

No. 23-175

In The
Supreme Court of the United States

—◆—
CITY OF GRANTS PASS, OREGON,

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 57 SOCIAL SCIENTISTS WITH
PUBLISHED RESEARCH ON HOMELESSNESS AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	5
I. The enforcement of anti-homeless laws has wide-ranging and lingering negative impacts on those experiencing homelessness and creates significant barriers to exiting homelessness.....	5
A. The enforcement of anti-homeless laws harms individuals’ health	5
1. Property seizures result in negative health consequences.....	6
2. Enforcement of anti-homeless laws pushes people unable to access shelter into hazardous environments.....	8
3. Enforcing anti-homeless laws can inflict prolonged sleep deprivation, which can worsen mental health....	10
4. Enforcement of anti-homeless laws can increase the spread of infectious diseases.....	12
B. The enforcement of anti-homeless laws exacerbates poverty, extends homelessness, and inflicts unnecessary suffering by creating barriers to accessing shelter, mental and behavioral health treatment, medical care, jobs, and housing	13

TABLE OF CONTENTS—Continued

	Page
1. Anti-homeless laws result in incarceration, which perpetuates homelessness and causes a cascade of harms.....	13
2. Anti-homeless laws impose unpayable fines and fees, which perpetuate poverty and keep people homeless	15
3. Enforcement of anti-homeless laws frequently entails destruction of homeless individuals’ property.....	17
4. Displacement from criminalization impacts access to treatment and medical and social services.....	18
II. Anti-homeless laws like the ones enforced by Grants Pass serve no penological purpose because they do not successfully reduce homelessness or its negative effects.....	21
A. Criminalizing homelessness fails to reduce homelessness in public space because involuntarily homeless people cannot be induced by any level of criminal penalty to stop sleeping outside.....	21
B. Criminalizing homelessness fails to increase public safety	25
C. Criminalizing homelessness fails to push individuals into sustained shelter and successful treatment.....	28

TABLE OF CONTENTS—Continued

	Page
D. Criminalizing homelessness fails to improve public health.....	30
III. The decision below does not bar localities from addressing homelessness in public space by adopting more effective alternatives to criminalization.....	31
A. City responses to homelessness in public space that are coordinated, planned, and connect people to services have been shown to be effective without enforcement of anti-homeless laws.....	32
B. Alternative responders that divert 911 calls regarding homelessness have been shown to more effectively reduce crime and better connect people to services....	33
CONCLUSION.....	35
APPENDIX	
List of <i>Amici Curiae</i>	1a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Papachristou v. City of Jacksonville</i> , 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972)	2
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TABLE OF AUTHORITIES—Continued

	Page
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TABLE OF AUTHORITIES—Continued

	Page
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Ariana Gonzalez & Quinn Tyminski, <i>Sleep Deprivation in an American Homeless Population</i> , 6 <i>Sleep Health</i> 489 (2020).....	10
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TABLE OF AUTHORITIES—Continued

	Page
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TABLE OF AUTHORITIES—Continued

	Page
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TABLE OF AUTHORITIES—Continued

	Page
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	Page
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TABLE OF AUTHORITIES—Continued

	Page
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TABLE OF AUTHORITIES—Continued

	Page
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TABLE OF AUTHORITIES—Continued

	Page
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INTEREST OF *AMICI CURIAE*¹

In the more than two dozen *amicus curiae* briefs submitted to the court during the petition phase, references to social scientific research were conspicuously missing. Most *amici* failed to reference any empirical analysis or evidence-based research—even cities and counties that made empirical claims and had access to internal analyses. This is not due to any lack of such research, as this brief shows. It is because the social scientific consensus on the impacts, costs, and consequences of laws like the one Grants Pass seeks to enforce overwhelmingly contradicts Petitioner’s arguments and claims.

*Amici*² are social science researchers who have published peer-reviewed scholarship on homelessness. Nearly all are university professors. Several have been expert witnesses on related cases. Many also work with people experiencing homelessness, government agencies, and service providers that will be impacted by this decision. As researchers with expertise directly related to this case, they write to shed light on the practical consequences that overturning Ninth Circuit precedent would have.

¹ This brief was not authored in whole or in part by counsel for any of the parties. No party or party’s counsel contributed money for preparing or submitting this brief, and no one other than *amici* and their counsel have contributed money for preparing or submitting this brief.

² *Amici* are listed in the attached appendix.

Grants Pass and other cities that use criminal law to attempt to banish homeless individuals from public space typically purport to do so for rehabilitative or deterrent purposes. They claim that the threat of arrest can make unsheltered life unviable and force individuals to accept services, eventually leading to an overall decrease in homelessness. Research points to the opposite. Grants Pass's punishment scheme will not decrease homelessness—it will instead prolong homelessness and needless suffering. *Amici* thus respectfully submit this summary of social scientific research on the impact of laws regulating homelessness in public space. *Amici* believe this will aid the Court in evaluating the lack of any legitimate penological justification for Grants Pass' scheme and, ultimately, in affirming the judgment below.

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SUMMARY OF ARGUMENT

Grants Pass's punishment scheme makes it illegal for unsheltered people to cover themselves with a blanket when they sleep on public property, even when they have no access to shelter. While this is an extreme example, local governments have enforced ordinances against standing, sitting, resting, and sleeping in public space for at least the past fifty years, since this Court first addressed such an ordinance in *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972). This has allowed social scientists decades to research the impacts of these laws and their enforcement. Nat'l L. Ctr. on Homelessness &

Poverty, *Housing Not Handcuffs* 12–13 (2019). This research has occurred across the U.S., from small towns to large cities, and consistently arrived at a broad consensus on three findings relevant to the case at hand.

First, *the enforcement of laws criminalizing homelessness has been shown to have wide-ranging and lingering negative impacts on those experiencing homelessness, which create significant barriers to exiting homelessness.*³ Enforcement of such laws negatively impacts homeless individuals’ health through loss of medication and medical devices; pushes people into hazardous environments along waterways and freeway underpasses; inflicts prolonged sleep deprivation; and catalyzes the spread of infectious disease. Enforcement also exacerbates poverty and extends an individual’s homelessness, most prominently through incarceration, the mark of a criminal record, and impossible-to-pay fines and fees. Enforcement creates churn that makes it difficult for individuals to maintain property and relationships long enough to utilize them to exit homelessness. These impacts create significant barriers to accessing shelter and sustaining engagement with mental and behavioral health treatment, medical care, employment, and housing.

Second, *anti-homeless laws like the scheme in Grants Pass serve no penological purpose. Research consistently shows that the enforcement of anti-homeless laws*

³ Because ordinances regulating sitting, standing, and sleeping in public space are primarily, if not exclusively, aimed at addressing homelessness, scholars in this field typically refer to them as “anti-homeless laws” or “anti-homeless ordinances.”

fails to deter any behavior or to sustainably accomplish the goals lawmakers purport to have. Enforcement may temporarily clear homeless people and their property from any given block, acceding to the demands of individual residents and businesses while creating headlines about governmental competence and response that benefit officials and politicians. But studies consistently show that on broader geographic scales, the enforcement of anti-homeless laws fails to (a) reduce homelessness in public space, (b) increase public safety, (c) push individuals into shelter or treatment, or (d) improve public health. More often, such enforcement does the opposite.

Third, *the Grants Pass ruling does not prevent local governments from addressing the issues associated with homelessness in public space. Alternatives to criminalization exist and have been shown to be more effective.* The claims by some officials that these rulings tie their hands and serve as an impediment to sound policy are baseless and self-serving. They also directly contradict federal guidance issued by the U.S. Interagency Council on Homelessness about sound methods of addressing unsheltered homelessness. *7 Principles for Addressing Encampments* 2–5 (June 2022); *Ending Homelessness for People Living in Encampments* 3–4 (Aug. 2015); *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 2–7 (June 2012). Research consistently demonstrates that coordinated responses to homelessness in public space that sustainably connect people to services are more

effective without the enforcement or threat of enforcement of anti-homeless laws.

◆

ARGUMENT

- I. **The enforcement of anti-homeless laws has wide-ranging and lingering negative impacts on those experiencing homelessness and creates significant barriers to exiting homelessness.**
 - A. **The enforcement of anti-homeless laws harms individuals' health.**

People experiencing homelessness who are unsheltered have higher rates of chronic illness, comorbid chronic conditions, and mortality due to chronic illness and injuries than their housed or sheltered counterparts. Jessica Richards & Randall Kuhn, *Unsheltered Homelessness and Health: A Literature Review*, 2 Am. J. Preventive Med. Focus, art. no. 100043, Mar. 2023, at 1, 8. When governments enforce anti-homeless laws without making adequate shelter available, enforcement “result[s] in adverse health outcomes, exacerbate[s] racial disparities, and create[s] traumatic stress, loss of identification and belongings, and disconnection from much-needed services.” U.S. Interagency Council on Homelessness, 7 *Principles, supra*, at 1. Studies demonstrate that this occurs through several mechanisms.

1. *Property seizures result in negative health consequences.*

Several large survey studies have shown that unhoused people's property is commonly confiscated or destroyed as a matter of procedure while enforcing anti-homeless laws. This occurs when a person is arrested and separated from their property or when police cordon off an area for sanitation workers to conduct camp clearances. This confiscation is a common practice in cities throughout the U.S. See Jennifer Darrah-Okike et al., *"It Was Like I Lost Everything": The Harmful Impacts of Homeless-Targeted Policies*, 28 Hous. Pol'y Debate 635, 635 (2018); Tony Robinson, *No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness*, 55 Urb. Affs. Rev. 41, 49 (2019); Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 Soc. Problems 131, 131 (2020); J. L. Goldshear et al., *"Notice of Major Cleaning": A Qualitative Study of the Negative Impact of Encampment Sweeps on the Ontological Security of Unhoused People Who Use Drugs*, 339 Soc. Sci. & Med., art. no. 116408, Dec. 2023, at 1, 4. For instance, a 2021 California study of 3,200 adults experiencing homelessness in eight counties across eight distinct regions found that 36 percent had their belongings taken or destroyed by officials conducting abatements in the previous six months. Margot Kushel et al., U.C.S.F. Benioff Homelessness & Hous. Initiative, *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness* 65 (2023). Likewise,

studies conducted in San Francisco in 2015 (n=351) found that 46 percent of survey participants reported having lost property at the hands of city officials in the past. Herring et al., *Pervasive Penalty*, *supra*, at 140.

Across these studies, participants reported having lost expensive daily medicine needed to treat HIV or Hepatitis C, ID and benefit cards, and walkers, canes, crutches, and wheelchairs that were key to their survival and medical wellbeing on the streets. *Id.* at 140; Kushel et al., *supra*, at 65. These findings are corroborated by a study of medical providers, in which doctors and nurses reported on the health problems their homeless patients experienced from property seizures, leading to higher costs for those patients' care. Diane Qi et al., *Health Impact of Street Sweeps from the Perspective of Healthcare Providers*, 37 J. Gen. Intern. Med. 3707, 3707 (2022).

One *amicus* researcher recently documented the story, also reported in the press, of Anjileen Swan, a disabled homeless woman in Los Angeles who was ordered early this year to pack up and move her belongings. Sam Levin & Will Craft, *Revealed: 300% Surge in Deaths of Unhoused People in LA Amid Fentanyl and Housing Crises*, *The Guardian* (Feb. 22, 2024), <https://www.theguardian.com/us-news/2024/feb/22/los-angeles-unhoused-deaths-increase-housing-crisis-fentanyl-overdoses>. Swan was given 15 minutes to move before she would face a citation and her remaining property forfeited. Only days earlier, she had been discharged from the hospital following open-heart surgery and was physically unable to pack. *Id.* "I'm still trying to

work with the people who housed me to begin with and see why they can't put me back inside," Swan later told a journalist. "They want me to start all over." Swan died on the streets just a few days later, still waiting to get back inside. *Id.*

2. *Enforcement of anti-homeless laws pushes people unable to access shelter into hazardous environments.*

Studies have shown that people who are unsheltered are often trapped living in dangerous areas because those places are less likely to draw law enforcement attention. Spaces under freeways, alongside train tracks or waterways, or in industrial lots or abandoned properties are safer from police enforcement, but they also tend to be acutely hazardous areas with higher risk of vehicle-pedestrian strike, flooding, exposure to the elements, and pollution. Jamie Suki Chang et al., *Harms of Encampment Abatements on the Health of Unhoused People*, 2 Soc. Sci. & Med.—Qual. Res. Health, art. no. 100064, Dec. 2022, at 1, 4; C. J. Gabbe et al., *Reducing Heat Risk for People Experiencing Unsheltered Homelessness*, 96 Int'l J. Disaster Risk Ed., art no. 103904, Oct. 2023, at 1, 5–7; Erin Goodling, *Intersecting Hazards, Intersectional Identities: A Baseline Critical Environmental Justice Analysis of U.S. Homelessness*, 3 Env't & Plan. E: Nature & Space 833, 833 (2020); Shawn Flanigan & Megan Welsh, *Unmet Needs of Individuals Experiencing Homelessness Near San Diego Waterways: The Roles of Displacement and Overburdened Service Systems*, 43 J. Health & Hum.

Servs. Admin. 105, 109 (2020); Chris Herring, *The New Logics of Homeless Seclusion: Homeless Encampments in America's West Coast Cities*, 13 *City & Cmty.* 285, 291 (2014).

Anti-homeless laws and their enforcement also tend to push people further from various health- and medical-related resources they rely on, including healthcare providers, food and water, and hygiene resources such as toilets and laundromats. Elizabeth A. Frye et al., *Open Defecation in the United States: Perspectives from the Streets*, 12 *Env't Just.* 226, 226 (2019); Qi et al., *supra*, at 3707. Following the passage of a new anti-camping ordinance in Denver, homeless people reported living in more isolated conditions to avoid police. Enforcement dislocated unhoused people from social support systems critical to survival and health, resulting in higher rates of assault and worse mental health outcomes, among other consequences. Marisa Westbrook & Tony Robinson, *Unhealthy by Design: Health & Safety Consequences of the Criminalization of Homelessness*, 30 *J. Soc. Distress & Homelessness* 107, 107 (2021). In San Francisco, police officers routinely tell unsheltered people to move onto California Department of Transportation property along highways and beneath overpasses to avoid enforcement. Chris Herring, *Cruel Survival: Policing and Punishing Homelessness in the American City* (forthcoming 2024) (manuscript at 119, 126) (on file with the author and UC Press). Arrest records in Chico, California show that, following the passage of anti-homeless “sit-lie” prohibitions, arrests occurred in locations

incrementally further from downtown over time, pushing unsheltered people into ever more marginal and more dangerous environments. Jennifer Wilking et al., *Understanding the Implications of a Punitive Approach to Homelessness: A Local Case Study*, 10 *Poverty & Pub. Pol'y* 159, 159 (2018).

No one prefers to camp in railyards with soil soaked in asbestos and arsenic from train breaks, or in riverbeds where every drizzle and shower carries the threat of flash floods, or along highways choked with particulate matter and unceasing noise pollution. But most fear the threat of jail even more. Criminalization pushes people into places that are harmful to their health and wellbeing because, in these places and nowhere else, a homeless person's existence may be tolerated for a time.

3. Enforcing anti-homeless laws can inflict prolonged sleep deprivation, which can worsen mental health.

Adequate sleep is essential to health and wellbeing. Studies have documented that people experiencing homelessness get less sleep and experience increased daytime fatigue and unintentional sleep during the daytime. Ariana Gonzalez & Quinn Tyminski, *Sleep Deprivation in an American Homeless Population*, 6 *Sleep Health* 489, 489 (2020). Criminalization plays a large role in this; laws like Grants Pass's scheme necessitate constant movement.

At night, unsheltered homeless people must contend with the cold, exposure to the elements, and maintaining their personal safety in the dark and marginal locations where, as discussed above, they are forced to sleep. Meanwhile, people staying in congregate shelters also often struggle to obtain adequate sleep due to noise levels, overcrowding, lack of privacy, anxiety, theft, and fears about personal safety.

Many, if not most, shelters in the U.S. are closed during daytime hours, forcing shelter residents to spend much of their daytime hours in public spaces. Thus, homeless people struggle to attain adequate sleep even in jurisdictions that only enforce anti-homeless laws during daylight hours, and even homeless people who *have* a shelter bed may find themselves caught up in the enforcement net. In fact, one study found shelter residents were more likely to report at least one instance of unintentional sleep and more than 14 days of inadequate sleep (<7 hours) in the past month than unsheltered people. Nhu Huynh et al., *The Association of Sleep with Physical and Mental Health Among People Experiencing Homelessness*, 10 *Sleep Health* 48, 50 (2024).

Anti-homeless laws that force people to try to stay awake in public or face criminal penalties can have devastating impacts on homeless people's mental and physical health—and, for the many homeless individuals facing severe sleep deficits, can be literally physically impossible to obey.

4. Enforcement of anti-homeless laws can increase the spread of infectious diseases.

During the COVID-19 crisis, doctors and scientists at the CDC issued guidelines to local authorities instructing that “if individual housing options are not available,” they should “allow people who are living unsheltered or in encampments to remain where they are.” Nat’l Ctr. for Immunization & Resp. Dis., Ctrs. for Dis. Control & Prev., *Interim Guidance on People Experiencing Unsheltered Homelessness*, CDC Stacks (Jul. 8, 2021), <https://stacks.cdc.gov/view/cdc/107838>.

These guidelines were issued due to many of the same reasons discussed above. First, enforcement of anti-homeless laws worsens individual health, making people more susceptible to infection. Second, continually being moved can catalyze the spread of disease between groups. Third, enforcement pushes people further from access to water, toilets, and other means of maintaining personal hygiene. Fourth, confiscating tents and sanitary supplies reduces abilities to self-isolate and maintain hygiene. Fifth, displacement caused by enforcement hinders social outreach work to provide information about viruses, masks, testing, and vaccinations. Colette Auerswald et al., U.C. Berkeley Pub. Health Cmty. Action Team, *For the Good of Us All: Addressing the Needs of Our Unhoused Neighbors During the COVID-19 Pandemic* 21–22 (2020).

The CDC’s conclusion based on this evidence was that enforcing criminal laws against sitting or sleeping

in public—forcing people unsheltered people to move into jail and/or to a new location on the streets—would exacerbate the spread of COVID-19. And COVID-19 is not unique in this regard. According to surveys of medical professionals, anti-homeless laws similarly interfere with the management and prevention of other infectious diseases including HIV, STIs, Hepatitis C, and skin and soft tissue infections. *See* Qi et al., *supra*, at 3712.

B. The enforcement of anti-homeless laws exacerbates poverty, extends homelessness, and inflicts unnecessary suffering by creating barriers to accessing shelter, mental and behavioral health treatment, medical care, jobs, and housing.

1. Anti-homeless laws result in incarceration, which perpetuates homelessness and causes a cascade of harms.

People experiencing homelessness most often experience incarceration in two scenarios: (1) an arrest for violating an anti-homeless law, or (2) an arrest on a bench warrant due to unpaid civil citations for violating an anti-homeless law. Incarceration for more than a couple of days may result in the termination of federal health benefits such as Social Security, Medicare, or Medicaid, or loss of a shelter bed. Chris Koyanagi et al., Bazon Ctr. for Mental Health L., *Arrested? What Happens to Your Benefits If You Go to Jail or Prison?* 3

(2006); Herring, *Cruel Survival*, *supra*, at manuscript 115. For people with mental health disorders, the alternately rigid and chaotic jail environment can be especially challenging, and research has found high levels of destabilization and decompensation while incarcerated. Dora M. Dumont et al., *Public Health and the Epidemic of Incarceration*, 33 *Ann. Rev. Pub. Health* 325, 329 (2012). The result is often an increase in symptoms of trauma, anxiety, depression, and psychosis, both while in jail and after release. Kristin Turney et al., *As Fathers and Felons: Explaining the Effects of Current and Recent Incarceration on Major Depression*, 53 *J. Health Soc. Behav.* 465, 465–66 (2012).

In San Francisco, those who are unsheltered upon arrest were found to be more likely to be unsheltered upon release—and in an even more vulnerable state, due to the loss of possessions such as clothing, identification, and medications during their incarceration from either theft or camp clearances. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 *Am. Socio. Rev.* 769, 788 (2019). And people who had been in shelters also become unsheltered upon release when they lose their beds due to time spent in jail. *Id.*

Many people experience incarceration for the first time due to their homelessness, and the effects are lasting. Incarceration often means a loss of employment and difficulty securing new employment. Bruce Western & Becky Pettit, *Incarceration & Social Inequality*, 139 *Daedalus* 8, 13 (2010); Devah Pager, *The Mark of a Criminal Record*, 108 *Am. J. Socio.* 937, 937

(2003). People with criminal records go on to face exclusions in the housing market due to landlord discrimination and restrictions on government-supported housing. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 *Am. J. Socio.* 88, 88 (2012). Criminalizing homelessness is a vicious cycle, saddling people with records that will make it far more difficult for them to secure housing and employment to support themselves, almost assuring that they will become repeat “offenders.”

2. *Anti-homeless laws impose unpayable fines and fees, which perpetuate poverty and keep people homeless.*

Penalties such as fines and fees imposed for violation of anti-homeless laws further impoverish, destabilize, and inflict undue harm on unhoused people. Citations seen as nominal to most are nearly impossible for unhoused people to pay, resulting in debt and bench warrants that create significant barriers to exiting homelessness. Katherine Beckett & Steve Herbert, *Banished: The New Social Control in Urban America* 103 (2009); Forrest Stuart, *Down, Out, and Under Arrest: Policing and Everyday Life in Skid Row* 78 (2016).

A study in San Francisco recounts the story of Bruce, who had received eight citations over his two years of homelessness for violating various anti-homeless ordinances. Herring et al., *Pervasive Penalty, supra*, at 143. Before becoming homeless, Bruce had only received tickets for speeding. The tickets initially amounted to just over \$1,000. But due to his inability

to pay, additional fines and fees accumulated to nearly \$4,000. The fines not only spoiled his credit but resulted in a suspended driver's license. Finally, a bench warrant issued for his arrest. Bruce lamented, "Worst of all is, even if I get on some payment plan, the DMV won't reissue my license until the last penny is paid! So how am I supposed to move forward?" Although Bruce occasionally stayed in a shelter when space was available, because of the city's shelter time-limits and wait-lists, Bruce was frequently left with no choice but to sleep outside and risk citation. *Id.*

This was found to be a common experience among San Francisco's homeless, where a survey (n=351) found that 85 percent of those unsheltered had received at least one citation in the past year and 43 percent had received five or more citations. *Id.* at 138. This finding was corroborated by court data, which showed that over 14,000 citations had been issued for homeless-related quality of life ordinances in 2014. Herring, *Complaint-Oriented Policing, supra*, at 790. The survey also found that only 10 percent of study participants were able to pay off their most recent ticket. Most citations reported in the survey resulted in an additional fee of more than twice the amount of the original ticket, a bench warrant issued for arrest, revocation of driver's license, and report to a credit agency. Herring et al., *Pervasive Penalty, supra*, at 142. These seemingly minor, and often purportedly non-criminal, citations lead to arrest, incarceration, and lingering exclusions that make it even harder to escape homelessness.

Warrants from unpaid citations result in individuals being disqualified from eligibility for public housing and Section 8 vouchers. Desmond, *supra*, at 88. Meanwhile, spoiled credit caused by unpaid fines can be detrimental to attaining market-rate rental housing. In some states, people may not participate in residential drug and mental health treatment programs unless all outstanding warrants are resolved. The overhanging warrants for citations also discourage some individuals from seeking help from police, reporting crimes, and even accessing medical or social benefits out of fear that they will be detained. Alice Goffman, *On the Run: Wanted Men in a Philadelphia Ghetto*, 74 *Am. Socio. Rev.* 339, 339 (2009).

License suspension limits job opportunities. Many jobs require commutes or driving, but moreover, many additional employers require licenses, using them as a signal or filter when considering applicants for low-level jobs. Reinstating a suspended driver's license can be costly—too costly for a person who doesn't already have a job.

3. Enforcement of anti-homeless laws frequently entails destruction of homeless individuals' property.

In addition to negative health consequences, the destruction of property pursuant to anti-homeless laws causes people to lose material resources they need to meet their basic needs. Researchers have reported that items frequently destroyed include personal

documents needed for accessing jobs, housing, and services such as IDs, driver's licenses, financial documents, birth certificates, and benefit cards; items required for work such as clothing and uniforms, bicycles, tools, and computers; and irreplaceable mementos, including letters, last remaining family photographs, ashes of relatives, and medals of military accomplishment. Chang et al., *supra*, at 4; Herring et al., *Pervasive Penalty, supra*, at 140; Kushel et al., *supra*, at 12; Ananya Roy et al., UCLA Luskin Inst. on Ineq. & Dem., *(Dis)Placement: The Fight for Housing and Community After Echo Park Lake* 37 (2022). In interviews with 70 people across three of Honolulu's encampments, 51 percent of respondents reported the loss of personal identification during sweeps, which created hindrances to their obtaining employment and services. Darrah-Okike et al., *supra*, at 644. These losses create a devastating cycle of hardship, further hindering unhoused individuals' ability to stabilize their lives. Those who have had their belongings destroyed describe feelings of isolation, anxiety, abandonment, and a loss of hope. *Id.* at 635; Robinson, *supra*, at 41; Goldshear et al., *supra*, at 1.

4. Displacement from criminalization impacts access to treatment and medical and social services.

Displacement caused by enforcement can also interfere with people's access to social services and aid. In Seattle, Beckett and Herbert describe how trespassing ordinances and park exclusions effectively banish

individuals from certain downtown areas. *Supra*, at 63. The impaired mobility made it impossible for people to access social services, medical care, and shelter, which were concentrated in the same zones from which they were excluded. Sparks found the same pattern in San Francisco. Tony Sparks, *Reproducing Disorder*, 45 Soc. Just. 51, 60 (2018). Likewise, in Dallas, 311 calls regarding homeless concerns are concentrated within service-dense locations, making it likely that service-seeking activities will translate into a police encounter. Hannah Lebovits, *A Call for Help: Constructing a Typology of Forced Encounters Between Vulnerable Citizens and the State* 1 (Feb. 29, 2024) (unpublished manuscript) (on file with author).

In Los Angeles, various researchers have documented how common it is for people to miss appointments with social workers, doctors, and court dates to protect their property from the threat of a sweep. Roy et al., *supra*, at 37; Goldshear et al., *supra*, at 5; Randall Kuhn et al., UCLA Campuswide Homelessness Init., *Periodic Assessment of Trajectories of Housing, Homelessness, and Health Study (PATHS). Fall 2023 Update: Encampment Sweeps and Housing Trajectories* 20 (2023), <https://escholarship.org/uc/item/46n649n0>. In his ethnography shadowing public health outreach workers in San Francisco, Herring documents how social workers were frequently unable to locate clients who had finally been assigned shelter, a rehab placement, or even permanent housing because they had been displaced by policing. Chris Herring, *Complaint-Oriented “Services”: Shelters as Tools for Criminalizing*

Homelessness, 693 ANNALS Am. Acad. Pol. & Soc. Sci. 264, 274 (2021). He also witnessed various people refuse hospitalization despite gruesome infections, debilitating pain, and serious illnesses, primarily out of fear of losing their belongings at the hands of city workers while away being treated. Herring, *Complaint-Oriented Policing, supra*, at 791; see also Qi et al., *supra*, at 3711, for corroboration of this phenomenon from healthcare providers.

Many people experiencing homelessness rely on the aid of nearby family members, churches, charities, or nonprofits that provide food and other support. These local relationships, in addition to providing stability, immediate needs, and necessary human connection, can be essential networks for accessing work and housing. Tony Sparks, *Tent City Seattle: Refusing Homelessness and Making a Home 1* (2024). As people are cycled from neighborhood to neighborhood by law enforcement, it becomes increasingly challenging for them to maintain these ties that are necessary to sustain themselves and escape homelessness. Punishment schemes like the one in Grants Pass that force people to not only switch neighborhoods but to leave an entire city or region have even more severe impacts.

II. Anti-homeless laws like the ones enforced by Grants Pass serve no penological purpose because they do not successfully reduce homelessness or its negative effects.

Anti-homeless ordinances such as those in Grants Pass are often justified on grounds that they will reduce homelessness in public spaces, increase public safety, reduce threats to public health, and/or push individuals into shelter or successful treatments. But research consistently shows that the enforcement of anti-homeless laws fails to deter the behaviors or sustainably accomplish these goals. Instead, social scientific consensus shows the opposite is true.

A. Criminalizing homelessness fails to reduce homelessness in public space because involuntarily homeless people cannot be induced by any level of criminal penalty to stop sleeping outside.

There is no evidence that anti-homeless laws contribute to a reduction in total homelessness or the number of unsheltered individuals at either a city- or county-wide scale. Hannah Lebovits & Andrew Sullivan, *Do Criminalization Policies Impact Local Homelessness? Exploring the Limits and Concerns of Socially Constructed Deviancy* 1 (Feb. 4, 2024) (unpublished manuscript), <https://ssrn.com/abstract=4716230>. Indeed, even when cities dedicate significant public resources and dollars to closure efforts, calls complaining about encampments in the area have not been shown to decrease. Bennett Allen & Michelle L. Nolan, *Impact*

of a Homeless Encampment Closure on Crime Complaints in the Bronx, New York City, 2017: Implications for Municipal Policy, 19 J. Evid.-Based Soc. Work 356, 356 (2022).

This is consistent with the fact that almost all homeless people are involuntarily homeless and truly have no non-public space to go to, no matter how severe the criminal penalties for remaining outside become. Many cities, like Grants Pass, face severe affordable housing shortages and shelter deficits. The U.S. currently has a shortage of 7.3 million affordable homes for extremely low-income renters and a deficit of shelter beds in the hundreds of thousands. Andrew Aurand et al., Nat'l Low Income Hous. Coal., *The Gap: A Shortage of Affordable Homes* 1 (2024); Tanya de Sousa et al., U.S. Dept. of Hous. & Urb. Devel., *The 2023 Annual Homeless Assessment Report (AHAR) to Congress* 2 (2023).

For instance, there are roughly 46,260 unhoused people in Los Angeles on any given night, but only about 16,100 shelter beds available—less than one bed for every three people experiencing homelessness. Kenneth Mejia, L.A. City Controller, *Homelessness Audit: Interim Housing & Shelter Bed Data* 3 (2023). Individual unsheltered people may be further barred from some number of theoretically available beds by restrictions based on gender, age, income, sexuality, religious practice, curfews that conflict with employment obligations, and time limits on stays. Tens of thousands of Los Angeles's unsheltered people would move inside if shelter space or safe sleep sites were made available, and nearly all would accept permanent housing. Jason

Ward et al., *Recent Trends Among the Unsheltered in Three Los Angeles Neighborhoods: An Annual Report from the Los Angeles Longitudinal Enumeration and Demographic Survey (LA LEADS) Project* 8–9 (2022). They remain outside because no other option has been offered. And many smaller cities like Grants Pass have no government-run shelters in their jurisdictions at all.

The result of criminalization in an environment with no adequate alternative shelter is spatial churn, where enforcement forces people to circulate between blocks, neighborhoods, and police jurisdictions without anyone leaving public space. A survey of individuals experiencing homelessness in San Francisco asked participants where they went following their most recent move-along order by law enforcement. Herring et al., *Pervasive Penalty*, *supra*, at 140. Ninety-one percent of surveyed individuals reported remaining outdoors, most often just moving two to three blocks away. Of the nine percent who did move indoors, some reported moving to drop-in centers that exclusively serve people living on the streets, but the most common responses were moving to a public library or taking a ride on the bus, both of which are indoor public spaces with limited nighttime availability. Twenty percent reported moving to a different neighborhood. Interviews with city authorities in Eugene, Oregon found the same. Claire W. Herbert, “*We’re Playing a Game of Whack-a-Mole*”: *Toleration, Enforcement, and Fragmentation in Government Response to Unsheltered Homelessness in Eugene, Oregon* 1 (2024) (unpublished manuscript) (on file with author).

City personnel know these ordinances are ineffective and are frustrated by their enforcement. As one police officer in San Francisco told a researcher accompanying them on a ride-along, “Look we’re not really solving anybody’s problem. This is a big game of whack-a-mole. I’ll clear one run, get a person to move, but by doing that, I’m just creating another call, right?” Herring, *Complaint-Oriented Policing*, *supra*, at 770.

Similarly, when Portland attempted to mitigate the concerns related to encampments through both a sweep effort and outreach work, a police officer noted that these efforts were “a way to provide some momentary relief for the businesses and residents that are immediately affected by that specific camp, [but] there is no guarantee that the camp is gonna stay gone, [and] there is no guarantee that the camp will not come back as soon as we leave.” Antonin Margier, *The Compassionate Invisibilization of Homelessness: Where Revanchist and Supportive City Policies Meet*, 44 *Urb. Geo.* 178, 190 (2023).

While the enforcement of anti-homeless ordinances may be effective at assisting specific merchants or residents to clear their private property, it does so only at the expense of other merchants and residents whose private property will be the next to be affected. These laws are ineffective at reducing overall homelessness on a neighborhood, let alone citywide, scale.

B. Criminalizing homelessness fails to increase public safety.

Cities often claim that anti-homeless ordinances are a critical part of their public safety strategy. But *Grants Pass* leaves localities free to enforce laws against unhoused people who commit crimes. It merely forbids punishing sleeping outside with a blanket when no alternate shelter is available—behavior which does not, on its own, threaten any third party’s safety. Many local governments alternately claim that criminalization is necessary for homeless people’s own good because encampments are unsafe for their residents. While homelessness certainly is not safe for those experiencing it, research consistently shows that criminal enforcement makes both unhoused individuals and the wider community less safe in various ways.

People experiencing homelessness are victims of violence at far greater rates than their housed peers. Kushel et al., *supra*, at 66; Molly Meinbresse et al., *Exploring the Experiences of Violence Among Individuals Who Are Homeless Using a Consumer-Led Approach*, 29 *Viol. & Victims* 122, 122 (2014). Further, people experiencing homelessness are disproportionately likely to be victims of common crimes such as robbery and theft. Joshua T. Ellsworth, *Street Crime Victimization Among Homeless Adults: A Review of the Literature*, 14 *Victims & Offenders* 96, 96 (2019).

The enforcement of anti-homeless laws contributes to victimization and crime by disrupting the

security and trust established within existing encampments. In Denver, homeless people reported living in more isolated conditions to avoid police, dislocating unhoused people from social support systems they had developed. Westbrook & Robinson, *supra*, at 107. Those who reported having felt forced to move were more than twice as likely to suffer a physical assault. *Id.* at 111. In San Francisco, several women interviewed attributed experiences of sexual assault directly to the enforcement of anti-homeless laws, when they were forced to abruptly relocate without the protection of their partners. Herring et al., *Pervasive Penalty, supra*, at 140.

Due to the illegality of sleeping or resting in public space, people experiencing homelessness have reported the inability to contact law enforcement for help or support, even in serious situations involving violence or harassment. Calling the police could jeopardize them or those around them and could make their future in an encampment untenable. In one study, a woman who was raped almost immediately following a police move-along order that pushed her into an unfamiliar area in the dead of night described her reluctance to call on the police for help:

What's the point? If I called them, they would have made all of us move [again]. Would [the officer] even believe me? The whole camp of new people would hate me, and what would stop [my rapist] from getting revenge? It's not like I've got a locked door to hide behind.

Id. at 144.

Just as the enforcement of “nuisance property ordinance[s] has the effect of forcing abused women to choose between calling the police on their abusers (only to risk eviction) or staying in their apartments (only to risk more abuse),” unhoused people often avoid calling the police in the face of abuse or theft for fear of eviction from public space. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 *Am. Socio. Rev.* 117, 137 (2013). Chang and colleagues found that sweeps in San Jose led to distrust of law enforcement and engendered self-policing, isolation, and increased interpersonal violence in encampments in the face of conflict with little feasible legal recourse available to the victims. *Supra*, at 1.

Meanwhile, policing scholarship has found frustration among officers who described their department’s resources being diverted toward homelessness and away from more serious crimes. For instance, during a ride-along with police officers addressing an encampment in San Francisco, a sergeant pointed to the dashboard and told a researcher, “See that call. That’s code for domestic abuse, and it’s been hanging there for over an hour. This is what I should be addressing, but instead I’m on this detail.” Herring, *Complaint-Oriented Policing*, *supra*, at 787.

Similar narratives of police officers were captured in a nationwide survey of nearly 100 police departments about their handling of homelessness. Robert Hartmann McNamara et al., *Policing the Homeless: Policy, Practice, and Perceptions*, 36 *Policing: Int’l J.*

357, 357 (2013). The researchers concluded that, across the United States, “the empirical evidence seems fairly clear that the crime control approach taken toward the homeless is unlikely to produce desired results for the police, the public, or the individuals living on the streets.” *Id.* at 369.

C. Criminalizing homelessness fails to push individuals into sustained shelter and successful treatment.

Enforcement of anti-homeless ordinances has also not proven effective at encouraging shelter or service utilization. This is mainly due to the utter lack of shelter and services. It is also because the reliance on law enforcement as the primary point of contact introduces a coercive relationship which prevents individuals from building trusting and successful relationships with service and resource providers. Tanya L. Zakrison et al., *Homeless People’s Trust and Interactions with Police and Paramedics*, 81 J. Urb. Health 596, 596 (2004). Surveys and ethnographic research of social service providers have revealed that many of them believe criminalization ordinances undermine their ability to aid clients. Yok-Fong Paat et al., *Insights from the Shelter: Homeless Shelter Workers’ Perceptions of Homelessness and Working with the Homeless*, 32 J. Prog. Human Servs. 263, 263 (2021); Suzie S. Weng & Paul G. Clark, *Working with Homeless Populations to Increase Access to Services: A Social Service Providers’ Perspective Through the Lens of Stereotyping and Stigma*, 29 J. Prog. Human Servs. 81, 81 (2017).

Los Angeles's Safer Cities Initiative represents a case study on the failure of this policing philosophy. Inaugurated in 2005 and discontinued in 2014, the initiative utilized courts to induce participation in shelter-run services. According to Stuart's multi-year study, the result was historic numbers of arrests and no discernable evidence of people receiving more meaningful services. *Supra* at 15–19. The program intensified punitive outcomes while providing no measurable increase in rehabilitative outcomes for those experiencing homelessness and only very minimal reductions of crime. *Id.*; Gary Blasi & Forrest Stuart, *Has the Safer Cities Initiative in Skid Row Reduced Serious Crime?* (NCJ 237185, Sept. 15, 2008). Other evaluators of the Safer Cities Initiative concluded that most of that crime could not be shown to be related to homelessness or encampments in the first place. Richard Berk & John MacDonald, *Policing the Homeless: An Evaluation of Efforts to Reduce Homeless-Related Crime*, 9 *Criminology & Pub. Pol'y* 813, 813 (NCJ 232444, 2010); Dennis P. Culhane, *Tackling Homelessness in Los Angeles' Skid Row: The Role of Policing Strategies and the Spatial Deconcentration of Homelessness*, 9 *Criminology & Pub. Pol'y* 851, 852 (2010).

More recently, a 2023 survey revealed that, in Los Angeles County, homeless individuals overwhelmingly encounter only police officers or sanitation workers during camp clearances, not social workers or other service providers. Despite *amici* from Los Angeles claiming that the city has its hands tied by injunctions based on the *Grants Pass* rule, a recent study (n=of

346) found that 53 percent of unsheltered people had been subject to at least one street sweep in the 6 months between April and September 2023. Kuhn et al., *supra*, at 8. Two-thirds of respondents who had ever been swept had experienced more than one sweep. *Id.* at 10. Across these reported instances of camp clearances, a social service worker was present in only 15 percent of reported encounters. *Id.* at 11. As a result, shelter services were only offered in 13 percent of sweep encounters, and 89 percent of people who experienced the sweeps continued to experience unsheltered homelessness after the sweep. *Id.* at 12. The researchers conclude that “limited movement into housing [after sweeps] does not appear to be driven by refusals and instead reflects the small share of respondents who were offered shelter.” *Id.*

D. Criminalizing homelessness fails to improve public health.

Officials frequently point to the public health threats of homelessness and encampments. But evidence shows that anti-homeless laws are not useful, let alone necessary, to address these public health threats. As detailed in the sections above, removing an encampment from a particular place only moves it to a new place. In the process, the churn and movement itself exacerbates public health conditions for both houseless individuals and the wider community by spreading infection, introducing homeless people to new environmental health concerns, and harming homeless individuals’ ability to treat existing conditions.

III. The decision below does not bar localities from addressing homelessness in public space by adopting more effective alternatives to criminalization.

Grants Pass has not tied cities' hands and prevented them from acting to address homelessness in public spaces. In fact, *Grants Pass* does not even prevent cities from enforcing many of the misguided anti-homeless policies studied and discussed in this brief. As noted above, Los Angeles has closed hundreds of encampments in recent months. Similarly, in March, San Francisco Mayor London Breed proudly announced that the city had reduced its tent count by 37 percent—the greatest reduction since 2020. Off. of the Mayor, *San Francisco's February Tent Count: Number of Tents on City Streets Drop Significantly Since July*, SF.gov (Mar. 2, 2024), <https://www.sf.gov/news/san-franciscos-february-tent-count-number-tents-city-streets-drop-significantly-july>. The more than 480 camp closures carried out by San Francisco in 2023 all occurred during the federal injunction and after the Ninth Circuit ruling, which both Mayor Breed and Governor Newsom claimed made such efforts “unworkable.”

However, if cities wish to go beyond the minimal constitutional floor set by *Grants Pass* and follow the research on homelessness, there are several best practices available that can address the harmful consequences of unsheltered homelessness without resorting to criminalization. *Amici* will discuss just two: coordinated social-service provision, and alternative responses for mental health and other crises.

A. City responses to homelessness in public space that are coordinated, planned, and connect people to services have been shown to be effective without enforcement of anti-homeless laws.

Existing federal guidelines, set forth by the U.S. Interagency Council on Homelessness and drawn from evidence-based research, outline ways that communities can shrink encampments and house people without threatening criminal enforcement for noncompliance. 7 *Principles, supra*, at 1–5; *Ending Homelessness, supra*, at 5–10; *Searching Out Solutions, supra*, at 8–11. These guidelines consistently recognize that “measures [that] punish people who currently live on the street [. . .] do nothing to reduce the factors contributing to homelessness,” instead “creat[ing] a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.” *Searching Out Solutions, supra*, at 6.

There are numerous examples of communities that have used an encampment resolution approach without enforcement, as recommended by the guidelines, to achieve progress on the dual goals of securing housing for unsheltered residents and removing encampments from public space. *Moving Inside: State Encampment Resolution Initiative at Work in King County*, King County Regional Homelessness Authority (Feb. 8, 2024), <https://kcrha.org/news-moving-inside-state-encampment-resolution-initiative-at-work-in-king-county/>; Stephen Metreux et al., Univ. Pa., *An Evaluation*

of the City of Philadelphia's Kensington Encampment Resolution Pilot 5 (Mar. 5, 2019); Samantha Batko et al., Urb. Inst., *Alternatives to Arrests and Police Responses to Homelessness: Evidence-Based Models and Promising Practices 1* (Oct. 2020).

B. Alternative responders that divert 911 calls regarding homelessness have been shown to more effectively reduce crime and better connect people to services.

Nationally, cities have been creating new models for responding to 911 calls regarding people experiencing homelessness or mental health crises. These alternative response teams reroute calls from police to small teams staffed by mental health care providers, social workers, and/or EMTs. For instance, in 2019, Eugene, Oregon's Crisis Assistance Helping Out on the Streets (CAHOOTS) handled more than 24,000 calls, about 20 percent of the total calls dispatched by 911, and only required police backup 250 times. White Bird Clinic, *CAHOOTS Media Guide 2* (2020), <https://whitebirdclinic.org/wp-content/uploads/2020/06/CAHOOTS-Media-Guide-20200626.pdf>.

The Support Team Assistance Response (STAR) program in Denver shows similar success. In a quasi-experimental study comparing the changes in police-recorded criminal offenses before and after the STAR pilot program, across pilot and non-pilot precincts, researchers found robust evidence that STAR reduced

reports of less serious crimes (e.g., trespassing, public disorder, and resisting arrest) by 34 percent and had no detectable effect on more serious crimes. Thomas S. Dee & Jaymes Pyne, *A Community Response Approach to Mental Health and Substance Abuse Crises Reduced Crime*, 8 *Sci. Advances* 2, 2–6 (2022).

Researchers commissioned to evaluate Portland, Oregon’s new alternative response found that, after two years, it had reduced the number of calls typically responded to by police by over 7,000 incidents and successfully reduced the number of non-life-threatening injuries transported to the emergency room following a 911 call. Greg Townley & Emily Leickly, *Portland Street Response: Year Two Program Evaluation 4* (2023), <https://www.pdx.edu/homelessness/PSR-Evaluation>.

Finally, Law Enforcement Assisted Diversion (LEAD) programs have been operating in many cities across the U.S. In Seattle, LEAD partners work with local businesses and residential associations to identify individuals who are generating high numbers of complaints. Forrest Stuart & Katherine Beckett, *Addressing Urban Disorder Without Police: How Seattle’s LEAD Program Responds to Behavioral-Health-Related Disruptions, Resolves Business Complaints, and Reconfigures the Field of Public Safety*, 43 *L. & Pol’y* 391, 391 (2021). LEAD teams then reach out to those individuals to offer services, and businesses and residents call LEAD rather than the police when an individual is causing a low-level problem. *Id.* at 404. When compared to similarly situated people who were not referred to LEAD because of funding or space

constraints, LEAD participants were more than twice as likely to be sheltered, 89 percent more likely to obtain permanent housing, and 60 percent less likely to be arrested in the six months after referral. *Id.* at 405; Seema L. Clifasefi et al., *Seattle’s Law Enforcement Assisted Diversion (LEAD) Program: Within-Subjects Changes on Housing, Employment, and Income/Benefits Outcomes and Associations with Recidivism*, 63 *Crime & Delinq.* 435, 435 (2017).

These examples of alternative approaches give members of the public someone to call about problems they experience in public space as a result of homelessness, and they all have better proven results and lower economic costs than enforcement of anti-homeless criminal measures like those in Grants Pass.

CONCLUSION

Based on these social scientific findings, *amici* recommend that the Court affirm the decision below.

Respectfully submitted,

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APPENDIX TABLE OF CONTENTS

	Page
List of <i>Amici Curiae</i>	1a

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4a

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5a

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