

No. 23-175

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IN THE  
**Supreme Court of the United States**

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CITY OF GRANTS PASS OREGON,  
*Petitioner,*

v.

GLORIA JOHNSON, ET AL., ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,  
*Respondent.*

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**On Writ of Certiorari to  
the United States Court of Appeals  
for the Ninth Circuit**

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**BRIEF AMICUS CURIAE  
IN SUPPORT OF RESPONDENTS AND ON  
BEHALF OF THE LOS ANGELES CATHOLIC  
WORKER, CANGRESS, VENICE JUSTICE  
COMMITTEE AND INNER CITY LAW CENTER**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... iii

INTEREST OF AMICUS CURIAE..... 1

SUMMARY OF THE ARGUMENT ..... 3

I. WITH THE LARGEST UNSHELTERED POPULATION IN THE NATION, LOS ANGELES’ EXPERIENCE DEMONSTRATES WHY THE DECISION BELOW IS CORRECT THAT CRIMINALIZATION VIOLATES THE EIGHTH AMENDMENT ..... 6

    A. The Numbers of Unhoused Persons in Los Angeles..... 6

    B. Los Angeles’ Repeated Campaigns Over Decades to Criminalize Unsheltered Individuals Have Failed to Change the Dynamics ..... 8

    C. The Failure to Address the Crisis in Shelter and Housing in Los Angeles ..... 11

    D. The Failure of LAMC 41.18 to Reduce Homelessness..... 18

    E. The City Has Allowed Low-Income Housing to Be Destroyed While It Claimed to Pursue Other Options for Addressing Homelessness ..... 20

II. CRIMINALIZING BASIC AND ESSENTIAL LIFE ACTIVITIES FOR UNSHELTERED INDIVIDUALS WHO HAVE NO CHOICE BUT TO LIVE IN PUBLIC SPACES SERVES NO LEGITIMATE PENOLOGICAL PURPOSE ..... 23

TABLE OF CONTENTS—Continued

	Page
A. The Availability of a “Necessity Defense” Does Not Cure the Eighth Amendment Violation.....	24
B. The Adverse Consequences of Criminalization Support the Holding that the Eighth Amendment is Violated Here....	27
Conclusion .....	31

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Jones v. City of Los Angeles</i> , 2004 WL 5469606 (C.A.9) (Appellants' Opening Brief).....	12, 13
<i>Grants Pass v. Johnson</i> , 72 F.4th 868 (9th Cir. 2023).....	5
<i>Gregg v. Georgia</i> , 428 U.S. 153, (1976).....	24
<i>In re Eichorn</i> 69 Cal. App. 4th 382, 388 (1988).....	25, 26
<i>Jerome Wiggins, et al. v. Board of Directors of the Community Redevelopment Agency of the City of Los Angeles, et al.</i> , LASC Case No. BC277539.....	22
<i>Jones v. City of Los Angeles</i> , 444 F.3d 1118, 1138 (9th Cir. 2004)., vacated as moot following settlement, 505 F.3d 1006 (9 <sup>th</sup> Cir. 2007) .....	passim
<i>People v. Garziano</i> , 230 Cal. App. 3d 241, 243 (1991).....	25
<i>People v. Pepper</i> 41 Cal. App. 4th 1029, (1996).....	26, 27
<i>State v. Barrett</i> , 302 Or. App. 23, 44–45 (2020).....	26
<i>Tobe v. City of Santa Ana</i> , 9 Cal.4th 1069, 1087-1088 (1995).....	26

**Statutes**

California Government Code § 65302.....	16
California Vehicle Code §21956 .....	10
Los Angeles Municipal Code §41.18(d).....	passim
Los Angeles Council District 15 had been offered shelter. LA Community Action Network, <i>Separate and Unequal</i> , graph (last accessed Mar. 1, 2024) <a href="https://cangress.org/publications/">https://cangress.org/publications/</a> .....	18

**Other Authorities**

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Brief for City of Los Angeles as Amici Curiae in Supporting Neither Party, City of Grants Pass Oregon v. Gloria Johnson, et al. (No. 23-175).....	4
City of Los Angeles, <i>2021-2029 Housing Element</i> , Chapter 1. Housing Needs Assessment, (Nov. 2021) <a href="https://planning.lacity.gov/odocument/bde50bc0-5f1f-4e88-a5cf-06a12e1d8078/Chapter_1_-">https://planning.lacity.gov/odocument/bde50bc0-5f1f-4e88-a5cf-06a12e1d8078/Chapter_1_-</a>	

<u>Housing_Needs_Assessment_(Adopted).pdf</u> .....	5
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Gale Holland, <i>Huge Increase in Arrests of Homeless in L.A.-But mostly for minor offenses</i> , L.A. Times (Feb. 4, 2018), <a href="https://www.latimes.com/local/politics/la-me-homeless-arrests-20180204-story.htm">https://www.latimes.com/local/politics/la-me-homeless-arrests-20180204-story.htm</a> .....	11
Gary Blasi & the UCLA Sch. of Law Fact Investigation Clinic <i>Policing Our Way Out of Homelessness?: The First Year of the Safer Cities Initiative on Skid Row</i> , (2009).....	10
Institute for the Study of Homelessness and Poverty, “Who is Homeless in Los Angeles?” 3 (2000).....	12
Jennifer Paluch, Joseph Herrera, <i>Homeless Populations Are Rising around California</i> , Public Policy Institute of California Blog, (Feb. 21, 2023).....	3

- Kenneth Mejia, Los Angeles City Controller, 41.18 Arrests Map (Jan 2012 - May 2023), (2023) <https://controller.lacity.gov/landings/4118>..... 9
- Kirsten Moore Sheely, et al., *The Making of a Crisis: A History of Homelessness in Los Angeles*, University of California, Los Angeles, Luskin Center for History and Policy, p. 53 (Jan. 2021) <https://luskincenter.history.ucla.edu/wp-content/uploads/sites/66/2021/01/LCHP-The-Making-of-A-Crisis-Report.pdf>.....9
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- Lindsey Horvath, @LindseyPHorvath, Twitter (Mar. 4, 2024) (19) Lindsey P. Horvath on X: <https://t.co/MqglkJEriV> / X (twitter.com) ..... 19
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<u>Housing_Needs_Assessment_(Adopted).pdf</u> .....	17
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Melissa Hernandez, <i>L.A. to reopen Section 8 housing waiting list for first time in five years. Here's what you need to know</i> , L.A. Times, (Sept. 22, 2022) <a href="https://www.latimes.com/california/story/2022-09-22/section-8-housing-voucher-waiting-list-los-angeles-how-to-apply">https://www.latimes.com/california/story/2022-09-22/section-8-housing-voucher-waiting-list-los-angeles-how-to-apply</a> .....	16
Nick Gerda, <i>Hidden City Report Finds LA Council's Signature Anti-Encampment Law Is Failing</i> , LAIST, (Mar. 2, 2024) ....	18, 28
Paul Rubenstein, Re: Los Angeles Mun. Code Section 41.18 Effectiveness Report (21-0329-S4), Nov. 28, 2023 <a href="https://s3.documentcloud.org/documents/24453676/4118-efficacy-summary-report.pdf">https://s3.documentcloud.org/documents/24453676/4118-efficacy-summary-report.pdf</a> .....	19
Penelope McMillan and Roxane Arnol, <i>Bradley Proposes Temporary Camp for</i>	



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<https://www.latimes.com/archives/la-xpm-1987-06-04-me-4837-story.html>..... 20
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University of California, San Francisco, Benioff Homelessness and Housing Initiative: Toward a New Understanding California Statewide Study of People Experiencing Homelessness, Executive Summary, (Jun. 2023) ..... 3

**INTERESTS OF AMICUS CURIAE<sup>1</sup>**

Amicus CANGRESS, known as Los Angeles Community Action Network (LA CAN), is a non-profit organization in Los Angeles' Skid Row for 25 years. Over its history, CANGRESS has advocated for civil rights for marginally housed and unhoused individuals and against criminalization of poverty. Originally focused on Downtown Los Angeles and Skid Row, CANGRESS has expanded its work into South Central Los Angeles, historically a majority Black community. For 20 years, amicus has conducted pro bono legal clinics for persons cited for quality-of-life crimes.

Amicus The Los Angeles Catholic Worker (LACW) is part of the international Catholic Worker movement, founded in 1933 by Dorothy Day and Peter Maurin in New York City during the Great Depression. Its primary focus is "to comfort the afflicted and afflict the comfortable," and en flesh Jesus' teachings, specifically, as recorded in Matthew 25:31-46, which are referred to as the Corporal Works of Mercy: feed the hungry; give water to the thirsty; clothe the naked; shelter the unsheltered; visit the sick and imprisoned; bury the dead; give alms to the poor. In 1970

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<sup>1</sup> Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than counsel for Amicus Curiae made a monetary contribution to its preparation or submission.

the LACW founded a soup kitchen, known as the Hippie Kitchen, and service center that provides toiletries, shopping carts, mail service and other assistance for the unhoused in Skid Row. LACW is an active voice opposing punitive policies toward the poor.

Amicus Venice Justice Committee (“VJC”) is an unincorporated association that fights civil and human rights violations targeting unsheltered persons, mostly in the Venice area of Los Angeles. Venice has the second largest unsheltered population in the City after Skid Row. VJC’s work primarily focuses on police interactions with the unhoused community, including free monthly legal clinics for unsheltered persons cited for “quality of life” crimes. VJC also coordinates special legal intake clinics following significant police action directed at the unhoused community.

Amicus Inner City Law Center (“ICLC”) is a non-profit poverty law firm located in Skid Row. Born inside a rusty construction trailer behind the Catholic Worker soup kitchen in 1980, ICLC has always been guided by the fundamental principle that every person should be treated with dignity and respect. Today, ICLC has over 120 staff members who fight for low-income tenants, working poor families, veterans, people living with HIV/AIDS, immigrants, and people who are living with disabilities or experiencing homelessness. ICLC’s mission is to ensure decent, safe, and fully habitable housing for the most vulnerable individuals and families residing in Los Angeles.

## SUMMARY OF ARGUMENT

“California is home to 12% of the nation’s population, 30% of the nation’s homeless population, and half the nation’s unsheltered population.”<sup>2</sup> On any given night, California has approximately 30 percent of all persons without a home of their own in the United States, including half of those who are unsheltered.<sup>3</sup> Both the City and County of Los Angeles filed amicus briefs in this matter representing that they are neutrals. But the facts regarding California’s unsheltered population – and the complicity of the City and County in exacerbating this situation - leave no room for neutrality on the question now before the Court.

As the Ninth Circuit held two decades ago in reviewing the City of Los Angeles’ policies criminalizing unsheltered individuals who had no choice but to

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<sup>2</sup> University of California, San Francisco, Benioff Homelessness and Housing Initiative, *Toward a New Understanding California Statewide Study of People Experiencing Homelessness, Executive Summary*, (Jun. 2023)

CASPEH\_Executive\_Summary\_62023.pdf (ucsf.edu)

[https://live-homelessness.pantheonsite.io/sites/default/files/2023-06/CASPEH\\_Executive\\_Summary\\_62023.pdf](https://live-homelessness.pantheonsite.io/sites/default/files/2023-06/CASPEH_Executive_Summary_62023.pdf)

<sup>3</sup> Jennifer Paluch, Joseph Herrera, *Homeless Populations Are Rising around California*, Public Policy Institute of California Blog, (Feb. 21, 2023) <https://www.ppic.org/blog/homeless-populations-are-rising-around-california/>

live in public spaces, “[t]he Eighth Amendment prohibits ... punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles.” *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2004)., vacated as moot following settlement, 505 F.3d 1006 (9th Cir. 2007).

While Los Angeles agrees that punishing unhoused individuals for sleeping, sitting, and generally living in public spaces violates the Eighth Amendment, they nonetheless ask the Court to weigh a decision that grants them broader latitude to “regulate” public spaces by making it a crime for the largest unsheltered population in the nation to live in most public spaces when there is no available shelter or housing. Although the City asserts that it needs to be able to “enforce partial solutions” while it “pursues the goal of providing enough housing and shelter for all,”<sup>4</sup> the City’s track record in this area is largely one of failure.<sup>5</sup>

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<sup>4</sup> Brief for City of Los Angeles as Amici Curiae in Supporting Neither Party, *City of Grants Pass Oregon v. Gloria Johnson, et al.* (No. 23-175)

<sup>5</sup> According to the most current General Plan for the City of Los Angeles for 2022-2029, the Point in Time Count documents an increase from 25,686 people experiencing homelessness in 2015 to 41,920 by 2020, an increase of more than 60 percent in just five years. See City of Los Angeles, *2021-2029 Housing Element*, Chapter 1. Housing Needs Assessment, (Nov. 2021)

So, it begs the question: if Los Angeles officials agree that broad criminal enforcement violates the Eighth Amendment as applied to unsheltered individuals, how many more decades should they be allowed to criminalize basic life activities of unsheltered persons when their record on “pursuing the goal of providing housing and shelter for all” over decades is deplorable and has exacerbated, if not in significant part created, the problems Los Angeles faces now and has faced for years.

The Ninth Circuit was correct in *Grants Pass v. Johnson*, 72 F.4th 868 (9th Cir. 2023), that criminalizing basic life activities conducted in public places when an individual lacks shelter violates the Eighth Amendment. The dire circumstances for unhoused persons in Los Angeles, the largest unsheltered population in the nation, demonstrate why the decision below was correct, necessary and should be affirmed by the Court.

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[https://planning.lacity.gov/odocument/bde50bc0-5f1f-4e88-a5cf-06a12e1d8078/Chapter\\_1\\_-\\_Housing\\_Needs\\_Assessment\\_\(Adopted\).pdf](https://planning.lacity.gov/odocument/bde50bc0-5f1f-4e88-a5cf-06a12e1d8078/Chapter_1_-_Housing_Needs_Assessment_(Adopted).pdf) :Chap.1-27 and Chart 1.8 (“Homeless Persons”). While the City noted that the sheltered population rose in 2020, attributing the increase to the opening of new shelters and increased temporary housing; the City also noted that nearly 70% of the City’s unhoused population still remains unsheltered. *Id.* at Chap.1-27.

**I. WITH THE LARGEST UNSHELTERED POPULATION IN THE NATION, LOS ANGELES' EXPERIENCE DEMONSTRATES WHY THE DECISION BELOW IS CORRECT THAT CRIMINALIZATION VIOLATES THE EIGHTH AMENDMENT**

**A. The Numbers of Unhoused Persons in Los Angeles**

In the most recent numbers released by the Department of Housing and Urban Development (“HUD”) for the January 2023 Point-in-Time Count (“PIT”), 653,104 people were documented as experiencing homelessness across the country.<sup>6</sup> In 2023, HUD calculated that the national total in all categories tracked by HUD of people experiencing homelessness rose 13 percent since 2007, when HUD first began collecting the annual Point-in-Time data.<sup>7</sup> *Id.* From 2022 to 2023, increases were highest among unsheltered individuals, rising by 20 percent or 39,598 people nationally. *Id.* More than 20 percent of that

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<sup>6</sup> See, U.S. Department of Housing and Urban Development, *Fact Sheet: 2023 Annual Homelessness Assessment Report Key Findings from the Point-in-Time Counts* (Dec. 1, 2023) [https://www.hud.gov/sites/dfiles/PA/documents/Fact\\_Sheet\\_Summarized\\_Findings.pdf](https://www.hud.gov/sites/dfiles/PA/documents/Fact_Sheet_Summarized_Findings.pdf)

<sup>7</sup> *Id.*



increase resulted from a rise in unsheltered persons in Los Angeles City and County.

Los Angeles has long been the epicenter of the unsheltered population in the United States. Approximately 20 percent of the total number of people who experienced homelessness last year were in Los Angeles. In the 2023 PIT Count, Los Angeles County had a nine percent increase in people experiencing homelessness for a total of approximately 75,000 individuals.<sup>8</sup> That number reflects a 10 percent increase in the City of Los Angeles, for an estimated total of approximately 46,000 people.<sup>9</sup>

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<sup>8</sup> The total population of petitioner Grants Pass is half of the 2023 unsheltered population of Los Angeles City and County. *See*, U.S. Census Bureau, QuickFacts Grants Pass city, Oregon; Josephine County, Oregon (last visited Mar. 1, 2023) <https://www.census.gov/quickfacts/fact/table/grantspasscityoregon,josephinecountyoregon,US/PST045222>

<sup>9</sup> While the overall increase from 2022 to 2023 was 10 percent, some categories showed much greater increases, including seniors and those experiencing domestic violence or intimate partner violence. For seniors, the year-over-year increase ranged from 52% for those aged 62-64, 37% for those aged 65-69 and 28% for those in the age group 70-79. The number of domestic violence victims who became unhoused increased by 54% from 2022 to 2023. Equally concerning is the rise in the number of unsheltered veterans, increasing 42% from 2022 to 2023, with only one third of the total number being sheltered. *See*, Los Angeles Homeless Services Authority, 2023 Greater Los Angeles Homeless Count - City of Los Angeles, CITY OF LA HC23 DATA SUMMARY, <https://www.lahsa.org/documents?id=7680-city-of-la-hc23-data-summary>. *Id.*

While the number of people without nightly shelter has increased significantly each year, available shelter, interim and long-term housing has fallen further and further behind and in most years increased only minimally, if at all. In short, with more than 75,000 individuals in Los Angeles City and County who lack a fixed place to sleep indoors at night and grossly inadequate public resources to assist them with shelter, and with a history of government indifference and inaction, criminalizing the necessity of people to live in public areas violates the Eighth Amendment right against cruel and unusual punishment for indigent, unhoused persons.

**B. Los Angeles' Repeated Campaigns Over Decades to Criminalize Unsheltered Individuals Have Failed to Change the Dynamics**

Though study after study has ... shown that policing the post-1970s crisis of homelessness has cost significantly more than supportive-housing approaches, the former strategy remains the most ubiquitous one. [] Reliance on law enforcement and emergency room visits produces a higher overall cost and by saddling people with criminal records and fees, perpetuates the cycle of poverty.<sup>10</sup>

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<sup>10</sup> Kirsten Moore Sheely, et al., *The Making of a Crisis: A History of Homelessness in Los Angeles*, University of California, Los Angeles, Luskin Center for History and Policy, p. 53 (Jan. 2021)

According to a recent study published by the Los Angeles City Controller, between 2012 and 2022, the Los Angeles Police Department arrested more than 36,000 unsheltered individuals for violations of LAMC 41.18(d).<sup>11</sup> Half of these arrests were in the Skid Row area and 84 percent were charged as misdemeanors, even though law enforcement had the option to charge the violations as infractions. *Id.* The charging decision is significant because even though infractions carry a fine of up to \$2,500, an impossible amount for a homeless person, the penalty for a misdemeanor violation of the same statute is even more harsh: it may be a fine of the same amount plus incarceration for up to six months. *Id.*<sup>12</sup>

In 2006, shortly after the City's enforcement of LAMC §41.18(d) was enjoined by the Ninth Circuit in *Jones*, newly appointed Police Chief Bratton initiated the "Safer Cities Initiative," based on the "broken windows" theory of policing developed by George Kelling of the Manhattan Institute: i.e., arrest people for minor offenses and it will result in fewer serious crimes.

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(edits supplied): <https://luskincenter.history.ucla.edu/wp-content/uploads/sites/66/2021/01/LCHP-The-Making-of-A-Crisis-Report.pdf>

<sup>11</sup> Kenneth Mejia, Los Angeles City Controller, 41.18 Arrests Map (Jan 2012 - May 2023), (2023) <https://controller.lacity.gov/landings/4118>

<sup>12</sup> For a comprehensive history of the government response to homelessness in Los Angeles, see Sheely, *supra*, note 9.

Under this approach, unhoused people on Skid Row were arrested for such minor offenses as littering, being a pedestrian in a roadway, jaywalking and similar crimes. Pursuant to the California Penal Code, many of these “crimes” were not crimes at all.<sup>13</sup>

The “Safer Cities Initiative” was a failure. In its first year, the LAPD arrested 9,000 people and issued approximately 12,000 citations, mostly for pedestrian violations. Most of these citations were ultimately dismissed because, among other reasons, the facts did not support the charges. According to a report prepared by Prof. Gary Blasi and the UCLA School of Law Fact Investigation Clinic, the Safer Cities Initiative was planned as a two-prong approach: arrests and services. The second prong, the “Streets or Services” (SOS) program, was even more of a failure. In the same time frame that the LAPD made 7,428 arrests under the Safer Cities Initiative, only 34 people completed the companion SOS program.<sup>14</sup>

According to an analysis by the Los Angeles Times, in 2016, a decade after the massive arrests in the Safer Cities Initiative failed to reduce homelessness in any manner, LAPD officers arrested 14,000

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<sup>13</sup> For example, California Vehicle Code §21956 includes an express exemption for pedestrians walking in roadways in a business district. So all of those tickets were invalid.

<sup>14</sup> Gary Blasi & the UCLA Sch. of Law Fact Investigation Clinic *Policing Our Way Out of Homelessness?: The First Year of the Safer Cities Initiative on Skid Row*, 7 (2009)

homeless people in the city on minor offenses, a 31% increase from 2011.<sup>15</sup> At the same time, LAPD arrests in the City overall dropped 15%. *Id.* An earlier analysis by the Times in 2011 found 1 in 10 arrests citywide were of homeless people. By 2016, it was 1 in 6, with most of the arrests for violations of “quality-of-life” laws. *Id.* The most common “crime” in 2016 was failure appear in court on a previously issued citation. *Id.* Despite this massive number of arrests, the number of people without fixed and regular nightly housing, let alone shelter, grew dramatically.

### **C. The Failure to Address the Crisis in Shelter and Housing in Los Angeles**

In *Jones*, the Court of Appeals for the Ninth Circuit enjoined Los Angeles Municipal Code §41.18(d), a city ordinance that made it a crime to sit, lie or sleep on any public street, sidewalk or other public way, without exception, and imposed fines and incarceration on violators. The Circuit enjoined the enforcement of the Los Angeles ordinance based on “substantial and undisputed evidence that the number of homeless persons in the city far exceeded the number of available shelter beds at all times,” there are more

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<sup>15</sup> Gale Holland, *Huge Increase in Arrests of Homeless in L.A.-But mostly for minor offenses*, L.A. Times (Feb. 4, 2018), <https://www.latimes.com/local/politics/la-me-homeless-arrests-20180204-story.html>

unhoused people in Los Angeles than indoor places for them to sleep. 444 F.3d at 1132.

Twenty years ago, when the Ninth Circuit decided *Jones*, there were nearly 50,000 more people without shelter in the region than available beds in Los Angeles. *Id.*, at 1122 (citing Los Angeles Homeless Services Authority, Los Angeles Continuum of Care, Ex. 1 Narrative, at 2-14 (2001); *id.* at 1129 fn. 4.<sup>16</sup> Then, as now, the causes of homelessness were the same: mental illness, substance abuse, domestic violence, low-paying jobs and *most significantly*, the chronic lack of affordable housing.” 444 F.3d at 1123, citing Institute for the Study of Homelessness and Poverty, “Who is Homeless in Los Angeles?” 3 (2000) (emphasis supplied).

Because sitting, lying and sleeping are unavoidable human acts, and finding that the plaintiffs in *Jones* were involuntarily without daytime or nighttime shelter based on a record containing “several reports directly authored or commissioned by City agencies or task forces,”<sup>17</sup> the Ninth Circuit held that the Los Angeles ordinance violated the federal Constitution’s Eighth Amendment ban on cruel and unusual punishment. 444 F.3d at 1138.

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<sup>16</sup> See also Appellants’ Opening Brief, *Jones v. City of Los Angeles*, 2004 WL 5469606 (C.A.9) (Appellate Brief)

<sup>17</sup> *Jones*, 444 F.3d at 1130 fn.4.

Notably, the Plaintiffs in *Jones* did not contend that §41.18(d) was facially invalid. Rather, they argued that so long as the number of unsheltered individuals in the City substantially exceeded the available shelter beds, enforcement of §41.18(d) against the City’s unhoused population during nighttime hours effectively criminalized homelessness – and, thus, violated the Eighth and Fourteenth Amendments to the United States Constitution.<sup>18</sup>

The Circuit agreed that the evidence supporting Plaintiffs’ inability to comply with the law was both “substantial and undisputed.” 444 F.3d at 1132. Against the mountain of evidence submitted by the *Jones* plaintiffs, the City of Los Angeles argued that the Court should not enjoin §41.18(d) because anyone arrested for violating the ordinance could simply raise a necessity defense in criminal proceedings and they would definitely prevail because of the enormous lack of available shelter in the City.

The Ninth Circuit correctly rejected the City’s request to place the burden on indigent and unsheltered persons to navigate the criminal system when the City conceded that the criminal charges were un-supportable. The Circuit found that the availability of a necessity defense was a “false promise” because homeless persons were unlikely to have the capability to fight the criminal charges. 444 F.3d at 1131.

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<sup>18</sup>Appellants Opening Brief: *Jones*, WL 5469606, at \*16.

Additionally, the prospect of a necessity defense was found inadequate because the “preconviction” harms unsheltered individuals would suffer justified enjoining enforcement. *Id.*

Simply because there was no other place for them to sleep, those experiencing homelessness would be: “arrested, imprisoned, and/or prosecuted, as well as suffer the loss of their personal property, for involuntarily violating section 41.18(d). These preconviction harms, some of which occur immediately upon citation or arrest, ... are not salved by the potential availability of a necessity defense. *The loss of Appellants’ possessions when they are arrested and held in custody is particularly injurious because they have so few resources and may find that everything they own has disappeared by the time they return to the street.*” 444 F.3d at 1131 (edits and emphasis supplied).

A key piece of evidence in *Jones* was a report the United States Conference of Mayors issued: “A Status Report on Hunger and Homelessness in Americas Cities 2002: A 25-city Survey December 2002.” The report was based on statistical information provided by mayors’ offices from each of the 25 cities included in the 2002 report. For the first time in 2002, Los Angeles was among the 25 cities responding to the survey. The full 2002 report is now available at <https://files.eric.ed.gov/fulltext/ED471937.pdf>.

Then-Los Angeles Mayor Hahn’s office reported a ten-percent increase from the prior year in the need



for emergency shelter in 2001 and identified the primary causes of increased homelessness in the City as the lack of affordable housing, mental illness, substance abuse, and poverty, as well as the lack of necessary services to respond to mental illness and substance abuse.

In 2001, the City of Los Angeles reported 1,658 shelter beds for unhoused individuals, with a small additional number of beds for families. U.S. Conf. of Mayors Report 2002 at p. 99. As the U.S. Conference of Mayor's Report described the situation in Los Angeles in 2002, "[t]he gap between the homeless population needing a shelter bed and the inventory of shelter beds is severely large. The deficiency in the inventory causes shelters to turn away homeless persons." U.S. Conf. of Mayors Report 2002 at p. 80.

The City fared no better when it came to providing units at public housing or Section 8 vouchers. According to the data Los Angeles provided for the 2002 Mayors Report, the Housing Authority's waitlist for public housing communities increased more than 25 percent and the applications for Section 8 vouchers for rent increased by over 2,000 families each month. *Id.* at p. 99. The wait time in 2002 for public housing and Section 8 vouchers was approximately three years.<sup>19</sup>

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<sup>19</sup> The success of obtaining a Section 8 voucher and then finding a landlord who will accept it have decreased in Los Angeles. In the last lottery, City housing officials expected about 365,000 people would apply for 30,000 available vouchers. See Melissa

*Id.* at 101. Los Angeles met only eight percent of the need for this “affordable” housing. *Id.* at 105. Of the 25 cities surveyed in the 2002 report, only Miami had longer wait times. *Id.* at 101.

Little has changed in the last two decades. Los Angeles still has an enormous shortfall of shelter beds and interim housing options that is approximately four times the documented need for shelter. Los Angeles Municipal Code §41.18(d), as currently codified and enforced, has been a failure at achieving its penological purpose for the same reason that the original version of the law was held unconstitutional in *Jones*. While the law criminalizes the basic necessity to sleep in public for people without access to a bed, it does little to reduce the unsheltered population as the endless cycle of streets to jails continues unabated.

The City has long recognized both the acute need for affordable housing and the City’s immense failure to meet this need. In the 2013-2021 General Plan for Los Angeles,<sup>20</sup> submitted to the State of

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Hernandez, *L.A. to reopen Section 8 housing waiting list for first time in five years. Here’s what you need to know*, L.A. Times, (Sept. 22, 2022) <https://www.latimes.com/california/story/2022-09-22/section-8-housing-voucher-waiting-list-los-angeles-how-to-apply>

<sup>20</sup> Pursuant to California Government Code § 65302, the State of California requires every city and county government entity to submit a General Plan to the state’s Housing and Community Development Department (“HCD”) for approval every eight years, with periodic progress updates. As part of the Plan, cities and counties must address how they intend to provide for several

California for approval, the City explicitly acknowledged the failure to create sufficient housing to meet expected needs for unhoused individuals.

In the 2013 General Plan, the City estimated that it needed more than 10,000 units a year to meet projected growth; but reported that the City had only produced about 6,000 units a year since 2006, for a shortfall of approximately 32,000 units between 2006 and 2013.<sup>21</sup> In the category of affordable units for moderate or lower-income households, the City reported it produced an average of 1,100 units annually since 2006.<sup>22</sup> At the same time, the percentage of unsheltered individuals in the City increased by several thousands of people each year.<sup>23</sup>

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specific categories, including the needs of seniors, people with disabilities, low-income individuals, and unhoused persons. If the Plan is not approved by the State, no development permits may issue in the City or County until deficiencies are corrected.

<sup>21</sup> Los Angeles Department of City Planning, *2013-2021 Housing Element*, CPC-2013-1318-GPA, (Adopted Dec. 3 2013) [https://planning.lacity.gov/odocument/bde50bc0-5f1f-4e88-a5cf-06a12e1d8078/Chapter\\_1\\_-\\_Housing\\_Needs\\_Assessment\\_\(Adopted\).pdf](https://planning.lacity.gov/odocument/bde50bc0-5f1f-4e88-a5cf-06a12e1d8078/Chapter_1_-_Housing_Needs_Assessment_(Adopted).pdf)

<sup>22</sup> *Id.*

<sup>23</sup> Between 2013 and 2023, the number of unsheltered homeless people counted by the Los Angeles City and County Continuum of Care increased 132%, from 22,590 to 52,307. See U.S. Department of Housing and Urban Development, PIT and HIC Data since 2007, HUD Exchange, (last viewed Mar. 1, 2024)

#### **D. The Failure of LAMC §41.18 to Reduce Homelessness**

Los Angeles Municipal Code §41.18 has been a key tool in the City’s criminalization of unsheltered individuals over more than two decades. In February 2023, Los Angeles City Councilmember Yaroslavsky submitted a motion to the City Council calling for an evaluation of the effectiveness of the most recent amendments to §41.18 in reducing homelessness.<sup>24</sup> Although the government report is complete, according to news reports it is being withheld from public disclosure - and from some of the councilmembers - because it concludes that §41.18 fails to achieve its goals to reduce the number of persons sleeping in public spaces because of the lack of resources.

News sources that obtained a copy of the document reported that 94% of people at encampments targeted for enforcement under 41.18 wanted shelter, but only 18% of those were successful in getting

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[https://www.hudexchange.info/resource/3031/pit-and-hic-data-since 2007.](https://www.hudexchange.info/resource/3031/pit-and-hic-data-since-2007)

<sup>24</sup> Following the City Council’s approval of the Yaroslavsky motion, amicus CANGRESS published a report based on interviews with unhoused individuals in the Skid Row area. The report, “Separate and Unequal: A Comprehensive Community Assessment of LAMC 41.18 by LA Community Action Network,” found that only 14 percent of the unhoused community interviewed in Los Angeles Council District 15 had been offered shelter. LA Community Action Network, *Separate and Unequal*, graph at p. 2. (last accessed Mar. 1, 2024) <https://cangress.org/publications/>

shelter. Nick Gerda, *Hidden City Report Finds LA Council's Signature Anti-Encampment Law Is Failing*, LAIST, (Mar 2, 2024) <https://laist.com/news/housing-homelessness/los-angeles-homeless-enforcement-report-on-4118>. Since then, Los Angeles County Board of Supervisors member Lindsay Horvath, chair of the Los Angeles Homeless Services Authority, made the LAHSA report public.<sup>25</sup>

The report concluded that “[m]ost individuals impacted by 41.18 operations had already been actively searching for housing with an outreach worker. ... Those that were connected to interim housing were also unlikely to experience successful outcomes. Most encampments saw client repopulations within a year. ... 41.18 falls short of more effective encampment resolution efforts, such as Inside Safe or other Encampment-to-Home initiatives,” neither of which is based on criminalization. See: LAHSA’s “Los Angeles Municipal Code Section 41.18 Effectiveness Report (21-0329-S4)”, November 28, 2023 (edits supplied).

LAHSA documented the unsuccessful efforts of unsheltered persons to find a place to sleep indoors. The report found that almost 94 percent of those

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<sup>25</sup> Lindsey Horvath, @LindseyPHorvath, Twitter (Mar. 4, 2024) (19) Lindsey P. Horvath on X: <https://t.co/MqglkJEriV> / X (twitter.com) and Paul Rubenstein, Re: Los Angeles Municipal Code Section 41.18 Effectiveness Report (21-0329-S4), (Nov. 28, 2023) <https://s3.documentcloud.org/documents/24453676/4118-effectiveness-summary-report.pdf>

impacted by 41.18 were already actively seeking housing and were enrolled in Street Outreach before this newest round of criminal enforcement began. “[A] significant majority of individuals were actively working with their outreach workers to find housing before the 41.18 ordinance came into effect.” *Id.*, p. 3. Again, 94% of unsheltered persons were enrolled in programs to obtain housing but only 18% were able to find housing.

**E. The City Has Allowed Low-Income Housing to Be Destroyed While It Claimed to Pursue Other Options for Addressing Homelessness**

The City of Los Angeles has a long history of unsuccessfully “pursuing” options for shelter and housing to address the ever-growing unsheltered population in the City. This section highlights just a few of those efforts.

In the late 1960s, Los Angeles had approximately 15,000 units in Single Room Occupancy (“SRO”) hotels in Los Angeles’ Skid Row area.<sup>26</sup> In 1987, then-Mayor Tom Bradley rejected a proposal by homeless services advocates for a six-month moratorium on the removal of encampments in the Skid Row

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<sup>26</sup> Skid Row History project by UCLA Luskin Social Welfare Department (<http://luskin.ucla.edu/social-welfare>).

area.<sup>27</sup> At the time, the City was subject to an order of the Los Angeles Superior Court requiring posting of notices about any action to remove encampments at least 12 hours before the sweeps began. *Id.*

A few months later, Mayor Bradley submitted a proposal to the Los Angeles City Council to pass a one-year moratorium on the destruction of Skid Row hotels, housing thousands of low-income residents.<sup>28</sup> Mayor Bradley noted that 8,000 to 10,000 low-income units were at risk of destruction in Skid Row, alone. At the time the moratorium was proposed, six of the Skid Row area's 80 single-room-occupancy ("SRO") hotels were demolished in the prior year, eliminating housing for nearly 500 low-income individuals. *Id.*

In 1989, Mayor Bradley again proposed a two-year ban on the demolition of Skid Row hotels. As Mayor Bradley was quoted as saying at the time, "[t]hese hotels are our last defense against homelessness."<sup>29</sup> Dozens of the SROs on Skid Row, which

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<sup>27</sup> Penelope McMillan and Roxane Arnol, *Bradley Proposes Temporary Camp for L.A.'s Homeless*, L.A. Times, (March 5, 1987) <https://www.latimes.com/archives/la-xpm-1987-06-04-me-4837-story.html> .

<sup>28</sup> Bill Boyarsky, *Bradley Calls for Halt to Razing of Skid Row Hotels*, L.A. Times, (July 22, 1987) <https://www.latimes.com/archives/la-xpm-1987-07-22-me-3367-story.html>

<sup>29</sup> Frederick Muir, *Bradley Proposes Skid Row Hotel Demolition Ban*, L.A. Times, (Mar.10, 1989) <https://www.latimes.com/archives/la-xpm-1989-03-10-me-1106-story.html>

housed an estimated 6,000 to 7,000 poor, aging, and disabled individuals, were demolished over the prior two decades to make way for commercial development. *Id.*

In 1992, when the most recent moratorium expired, the City Council initially failed to pass an extension. In the course of debating the moratorium, city housing officials noted that 20,000 low-income housing units were lost to commercial and industrial development over the prior two decades, increasing the number of people without shelter in the City.<sup>30</sup>

In 2002, the Legal Aid Foundation of Los Angeles filed a lawsuit on behalf of low-income residents of Skid Row, challenging an amendment to the CBD redevelopment plan for the City Center Los Angeles, which would lead to the destruction of even more low-income housing in the area. *Jerome Wiggins, et al. v. Board of Directors of the Community Redevelopment Agency of the City of Los Angeles, et al.*, LASC Case No. BC277539. A stipulated settlement reached in 2006 created a “no net loss” policy for low-income housing in downtown Los Angeles, primarily for residential hotels. The *Wiggins* Settlement created a

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<sup>30</sup> Luis Sahagun and Greg Krikorian, *Moratorium on Razing of Residential Hotels Expires : Housing: Council scrambles to pass extension of 1989 measure intended to balance rights of property owners and low-income tenants*, L.A. Times, (Sept. 19, 1992) <https://www.latimes.com/archives/la-xpm-1992-09-19-me-731-story.html>



baseline of more than 9,000 low-income units in downtown.

In 2003, advocates for unsheltered residents of Skid Row filed an action to enjoin the arrest, incarceration, and criminal citations for sleeping at night on the sidewalks of Skid Row when there was no available and adequate shelter. *Jones*, 444 F.3d at 1118. In 2006, the parties entered into a settlement in *Jones*, requiring the City to create 1200 new low-income housing units, with half located on Skid Row. It took the City nearly a decade to complete these units.<sup>31</sup>

## II. CRIMINALIZING BASIC AND ESSENTIAL LIFE ACTIVITIES FOR UNSHELTERED INDIVIDUALS WHO HAVE NO CHOICE BUT TO LIVE IN PUBLIC SPACES SERVES NO LEGITIMATE PENOLOGICAL PURPOSE

The Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles.” *Jones*, 444 F.3d at 1138. Imposing criminal laws on unsheltered individuals “for involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter” because of grossly

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<sup>31</sup> City’s 2015 Assessment of the *Jones* settlement available at: [https://cdn.theatlantic.com/assets/media/files/jones\\_settlement\\_factsheet\\_6\\_10\\_15.pdf](https://cdn.theatlantic.com/assets/media/files/jones_settlement_factsheet_6_10_15.pdf)

insufficient resources available to allow them to avoid sleeping and sitting in public places with their property serves no legitimate penological goal. *Id.*

Under our justice system, “[a] penalty also must accord with the ‘dignity of man, which’ is the basic concept underlying the Eighth Amendment. This means, at least, that the punishment not be ‘excessive.’” *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (internal citation omitted). Criminal punishment of individuals who have no place to live “is nothing more than the purposeless and needless imposition of pain and suffering[.]” *Coker v. Georgia*, 433 U.S. 584, 592 1977.

The circumstances in Los Angeles, with the largest unsheltered population in the nation, underscore why this is so when compliance with the law is impossible. Even if a person is able to obtain shelter on one day, there is no guarantee that they will be able to obtain shelter the next day. Moreover, even if cited or arrested on one day, approximately 50,000 unsheltered individuals will face the same odds and impossibility of compliance that day and the next day, through no fault of their own, because there will still be no place for them to rest during the day or night other than the streets, sidewalks and other public places.

**A. The Availability of a “Necessity Defense” Does Not Cure the Eighth Amendment Violation**

In *Jones*, the Ninth Circuit questioned the City of Los Angeles' policy of criminal enforcement of LAMC §41.18(d) when the City conceded homeless individuals could not be convicted based on a necessity defense. 444 F.3d at 1131. The City affirmatively argued that the draconian ban applied against Mr. Jones and the other plaintiffs need not be enjoined because everyone cited would be able to raise a successful necessity defense.

This argument was properly rejected because it offended the Eighth Amendment's assurance against cruel and unusual punishment. The Ninth Circuit asked the obvious question: "If there is no offense for which the homeless can be convicted, is the City admitting that all that comes before is merely police harassment of a vulnerable population?" *Id.*

In California, appellate courts have carved out an affirmative defense of necessity "despite the absence of any statutory articulation of this defense and rulings from the California Supreme Court that the common law is not a part of the criminal law in California." *People v. Garziano*, 230 Cal. App. 3d 241, 243 (1991); *see also In re Eichorn* 69 Cal. App. 4th 382, 388 (1988); (charged with violating a ban on sleeping in public places).

*In re Eichorn* concerned a homeless veteran who was arrested and convicted for sleeping on the grounds of the Santa Ana Civic Center in violation of the city's anticamping ordinance. *Id.* at 382-87. The

*Eichorn* court set aside the conviction, finding that the trial court committed error when it refused to allow Eichorn to raise a necessity defense. *Id.* “There was substantial if not uncontradicted evidence that defendant slept in the civic center because his alternatives were inadequate and economic forces were primarily to blame for his predicament.” *Id.* at 390. Therefore, defendant was “entitled to raise a necessity defense to charges he violated the camping ordinance” *Id.* at 391.

In the same vein, the California Supreme Court held that the necessity defense was available to any person cited under a Santa Ana ordinance banning “camping” and storage of personal property on public property, even though the Court rejected a facial challenge to the ordinance. *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1087-1088 (1995) .

The necessity defense is rooted in the public policy need to protect individuals against criminal punishment in circumstances where criminal conduct is pursued to avoid a greater “harm or evil” without the availability of an alternative legal course of action. *In re Eichorn* 69 Cal. App. 4th at 389. But the necessity defense can only be raised after the criminal charges are brought and is asserted after the fact to absolve otherwise criminal conduct despite proof of a crime. *Id.* at 389. See also *People v. Pepper* 41 Cal. App. 4th 1029, 1035 (1996)). In short. “the Eighth Amendment does not permit punishing a homeless

person for public camping when the camping is an unavoidable consequence of being homeless. *State v. Barrett*, 302 Or. App. 23, 44–45 (2020) (Ortega, J., concurring in the judgment).

Again, as the Ninth Circuit emphasized in *Jones*, the availability of a necessity defense would not eliminate the continued and repeated threat of being “fined, arrested, imprisoned, and/or prosecuted, as well as suffer the loss of their personal property.” *Id.* at 1131. The Court understood that unhoused litigants likely would not have counsel to raise the necessity defense, nor would they have the knowledge or resources to raise the defense on their own. *Id.* In the face of daily criminalization of essential life activities, unhoused individuals will continue to pay the repercussions for circumstances that are beyond their control, meaning they will have to weigh survival or a restriction of their freedom.

#### **B. The Adverse Consequences of Criminalization Support the Holding that the Eighth Amendment is Violated Here**

Consistent with the holding in *Jones*, in 2019 the Los Angeles Homeless Services Authority (“LAHSA”) issued “Guiding Principles and Practices for Local Responses to Unsheltered Homelessness.” LAHSA recognized the adverse consequences of criminalization as the response to homelessness.

Using the criminal system to address homelessness is not only personally harmful to the individual charged, but “disruptive to progress toward ending their homelessness. document recognized the trauma resulting from arrest, citation and incarceration and emphasized that criminalization should be the last resort because of “the serious adverse consequences on a person experiencing homelessness. LAHSA also emphasized that criminal penalties, including fines and jail time, impede efforts to achieve “stability, work toward their goals, and secure employment and/or long-term housing.” *Id.*

The same conclusions were reached in a June 2023 statewide study of homelessness published by the Benioff Homelessness and Housing Initiative at University of California, San Francisco. Considering the impact of criminal charges on homeless individuals, the report found that it was necessary to “address the criminal justice system to homelessness cycle.” *Toward a New Understanding The California Statewide Study of People Experiencing Homelessness, Policy Recommendations*, p.87.

Nearly one in five participants (19%) entered homelessness from an institutional setting, including jail and prison. Thirty-seven percent spent time in prison and 77% spent time in jail at some point in their lifetimes. While experiencing homelessness, 30% of all participants had a jail stay during their current episode. Participants reported their prior criminal

justice records were a barrier to employment and housing. *Id.* at 87.

A recent analysis conducted by LAHSA also assessed LAMC 41.18 operations from December 2021 to November 2023, a period over which 174 encampment clear-outs were conducted in Los Angeles.<sup>32</sup> The report considered whether 41.18 was effectively reducing homelessness by 1) housing Angelenos and 2) preventing encampments from returning. In this regard, LAHSA concluded that 41.18 was ineffective.<sup>33</sup> Among this report's key findings were that nearly all encampments reemerged post-clearing. In one encampment clearing, 52 out of 54 residents of the encampment wanted shelter, but only 2 were provided with shelter.<sup>34</sup>

The report also noted that displacement of unhoused individuals often results in them losing contact with service providers. “[E]ncampment clearings can disrupt their service pathway. Clients may move away from the location and providers may lose contact after clients are displaced. Clients may also become distrustful of providers and refuse services after being

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<sup>32</sup>Nick Gerda, *Hidden City Report Finds LA Council's Signature Anti-Encampment Law Is Failing*, Laist, (Mar. 1, 2024) <https://laist.com/news/housing-homelessness/los-angeles-homeless-enforcement-report-on-4118>

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

forced to move from their current location. Encampment clearings can lead to a loss of ID and documentation that are crucial for ongoing services and eventual housing.” *Id.*, p. 4.

Similarly, encampment clearings can lead to a loss of vital documents — documents, such as a birth certificate, that are required to prove identification.<sup>35</sup> Without these vital documents, unhoused individuals are unable to procure a driver’s license, access their social security benefits, visit a doctor, fill out a W-9, open a bank account, save for their future, access food stamps, or, crucially, find housing.<sup>36</sup> Their lack of a birth certificate and other vital documents renders unhoused people invisible, and it makes their journey out of houselessness virtually impossible.

In other words, not only does criminalizing unhoused individuals not deter houselessness (and thus not serve a legitimate penological purpose), but by causing displacement and removal, criminalization can dispossess vulnerable people of their access to benefits — those benefits intended precisely for people in their economic condition. In doing so, criminalization traps people in houselessness. The loss of

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<sup>35</sup> *Id.*

<sup>36</sup> Teresa Wiltz, Without ID, Homeless Trapped in Vicious Cycle, Stateline, (May 15, 2017) <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/15/without-id-homeless-trapped-in-vicious-cycle>.



identification documents is merely one facet, albeit an important one, that highlights the fact that criminalization serves no legitimate penological purpose.

### CONCLUSION

The Ninth Circuit correctly held that the ordinance in question creates a violation of the Eighth Amendment. The judgment below should be affirmed.

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Respectfully submitted,

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