

No. 23-175

In The
Supreme Court of the United States

—◆—
CITY OF GRANTS PASS,

Petitioner,

v.

GLORIA JOHNSON AND JOHN LOGAN,
ON BEHALF OF THEMSELVES AND ALL
OTHERS SIMILARLY SITUATED,

Respondents.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF OF THE NATIONAL POLICE
ACCOUNTABILITY PROJECT AND THE LAW
ENFORCEMENT ACTION PARTNERSHIP AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

—◆—
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INTEREST OF *AMICI CURIAE*¹

The Law Enforcement Action Partnership (LEAP) is a nonprofit organization whose members include police, prosecutors, judges, corrections officials, and other law enforcement officials advocating for criminal justice and drug policy reforms that will make our communities safer and more just. Founded by five police officers in 2002 with a sole focus on drug policy, today LEAP's speakers bureau numbers more than 200 criminal justice professionals advising on police community relations, incarceration, harm reduction, drug policy, and global issues. Through speaking engagements, media appearances, testimony, and support of allied efforts, LEAP reaches audiences across a wide spectrum of affiliations and beliefs, calling for more practical and ethical policies from a public safety perspective.

The National Police Accountability Project (NPAP) has approximately 550 attorney members practicing in every region of the United States. Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for nonprofit organizations and community groups working on

¹ *Amici* file this brief pursuant to Sup. Ct. R. 37.3. This brief has been authored entirely by *Amici* and their counsel, and no Party or Party counsel, or any other person or entity, has contributed money or other financial support to fund the preparation or filing of this brief. *See* Sup. Ct. R. 37.6.

police and correction officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients. NPAP has recently filed *amicus* briefs at this Court in *Vega v. Tekoh*, No. 21-499, *Egbert v. Boule*, No. 21-147, *Thompson v. Clark*, No. 20-659, *Brownback v. King*, 19-546, and *Reed v. Goetz*, No. 21-442.



SUMMARY OF ARGUMENT

At both the certiorari and merits stage, Petitioner characterizes this case as one in which cities seek “ample leeway” to enforce neutral criminal laws, Pet. at 2, and presents its request to this Court as one in the best interest of unhoused people themselves, *e.g.* Pet. at 33-34. But Petitioner and its governmental *amici* fail to provide important context to this Court about the result of increasing contacts between law enforcement officers and unhoused people like the Respondents.

First, increasing law enforcement contacts with unhoused people is dangerous, and will increase violent outcomes—including fatalities. Police-civilian encounters already carry a greater risk of involving physical force than encounters between civilians and unarmed, non-law enforcement social services providers do. But the demographic profile of unhoused people—who are more likely to be racial minorities, have a mental health condition, and generally provoke a

background presumption of danger on the part of an officer—drastically increases the likelihood that police will use force against them. Any decision of this Court that encourages local governments to address homelessness with police rather than other solutions must reckon with that likely result.

Second, regardless of the likelihood of violence, shifting the response to homelessness to police imposes burdens on law enforcement members themselves. Officers are not trained or equipped to deal with the myriad social issues that result in living outside. And even if they were, diverting limited police resources to address homelessness reduces law enforcement's ability to solve crimes and do other important work to preserve public safety.

Third, the proposed criminal laws at issue in this case not only fail to succeed on their own terms, but actively undermine other, smarter efforts to reduce homelessness. As Petitioners do not seriously dispute, so-called sweeps of public encampments do not eliminate public homelessness; they merely relocate it. And the process of forced relocation, especially when combined with monetary fines and repeated, both undermines what little stability exists for unhoused people and limits their ability to escape homelessness.

Finally, even aside from the merits of public camping bans as a response to public homelessness, the laws at issue in this case have second order effects that undermine public safety. Criminalizing homelessness—and putting law enforcement officers in a position to

enforce such laws—undermines community trust in law enforcement. That erosion of community trust and support, in turn, undermines law enforcement officers’ abilities to do their jobs.

In deciding this case, *Amici* urge this Court to consider the likely effects of putting government’s response to public homelessness in the hands of police officers—the effects on the unhoused, on officers themselves, and on everyone who depends on law enforcement to do important work protecting public safety. In consideration of those effects, and for the reasons discussed by Respondents, this Court should affirm the Ninth Circuit.

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ARGUMENT

I. Criminalizing homelessness unnecessarily increases the potential for violent encounters between police and civilians.

Petitioner Grants Pass and many of its *amici* propose, at bottom, to respond to nonviolent public camping—people without homes existing in public space—with law enforcement. That response will result in violence, up to and including fatalities, for unhoused people. This result follows from the nature of police interactions with the public, and the slice of the public at issue in this case. For one thing, allocating responsibilities from social service providers to armed law enforcement officers increases the risk of violence during these encounters. But for another, the people that

Grants Pass proposes to criminalize are not a random sample of the population. The particular characteristics of unhoused people make law enforcement encounters with them more likely to end in violence than average encounters with people who will not have camping bans enforced against them.

First, *Amici* note the substantial reporting and data showing that police responses to non-emergency situations impose real dangers on individuals, communities, and police themselves. Both civilians and officers face danger in any encounter, not merely those that involve stopping in-progress crimes, serving warrants on armed suspects, or other higher-risk police activity. Part of this danger is because officers are “trained to presume danger” in virtually any encounter, and they react accordingly in ways that increase the likelihood of “anticipatory killings.” David Kirkpatrick, Steve Eder, Kim Barker, and Julie Tate, *Why Many Police Traffic Stops Turn Deadly*, *The N.Y. Times* (Oct. 31, 2021).² Another part of the danger is that even ostensibly lower-risk activities like welfare checks—where police respond to calls to check on the wellbeing of unarmed people not suspected of any offense—can cause substantial harm because they entail surprise and often involve individuals who are acting erratically or otherwise in apparent mental distress. There is always

² *Available at:* <https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html>. From 2016-2021, that manifested in more than 400 killings of unarmed people by law enforcement during vehicle stops, *id.*, including in situations described by officers and in case law as serving a community caretaking—rather than investigatory or crime-solving—function. *See id.*

a “risk for harm . . . given that no help was sought or requested and that the patient might be very surprised and/or distressed by the unexpected arrival of police.” Hal S. Wortzel, et al., *Welfare Checks and Therapeutic Risk Management*, *Journal of Psychiatric Practice*, 25:6 (Nov. 2019).³ In short, law enforcement encounters of all kinds always carry some risk of violence.

Second, though, law enforcement encounters with unhoused people are more dangerous than the average encounter between an officer and a civilian because of the specific characteristics of unhoused populations. Data from the annual “point in time” survey and other sources show that the unhoused population—the people whom Petitioner’s “camping ban” punishes, by design, for merely existing outside—is disproportionately composed of racial and ethnic minorities and people living with mental illness. *See State of Homelessness: 2023 Edition*, National Alliance to End Homelessness (2024) (describing rate of homelessness among Black people at more than four times the rate of homelessness among white people);⁴ *The Complex Link Between Homelessness and Mental Health*, *Psychology Today* (May 21, 2021) (explaining that 20-25% of unhoused population suffers from “severe mental illness,” and that the number rises among those experiencing

³ Available at: https://journals.lww.com/practicalpsychiatry/Fulltext/2019/11000/Welfare_Checks_and_Therapeutic_Risk_Management.8.aspx.

⁴ Available at: <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness/>.

“chronic/long term homelessness”).⁵ And it includes, especially, people who have more than one of these characteristics simultaneously. *See id.*

People whose demographic profile makes them most likely to fall under public camping bans face a startlingly higher risk of police violence. People with mental illness, for example, are “16 times more likely to be killed during a police encounter than other civilians approached or stopped by law enforcement.” Overlooked in the Undercounted—The Role of Mental Illness in Fatal Law Enforcement Encounters, Treatment Advocacy Center (Dec. 2015).⁶ The news media has covered numerous high-profile examples of police killing people during wellness checks. *See* Doug Criss and Leah Asmelash, *When a police wellness check becomes a death sentence*, CNN (Oct. 19, 2019) (collecting some notable incidents).⁷ And people with mental illness face danger even when not in an acute episode; that heightened risk applies to, for example, people on the autism spectrum, as well. *E.g.* Jamiles Lartey, *When Police Encounters With Autistic People Turn Fatal*, The Marshall Project (Mar. 16, 2024).⁸

⁵ Available at: <https://www.psychologytoday.com/us/blog/mind-matters-menninger/202105/the-complex-link-between-homelessness-and-mental-health>.

⁶ Available at: <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>.

⁷ Available at: <https://www.cnn.com/2019/10/19/us/wellness-check-police-shootings-trnd>.

⁸ Available at: <https://www.themarshallproject.org/2024/03/16/california-police-autism-disability>.

Similarly, communities of color also face starkly heightened danger in encounters with law enforcement. Black men, for example, “are about 2.5 times more likely to be killed by police” than white men. Frank Edwards, Hedwig Lee, and Michael Esposito, *Risk of being killed by police use of force in the United States by age, race–ethnicity, and sex*, Proceedings of the National Academy of Science, 116:34 (Aug. 20, 2019).⁹ Latino men are nearly one and a half times more likely to be killed by law enforcement than white men. *Id.* And as noted, when multiple factors that increase risk of violence combine, the risk of violence increases still further. See Abigail Abrams, *Black, Disabled, and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities*, TIME (June 25, 2020).¹⁰

Taken together, criminalizing homelessness and enlisting the police to address it will result in more encounters between police and civilians, with a population of civilians far more likely to die during those encounters.

⁹ Available at: <https://www.pnas.org/doi/pdf/10.1073/pnas.1821204116>.

¹⁰ Available at: <https://time.com/5857438/police-violence-black-disabled/>

II. Camping bans foist social issues onto law enforcement agencies that are not equipped to address them and divert limited police resources away from solving crimes.

Municipal governments' increasing reliance on their police officers as the primary points of contact with their unhoused populations not only poses a greater risk of violence, but also displaces higher-leverage police work. Police chiefs have cited enforcing ordinances targeting unhoused people as "one of the biggest challenges" facing their agencies, noting that they are "required to enforce these laws, even while studies have demonstrated that criminalization is an ineffective solution to homelessness; research shows that it costs cities money, perpetuates poverty, and provides only temporary relief instead of a sustainable remedy." *Practices in Modern Policing: Policing in Vulnerable Populations*. International Association of Chiefs of Police (2018).¹¹ Enforcing "camping bans" is a challenge for police because homelessness is a social issue, not a crime, and is best addressed by social service providers.

Police officers have been called upon to address homelessness simply because they are the default first responders, not because they have relevant expertise or training on the matter. Aaron Ross Coleman, *Police reform, defunding, and abolition, explained*, Vox (Jul.

¹¹ Available at: https://www.theiacp.org/sites/default/files/2018-11/IACP_PMP_VulnerablePops.pdf.

16, 2020).¹² Only 40% of surveyed police departments even have a policy on responding to issues involving unhoused people. *Practices in Modern Policing: Policing in Vulnerable Populations* at 24. Even officers with extensive guidance and training are ill-suited to respond to issues involving unhoused people because their primary training to fight serious crime is wholly at odds with engaging in social issues like homelessness, much less solving it. See Roge Karma, *We train police to be warriors—and then send them out to be social workers*, Vox (Jul. 31, 2020).¹³

The leading causes of homelessness—lack of affordable housing, stagnant wages, poverty, and, to a lesser extent, mental illness and addiction—are social ills that police officers are neither equipped nor expected to address. Gary Warth, *Cause of homelessness? It's not drugs or mental illness, researchers say*, Los Angeles Times (Jul. 11, 2022).¹⁴ And both the camping bans at issue in this case and police enforcement of them will not change that. Arrests or citations of unsheltered people lodging in public spaces does not provide resources that will address these root problems, nor does it protect against any real threat to public safety.

¹² Available at: <https://www.vox.com/21312191/police-reform-defunding-abolition-black-lives-matter-protests>.

¹³ Available at: <https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training>.

¹⁴ Available at: <https://www.latimes.com/california/story/2022-07-11/new-book-links-homelessness-city-prosperity>.

Accordingly, *Amici* and other law enforcement experts have determined that the most effective police response to unhoused individuals is one in which their participation is limited. This can include responding where a non-police co-responder is leading the interaction. *Critical Issues in Policing Series: The Police Response to Homelessness*, Police Executive Research Forum at 73-74, 2018.¹⁵ Policing experts recommend that law enforcement agencies collaborate with a broad range of private and public social service providers and not expect to “take the leading role.” *Id.* at 74. And numerous jurisdictions have developed successful programs in exactly these ways. *See, e.g.*, Natalie Weber and Michaela Mulligan, *St. Petersburg social workers go to 911 calls. What’s the program’s future?*, Tampa Bay Times (Jul. 31, 2023);¹⁶ Linh Ta, *Central Iowa police departments respond to crises in new ways*, Axios Des Moines (Mar. 4, 2024).¹⁷ This may help particularly given the aforementioned higher prevalence of mental health issues among unhoused people. *See* Ram Subramanian and Leily Arzy, *Rethinking How Law Enforcement Is Deployed*, The Brennan Center (Nov. 17, 2022).¹⁸ By contrast, laws that criminalize being

¹⁵ Available at: <https://www.policeforum.org/assets/PoliceResponsetoHomelessness.pdf>.

¹⁶ Available at: <https://www.tampabay.com/news/crime/2023/07/31/st-petersburg-social-workers-go-911-calls-whats-programs-future>.

¹⁷ Available at: <https://www.axios.com/local/des-moines/2024/03/04/mental-health-heart-iowa-community-services-police>.

¹⁸ Available at: <https://www.brennancenter.org/our-work/research-reports/rethinking-how-law-enforcement-deployed>.

unhoused and living outside put police in a position where they are forced to do work far outside of the scope of their core responsibilities.

Worse, directing law enforcement to respond to non-violent public camping stops them from spending time on activities that matter the most. Law enforcement resources should be used efficiently, with a focus on combating actual threats to public safety. But police officers typically spend only a fraction of their time responding to violent crimes like homicide, robbery, rape, and aggravated assault. Jeff Asher and Ben Horwitz, *How Do the Police Actually Spend Their Time?*, The New York Times (Nov. 8, 2021).¹⁹ This has contributed to declining clearance rates, which has predictable and negative effects on public safety. *See, e.g.*, Data Release: Gun Violence Clearance Rates and Case Outcomes, Philadelphia City Controller (Jan. 15, 2022) (describing 36.7% clearance rate of fatal shootings and 18.9% clearance rate of non-fatal shootings in 2020, and noting rising homicides). But addressing violent crimes is precisely what we train and expect police officers to focus on. Restricting the use of police in enforcement of camping bans enables them to prioritize combatting serious and violent crimes over the social issues for which they are ill-suited and ill-prepared to address.

¹⁹ Available at: <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

III. Forcing police to participate in enforcing laws targeting unhoused people is counter-productive to alleviating homelessness.

Arrests and encampment sweeps do not even succeed at alleviating homelessness on their own terms. These tactics simply move unhoused people from one place to another. Experts on homelessness have observed that “anti-homeless laws and enforcement fail to reduce urban disorder, but create instead a spatial churn in which homeless people circulate between neighborhoods and police jurisdictions rather than leaving public space.” Chris Herring, Dilara Yarbrough, and Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 Soc. Problems 1, 1 (2019). So long as there is a shortage of affordable housing and shelter space, there will be people surviving in public spaces. Investing in police-led sweeps rather than affordable housing and living wages, among other policy solutions, is a very expensive way to perpetuate homelessness.

The criminalization of homelessness not only fails to alleviate the crisis but exacerbates it. Move-along orders destroy the social networks created between neighbors at encampments—networks which unhoused people rely upon to keep their belongings, and their persons, safe. Herring, et al., *supra*, at 10. Encampment sweeps “disrupt[] the security and trust established within existing encampments . . . and . . . forc[e] people into new territories of strangers surviving without housing,” leaving displaced people vulnerable to violence. *Id.* at 12. Citations wreak additional

havoc, as they saddle already-impooverished unsheltered people with fines they cannot afford to pay. *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*, National Law Center on Homelessness & Poverty 15 (2019). The failure to pay a fine may result in the issuance of a bench warrant and incarceration. Herring, et al., *supra*, at 10. Finally, the mark of a criminal record can also make it very difficult for individuals to secure housing and employment. Sean E. Goodison, et al., *The Law Enforcement Response to Homelessness: Identifying High-Priority Needs to Improve Law Enforcement Strategies for Addressing Homelessness*, Rand Corporation 12 (2020). By needlessly entangling unhoused people in the criminal legal system, law enforcement responses to homelessness compound the stress, instability, and scarcity of resources they already experience. This heightened vulnerability in turn severely impedes the efforts of unsheltered people to escape homelessness.

IV. Criminalizing homelessness is also detrimental to law enforcement because it erodes community trust.

Police enforcement of bans on existing outside not only increases violence, distracts from other work, and does not actually address the homelessness crisis, but it breeds distrust of government and thereby undermines public safety. Because negative interactions with law enforcement can leave unhoused people skeptical of all government workers, these unnecessary police encounters can make it difficult or even impossible

for government-employed service providers to connect unhoused people with shelter and other welfare services. Herring, et al., *supra*, at 16. Burgeoning distrust also affects law enforcement more acutely even than other government services, because unhoused people become much less likely to report crimes or cooperate with the police as witnesses. Housing Not Handcuffs, *supra*, at 65. This suspicion of law enforcement and lack of cooperation ultimately erodes public safety, because there is a direct relationship between trust in law enforcement and better outcomes for police and the communities they serve. *See, e.g.*, Tom R. Tyler, *Why People Obey the Law*, 5 (2006) (“Of particular importance is the impact of [people’s] experiences [with legal authorities] on views of the legitimacy of legal authorities, because legitimacy in the eyes of the public is a key precondition to the effectiveness of authorities.”); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *Yale L. J.* 2054, 2059 (2017) (“Empirical evidence suggests that feelings of distrust manifest themselves in a reduced likelihood among African Americans to accept law enforcement officers’ directives and cooperate with their crime-fighting efforts.”) (citations omitted).

By contrast, connecting unhoused people with government-employed service providers reduces the possibility of dangerous encounters with police officers not trained to handle the homelessness crisis. This in turn will increase community trust in law enforcement, aiding officers’ abilities to do their jobs. *See Death Sentence*; *see also* Cedric L. Alexander, *Ex-cop: Atatiana*

Jefferson's killing further erodes police legitimacy,
CNN (Oct. 14, 2019).²⁰

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CONCLUSION

Amici experts on law enforcement urge the Court to consider the myriad ways that criminalizing un-housed people for merely existing in public not only fails at its stated purpose, but causes other cascading negative consequences for police, unhoused people, and wider society. For these reasons, along with the reasons in Respondents' brief, *Amici* ask the Court to affirm the Ninth Circuit.

Respectfully submitted,

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²⁰ Available at: <https://www.cnn.com/2019/10/14/opinions/atatiana-jefferson-police-shooting-death-alexander/index.html>.