



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Hawai‘i

BY EMAIL AND U.S. MAIL

June 2, 2023

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**Re: County of Hawai‘i sweeps of houseless encampments on May 24,  
2023 and planned sweeps for June 7, 2023 and other future dates**

Dear Mayor Roth, Director Messina, Chief Moszkowicz, and Corporation Counsel Strance:

The ACLU of Hawai‘i Foundation (“**ACLU of Hawai‘i**”) has learned that the County of Hawai‘i (“**County**”) conducted a sweep on May 24, 2023 that forcibly evicted a group of houseless people from Hale Hālāwai beach park in Kona (“**Hale Hālāwai Sweep**”).<sup>1</sup> We also learned that the Hale Hālāwai Sweep is just the first in a series of enforcement actions that the County intends to execute against houseless people within the County, including an upcoming sweep planned for June

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<sup>1</sup> Mayor Mitch Roth (@himayormitch), INSTAGRAM, <https://www.instagram.com/p/CspDXJYSijL> (last visited June 2, 2023).

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7, 2023 near the Kona Community Aquatic Center and other locations across Hawai‘i Island (“**Planned Sweeps**”).<sup>2</sup>

The County is engaging in these sweeps despite knowing full well that Hawai‘i County does not have sufficient available shelter space to house the people who have been impacted by these sweeps.<sup>3</sup>

The County’s execution of enforcement actions under these circumstances is constitutionally problematic. In 2019, in *Martin v. City of Boise*, the federal Ninth Circuit Court of Appeals affirmed the well-established principle that a municipality’s enforcement of an ordinance “violates the Eighth Amendment [to the U.S. Constitution] insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.”<sup>4</sup> And just this past fall, in *Johnson v. City of Grants Pass*, the Ninth Circuit—in a separate published opinion—re-affirmed the principle that a municipality “cannot, consistent with the Eighth Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, *when there is no other place in the City for them to go.*”<sup>5</sup> Here—when houseless people in the County have no safe place to go without being subjected to the County’s laws that punish sheltering in public spaces—enforcement actions like the Hale Hālāwai Sweep and the Planned Sweeps (if the County chooses to move forward with them) violate the mandates of the U.S. and Hawai‘i constitutions.<sup>6</sup>

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<sup>2</sup> *Homeless Encampment Swept At Hale Halawai in Kona*, BIG ISLAND VIDEO NEWS (May 24, 2023), <https://www.bigislandvideonews.com/2023/05/24/homeless-encampment-swept-at-hale-halawai-in-kona> (County stating that “the next operation in Kona will address the growing encampment in front of the Kona gym and pool”).

<sup>3</sup> The most recent Point-in-Time Count conducted by Bridging the Gap on Sunday, January 22, 2023 shows that there are 725 unsheltered individuals on Hawaii Island on any given night, about one third of whom live in the Kona area. Bridging the Gap, *2023 Hawai‘i County Point In Time Count Topline Report*, (Apr. 17, 2023), at 3-4 [https://www.btghawaii.org/media/uploads/2023\\_hawaii\\_county\\_topline\\_pit\\_report\\_-\\_4.17.23.pdf](https://www.btghawaii.org/media/uploads/2023_hawaii_county_topline_pit_report_-_4.17.23.pdf). Meanwhile, based on our conversation with Community Alliance Partners—the local chapter of the homeless continuum of care, whose members operate all emergency homeless shelters on Hawai‘i Island—there were *zero* vacancies on the Kona side of the island on the day of the Hale Hālāwai Sweep and there are generally close to zero vacancies on any given day.

<sup>4</sup> 920 F.3d 584, 604 (9th Cir.), *cert. denied*, 140 S. Ct. 674 (2019).

<sup>5</sup> 50 F.4th 787, 813 (9th Cir. 2022) (emphasis added).

<sup>6</sup> Although not addressed fully here, the Hale Hālāwai Sweep and the Planned Sweeps may also violate other constitutional rights. For example, it appears the County failed to provide adequate

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In light of this, we write with a demand: **The County must stop the Planned Sweeps unless and until the County either stands up emergency shelter spaces that can adequately house Hawai'i County's houseless community, or designates a safe space where houseless community members can exist without being subject—every single day and every single second—to County enforcement actions.**

As you may be aware, the ACLU of Hawai'i has challenged other unconstitutional enforcement actions on neighboring islands, including in the City and County of Honolulu and in Maui County.<sup>7</sup>

We request a response from the County **by 5 p.m. on Monday, June 5**. We are open to discussing alternatives with you. If you have any questions or comments regarding this letter, please contact me at 808-522-5905 or [wkim@acluhawaii.org](mailto:wkim@acluhawaii.org).

Sincerely yours,



Wookie Kim  
Legal Director  
ACLU of Hawai'i

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notice or any opportunity to be heard before it seized and destroyed houseless people's personal property during the Hale Hālāwai Sweep. This would be a violation of procedural due process rights guaranteed by the Fourteenth Amendment to the U.S. Constitution and article I, section 5 of the Hawai'i Constitution. *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.")

It also appears that the County treated houseless people's property as "opala", and unreasonably seized and destroyed that personal property. This would be a violation of the Fourth Amendment and article I, section 7. *See Garcia v. City of Los Angeles*, 11 F.4th 1113 (9th Cir. 2021) (granting preliminary injunction against Los Angeles for "summarily destroying homeless individuals' publicly stored personal property"); *Recchia v. City of L.A. Dep't of Animal Servs.*, 889 F.3d 553, 558 (9th Cir. 2018) ("Homeless people living on the street enjoy the protection of the Fourth Amendment" and "[t]he seizure of a homeless person's property implicates important Fourth Amendment concerns.").

<sup>7</sup> Rui Kaneya, *Lawsuit Filed Over Seizure of Homeless People's Property*, HONOLULU CIVIL BEAT (Sept. 16, 2015), <https://www.civilbeat.org/2015/09/lawsuit-filed-over-seizure-of-homeless-peoples-property>; Jack Truesdale, *Lawsuit Challenges Maui County Homeless Sweep*, HONOLULU CIVIL BEAT (Nov. 2, 2021), <https://www.civilbeat.org/2021/11/lawsuit-challenges-maui-county-homeless-sweep>; 'A'ali'i Dukelow, *Maui county officials face lawsuit over homeless encampment sweep*, KITV ISLAND NEWS (Nov. 2, 2021), [https://www.kitv.com/news/local/maui-county-officials-face-lawsuit-over-homeless-encampment-sweep/article\\_7bd403ac-3c1c-11ec-a299-cf4e95feb12a.html](https://www.kitv.com/news/local/maui-county-officials-face-lawsuit-over-homeless-encampment-sweep/article_7bd403ac-3c1c-11ec-a299-cf4e95feb12a.html).