
IN THE
Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,
Petitioner,

v.

GLORIA JOHNSON, ET AL., 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
AMERICAN PSYCHIATRIC ASSOCIATION,
NATIONAL ALLIANCE ON MENTAL ILLNESS,
NATIONAL ASSOCIATION FOR RURAL MENTAL
HEALTH, NATIONAL ASSOCIATION OF SOCIAL
WORKERS, AND THE JUDGE DAVID L. BAZELON
CENTER FOR MENTAL HEALTH LAW
AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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| <i>Brown v. Plata</i> , 563 U.S. 493 (2011) | 14 |
| CONSTITUTION, STATUTES, REGULATIONS, AND RULES | |
| U.S. Const. amend. VIII (Cruel and Unusual Punishments Clause) | 2 |
| American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4..... | 29 |
| Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313..... | 29 |
| Grants Pass Mun. Code: | |
| § 5.61.010(B) | 3 |
| § 5.61.020(A) | 3 |
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| § 6.46.090 | 3 |
| N.Y. Comp. Codes R. & Regs. tit. 14, § 508.5 | 28 |
| Sup. Ct. R. 37.6 | 1 |
| ADMINISTRATIVE MATERIALS | |
| Ctr. for Medicaid & CHIP Servs., Nat’l Inst. of Mental Health & Substance Abuse & Men- tal Health Servs. Admin., <i>Joint Information Bulletin: Coverage of Early Intervention Services for First Episode Psychosis</i> (Oct. 16, 2015), https://www.medicaid.gov/sites/ default/files/Federal-Policy-Guidance/ Downloads/cib-10-16-2015.pdf | 28 |

| | |
|--|-------|
| Medicaid & CHIP Payment & Access Comm'n: | |
| <i>Behavioral health services covered under HCBS waivers and 1915(i) SPAs</i> , https://www.macpac.gov/subtopic/behavioral-health-services-covered-under-hcbs-waivers-and-spas/ | 28-29 |
| <i>Medicaid's Role in Housing</i> (June 2021), https://www.macpac.gov/wp-content/uploads/2021/06/Medicoids-Role-in-Housing-1.pdf | 28 |
| Nat'l Council on Disability, <i>Inclusive Livable Communities for People with Psychiatric Disabilities</i> (Mar. 17, 2008), https://www.ncd.gov/assets/uploads/reports/2008/ncd-inclusive-livable-communities-2008.pdf | 19 |
| Press Release, Ctrs. for Medicare & Medicaid Servs., <i>HHS Approves New Mexico's Request to Expand Access to Critical Behavioral Health Services Through Mobile Crisis Intervention Teams</i> (Feb. 6, 2024), https://www.cms.gov/newsroom/press-releases/hhs-approves-new-mexicos-request-expand-access-critical-behavioral-health-services-through-mobile | 29 |
| Statement of Interest of the United States, <i>Bell v. City of Boise</i> , No. 1:09-cv-540-REB, ECF No. 276 (D. Idaho Aug. 6, 2015) | 13 |
| Substance Abuse & Mental Health Servs. Admin., U.S. Dep't of Health & Hum. Servs.: | |
| <i>Advisory: Peer Support Services in Crisis Care</i> (June 2022), https://store.samhsa.gov/sites/default/files/pep22-06-04-001.pdf | 24 |

| | |
|--|----|
| <i>Building Your Program: Supported Employment</i> (2009), https://store.samhsa.gov/sites/default/files/sma08-4364-buildingyourprogram.pdf | 22 |
| <i>Crisis Services: Effectiveness, Cost-Effectiveness, and Funding Strategies</i> (2014), https://store.samhsa.gov/sites/default/files/sma14-4848.pdf | 26 |
| <i>Guide Overview: Expanding Access to and Use of Behavioral Health Services for People Experiencing Homelessness</i> (Jan. 2023), https://store.samhsa.gov/sites/default/files/pep22-06-02-007.pdf | 5 |
| <i>Marking One Year of the Bipartisan Safer Communities Act</i> (July 28, 2023), https://www.samhsa.gov/blog/marking-one-year-bipartisan-safer-communities-act | 29 |
| <i>Mental Health Myths and Facts</i> , https://www.samhsa.gov/mental-health/myths-and-facts | 8 |
| <i>National Guidelines for Behavioral Health Crisis Care – Best Practice Toolkit</i> (2020), https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf | 10 |
| <i>National Model Standards for Peer Support Certification</i> (2023), https://store.samhsa.gov/sites/default/files/pep23-10-01-001.pdf | 24 |
| <i>Transforming Housing for People with Psychiatric Disabilities Report</i> (2006), http://research.policyarchive.org/17617.pdf | 19 |

| | |
|--|----|
| U.S. Dep't of Health & Hum. Servs.: | |
| Letter from Daniel Tsai, Deputy Adm'r & Director, Ctrs. for Medicare & Medicaid Servs., to State Health Officials (Dec. 28, 2021), https://www.medicaid.gov/sites/default/files/2021-12/sho21008.pdf | 29 |
| <i>Mental Health: A Report of the Surgeon General</i> (1999), https://digirepo.nlm.nih.gov/ext/document/101584932X120/PDF/101584932X120.pdf | 19 |
| U.S. Dep't of Hous. & Urb. Dev.: | |
| Richard Cho, <i>To Solve Homelessness, We Must Increase the Supply of Housing</i> (Dec. 6, 2022), https://www.hud.gov/ourwayhome/blog/blog_12_06_22 | 16 |
| <i>Guidance on Housing Individuals and Families Experiencing Homelessness Through the Public Housing and Housing Choice Voucher Programs</i> (June 8, 2023), https://www.hud.gov/sites/dfiles/PIH/documents/pih2023-13.pdf | 27 |
| <i>Housing Choice Vouchers Fact Sheet</i> , https://www.hud.gov/topics/housing_choice_voucher_program_section_8#hcv01 | 27 |
| Off. of Pol'y Dev. & Rsch.: | |
| <i>Low-Income Housing Tax Credit (LIHTC)</i> , https://www.huduser.gov/portal/datasets/lihtc.html | 28 |
| <i>The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness: Final Report</i> (July 2007), https://www.huduser.gov/portal/publications/pdf/hsgfirst.pdf | 19 |

| | |
|---|-------|
| Press Release, <i>HUD Announces the Availability of \$30.3 Billion for Housing Authorities to Provide Affordable Housing</i> (Apr. 13, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_076 | 27 |
| <i>Section 811 Supportive Housing for Persons With Disabilities</i> , https://www.hud.gov/program_offices/housing/mfh/progdesc/disab811 | 27 |
| <i>The 2023 Annual Homelessness Assessment Report (AHAR) to Congress</i> (Dec. 2023), https://www.huduser.gov/portal/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf | 4 |
| U.S. Dep't of Justice: | |
| Jennifer Bronson & Marcus Berzofsky, Bur. of Justice Statistics, <i>Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12</i> (June 2017), https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf | 14 |
| Bur. of Justice Assistance, U.S. Dep't of Justice, <i>Responding to Homelessness</i> , https://bja.ojp.gov/program/pmhc/responding-homelessness | 9 |
| <i>Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail</i> (Apr. 22, 2021), https://www.justice.gov/crt/case-document/file/1388891/download | 14-15 |
| <i>Investigation of the City of Minneapolis and the Minneapolis Police Department</i> (June 16, 2023), https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf | 9 |

| | |
|--|--------|
| <i>Investigation of the Louisville Metro Police Department and Louisville Metro Government</i> (Mar. 8, 2023), https://www.justice.gov/opa/press-release/file/1573011/download | 9 |
| Zhen Zeng & Todd D. Minton, Bur. of Justice Statistics, <i>Census of Jails, 2005–2019 – Statistical Tables</i> (Oct. 2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cj0519st.pdf | 14 |
| U.S. Dep’t of Justice & U.S. Dep’t of Health & Hum. Servs., <i>Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities</i> (May 2023), https://www.justice.gov/d9/2023-05/Sec.%2014%28a%29%20-%20DOJ%20and%20HHS%20Guidance%20on%20Emergency%20Responses%20to%20Individuals%20with%20Behavioral%20Health%20or%20Other%20Disabilities_FINAL.pdf | 11 |
| U.S. Interagency Council on Homelessness, <i>Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness</i> (June 2012), https://usich.gov/sites/default/files/document/Searching_Out_Solutions_2012.pdf | 12, 13 |
| OTHER MATERIALS | |
| Am. Bar Ass’n, <i>Collateral Consequences of Criminal Convictions: Judicial Bench Book</i> (2018), https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf | 12 |

- Am. Psychiatric Ass'n, *Position Statement on Housing, Homelessness, and Mental Health* (2023), <https://www.psychiatry.org/getattachment/9db151ca-94b5-4aec-b599-e4172a52c4ef/Position-Housing-Homelessness.pdf> 5
- Margie Balfour, *What if . . . Access to Care was the priority? Lessons from the Southern Arizona Crisis System*, https://www.neomed.edu/wp-content/uploads/CJCCOE_01-Margie-Balfour-What-if-access-to-care-was-a-priority.pdf 21
- Stephanie L. Barker & Nick Maguire, *Experts by Experience: Peer Support and its Use with the Homeless*, 53 *Cmty. Mental Health J.* 598 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5438434/pdf/10597_2017_Article_102.pdf..... 24
- McKenzie Beard, *Medicaid is paying for housing, food in more states*, *Wash. Post* (Apr. 21, 2023), <https://www.washingtonpost.com/politics/2023/04/21/medicaid-is-paying-housing-food-more-states/> 29
- Benioff Homelessness & Housing Initiative, University of California San Francisco, *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness* (June 2023), https://homelessness.ucsf.edu/sites/default/files/2023-06/CASPEH_Report_62023.pdf 5, 8
- Michael C. Biasotti, *Management of the Severely Mentally Ill and Its Effects on Homeland Security* (Sept. 2011) (Master's Thesis, Naval Postgraduate School), <https://mentalillnesspolicy.org/wp-content/uploads/homelandsecuritymentalillness.pdf> 12

- Gary R. Bond & Robert E. Drake, *The critical ingredients of assertive community treatment*, 14 *World Psychiatry* 240 (June 2015), available at <https://onlinelibrary.wiley.com/doi/epdf/10.1002/wps.20234>..... 20
- Gary R. Bond et al.:
- An Update on Randomized Controlled Trials of Evidence-Based Supported Employment*, 31 *Psychiatric Rehab. J.* 280 (2008) 23
- Assertive Community Treatment for People with Severe Mental Illness: Critical Ingredients and Impact on Patients*, 9 *Disease Mgmt. & Health Outcomes* 141 (Mar. 2001)..... 20
- Implementing Supported Employment as an Evidence-Based Practice*, 52 *Psychiatric Servs.* 313 (Mar. 2001), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.52.3.313> 23
- Christie C. Browne et al., *Continuity of mental health care during the transition from prison to the community following brief periods of imprisonment*, 13 *Front. Psychiatry* #934837 (Sept. 20, 2022), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9530150/pdf/fpsyt-13-934837.pdf>..... 15
- Craig M. Coldwell & William S. Bender, *The Effectiveness of Assertive Community Treatment for Homeless Populations With Severe Mental Illness: A Meta-Analysis*, 164 *Am. J. Psychiatry* 393 (Mar. 2007), <https://ajp.psychiatryonline.org/doi/epdf/10.1176/ajp.2007.164.3.393>..... 21

- Corp. for Supportive Hous., *The New York/New York Agreement Cost Study: The Impact of Supportive Housing on Services Use for Homeless Mentally Ill Individuals* (May 2001), https://shnny.org/uploads/NY-NY_Agreement_Cost_Study_2001.pdf.....18, 25
- Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, Prison Pol’y Initiative (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>..... 13
- Dennis P. Culhane et al., *The Impact of Supportive Housing for Homeless People with Severe Mental Illness on the Utilization of the Public Health, Corrections, and Emergency Shelter Systems: The New York-New York Initiative*, 13 Hous. Pol’y Debate 107 (2002), available at <http://works.bepress.com/metraux/16>.....18, 25
- Darci Delgado et al., *Economics of decriminalizing mental illness: when doing the right thing costs less*, 25 CNS Spectrums 566 (2020), <https://www.cambridge.org/core/journals/cns-spectrums/article/abs/economics-of-decriminalizing-mental-illness-when-doing-the-right-thing-costs-less/59E5D08F4C3C5B030DB1A44C95639B90>..... 25-26
- Marina Dieterich et al., *Intensive case management for severe mental illness (Review)*, Cochrane Database of Systematic Reviews 49 (2017), <https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD007906.pub3/epdf/full> 20

| | |
|---|----|
| Ehren Dohler et al., Ctr. on Budget & Pol’y Priorities, <i>Supportive Housing Helps Vulnerable People Live and Thrive in the Community</i> (May 31, 2016), https://www. cbpp.org/sites/default/files/atoms/files/5-31- 16hous.pdf | 17 |
| Robert E. Drake & Michael A. Wallach, <i>Employment is a critical mental health inter- vention</i> , 29 <i>Epidemiol. & Psychiatric Sci.</i> e178 (Nov. 2020), https://www.ncbi.nlm.nih. gov/pmc/articles/PMC7681163/ | 23 |
| Fairmount Ventures, Inc., <i>Evaluation of Path- ways to Housing PA</i> (Jan. 2011), https:// centercityphila.org/uploads/attachments/ cit0g2r8x0029f6qdp9b8ja-pathways-to- housing.pdf | 19 |
| Z. Joyce Fan et al., <i>Improving Employment Outcomes for People with Mental Health Disorders in Washington State</i> (June 2016), https://www.dshs.wa.gov/sites/default/files/ rda/reports/research-11-230.pdf | 23 |
| Will Fischer, Ctr. on Budget & Pol’y Priorities, <i>Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long- Term Gains Among Children</i> (Oct. 7, 2015), https://www.cbpp.org/sites/default/files/ atoms/files/3-10-14hous.pdf | 16 |
| Jenny Gold, <i>Affordable treatment for mental illness and substance abuse gets harder to find</i> , <i>Wash. Post</i> (Dec. 1, 2019) | 7 |
| Shenyang Guo et al., <i>Assessing the Impact of Community-Based Mobile Crisis Services on Preventing Hospitalization</i> , 52 <i>Psychiatric Servs.</i> 223 (Feb. 2001), https://ps.psychiatry online.org/doi/pdf/10.1176/appi.ps.52.2.223 | 22 |

- Jess Hallam, *Mental Health Disabilities and the Criminalization of Homelessness: Challenging Municipal Sit-Lie Ordinances as Disparate Impact Discrimination Under the Americans with Disabilities Act of 1990*, 45 N.Y.U. Rev. Law & Soc. Change 632 (2022), https://socialchangenyu.com/wp-content/uploads/2022/05/Hallam_45.4_Mental-Health-Disabilities.pdf..... 12
- Homelessness Pol’y Rsch. Inst., *Policing Homelessness: A review of the literature on policing policies that target homelessness and best practices for improving outcomes* (Oct. 21, 2021), <https://socialinnovation.usc.edu/wp-content/uploads/2021/10/Policing-Homelessness-Final-1.pdf>..... 10
- Alex S. Keuroghlian et al., *Out on the Street: A Public Health and Policy Agenda for Lesbian, Gay, Bisexual, and Transgender Youth Who are Homeless*, 84 Am. J. Orthopsychiatry 66 (2014) 6
- KFF, *Medical Behavioral Health Services: Assertive Community Treatment* (2022), <https://www.kff.org/medicaid/state-indicator/medicaid-behavioral-health-services-assertive-community-treatment/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> 28
- Kimberly Kindy et al., *Fatal police shootings of mentally ill people are 39 percent more likely to take place in small and midsized areas*, Wash. Post (Oct. 17, 2020), https://www.washingtonpost.com/national/police-mentally-ill-deaths/2020/10/17/8dd5bcf6-0245-11eb-b7ed-141dd88560ea_story.html..... 11

- H. Richard Lamb et al., *The Police and Mental Health*, 53 *Psychiatric Servs.* 1266 (Oct. 2002), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.53.10.1266>..... 22
- Ayobami Laniyonu & Phillip Atiba Goff, *Measuring disparities in police use of force and injury among persons with serious mental illness*, 21 *BMC Psychiatry* 500 (Oct. 2021), <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-021-03510-w> 10
- Eric A. Latimer, *Economic Impacts of Assertive Community Treatment: A Review of the Literature*, 44 *Can. J. Psychiatry* 443 (June 1999), <https://journals.sagepub.com/doi/pdf/10.1177/070674379904400504> 26
- Anthony F. Lehman et al., *Cost-effectiveness of assertive community treatment for homeless persons with severe mental illness*, 174 *Brit. J. Psychiatry* 346 (Apr. 1999), https://www.researchgate.net/publication/12766197_Cost-effectiveness_of_assertive_community_treatment_for_homeless_persons_with_severe_mental_illness 26
- Angela Ly & Eric Latimer, *Housing First Impact on Costs and Associated Cost Offsets: A Review of the Literature*, 60 *Can. J. Psychiatry* 475 (Nov. 2015), <https://journals.sagepub.com/doi/pdf/10.1177/070674371506001103>..... 25
- Matthew Makarios et al., *Examining the Predictors of Recidivism Among Men and Women Released From Prison in Ohio*, 37 *Crim. Just. & Behav.* 1377 (Dec. 2010) 19

Patrick Markee, Coal. for the Homeless, *Research Proves that Federal Housing Programs Work to Reduce Family Homelessness* (Feb. 12, 2009), <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/03/BriefingPaper-ResearchonHousingAssistanceforHomelessFamilies-2-12-2009.pdf> 16-17

Kevin Martone et al., Technical Assistance Collaborative, *Olmstead at 20: Using the Vision of Olmstead to Decriminalize Mental Illness* (2019), https://www.tacinc.org/wp-content/uploads/2020/02/olmstead-at-twenty_09-04-2018.pdf 9

Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 Am. J. Pub. Health 1977 (Dec. 2017) 9

Thomas G. McGuire & Jeanne Miranda, *New Evidence Regarding Racial And Ethnic Disparities In Mental Health: Policy Implications*, 27 Health Affs. 393 (Mar./Apr. 2008) 7

Jessica Mogk et al., *Court-imposed fines as a feature of the homelessness-incarceration nexus: a cross-sectional study of the relationship between legal debt and duration of homelessness in Seattle, Washington, USA*, 42 J. Pub. Health 107 (June 2020) 13

Nat'l All. to End Homelessness, *Homelessness and Racial Disparities* (updated Dec. 2023), <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality> 6

- Brandon Nichter et al., *Prevalence, correlates, and mental health burden associated with homelessness in U.S. military veterans*, 53 *Psychol. Med.* 3952 (2023)..... 6
- Deborah K. Padgett, *Homelessness, housing instability and mental health: making the connections*, 44 *BJPsych Bull.* 197 (Oct. 2020)..... 7
- Deborah K. Padgett et al., *Housing First Services for People Who Are Homeless With Co-Occurring Serious Mental Illness and Substance Abuse*, 16 *Rsch. on Soc. Work Prac.* 74 (2006), <https://journals.sagepub.com/doi/10.1177/1049731505282593> 17
- Peer Recovery Ctr. of Excellence, *Comparative Analysis of State Requirements for Peer Support Specialist Training and Certification in the United States* (Jan. 2023), <https://peerrecoverynow.org/wp-content/uploads/2023-FEB-07-prcoe-comp-analysis.pdf> 23-24
- Olivia Randi, Nat'l Acad. for State Health Pol'y, *American Rescue Plan Act Allows States to Expand Mobile Crisis Intervention Services for Children and Youth Through Medicaid* (Aug. 2, 2021), <https://nashp.org/american-rescue-plan-act-allows-states-to-expand-mobile-crisis-intervention-services-for-children-and-youth-through-medicaid/#:~:text=Section%209813%20of%20the%20ARPA,starting%20on%20April%201%2C%202022>..... 28
- Taeho Greg Rhee & Robert A. Rosenheck, *Why are black adults over-represented among individuals who have experienced lifetime homelessness?*, 75 *J. Epidemiol. & Cmty. Health* 161 (2021)..... 6

- E. Sally Rogers, *A Benefit-Cost Analysis of a Supported Employment Model for Person with Psychiatric Disabilities*, 18 *Evaluation & Program Planning* 105 (1995), <https://cpr.bu.edu/wp-content/uploads/2011/11/rogers1995.pdf> 23
- Michelle P. Salyers et al., *A Ten-Year Follow-Up of a Supported Employment Program*, 55 *Psychiatric Servs.* 302 (Mar. 2004), <https://ps.psychiatryonline.org/doi/epdf/10.1176/appi.ps.55.3.302> 23
- Roger L. Scott, *Evaluation of a Mobile Crisis Program: Effectiveness, Efficiency, and Consumer Satisfaction*, 51 *Psychiatric Servs.* 1153 (Sept. 2000), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.51.9.1153> 22
- Debra Srebnik et al., *Housing Choice and Community Success for Individuals with Serious and Persistent Mental Illness*, 31 *Cnty. Mental Health J.* 139 (Apr. 1995) 18
- Ana Stefancic et al., “*What We Have in Common*”: *A Qualitative Analysis of Shared Experience in Peer-Delivered Services*, 55 *Cnty. Mental Health J.* 1 (Aug. 2019), available for purchase at <https://link.springer.com/article/10.1007/s10597-019-00391-y> 24
- Heather Stuart, *Violence and mental illness: an overview*, 2 *World Psychiatry* 121 (June 2003) 8, 10
- Linda A. Teplin et al., *Crime Victimization in Adults with Severe Mental Illness*, 62 *Arch. Gen. Psychiatry* 911 (Aug. 2005) 10

| | |
|---|--------|
| The Lewin Group, <i>Cost of Serving Homeless Individuals in Nine Cities</i> (Nov. 19, 2004), https://www.csh.org/wp-content/uploads/2011/12/Report_CostforIndividuals1.pdf | 27 |
| The Road Home Dane Cnty., <i>Permanent Supportive Housing</i> , https://trhome.org/permanent-supportive-housing/ | 25 |
| Treatment Advocacy Ctr., <i>Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters</i> (Dec. 2015), https://www.treatmentadvocacycenter.org/wp-content/uploads/2023/11/Overlooked-in-the-Undercounted.pdf | 11 |
| Jack Tsai & Robert A. Rosenheck, <i>Risk Factors for Homelessness Among US Veterans</i> , 37 <i>Epidemiol. Rev.</i> 177 (2015) | 6 |
| Sam Tsemberis et al., <i>Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals With a Dual Diagnosis</i> , 94 <i>Am. J. Pub. Health</i> 651 (Apr. 2004), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448313/pdf/0940651.pdf | 18, 20 |
| Sonia Vidal et al., <i>Assertive Community Programs for Patients with Severe Mental Disorders: Are Benefits Sustained After Discharge?</i> , 56 <i>Cnty. Mental Health J.</i> 559 (Apr. 2020), available for purchase at https://link.springer.com/article/10.1007/s10597-019-00513-6 | 21 |
| Nastassia Walsh, Nat'l Ass'n of Counties, <i>Reducing Mental Illness in Rural Jails</i> (Feb. 19, 2016), https://www.naco.org/sites/default/files/documents/Reducing%20Mental%20Illness%20in%20Rural%20Jails_FINAL.pdf | 14 |

Michelle Wood et al., *Housing Affordability
and Family Well-Being: Results from the
Housing Voucher Evaluation*, 19 Hous. Pol’y
Debate 367 (2008)..... 16

INTEREST OF *AMICI CURIAE*¹

Amicus American Psychiatric Association (“APA”), with more than 38,000 members, is the Nation’s leading organization of physicians who specialize in psychiatry. APA has participated in numerous cases in this Court. Its member physicians work to ensure high-quality care and effective treatment for all persons with mental illness. APA’s members engage in psychiatric treatment, education, research, and forensic activities, and many of them regularly perform roles in the criminal justice system.

Amicus National Alliance on Mental Illness (“NAMI”) is the nation’s largest grassroots mental health organization, dedicated to building better lives for the millions of Americans affected by mental illness. NAMI is an alliance of more than 700 affiliate organizations that work in communities in all 50 States to raise awareness, provide support and education, and advocate for policy change. This alliance has a long history of working to decriminalize mental illness and ensure that people with mental health conditions are connected to the care they need in the community.

Amicus National Association for Rural Mental Health (“NARMH”) is a professional organization that serves the field of rural behavioral health. NARMH’s membership includes the entire spectrum of the rural mental health community, including consumers, family members, practitioners, administrators, educators, researchers, and policy makers. NARMH’s deep commitment to rural people and those that serve them has

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

allowed NARMH to improve access, availability, and understanding of behavioral health and substance abuse services in rural and frontier areas.

Amicus National Association of Social Workers (“NASW”), established in 1955, is the largest association of professional social workers in the world, with approximately 110,000 members and chapters throughout the United States. NASW develops and disseminates standards of social work practice, enforces the NASW Code of Ethics, conducts research, and provides policy statements on issues of importance to the social work profession. Consistent with its published policy statements, NASW supports the availability of a broad range of housing options for people who have severe and persistent mental illness.

Amicus The Judge David L. Bazelon Center for Mental Health Law is a national non-profit legal advocacy organization founded in 1972 to advance the rights of individuals with mental illness and developmental disabilities. The Center advocates for laws and policies that support a society where Americans with mental disabilities live with autonomy, dignity, and opportunity in welcoming communities, supported by law, policy, and practices that help them reach their full potential. Its litigation and policy advocacy advances rights to fair treatment, adequate mental health care, and community-based services.

SUMMARY OF ARGUMENT

The Ninth Circuit held that a municipal ordinance prohibiting individuals from “camping” – or sleeping in public with even rudimentary bedding materials such as a blanket – violates the Cruel and Unusual Punishments Clause of the Eighth Amendment because it effectively criminalizes a person’s status as a

homeless individual.² That ruling is of substantial importance to *amici*, organizations that are dedicated to promoting the health and well-being of individuals with mental illness and that have expertise in the effective treatment of mental illness. This Court should affirm.

I. The Ninth Circuit ruling arises against a backdrop of a housing crisis that affects hundreds of thousands of homeless individuals. Although studies have shown that the majority of homeless individuals do not have a mental illness, studies likewise demonstrate that individuals with mental illness are disproportionately represented among homeless individuals. Accordingly, local efforts to address the problem of homelessness through criminal enforcement disproportionately affect people with mental illness and increase the likelihood of encounters between those individuals and the criminal justice system, encounters that are fraught with risk and that too often exacerbate, rather than address, root causes of homelessness.

II. To the extent petitioner and its *amici* seek to justify the criminalization of homelessness based on the contention that governments lack other alternatives, their arguments are incorrect and misleading. Homelessness is fundamentally a problem driven by the lack of affordable housing. Research shows that

² Grants Pass adopted three at-issue ordinances: the first prohibits sleeping “on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety.” Grants Pass Mun. Code § 5.61.020(A). The second prohibits “[c]amping” on “any sidewalk, street, alley, lane, public right of way, park, bench, or any other publicly-owned property or under any bridge or viaduct,” with a “[c]ampsite” defined as “any place where bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed.” *Id.* §§ 5.61.010(B), 5.61.030. The third prohibits “[c]amping” in the City’s parks. *Id.* § 6.46.090.

scalable interventions, such as supportive housing – which includes both housing and services for individuals with mental illness or other disabilities – can improve health outcomes and reduce costs. By employing these community-based interventions, governments can address homelessness and housing insecurity without resorting to criminal enforcement.

ARGUMENT

I. ADDRESSING HOMELESSNESS THROUGH CRIMINAL ENFORCEMENT DISPROPORTIONATELY IMPACTS INDIVIDUALS WITH MENTAL ILLNESS

A. A Large and Growing Number of Americans Are Homeless, and a Disproportionate Number of Those Individuals Have a Mental Illness

Stable housing promotes individuals' mental and physical health. Yet, because of the United States' affordable housing crisis, a large and growing number of Americans are homeless. The federal government estimates that roughly 653,100 Americans are homeless, an increase of an estimated 12 percent between 2022 and 2023.³ Approximately 40 percent of those individuals are living outside of shelters.⁴

Studies have shown that the majority of homeless individuals do not have a mental illness and that homelessness is more frequently triggered by economic

³ See U.S. Dep't of Hous. & Urb. Dev., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress* 12 (Dec. 2023), <https://www.huduser.gov/portal/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

⁴ See *id.*

factors such as the loss of a job or debt.⁵ It is thus an oversimplification and inaccurate to conflate mental illness and homelessness.⁶ That said, studies also demonstrate that individuals with mental illness disproportionately experience homelessness and make up a significant percentage of the homeless population. More than 20 percent of people experiencing homelessness currently have a serious mental illness such as bipolar disorder or schizophrenia, compared with 5.6 percent of the general population.⁷ Individuals experiencing homelessness also report disproportionately high lifetime rates of mental health challenges. One study found that 27 percent of individuals experiencing homelessness had been hospitalized for a mental health condition, with more than half of those hospitalizations occurring prior to their first instance of homelessness.⁸

⁵ See Am. Psychiatric Ass'n, *Position Statement on Housing, Homelessness, and Mental Health* (2023), <https://www.psychiatry.org/getattachment/9db151ca-94b5-4aec-b599-e4172a52c4ef/Position-Housing-Homelessness.pdf>.

⁶ See *id.* (noting that “homelessness and mental disorders are not synonymous and should not be referred to interchangeably” and that conflating “mental health disorders with poverty and homelessness worsens the stigma toward people with mental illness and toward people who are unhoused”).

⁷ See Substance Abuse & Mental Health Servs. Admin., *Guide Overview: Expanding Access to and Use of Behavioral Health Services for People Experiencing Homelessness* 1 (Jan. 2023), <https://store.samhsa.gov/sites/default/files/pep22-06-02-007.pdf>.

⁸ See Benioff Homelessness & Housing Initiative, University of California San Francisco, *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness* 5 (June 2023), https://homelessness.ucsf.edu/sites/default/files/2023-06/CASPEH_Report_62023.pdf.

Studies also show that among veterans – a group that is also generally overrepresented among the homeless population – those with a history of mental health conditions, including post-traumatic stress disorder (PTSD), depression, and generalized anxiety, are at greater risk of homelessness.⁹ Indeed, the strongest and most consistent risk factor informing whether veterans become homeless is whether the individual has a mental illness or co-occurring substance use disorder.¹⁰ LGBTQ youth who experience homelessness likewise have disproportionately high rates of mental illness.¹¹ Many minority groups, including Black and Indigenous people, are disproportionately represented among the homeless.¹² Among racial and ethnic minorities, a strong risk factor for homelessness is mental illness.¹³ These groups also face disparities in mental health care; they “have less access

⁹ See Brandon Nichter et al., *Prevalence, correlates, and mental health burden associated with homelessness in U.S. military veterans*, 53 *Psychol. Med.* 3952, 3959 (2023).

¹⁰ See Jack Tsai & Robert A. Rosenheck, *Risk Factors for Homelessness Among US Veterans*, 37 *Epidemiol. Rev.* 177, 179 (2015).

¹¹ See Alex S. Keuroghlian et al., *Out on the Street: A Public Health and Policy Agenda for Lesbian, Gay, Bisexual, and Transgender Youth Who are Homeless*, 84 *Am. J. Orthopsychiatry* 66 (2014).

¹² See Nat’l All. to End Homelessness, *Homelessness and Racial Disparities* (updated Dec. 2023), <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality>.

¹³ See, e.g., Taeho Greg Rhee & Robert A. Rosenheck, *Why are black adults over-represented among individuals who have experienced lifetime homelessness?*, 75 *J. Epidemiol. & Cmty. Health* 161, 163 (2021) (“[a]mong non-Hispanic black men, those with lifetime homelessness were more likely to report almost all past-year psychiatric disorders than those without lifetime homelessness”).

to mental health services than whites have, are less likely to receive needed care, and are more likely to receive poor-quality care when treated.”¹⁴

In addition, “the deleterious effects of homelessness *on* mental health have been established by research going back decades.”¹⁵ Individuals may, for example, experience significant distress from “the emotional sequelae of being [homeless].”¹⁶ Children, in particular, “are especially susceptible to the psychological effects of homelessness and housing instability.”¹⁷

Not surprisingly, people experiencing homelessness often lack access to reliable mental health treatment. In general, “Americans are . . . finding it harder to obtain affordable treatment for mental illness.”¹⁸ This problem is particularly acute for homeless individuals: although approximately 40 percent of homeless individuals are enrolled in Medicaid, an acute scarcity of mental health care providers who provide services for Medicaid patients renders mental health care through Medicaid “virtually unattainable” in many parts of the United States.¹⁹ A California study of individuals experiencing homelessness found that only 9 percent of respondents had received mental

¹⁴ Thomas G. McGuire & Jeanne Miranda, *New Evidence Regarding Racial And Ethnic Disparities In Mental Health: Policy Implications*, 27 *Health Affs.* 393, 396 (Mar./Apr. 2008).

¹⁵ Deborah K. Padgett, *Homelessness, housing instability and mental health: making the connections*, 44 *BJPsych Bull.* 197, 197 (Oct. 2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Jenny Gold, *Affordable treatment for mental illness and substance abuse gets harder to find*, *Wash. Post* (Dec. 1, 2019).

¹⁹ Padgett, 44 *BJPsych Bull.* at 199.

health counseling and only 14 percent had received medications for mental health conditions.²⁰

B. Policies That Criminalize Nonviolent Conduct Associated with Being Homeless Disproportionately Harm Individuals with Mental Illness

Because individuals with mental illness are overrepresented within populations experiencing homelessness, they are disproportionately affected by ordinances, like the ones at issue in this litigation, that address homelessness through criminal enforcement. Such approaches increase the likelihood of interactions between the criminal justice system and people with mental illness.

1. People with Mental Illness Are Disproportionately Harmed by Interactions with Law Enforcement

Although police officers may be well-intentioned and may in some cases engage successfully with individuals with mental illness – including through voluntary transport of those in need to psychiatric care – stigmatization of individuals with mental illness and lack of expertise and experience with appropriate de-escalation and stabilization practices can lead to serious harms.

Despite being no more likely than the general population to commit crime,²¹ people with mental illness

²⁰ See Benioff Homelessness & Housing Initiative, *supra* note 8, at 7.

²¹ See Substance Abuse & Mental Health Servs. Admin., *Mental Health Myths and Facts*, <https://www.samhsa.gov/mental-health/myths-and-facts> (last visited Mar. 27, 2024); see also Heather Stuart, *Violence and mental illness: an overview*, 2 *World Psychiatry* 121, 123 (June 2003) (“members of the public

are disproportionately confronted and arrested by law enforcement.²² The U.S. Department of Justice (“DOJ”) has found that “[p]eople who experience homelessness tend to have frequent (and often repeat) interactions with law enforcement. A key driver of these interactions is the prevalence of unmet behavioral health needs.”²³ In its investigation of the Minneapolis Police Department, the DOJ found that Minneapolis unnecessarily deploys police in response to calls for help involving people with behavioral health disabilities, a practice that is “often harmful and ineffective.”²⁴ This is so despite the fact that

undoubtedly exaggerate both the strength of the relationship between major mental disorders and violence, as well as their own personal risk”).

²² See Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 Am. J. Pub. Health 1977, 1979 (Dec. 2017); see also Kevin Martone et al., Technical Assistance Collaborative, *Olmstead at 20: Using the Vision of Olmstead to Decriminalize Mental Illness* 3 (2019) (“[A] disproportionate number of people with mental illness are incarcerated in jails and prisons, segregated from society for offenses that could well have been prevented had they had access to appropriate community-based services and supports.”), https://www.tacinc.org/wp-content/uploads/2020/02/olmstead-at-twenty_09-04-2018.pdf.

²³ Bur. of Justice Assistance, U.S. Dep’t of Justice, *Responding to Homelessness*, <https://bja.ojp.gov/program/pmhc/responding-homelessness> (last visited Mar. 27, 2024).

²⁴ U.S. Dep’t of Justice, *Investigation of the City of Minneapolis and the Minneapolis Police Department* 57 (June 16, 2023), https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf; see also U.S. Dep’t of Justice, *Investigation of the Louisville Metro Police Department and Louisville Metro Government* 62 (Mar. 8, 2023) (investigating the Louisville Metro Police Department’s “ineffective, harmful, and unequal response to situations involving behavioral health issues”), <https://www.justice.gov/opa/press-release/file/1573011/download>.

people with mental illness are far more likely to be the victim of a violent crime than its perpetrator.²⁵

When police interact with individuals with mental illness, they are also more likely to use excessive force.²⁶ According to the Substance Abuse and Mental Health Services Administration, “well-intentioned law enforcement responders” to calls for help involving people with mental illness “often escalate the situation,” including due to “the presence of police vehicles and armed officers that generate anxiety.”²⁷ Research has shown that people with serious mental illness are 12 times more likely to experience police use of force than the general public.²⁸ Tragically, people with untreated mental illness are 16 times

²⁵ See Linda A. Teplin et al., *Crime Victimization in Adults with Severe Mental Illness*, 62 Arch. Gen. Psychiatry 911, 914 (Aug. 2005) (“[o]ver one quarter of the SMI sample had been victims of a violent crime (attempted or completed) in the past year, 11.8 times higher than the [general population] rates”); Stuart, 2 World Psychiatry at 123 (“[i]t is far more likely that people with a serious mental illness will be the victim of violence,” rather than its perpetrator).

²⁶ See Homelessness Pol’y Rsch. Inst., *Policing Homelessness: A review of the literature on policing policies that target homelessness and best practices for improving outcomes* 6 (Oct. 21, 2021), <https://socialinnovation.usc.edu/wp-content/uploads/2021/10/Policing-Homelessness-Final-1.pdf>.

²⁷ Substance Abuse & Mental Health Servs. Admin., *National Guidelines for Behavioral Health Crisis Care – Best Practice Toolkit* 33 (2020), <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>.

²⁸ See Ayobami Laniyonu & Phillip Atiba Goff, *Measuring disparities in police use of force and injury among persons with serious mental illness*, 21 BMC Psychiatry 500 (Oct. 2021), <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-021-03510-w>.

more likely to be killed by law enforcement than those without a mental illness.²⁹ The DOJ and the U.S. Department of Health and Human Services (“HHS”) have recognized that, “[i]n recent years, people with mental illness have accounted for between 20% and 25% of individuals killed by law enforcement.”³⁰ By increasing interactions between police and people with mental illness, policies criminalizing homelessness risk placing people with mental illness at an even greater risk of harm.

Moreover, the overreliance on police to address what are ultimately housing and mental health care needs not only is fraught with risk, but also overburdens the police and comes at great cost. A national survey found that approximately 84 percent of police stated there has been an increase in the number of calls related to mental illness over their career, 80 percent reported the amount of time spent on these calls has increased or substantially increased, and 56 percent

²⁹ See Treatment Advocacy Ctr., *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters* 12 (Dec. 2015), <https://www.treatmentadvocacycenter.org/wp-content/uploads/2023/11/Overlooked-in-the-Undercounted.pdf>.

³⁰ U.S. Dep’t of Justice & U.S. Dep’t of Health & Hum. Servs., *Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities* 2 (May 2023) (citing Kimberly Kindy et al., *Fatal police shootings of mentally ill people are 39 percent more likely to take place in small and mid-sized areas*, Wash. Post (Oct. 17, 2020), https://www.washingtonpost.com/national/police-mentally-ill-deaths/2020/10/17/8dd5bcf6-0245-11eb-b7ed-141dd88560ea_story.html), https://www.justice.gov/d9/2023-05/Sec.%2014%28a%29%20-%20DOJ%20and%20HHS%20Guidance%20on%20Emergency%20Responses%20to%20Individuals%20with%20Behavioral%20Health%20or%20Other%20Disabilities_FINAL.pdf).

stated the increase is due to inability to connect individuals with mental health treatment.³¹

2. Criminal Citations and Incarceration Can Impose Serious Burdens on People with Mental Illness

Criminal citations – including those arising from the criminalization of homelessness – disproportionately and negatively impact individuals with mental illness. Camping ordinances and so-called “sit-lie” laws impose criminal penalties for sleeping, sitting, or lying in public spaces.³² The effects of a criminal citation under such ordinances can be serious. Having a criminal record adds barriers to employment, stable housing, and government benefits.³³ Fines and other legal fees can also exacerbate financial instability and

³¹ See Michael C. Biasotti, *Management of the Severely Mentally Ill and Its Effects on Homeland Security* 35-36, 41-45 (Sept. 2011) (Master’s Thesis, Naval Postgraduate School), <https://mentalillnesspolicy.org/wp-content/uploads/homelandsecuritymentalillness.pdf>.

³² Jess Hallam, *Mental Health Disabilities and the Criminalization of Homelessness: Challenging Municipal Sit-Lie Ordinances as Disparate Impact Discrimination Under the Americans with Disabilities Act of 1990*, 45 N.Y.U. Rev. Law & Soc. Change 632, 644-45 (2022), https://socialchangenyu.com/wp-content/uploads/2022/05/Hallam_45.4_Mental-Health-Disabilities.pdf.

³³ See U.S. Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 1 (June 2012) (“[I]ndividuals who are arrested or fined for ‘act of living’ crimes in public spaces now have a criminal record, resulting in barriers to work and difficulty in receiving mainstream services and housing that often bar individuals with criminal histories.”), https://usich.gov/sites/default/files/document/Searching_Out_Solutions_2012.pdf; Am. Bar Ass’n, *Collateral Consequences of Criminal Convictions: Judicial Bench Book* 4 (2018), <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf>.

further compromise housing stability. A study of people experiencing homelessness in Seattle found that individuals with outstanding legal debt spent approximately two more years without stable housing than those without legal debt.³⁴

In addition, formerly incarcerated individuals are almost 10 times more likely to be homeless than the general public, and even a single period of incarceration makes a person seven times as likely to experience homelessness.³⁵ The U.S. Interagency Council on Homelessness (“USICH”) has concluded that, “[r]ather than helping people to regain housing, obtain employment, or access needed treatment and services, criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”³⁶

Imprisonment due to the criminalization of homelessness can result in significant negative effects on an individual’s physical and mental health, as well. As noted above, people with mental illness experiencing homelessness already face various barriers to accessing mental health treatment; incarceration

³⁴ See Jessica Mogk et al., *Court-imposed fines as a feature of the homelessness-incarceration nexus: a cross-sectional study of the relationship between legal debt and duration of homelessness in Seattle, Washington, USA*, 42 J. Pub. Health 107 (June 2020).

³⁵ See Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, Prison Pol’y Initiative (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

³⁶ USICH, *supra* note 33, at 6; see also Statement of Interest of the United States at 15-16, *Bell v. City of Boise*, No. 1:09-cv-540-REB, ECF No. 276 (D. Idaho Aug. 6, 2015) (“[C]riminalizing homelessness is . . . misguided public policy, leading to worse outcomes for people who are homeless and for their communities.”).

exacerbates these barriers. Once incarcerated, many people with mental illness do not receive adequate treatment. *See generally Brown v. Plata*, 563 U.S. 493 (2011) (describing inadequacies of mental health care in California’s prisons). A study by the Bureau of Justice Statistics found that only 35 percent of jail inmates with mental illness received treatment after admission, compared with 54 percent of state prisoners.³⁷ In some smaller jails, providing mental health care to inmates is made challenging by the lack of services generally within the locality and by the small jail staff.³⁸ The DOJ’s 2019 *Census of Jails* found that only 26 percent of local jails offer mental health or psychiatric care.³⁹

People with mental illness also frequently receive inadequate support upon release from incarceration. In Alameda County, California, the DOJ found that a lack of community-based housing and services resulted in repeated incarceration and admissions of people with mental illness to the psychiatric hospital and emergency department.⁴⁰ Continuity of care is

³⁷ See Jennifer Bronson & Marcus Berzofsky, U.S. Dep’t of Justice, Bur. of Justice Statistics, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*, at 8 (June 2017), <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>.

³⁸ See Nastassia Walsh, Nat’l Ass’n of Counties, *Reducing Mental Illness in Rural Jails* 5 (Feb. 19, 2016), https://www.naco.org/sites/default/files/documents/Reducing%20Mental%20Illness%20in%20Rural%20Jails_FINAL.pdf.

³⁹ See Zhen Zeng & Todd D. Minton, U.S. Dep’t of Justice, Bur. of Justice Statistics, *Census of Jails, 2005–2019 – Statistical Tables* 43 (Oct. 2021), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cj0519st.pdf>.

⁴⁰ See U.S. Dep’t of Justice, *Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail* (Apr. 22,

particularly challenging for individuals with short periods of incarceration,⁴¹ which are common among those incarcerated under laws criminalizing homelessness.

Criminalizing homelessness thus perpetuates and increases the risk of homelessness for people with mental illness.

II. COMMUNITY-BASED HOUSING AND MENTAL HEALTH SERVICES ARE FAR MORE EFFECTIVE THAN CRIMINAL ENFORCEMENT IN ADDRESSING THE PROBLEM OF HOMELESSNESS FOR INDIVIDUALS WITH MENTAL ILLNESS

Petitioner and its *amici* suggest that the Ninth Circuit’s decision will somehow interfere with governmental efforts to address the problem of – and the problems associated with – homelessness. But research, including large-scale trials, shows that interventions such as supportive housing both improve health outcomes and result in cost savings. Community-based mental health services reduce law enforcement intervention and incarceration, promote the integration of individuals with mental illness into their communities, and improve outcomes for both individuals with mental illness and the broader community.

2021), <https://www.justice.gov/crt/case-document/file/1388891/download>.

⁴¹ See Christie C. Browne et al., *Continuity of mental health care during the transition from prison to the community following brief periods of imprisonment*, 13 *Front. Psychiatry* #934837, at 1 (Sept. 20, 2022) (“[c]ontinuity of mental health care for those exiting prison is poor, particularly for those with mental health needs experiencing brief periods of imprisonment”), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9530150/pdf/fpsy-13-934837.pdf>.

A. There Are Proven Alternatives to Criminal Enforcement To Address Homelessness for People with Mental Illness

Many localities have implemented community-based alternatives to address the homelessness crisis and its impact on people with mental illness. These alternative interventions are focused on providing services for people with mental illness experiencing homelessness that are effective at helping individuals live successfully in their own homes and communities, including supportive housing, assertive community treatment, mobile crisis services, supported employment, and peer support services.

1. *Supportive Housing.* Homelessness is fundamentally a housing scarcity problem.⁴² Above all else – more than mental illness or any other factor – homelessness is driven by rising costs and low rental availability.⁴³ In response, rental assistance programs and subsidized housing have been proven to sharply reduce long-term homelessness and housing insecurity for individuals with mental illness.⁴⁴

⁴² See Richard Cho, U.S. Dep’t of Hous. & Urb. Dev., *To Solve Homelessness, We Must Increase the Supply of Housing* (Dec. 6, 2022) (describing research), https://www.hud.gov/ourwayhome/blog/blog_12_06_22.

⁴³ See *id.*

⁴⁴ See Will Fischer, Ctr. on Budget & Pol’y Priorities, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children* (Oct. 7, 2015), <https://www.cbpp.org/sites/default/files/atoms/files/3-10-14housing.pdf>; Michelle Wood et al., *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*, 19 Hous. Pol’y Debate 367-412 (2008); Patrick Markee, Coal. for the Homeless, *Research Proves that Federal Housing Programs Work to Reduce Family Homelessness* (Feb. 12, 2009) (collecting research), <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/>

Additionally, supportive housing programs are highly effective in combating housing insecurity and achieving long-term stability among individuals with mental illness. Supportive housing programs provide housing and services designed to target the individual's specific needs; such housing is not made contingent on mandatory participation in services.⁴⁵ Rather, participants are afforded the same rights and responsibilities as any other tenant, which leads to improved housing stability as compared to housing conditioned on participation in services that may not be tailored to the individual's needs.⁴⁶ With secure housing provided first, participants can more effectively focus on recovery. Providing secure and stable housing allows individuals to focus on improving their circumstances through employment or education, rather than focusing on immediate survival needs. Additionally, increased satisfaction with one's residence

03/BriefingPaper-ResearchonHousingAssistanceforHomeless Families-2-12-2009.pdf.

⁴⁵ Requirements that tenants agree to treatment or abstain from use of drugs and alcohol are routinely used to deny housing to those most in need and have been shown to do little to actually decrease substance use. See Deborah K. Padgett et al., *Housing First Services for People Who Are Homeless With Co-Occurring Serious Mental Illness and Substance Abuse*, 16 *Rsch. on Soc. Work Prac.* 74-83 (2006) (a longitudinal experiment comparing substance use in "housing first" and "treatment first" individuals showed no significant difference in alcohol and drug use), <https://journals.sagepub.com/doi/10.1177/1049731505282593>.

⁴⁶ See Ehren Dohler et al., *Ctr. on Budget & Pol'y Priorities, Supportive Housing Helps Vulnerable People Live and Thrive in the Community* (May 31, 2016), <https://www.cbpp.org/sites/default/files/atoms/files/5-31-16hous.pdf>.

is a significant predictor of housing stability⁴⁷ and often proves to be a powerful motivator for participants to seek and maintain treatment.⁴⁸

This “Housing First” approach is more effective at reducing homelessness for people with mental illness than enacting laws designed to criminalize homelessness *or* increasing reliance upon emergency shelters. For example, a five-year study conducted by the University of Pennsylvania tracking thousands of individuals placed into supportive housing in New York City found that use of emergency shelters by individuals in supportive housing dropped 60 percent and incarceration dropped 85 percent as compared to similarly situated individuals who were not connected to supportive housing.⁴⁹ Supportive housing also reduces hospitalization, increases participant satisfaction, and improves mental health symptoms.⁵⁰ Similar results have been found across American

⁴⁷ See Debra Srebnik et al., *Housing Choice and Community Success for Individuals with Serious and Persistent Mental Illness*, 31 Cmty. Mental Health J. 139-52 (Apr. 1995).

⁴⁸ See Sam Tsemberis et al., *Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals With a Dual Diagnosis*, 94 Am. J. Pub. Health 651, 655 (Apr. 2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448313/pdf/0940651.pdf>.

⁴⁹ See Dennis P. Culhane et al., *The Impact of Supportive Housing for Homeless People with Severe Mental Illness on the Utilization of the Public Health, Corrections, and Emergency Shelter Systems: The New York-New York Initiative*, 13 Hous. Pol’y Debate 107, 137-38 (2002), available at <http://works.bepress.com/mettraux/16>; Corp. for Supportive Hous., *The New York/New York Agreement Cost Study: The Impact of Supportive Housing on Services Use for Homeless Mentally Ill Individuals* 5 (May 2001), https://shnny.org/uploads/NY-NY_Agreement_Cost_Study_2001.pdf.

⁵⁰ See Culhane, 13 Hous. Pol’y Debate at 137-38.

cities that implement supportive housing.⁵¹ For these reasons, supportive housing has been endorsed by the federal government: the U.S. Department of Housing and Urban Development (“HUD”),⁵² the Surgeon General,⁵³ HHS,⁵⁴ and the National Council on Disability⁵⁵ all recognize the efficacy of supportive housing.

2. *Assertive Community Treatment.* Assertive community treatment (“ACT”) is a service in which specialized multidisciplinary teams provide individualized care and support for the day-to-day needs of people with serious mental illness. Specifically, ACT programs provide individuals with services designed

⁵¹ See Fairmount Ventures, Inc., *Evaluation of Pathways to Housing PA 3* (Jan. 2011) (incarceration rates fell by 50% in Philadelphia), <https://centercityphila.org/uploads/attachments/cit0g2r8x0029f6qdp9b8ja-pathways-to-housing.pdf>; Matthew Makarios et al., *Examining the Predictors of Recidivism Among Men and Women Released From Prison in Ohio*, 37 *Crim. Just. & Behav.* 1377-91 (Dec. 2010) (incarceration rates fell by 61% in Ohio); see generally Nat’l Council on Disability, *Inclusive Livable Communities for People with Psychiatric Disabilities* 37-41, 43-44 (Mar. 17, 2008), <https://www.ncd.gov/assets/uploads/reports/2008/ncd-inclusive-livable-communities-2008.pdf>.

⁵² See Off. of Pol’y Dev. & Rsch., U.S. Dep’t of Hous. & Urb. Dev., *The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness: Final Report* 102-03 (July 2007), <https://www.huduser.gov/portal/publications/pdf/hsgfirst.pdf>.

⁵³ See U.S. Dep’t of Health & Hum. Servs., *Mental Health: A Report of the Surgeon General* 225-329 (1999), <https://digirepo.nlm.nih.gov/ext/document/101584932X120/PDF/101584932X120.pdf>.

⁵⁴ See Substance Abuse & Mental Health Servs. Admin., U.S. Dep’t of Health & Hum. Servs., *Transforming Housing for People with Psychiatric Disabilities Report* 16, 23-25 (2006), <http://research.policyarchive.org/17617.pdf>.

⁵⁵ See Nat’l Council on Disability, *supra* note 51, at 17-28.

to help with symptom mitigation, medication management, housing, finances, and other individualized needs to promote successful community engagement.⁵⁶ The multidisciplinary team generally includes psychiatric providers, registered nurses, case managers, therapists, peer support workers, and other specialists. Additionally, ACT programs bring services to participants in their own homes and elsewhere in the community, rather than requiring participants to travel to obtain services; this increases long-term success of mental health services.⁵⁷

ACT services are more effective than other services in reducing hospital use⁵⁸ by individuals with mental illness, and they are most effective for those individuals who have repeatedly returned to psychiatric hospitals.⁵⁹ ACT is also particularly effective when geared towards homeless individuals with mental illness and when integrated into supportive housing models.⁶⁰ Indeed, a review of 10 studies, totaling nearly 6,000 participants, showed that ACT participants with mental illness demonstrated a 37 percent

⁵⁶ See Gary R. Bond & Robert E. Drake, *The critical ingredients of assertive community treatment*, 14 *World Psychiatry* 240-42 (June 2015), available at <https://onlinelibrary.wiley.com/doi/epdf/10.1002/wps.20234>.

⁵⁷ See Gary R. Bond et al., *Assertive Community Treatment for People with Severe Mental Illness: Critical Ingredients and Impact on Patients*, 9 *Disease Mgmt. & Health Outcomes* 141-59 (Mar. 2001).

⁵⁸ See *id.*

⁵⁹ See generally Marina Dieterich et al., *Intensive case management for severe mental illness (Review)*, *Cochrane Database of Systematic Reviews* 49-56 (2017), <https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD007906.pub3/epdf/full>.

⁶⁰ See Tsemberis, 94 *Am. J. Pub. Health* at 651-56.

or greater reduction in homelessness as compared to those who received other services.⁶¹ ACT programs have led to a reduction of hospital admissions and admission days, more stable housing, greater satisfaction among participants and families, less treatment dropout, and improved quality of life and social functioning.⁶²

3. *Mobile Crisis Services.* Mobile crisis services provide individuals with mental illness with in-person, onsite access to mental health professionals trained in de-escalation, such as psychiatric nurses, emergency medical technicians (EMTs), social workers, and peer workers. In certain programs, professionals travel to individuals in crisis and are available to respond to their individual needs 24 hours per day, 7 days per week. One study showed that upwards of 70 percent of mental health crises can be resolved “in the field” via mobile crisis services.⁶³ Mobile crisis services thus relieve pressure on law enforcement to respond to situations beyond their expertise and that

⁶¹ See Craig M. Coldwell & William S. Bender, *The Effectiveness of Assertive Community Treatment for Homeless Populations With Severe Mental Illness: A Meta-Analysis*, 164 *Am. J. Psychiatry* 393-99 (Mar. 2007), <https://ajp.psychiatryonline.org/doi/epdf/10.1176/ajp.2007.164.3.393>.

⁶² See Sonia Vidal et al., *Assertive Community Programs for Patients with Severe Mental Disorders: Are Benefits Sustained After Discharge?*, 56 *Comty. Mental Health J.* 559-67 (Apr. 2020), available for purchase at <https://link.springer.com/article/10.1007/s10597-019-00513-6>.

⁶³ Margie Balfour, *What if . . . Access to Care was the priority? Lessons from the Southern Arizona Crisis System* 10 (summarizing call outcome data from 2019, following 20 years of system development), https://www.neomed.edu/wp-content/uploads/CJCCOE_01-Margie-Balfour-What-if-access-to-care-was-a-priority.pdf (last visited Mar. 27, 2024).

do not require police response, and divert individuals from hospitalization,⁶⁴ arrest, or incarceration.⁶⁵ Law enforcement officers generally prefer mobile crisis services as compared to police intervention in such situations.⁶⁶

4. *Supported Employment.* Supported employment helps people with serious mental illness get and keep jobs that align with their individual needs, strengths, and interests.⁶⁷ Supported employment services help connect individuals with jobs, provide on-the-job support and tailored trainings, and work with employers to identify necessary accommodations.⁶⁸ As a result, supported employment participants are better able to integrate into the workforce and maintain employment. Employment is critical to recovery: it helps individuals with mental illness live autonomously, build

⁶⁴ See Shenyang Guo et al., *Assessing the Impact of Community-Based Mobile Crisis Services on Preventing Hospitalization*, 52 *Psychiatric Servs.* 223-28 (Feb. 2001), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.52.2.223>; Roger L. Scott, *Evaluation of a Mobile Crisis Program: Effectiveness, Efficiency, and Consumer Satisfaction*, 51 *Psychiatric Servs.* 1153-56 (Sept. 2000), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.51.9.1153>.

⁶⁵ See generally H. Richard Lamb et al., *The Police and Mental Health*, 53 *Psychiatric Servs.* 1266, 1268 (Oct. 2002) (noting that mobile crisis team responses result in arrest rates of 2 to 13 percent, as compared to the 21-percent arrest rate for typical contacts between law enforcement and individuals in mental health crises), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.53.10.1266>.

⁶⁶ See Scott, 51 *Psychiatric Servs.* at 1153-56.

⁶⁷ See generally Substance Abuse & Mental Health Servs. Admin., U.S. Dep't of Health & Hum. Servs., *Building Your Program: Supported Employment* (2009), <https://store.samhsa.gov/sites/default/files/sma08-4364-buildingyourprogram.pdf>.

⁶⁸ See *id.*

personal relationships, improve self-esteem, and foster independence, which improves overall symptom management.⁶⁹

Studies show high employment rates for at least a decade following participation in supported employment.⁷⁰ Supported employment also correlates with fewer inpatient hospitalizations and emergency room visits for those with mental illness,⁷¹ and there is similarly a negative correlation between supported employment and arrest rates.⁷²

5. *Peer Support Services.* Peer support workers are trained⁷³ individuals with lived experience in the

⁶⁹ See generally Robert E. Drake & Michael A. Wallach, *Employment is a critical mental health intervention*, 29 *Epidemiol. & Psychiatric Sci.* e178 (Nov. 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7681163/>; E. Sally Rogers, *A Benefit-Cost Analysis of a Supported Employment Model for Person with Psychiatric Disabilities*, 18 *Evaluation & Program Planning* 105-15 (1995), <https://cpr.bu.edu/wp-content/uploads/2011/11/rogers1995.pdf>; Gary R. Bond et al., *Implementing Supported Employment as an Evidence-Based Practice*, 52 *Psychiatric Servs.* 313-22 (Mar. 2001), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.52.3.313>.

⁷⁰ See Gary R. Bond et al., *An Update on Randomized Controlled Trials of Evidence-Based Supported Employment*, 31 *Psychiatric Rehab. J.* 280, 284 (2008); Michelle P. Salyers et al., *A Ten-Year Follow-Up of a Supported Employment Program*, 55 *Psychiatric Servs.* 302, 305 (Mar. 2004), <https://ps.psychiatryonline.org/doi/epdf/10.1176/appi.ps.55.3.302>.

⁷¹ See Rogers, 18 *Evaluation & Program Planning* at 113.

⁷² See Z. Joyce Fan et al., *Improving Employment Outcomes for People with Mental Health Disorders in Washington State* (June 2016), <https://www.dshs.wa.gov/sites/default/files/rda/reports/research-11-230.pdf>.

⁷³ See Peer Recovery Ctr. of Excellence, *Comparative Analysis of State Requirements for Peer Support Specialist Training and Certification in the United States* (Jan. 2023), <https://peerrecovery>

mental health service system who are well-positioned to build relationships with those in need of support. By building connections based on shared experiences, peers are viewed as credible and relatable, which fosters trust and productive working relationships.⁷⁴ Peers assist in connecting individuals to treatment providers, building and maintaining social relationships, participating in community engagement activities, and transitioning from institutional settings. As a result, peer workers improve outcomes for the individuals they support, including by reducing hospitalizations, increasing service utilization and treatment engagement, and improving overall quality of life.⁷⁵ Moreover, peer support has been effective in decreasing the number of days spent homeless and homelessness relapses, and increasing overall housing stability for those with mental illness.⁷⁶

now.org/wp-content/uploads/2023-FEB-07-prcoe-comp-analysis.pdf; Substance Abuse & Mental Health Servs. Admin., *National Model Standards for Peer Support Certification* (2023), <https://store.samhsa.gov/sites/default/files/pep23-10-01-001.pdf>.

⁷⁴ See Ana Stefancic et al., “What We Have in Common”: A Qualitative Analysis of Shared Experience in Peer-Delivered Services, 55 *Cmt. Mental Health J.* 1-9 (Aug. 2019) (explaining that, although peer specialists rarely reported explicitly sharing experiences related to mental health with clients, the shared experience of mental health shaped peer specialists’ approach to service), available for purchase at <https://link.springer.com/article/10.1007/s10597-019-00391-y>.

⁷⁵ See Substance Abuse & Mental Health Servs. Admin., *Advisory: Peer Support Services in Crisis Care* 1 (June 2022), <https://store.samhsa.gov/sites/default/files/pep22-06-04-001.pdf>.

⁷⁶ See Stephanie L. Barker & Nick Maguire, *Experts by Experience: Peer Support and its Use with the Homeless*, 53 *Cmt. Mental Health J.* 598-612 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5438434/pdf/10597_2017_Article_102.pdf.

B. Alternative Interventions Save Money

These alternatives to criminal enforcement are not only more effective, but also *cost-effective*. Research shows a sharp decline in the use of public funds to support homeless individuals with mental illness when supportive housing is available.⁷⁷ This makes sense: the per diem cost of serving one person in supportive housing is a quarter the cost of incarceration and a tenth the cost of psychiatric hospitalization,⁷⁸ which can cost tens of thousands of dollars per person per year.⁷⁹ A review of more than 30 studies focusing on the cost of Housing First programs found that prioritizing housing with voluntary services is, overall, a more efficient allocation of resources than using funds to provide other interventions such as traditional outpatient services, hospitalization, and incarceration.⁸⁰

The services typically associated with supportive housing participation also reduce overall system costs. Providing mental health services and housing to an individual with mental illness is significantly cheaper than incarcerating and hospitalizing them.⁸¹ For

⁷⁷ See Corp. for Supportive Hous., *supra* note 49, at 5-7.

⁷⁸ See The Lewin Group, *Cost of Serving Homeless Individuals in Nine Cities* 1 (Nov. 19, 2004), https://www.csh.org/wp-content/uploads/2011/12/Report_CostforIndividuals1.pdf.

⁷⁹ See Culhane, 13 Hous. Pol’y Debate at 137-38.

⁸⁰ See Angela Ly & Eric Latimer, *Housing First Impact on Costs and Associated Cost Offsets: A Review of the Literature*, 60 Can. J. Psychiatry 475-87 (Nov. 2015) (noting that Housing First initiatives, which may not entirely pay for themselves, significantly offset cost of other services and improve outcomes for participants), <https://journals.sagepub.com/doi/pdf/10.1177/070674371506001103>.

⁸¹ See generally Darci Delgado et al., *Economics of decriminalizing mental illness: when doing the right thing costs less*, 25

example, ACT programs dramatically reduce costs associated with hospitalization; a comparison study of homeless individuals with mental illness in Baltimore showed that, because those individuals not receiving ACT services incurred significantly more emergency room visits and inpatient hospital days, the overall average cost per year for individuals receiving ACT was almost \$16,000 less than that for those not receiving ACT.⁸² The average cost per case associated with mobile crisis services is likewise approximately 23 percent lower than those involving standard law enforcement interventions.⁸³ Another study found that mobile crisis services can decrease inpatient hospitalization costs by approximately 79 percent over the course of six months.⁸⁴

Furthermore, state and federal government funds have been made available to support these alternative

CNS Spectrums 566-70 (2020), <https://www.cambridge.org/core/journals/cns-spectrums/article/abs/economics-of-decriminalizing-mental-illness-when-doing-the-right-thing-costs-less/59E5D08F4C3C5B030DB1A44C95639B90>.

⁸² See Eric A. Latimer, *Economic Impacts of Assertive Community Treatment: A Review of the Literature*, 44 Can. J. Psychiatry 443-54 (June 1999), <https://journals.sagepub.com/doi/pdf/10.1177/070674379904400504>; Anthony F. Lehman et al., *Cost-effectiveness of assertive community treatment for homeless persons with severe mental illness*, 174 Brit. J. Psychiatry 346, 348-51 (Apr. 1999) (concluding that ACT was more effective and no more expensive than “usual services”), https://www.researchgate.net/publication/12766197_Cost-effectiveness_of_assertive_community_treatment_for_homeless_persons_with_severe_mental_illness.

⁸³ See Substance Abuse & Mental Health Servs. Admin., *Crisis Services: Effectiveness, Cost-Effectiveness, and Funding Strategies* 15 (2014), <https://store.samhsa.gov/sites/default/files/sma14-4848.pdf>.

⁸⁴ See *id.*

interventions. For example, in a single year, HUD provides upwards of \$30 billion to low-income households through the Housing Choice Voucher Program.⁸⁵ Voucher recipients are better able to find housing that meets their needs and are not limited to subsidized housing projects.⁸⁶ Accordingly, vouchers can be used to fund supportive housing.⁸⁷ Additionally, through Section 811, HUD funds supportive housing for low-income individuals with disabilities, including mental illness.⁸⁸ HUD also gives state and local agencies the

⁸⁵ See Press Release, U.S. Dep't of Hous. & Urb. Dev., *HUD Announces the Availability of \$30.3 Billion for Housing Authorities to Provide Affordable Housing* (Apr. 13, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_076 (last visited Mar. 27, 2024).

⁸⁶ See U.S. Dep't of Hous. & Urb. Dev., *Housing Choice Vouchers Fact Sheet*, https://www.hud.gov/topics/housing_choice_voucher_program_section_8#hcv01 (last visited Mar. 27, 2024).

⁸⁷ See U.S. Dep't of Hous. & Urb. Dev., *Guidance on Housing Individuals and Families Experiencing Homelessness Through the Public Housing and Housing Choice Voucher Programs 7* (June 8, 2023) (housing choice voucher programs may preference individuals or families who qualify for voluntary services offered in conjunction with voucher-assisted units), <https://www.hud.gov/sites/dfiles/PIH/documents/pih2023-13.pdf>; The Road Home Dane Cnty., *Permanent Supportive Housing* (describing Wisconsin supportive housing program in which participants receive rental subsidies through housing choice “Mainstream” vouchers), <https://trhome.org/permanent-supportive-housing/> (last visited Mar. 27, 2024).

⁸⁸ See U.S. Dep't of Hous. & Urb. Dev., *Section 811 Supportive Housing for Persons With Disabilities*, https://www.hud.gov/program_offices/housing/mfh/progdsc/disab811 (last visited Mar. 27, 2024).

equivalent of \$9 billion per year to issue tax credits that will support low-income housing.⁸⁹

Medicaid is also a significant resource for municipalities seeking additional funding to support their community. For example, Medicaid allows States to obtain federal matching funds for supported employment,⁹⁰ supportive housing,⁹¹ and ACT services.⁹² States are making use of federal funding through Medicaid to help pay for these services and others, including peer support services.⁹³

⁸⁹ See Off. of Pol’y Dev. & Rsch., *Low-Income Housing Tax Credit (LIHTC)*, <https://www.huduser.gov/portal/datasets/lihtc.html> (last visited Mar. 27, 2024).

⁹⁰ See Ctr. for Medicaid & CHIP Servs., Nat’l Inst. of Mental Health & Substance Abuse & Mental Health Servs. Admin., *Joint Information Bulletin: Coverage of Early Intervention Services for First Episode Psychosis* 5, 8 (Oct. 16, 2015), <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/cib-10-16-2015.pdf>.

⁹¹ See Medicaid & CHIP Payment & Access Comm’n, *Medicaid’s Role in Housing* (June 2021), <https://www.macpac.gov/wp-content/uploads/2021/06/Medicoids-Role-in-Housing-1.pdf>.

⁹² See KFF, *Medical Behavioral Health Services: Assertive Community Treatment* (2022), <https://www.kff.org/medicaid/state-indicator/medicaid-behavioral-health-services-assertive-community-treatment/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Mar. 27, 2024).

⁹³ See N.Y. Comp. Codes R. & Regs. tit. 14, § 508.5; Olivia Randi, Nat’l Acad. for State Health Pol’y, *American Rescue Plan Act Allows States to Expand Mobile Crisis Intervention Services for Children and Youth Through Medicaid* (Aug. 2, 2021), <https://nashp.org/american-rescue-plan-act-allows-states-to-expand-mobile-crisis-intervention-services-for-children-and-youth-through-medicaid/#:~:text=Section%209813%20of%20the%20ARPA,starting%20on%20April%201%2C%202022; Medicaid & CHIP Payment & Access Comm’n, Behavioral health services>

The American Rescue Plan Act of 2021 authorized time-limited federal funding through Medicaid available for mobile crisis services, demonstrating a national shift toward funding mobile mental health responses to calls for help involving people in crisis.⁹⁴ These programs are being developed in at least 15 States.⁹⁵ Additionally, at least 19 States have been approved to use Medicaid funds to address the needs of individuals experiencing housing insecurity such as rental assistance and basic necessities such as utilities and food.⁹⁶ There has been other federal support for mobile crisis services, including through the recent Bipartisan Safer Communities Act, and expanded access to these services regardless of ability to pay or place of residence.⁹⁷

covered under HCBS waivers and 1915(i) SPAs, <https://www.macpac.gov/subtopic/behavioral-health-services-covered-under-hcbs-waivers-and-spas/> (last visited Mar. 27, 2024).

⁹⁴ See Letter from Daniel Tsai, Deputy Adm'r & Director, Ctrs. for Medicare & Medicaid Servs., U.S. Dep't of Health & Hum. Servs., to State Health Officials (Dec. 28, 2021), <https://www.medicaid.gov/sites/default/files/2021-12/sho21008.pdf>.

⁹⁵ See Press Release, Ctrs. for Medicare & Medicaid Servs., *HHS Approves New Mexico's Request to Expand Access to Critical Behavioral Health Services Through Mobile Crisis Intervention Teams* (Feb. 6, 2024), <https://www.cms.gov/newsroom/press-releases/hhs-approves-new-mexicos-request-expand-access-critical-behavioral-health-services-through-mobile>.

⁹⁶ See McKenzie Beard, *Medicaid is paying for housing, food in more states*, Wash. Post (Apr. 21, 2023), <https://www.washingtonpost.com/politics/2023/04/21/medicaid-is-paying-housing-food-more-states/>.

⁹⁷ See Substance Abuse & Mental Health Servs. Admin., *Marking One Year of the Bipartisan Safer Communities Act* (July 28, 2023), <https://www.samhsa.gov/blog/marking-one-year-bipartisan-safer-communities-act>.

CONCLUSION

Community-based alternatives are more humane, more effective, and less expensive alternatives to the justice system for individuals with mental illness experiencing homelessness.

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