

FAQ: Preliminary Injunction Against the Criminalization of Homelessness in San Francisco

What is the holding of the Ninth Circuit case *Martin v. Boise*?

In *Martin v. Boise*, the Ninth Circuit determined that the government cannot arrest poor people for sitting, lying, or sleeping in public when they have no real alternative. The decision does not cover individuals who do have access to appropriate shelter or housing.

Why is there a preliminary injunction in place?

A federal court determined that the City routinely cites and arrests thousands of people who have no real access to shelter and regularly destroys their personal belongings. This is in violation of the City's own policies and the U.S. Constitution.

The court also found that the City enforces the City's anti-homeless laws even when there are no social services staff present to offer shelter, without knowing if any shelter is available, and even when it is obvious the City's shelters and supportive housing sites are already at capacity. The City provided no specific evidence that it offered shelter to any of the 3,000 individuals who were cited or arrested in the past three years just for being homeless.

Does the preliminary injunction ban the City from addressing street encampments?

No. This is not a ban on addressing homeless encampments. The City can enforce all necessary health, accessibility, and public safety laws to address homeless encampments when necessary—including for routine street cleanings.

The City can also clear encampments if it makes real offers of available shelter to the affected people.

Does the preliminary injunction ban the City from offering shelter and services to homeless people?

No. The injunction does not prohibit the City of San Francisco from offering shelter and services to unhoused people. It actually encourages the City to make real offers of shelter as the only way to address the homelessness crisis. A record-high 975 people entered shelters during outreach operations in the first six months of 2023.

Under the injunction, if the City can provide a real offer of shelter (meaning a specific accommodation that is available to and appropriate for the unhoused person whose encampment is being cleared), it is then free to enforce anti-homeless laws against that individual.

Under the injunction, does the City need to have enough shelter for thousands of homeless residents before it can enforce its laws that punish being homeless?

No. The City can enforce its anti-homelessness laws now if it can make real, specific offers of shelter to unhoused individuals, and the injunction does not prohibit enforcement against individuals who have such shelter.

So what does the injunction really prohibit the City from doing?

The injunction only prohibits City officials from citing and arresting poor people for sitting, sleeping and existing in public if they have nowhere else they can go because they have no option of realistically accessing shelter or housing.

Who is covered under the injunction?

The injunction expressly provides that “involuntarily homeless” individuals are protected. People who have declined a specific offer of available shelter or otherwise have access to shelter or the means to obtain it are not covered by the injunction. The injunction order says this on pages 36 and 50.

Are unhoused residents who decline a specific offer of realistically available shelter protected by the injunction?

The injunction does not protect unhoused residents who decline specific and realistic shelter offers.

How long will the preliminary injunction be in place?

Unless the preliminary injunction is modified or dissolved, it will remain in place until there is a final judgement, typically after a trial is held. A trial is currently scheduled for 2024.

Does San Francisco offer homeless residents specific offers of realistically available shelter prior to encampment sweeps?

The City routinely fails to offer shelter to homeless residents during encampment sweeps. This failure is why the District Court issued the injunction in the first place. Even now, there are almost 500 homeless people on a shelter waitlist that was opened this summer. Of those people on the waitlist, the City has successfully placed only 13 people in shelters. Meanwhile, the City has shut same-day shelter lines making it impossible for hundreds of unhoused people to access shelter when they need it.

Do anti-homelessness laws prevent homeless people from moving into the City?

The vast majority of unhoused people in San Francisco are from the Bay Area and can no longer afford to pay rent. Recent studies show that at least 75% of unhoused people were living and working in San Francisco before they became homeless—with the majority living in the City for a decade or more before they could no longer afford rent. There is no evidence that large numbers of unhoused people are moving to San Francisco.

Does San Francisco have enough laws in place to address street homelessness?

San Francisco has more laws that criminalize homelessness than any other City in the country. These misguided laws from the era of mass incarceration have not solved our community's affordable housing crisis or meaningfully reduced the number of homeless individuals sleeping on San Francisco's streets without access to shelter.

What is the Coalition on Homelessness lawsuit about, and what are the Plaintiffs seeking with this injunction?

Plaintiffs are seeking to ensure that San Francisco meets its commitments to taxpayers to deliver on real improvements to street homelessness. The lawsuit seeks to ensure that the City is following its own data-driven policies to address this crisis, including by connecting unhoused individuals to real opportunities for shelter and affordable housing instead of just destroying survival belongings. The lawsuit also points out the immediate, commonsense steps San Francisco can take over the next several months to dramatically reduce street homelessness.

What is the current status of the case?

The City's appeal of the preliminary injunction is still before the Ninth Circuit. The Ninth Circuit recently denied the City's motion to modify the injunction in the meantime. The City had asked the Ninth Circuit to allow it to return to its prior policy on encampments which Plaintiffs had established led to thousands of citations and arrests of people who had no access to shelter. A trial is currently scheduled for October 2024.