



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai'i



Goldstein, Borgen,
Dardarian & Ho

BY EMAIL

April 30, 2020

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Re: County of Hawai'i sweeps of houseless encampments during the COVID-19 pandemic

Dear Mayor Kim, Chief Ferreira, Director Yamamoto, and Corporation Counsel Kamelamela:

The ACLU of Hawai'i Foundation (“**ACLU of Hawai'i**”) and the law firm of Goldstein, Borgen, Dardarian & Ho (“**GBDH**”) recently learned that the County of Hawai'i (“County”) conducted a sweep that forcibly evicted a group of people from a lot adjacent to Agasa Furniture in downtown Hilo early on April 7, 2020 (“**Hilo Sweep**”). The Hilo Sweep follows other recent sweeps in Kona and Wailuku. As explained below, in conducting the Hilo Sweep, the County skirted the mandates of both the U.S. and Hawai'i constitutions and state law. We write to express our concerns not only about the Hilo Sweep, but also the County's broader policies and practices regarding people who are houseless. These policies and practices are unlawful and unsound under normal circumstances. But they are blatantly unconstitutional and reckless during the present pandemic. So we also write with a demand: ***The County must immediately cease conducting sweeps of houseless encampments in the County, at least until the COVID-19 pandemic passes.***

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Given that the County's ongoing practice of forcibly evicting and scattering houseless people is also substantially and recklessly increasing the risk that they and other members of the community will experience serious harm during the ongoing pandemic, ***we also ask that you respond in writing, by May 7, 2020, making a public commitment to suspend future sweeps of houseless encampments.***

The Hilo Sweep occurred in the lot located at 117 Punahoa Street (“**Lot**”) in downtown Hilo. In early 2018, County residents Jerilyn Rose and Michael Ravenswing purchased the Lot.¹ At some point after taking ownership, Rose and Ravenswing gave several houseless people permission to reside on the Lot (“**Residents**”), after which the Residents began putting up tents and structures.²

Near the end of 2018, inspectors from the County's Department of Public Works examined the Lot and allegedly observed building code violations, such as unpermitted fencing and structures.³ The County began fining Rose and Ravenswing for such violations. Because Rose and Ravenswing did not comply, in April 2019 the County initiated legal action against them to remove the unpermitted structures on the Lot, force compliance with the building code, and require them to pay fines. In January 2020, the County, seeking to satisfy the fines Rose and Ravenswing owed to the County, filed a motion for writ of attachment, execution, and sale of the Lot. On April 6, 2020, the circuit court held a hearing and orally granted the County's motion.

¹ The County's real property records for the address reflect that Rose and Ravenswing used limited liability corporations to purchase the lot. See <https://qpublic.schneidercorp.com/Application.aspx?AppID=1048&LayerID=23618&PageTypeID=4&PageID=9878&Q=636476436&KeyValue=230090270000>.

² *Video: Unpermitted Hilo Structures Demolished*, Big Island Video News (Nov. 21, 2019), <https://www.bigislandvideonews.com/2019/11/21/video-unpermitted-hilo-structures-demolished> (lot resident Jeffery Horie stating that he served as a “property manager for the owners” and the “lessee” of the Lot).

³ Michael Brestovansky, *Fines Pile Up For Owners of Downtown Hilo Property*, Hawaii Tribune-Herald (Aug. 22, 2019), <https://www.hawaiitribune-herald.com/2019/08/22/hawaii-news/fines-pile-up-for-owners-of-downtown-hilo-property>.

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Early the very next morning—before the court had entered final judgment—the County conducted the Hilo Sweep.⁴ Notably, the County moved forward with the Hilo Sweep even though just one day earlier it had signaled to advocates (including HOPE Services and Community Alliance Partners) that it was in favor of a plan to relocate the Residents to the soccer fields on the Hilo bayfront, and even though advocates had offered to provide guidance and support to the County regarding that plan. The County apparently reversed course on its stated commitment to advocates.

During the Hilo Sweep, about 12 police officers and 15 county workers brought at least one bulldozer and several trucks to the Lot and forcibly removed the fifteen-or-so Residents before then seizing and destroying Residents' remaining personal property.⁵ At no point before the Hilo Sweep did the County serve any written notice on the Lot's Residents. Nor did the County initiate any eviction or other legal proceeding against them. Instead, as the Hilo Sweep was beginning, a County official *orally* notified Residents that they had a mere *30 minutes* in which to completely vacate the Lot. When an advocate from HOPE Services requested more time on Residents' behalf, the County granted 15 more minutes—but no longer. Unsurprisingly, the Residents were unable to gather and remove the vast majority of their personal property from the Lot in time. As a result—just 45 minutes after the Hilo Sweep began—about 15 Residents⁶ were displaced from their residence, most of them without their personal property, and practically all of them without a safe place to go.⁷

The County's actions in conducting the Hilo Sweep are illegal and unconstitutional in several respects. Regarding state law requirements, the County did not have clear and final ownership of the Lot when it conducted the Hilo Sweep.

⁴ More information about the Hilo Sweep is available here:
<https://www.facebook.com/HOPEServicesHawaii/posts/3030783616986265>.

⁵ Photos of the Hilo Sweep are available here:
<https://www.facebook.com/photo?fbid=3030578690340091&set=pcb.3030783616986265>.

⁶ The County has stated that there were only 12 people on the Lot. *See* Star-Advertiser Staff, *Police Remove A Dozen People Squatting in Vacant Hilo Lot*, Honolulu Star-Advertiser (Apr. 7, 2020), <https://www.staradvertiser.com/2020/04/07/breaking-news/hilo-police-remove-a-dozen-people-squatting-in-vacant-lot>. But there were, in fact, 15 Residents at the time; 3 Residents were not on or near the Lot when the Hilo Sweep occurred. Thus, these 3 Residents received *no* notice and had no opportunity to retrieve any of their belongings before the County seized and destroyed them.

⁷ About 4 residents did successfully obtain shelter via HOPE Services.

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The court had not yet entered any written order stating as much. Indeed, court records reflect that the circuit court entered the order on the County’s motion on April 21, 2020—two full weeks *after* the Hilo Sweep.⁸ Even assuming that any oral order made on April 6 constituted “entry” of judgment, the County appears to have completely disregarded the automatic 10-day stay of execution imposed by statute and court rule.⁹ Finally, even assuming that the County had, by the morning of April 7, appropriately completed the attachment process vis-à-vis Rose and Ravenswing, that does not mean that it had the ability to ignore the Residents’ rights of possession to the Lot and their personal property, in the same way that when a bank forecloses on an owner’s home, it cannot immediately remove existing tenants without completing a separate legal process against them. There is no indication that the County followed any such legal process against the Residents.

The Hilo Sweep also constituted a flagrant violation of Residents’ constitutional rights. *First*, in failing to provide adequate notice or any opportunity to be heard before seizing and destroying Residents’ personal property and ejecting them from the land on which they had been living with the permission of the prior owners, the County violated procedural due process rights guaranteed by the Fourteenth Amendment to the U.S. Constitution and article I, section 5 of the Hawai‘i Constitution.¹⁰ *Second*, in unreasonably seizing and destroying Residents’

⁸ In an article published shortly after the Hilo Sweep occurred, Corporation Counsel even conceded that some ambiguity existed regarding whether the County actually owned the property at that particular moment. See Michael Brestovansky, *Downtown Hilo Site of Multiple Homeless Camps is Cleared, Fenced*, Hawaii Tribune-Herald (Apr. 8, 2020), <https://www.hawaiitribune-herald.com/2020/04/08/hawaii-news/downtown-hilo-site-of-multiple-homeless-camps-is-cleared-fenced> (“‘The county technically owns the property,’ said county Corporation Counsel Joe Kamelamela. ‘But we don’t have the deed for it. It’s not that kind of ownership.’”).

⁹ See Haw. Rev. Stat. § 641-3 (“No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry.”); Haw. R. Civ. Proc. Rule 62(a) (“[N]o execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.”).

¹⁰ See, e.g., *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012) (“Because homeless persons’ unabandoned possessions are ‘property’ within the meaning of the Fourteenth Amendment, the City must comport with the requirements of the Fourteenth Amendment’s due process clause if it wishes to take and destroy them.”); *Kincaid v. City of Fresno*, No. 106CV-1445 OWW SMS, 2006 WL 3542732, at *1, *37-39 (E.D. Cal. Dec. 8, 2006) (granting preliminary injunction preventing City from “immediately seizing and destroying on the spot, [plaintiffs’] personal possessions, during sweeps conducted by the City . . . to remove homeless persons, encampments, and their property from private property and other locations within the City” because the City’s failure to provide “effective and adequate pre- or post-deprivation process . . . violate[d] the Fourteenth Amendment . . .”).

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personal property, the County violated the Fourth Amendment and article I, section 7.¹¹ *Third*, by deliberately choosing to evict and scatter the Residents—and thereby affirmatively placing them in further danger of contracting COVID-19—the County violated substantive due process rights guaranteed by the Fourteenth Amendment and article I, section 5.¹² Indeed, as the attached **Declaration of Dr. John Swartzberg**, a renowned infectious disease specialist, states, “[c]onducting encampment sweeps and confiscating the belongings of people who are houseless . . . can increase the risk of adverse outcomes from COVID-19 for those who are subject to the sweep” and “clearing encampments will put lives at risk by increasing transmission of the virus among a vulnerable population.” *Fourth*, by using criminal law enforcement officers and the implicit threat of arrest to force Residents off the Lot when there were no meaningful safe places for them to go to—particularly at a time when the County’s shelters are hopelessly overcrowded and must also maintain strict social distancing requirements that further limit capacity—the County violated Residents’ rights under the Eighth Amendment and article I, section 12 to be free from cruel and unusual punishment.¹³

The County’s decision to conduct the Hilo Sweep also runs counter to public health. The Hilo Sweep was directly contrary to COVID-19-related guidance published by the Centers for Disease Control and Prevention (“CDC”), which states: “Unless individual housing units are available, do not clear encampments during community spread of COVID-19.”¹⁴ And as Dr. Swartzberg states, “[t]he best solution to protect public health and the safety of the people who are houseless is to

¹¹ See, e.g., *Kincaid*, 2006 WL 3542732, at *35-37 (granting preliminary injunction on Fourth Amendment grounds based on City’s “policy and practice of seizure and destruction” of plaintiffs’ personal property “[e]ven when homeless people inform[ed] City workers that they ha[d] been granted permission to keep their belonging where they are . . .”).

¹² See, e.g., *Kennedy v. City of Ridgefield*, 439 F. 3d 1055, 1061-65 (9th Cir. 2006) (recognizing claim under substantive due process where state or local officials place a person in a situation of known danger with deliberate indifference to their personal and physical safety).

¹³ See, e.g., *Martin v. City of Boise*, 920 F.3d 584, 604 (9th Cir.), *cert. denied*, 140 S. Ct. 674 (2019) (holding that enforcement of an ordinance “violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them”).

¹⁴ Interim Guidance, *People Experiencing Homelessness and COVID-19*, CDC (Mar. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

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secure individual housing units” for houseless people, rather than scattering them, which also causes them to “break connections with service providers.”

Finally, the County’s actions are inhumane. Forcibly evicting peaceful people from a private lot without providing any meaningful due process and, importantly, without providing any meaningful alternative place to exist is an intolerable act in civilized society—and is even more so during one of the worst health crises in modern history.

For all these reasons, the ACLU of Hawai‘i and GBDH now demand that the County not conduct any sweeps, evictions, or other enforcement actions against people who are houseless.¹⁵ Such a moratorium must exist at least until the present COVID-19 pandemic passes, but should extend beyond that point as well.

If for some reason the County of Hawai‘i cannot make this commitment, the ACLU of Hawai‘i and GBDH stand ready to respond appropriately, as they have done before, in defense of civil rights, and against unlawful government action, especially given that the County conducted the Hilo Sweep with such impunity.

We look forward to hearing from you by May 7, 2020. If you have questions or comments, please contact Wookie Kim at 808-522-5905 or wkim@acluhawaii.org, or Anne Bellows at 510-287-4344 or abellows@gbdhlegal.com.

Sincerely yours,



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Enclosures: Attachment A (April 23, 2020 Declaration of Dr. John Swartzberg)

¹⁵ This is consistent with the statewide moratorium on evictions. See Office of the Governor, Fifth Supplementary Proclamation, at 6 (Apr. 16, 2020), https://governor.hawaii.gov/wp-content/uploads/2020/04/2004088-ATG_Fifth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf.