteenth Amendment’s Due Process Clause, which prohibits significant financial and institutional conflicts of interest, including in the enforcement of fines, fees, and vehicle seizures. In March 2023, the U.S. District Court for the Northern District of Alabama denied the Town of Brookside’s Motion to Dismiss. In reaching its decision, the court placed special emphasis on the United States’ statement of interest.

- **Highlighting Criminalization of Poverty issues at the United Nations:** At the 31st and 32nd sessions of the United Nations Commission on Crime Prevention and Criminal Justice held in 2022 and 2023, respectively, DOJ supported the United States’ co-sponsorship of a side event at each session on the topic of criminalization of poverty and status. ATJ representatives delivered remarks at both events to highlight domestic efforts and to encourage additional global partnerships to strengthen responses.

Addressing Issues Related to the Criminalization of Homelessness

- **Filing Statement of Interest in Religious Land Use Case Involving Faith-based Group that Feeds Homeless People in California:** In May 2023, DOJ filed a [statement of interest](#) in a federal lawsuit explaining that the act of distributing food and drinks to people who are homeless by Micah’s Way, a faith-based organization that helps people in need, could be a protected religious exercise. The statement was filed in *Micah’s Way v. the City of Santa Anna*, a lawsuit alleging that Santa Ana imposed a substantial burden on Micah’s Way’s religious exercise. At issue is the city’s denial of an occupancy certificate to Micah’s Way on the grounds that it was providing food and drinks to people who are homeless in violation of the city’s zoning ordinance. In June 2023, the U.S. District Court for the Central District of California agreed with the United States that food distribution could be religious exercise and therefore protected religious activity under RLUIPA and denied the California city’s motion to dismiss.

- **Filing Statement of Interest Arguing that Panhandling is Expressive Activity Protected by First Amendment:** In January 2023, the Department filed a [statement of interest](#) in a case in Florida explaining that “panhandling” (asking for donations on public streets) is expressive activity protected by the First Amendment and laws that seek to regulate such activity must be the least restrictive means to serve a compelling governmental interest and supported by strong evidence.
- **Investigation of the City of Phoenix and the Phoenix Police Department to Assess Possible Civil Rights Violations of Homeless People:** Criminal civil rights laws prohibit law enforcement officers from willfully violating the constitutional rights of others and these laws apply when officers violate the rights of people who are experiencing homelessness. These rights include the right to be free from unreasonable force during a seizure, the right to be free from sexual assault, and the right to be free from having property unreasonably seized. In August 2021, the Department [opened](#) a pattern-or-practice investigation into the Phoenix Police Department to assess whether, among other things, the police department violates the civil rights of people experiencing homelessness. The Department is specifically assessing whether the police department has violated the rights of people experiencing homelessness by unlawfully seizing or disposing of private property. Also in Phoenix, the Department is assessing whether officers engaged in retaliatory activity against people who are exercising their First Amendment rights to speech, including panhandling or requesting donations.
- **DOJ Participation in U.S. Interagency Council on Homelessness:** DOJ is a member of the [United States Interagency Council on Homelessness](#) (USICH). In December 2022, USICH launched [ALL IN](#), the Federal Strategic Plan to Prevent and End Homelessness. The plan includes ending unsheltered homelessness – and laws that criminalize it – as a strategic goal.
- **Combating the Criminalization of Homelessness through Filing Statement of Interest:** In August 2015, the Department filed a [statement of interest](#) arguing that making it a crime for people who are homeless to sleep in public places, when there is insufficient shelter space in a city, unconstitutionally punishes them for being homeless. The statement was filed in federal district court in Idaho in *Bell v. City of Boise et al.*, a case brought by homeless plaintiffs who were convicted under Boise ordinances that criminalize sleeping or camping in public. As stated by the Department in its filing, “[i]t should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment. . . . Sleeping is a life-sustaining activity—i.e., it must occur at some time

in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless.” The subsequent resolution of the case was decided by the United States Court of Appeals for the Ninth Circuit, which found that there are situations, like those in *Bell*, in which the criminalization of homeless persons violates the Eighth Amendment (see [Martin v. City of Boise](#) (2018)).

- **Releasing a Solicitation to Address the Issue of Fines and Fees:** In May 2023, OJP’s Bureau of Justice Assistance released the solicitation *FY 2023 The Price of Justice: Rethinking the Consequences of Fines and Fees*, which will fund a training and technical assistance provider to work in partnership with five states, local, and/or Tribal criminal justice agencies or systems to address the use of fines and fees, and to ensure they are being imposed in a constitutional and nondiscriminatory way.