

No. 19-247

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**In The  
Supreme Court of the United States**

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CITY OF BOISE,

*Petitioner,*

v.

ROBERT MARTIN, ET AL.,

*Respondents.*

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

—◆—  
**BRIEF OF AMICI CURIAE CALIFORNIA  
STATE SHERIFFS' ASSOCIATION,  
CALIFORNIA POLICE CHIEFS ASSOCIATION, AND  
CALIFORNIA PEACE OFFICERS' ASSOCIATION  
IN SUPPORT OF PETITIONER**

—◆—  
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**STATEMENT OF INTEREST OF  
AMICI CURIAE**

Amici Curiae are the California State Sheriffs' Association ("CSSA"), the California Police Chiefs Association ("CPCA") and the California Peace Officers' Association ("CPOA").<sup>1</sup>

CSSA is a non-profit professional organization that represents each of the 58 California Sheriffs. It was formed to allow the sharing of information and resources between sheriffs and departmental personnel in order to allow for the general improvement of law enforcement throughout the State of California. CPCA represents virtually all of the more than 400 municipal chiefs of police in California. CPCA seeks to promote and advance the science and art of police administration and crime prevention, by developing and disseminating professional administrative practices for use in the police profession. It also furthers police cooperation and the exchange of information and experience throughout California. Finally, CPOA represents more than 35,000 peace officers, of all ranks, throughout the State of California. CPOA provides professional development and training for peace officers, and reviews and comments on legislation and other matters impacting law enforcement.

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<sup>1</sup> Pursuant to SUP. CT. R. 37.6, Amici affirm that no counsel for a party authored this Brief in whole or in part and that no person other than Amici, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this Brief. Amici have received consent and timely notification from all parties to the filing of this Brief.

Amici have identified this matter as one in which their expertise may be of assistance to the Court and wish to draw the Court's attention to the potentially sweeping operational impact of the Court's decision on local law enforcement agencies throughout the State. Amici urge the Court to grant the Petition for Writ of Certiorari because the issues presented will have a profound impact on the members of each Association, as well as on all the law enforcement agencies and peace officers in the State of California, and the general public.



### **SUMMARY OF ARGUMENT**

Amici are familiar with the Petition filed by the City of Boise and do not seek to duplicate the Petitioner's arguments. Rather, Amici wish to discuss the practical implications that the Ninth Circuit's underlying decision is having, and will continue to have, on law enforcement throughout the State of California. Amici also wish to emphasize the exceptional public importance of the questions presented by the Petition from the perspective of those whose profession brings them in contact with the homeless population on a daily basis in the course of their duties as peace officers.

Local municipalities have the legal authority to pass ordinances that regulate the health, safety and welfare of their citizens. These municipalities also have the expertise to determine how to best address

the difficult and sensitive issues raised by the increasing homeless populations in their jurisdictions. Indeed, the States' core police powers have always included authority to define criminal law and to protect the health, safety, and welfare of their citizens. *See Brecht v. Abrahamson*, 507 U.S. 619, 635, 123 L. Ed. 2d 353, 113 S. Ct. 1710 (1993); *see also Whalen v. Roe*, 429 U.S. 589, 603, n. 30, 51 L. Ed. 2d 64, 97 S. Ct. 869 (1977).

The problems presented by the ever-increasing homeless population and the concomitant proliferation of homeless encampments have created a crisis of epic proportions on the streets of cities across the United States. With 129,972 individuals experiencing homelessness on any given day as of January 2018 – the highest in the Nation – no state has felt the impact of this crisis more severely than the State of California.<sup>2</sup> And as first responders, no profession faces the crisis in a more direct way on a daily basis than that of law enforcement.

Police officers “are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties . . . ”. *Christal v. Police*

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<sup>2</sup> United States Interagency Council on Homelessness, *California Homeless Statistics* available at <https://www.usich.gov/homelessness-statistics/ca>; *see also* U.S. Dept. of Housing and Urban Development, *2018 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations – California* January 24, 2018 available at [https://files.hudexchange.info/reports/published/CoC\\_PopSub\\_State\\_CA\\_2018.pdf](https://files.hudexchange.info/reports/published/CoC_PopSub_State_CA_2018.pdf).

*Com. of San Francisco*, 33 Cal. App. 2d 564, 567 (1939). Indeed, the most basic function of law enforcement agencies is to protect the safety of the public.

In order to carry out these duties, society has granted peace officers great authority, including the power to cite and arrest persons for violating the law. This authority provided to peace officers, however, is not without strict limitations designed to ensure that peace officers do not abuse this authority. Courts are constantly called upon to balance the immeasurable value of effective law enforcement – to the individual citizen and to society in general – against precious individual constitutional rights.

Prior to *Martin*, enforcement of generally applicable criminal laws was the province of local law enforcement agencies regardless of the “involuntariness” of the conduct at issue. The expansive interpretation given to the Eighth Amendment by the Ninth Circuit impermissibly intrudes on core peace officer functions, impairs law enforcement’s ability to protect public safety and fails to provide law enforcement sufficient direction or flexibility to make critical decisions regarding citing individuals for violations of basic health and safety laws. In short, the *Martin* decision leaves law enforcement officers in a very difficult position in their struggle to ensure the health and public safety for all persons whom they serve.

For law enforcement, the Ninth Circuit’s lack of analysis, lack of clarity on the legal standard and failure to explain what is meant by basic terms within the

decision such as “shelter,” “availability” and “involuntary” present more than an interesting cerebral exercise. Instead, for peace officers on the street, who are making thousands of contacts each month with the homeless population on their city’s streets, the underdeveloped and confusing decision provides law enforcement agencies with sparse direction as to the scope of their authority in those day-to-day policing contacts or with respect to how they must act to avoid future liability. In sum, *Martin* imposes an amorphous standard that is impossible for officers, or courts, to apply in a fair and consistent manner. In addition, the *Martin* decision significantly burdens peace officers in their daily duties and creates substantial civil liability exposure for those officers.

Amici’s members need this Court’s guidance concerning a clear and consistent interpretation of the liability standard governing law enforcement interactions with the homeless population, and the scope of laws that permissibly may be enforced as to this population. Amici believe the resolution of the questions raised by this case are extremely important and submit this Brief seeking guidance out of concern that the laws fostered to ensure the health and safety of both the homeless population and the public at large should not be compromised by vague and impracticable constitutional standards. Amici and their members further have an interest in ensuring that law enforcement agencies and peace officers have appropriate flexibility to make critical decisions regarding citations and arrests for violations of basic health and safety laws

without facing the specter of monetary damages, attorneys' fees awards, and defense costs that are associated with civil lawsuits.

Unfortunately, there is no easy answer to the problem of homelessness and there is no single tool that will solve this crisis. Amici wish to make it very clear that they, by no means, argue for the criminalization of the homeless. Law enforcement agencies in California remain steadfast in their commitment to improving the lives of persons experiencing homelessness, by partnering with social service agencies and community groups to address homelessness, while maintaining cities and counties that are safe, clean and accessible to all. To successfully reduce homelessness and homeless encampments, California law enforcement must continue to be innovative and must be able to employ each and every tool at their disposal. Enforcement of the type of ordinances at issue in *Martin* is simply one tool, and a vital one, that should be available to law enforcement. Accordingly, Amici respectfully support the City of Boise's Petition for Writ of Certiorari.

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## ARGUMENT

### **I. Homelessness is a Critical Issue in California Policing**

The disparate practical impact on California of the *Martin* decision, arising out of Boise, Idaho, is staggering. In 2018, Boise, and the county in which it sits, had

117 unsheltered homeless individuals.<sup>3</sup> That same year, Los Angeles and the county in which it sits, had 36,461 unsheltered individuals – over 300 times more than Boise.<sup>4</sup> To say that the homelessness problems in different cities require different approaches, strategies and tools is a gross understatement. Preventing the use of a tool by the Boise Police Department simply does not have the same effect as preventing the use of the same tool by the Los Angeles Police Department. Additionally, while the open questions raised by *Martin* may prove difficult to answer in Boise – such as how to calculate the total homeless population day-to-day – those questions become impossible to answer in cities such as Los Angeles, San Francisco, and San Diego whose homeless populations are so large that counts take days to complete and are admittedly still not 100 percent accurate. In short, the practical consequences of the *Martin* decision on California law enforcement are nothing short of dire.

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<sup>3</sup> U.S. Dept. of Housing and Urban Development, *2018 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations – Boise/Ada County* January 31, 2018 available at [https://files.hudexchange.info/reports/published/CoC\\_PopSub\\_CoC\\_ID-500-2018\\_ID\\_2018.pdf](https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_ID-500-2018_ID_2018.pdf).

<sup>4</sup> U.S. Dept. of Housing and Urban Development, *2018 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations – Los Angeles City & County* January 24, 2018 available at [https://files.hudexchange.info/reports/published/CoC\\_PopSub\\_CoC\\_CA-600-2018\\_CA\\_2018.pdf](https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_CA-600-2018_CA_2018.pdf).



**a. California Law Enforcement Agencies Receive Thousands of Homeless-Related Calls for Service**

Without question, homelessness presents one of the most significant challenges to California law enforcement today especially with the explosion of homeless encampments in cities throughout the State. Though the numbers are staggering in the major California cities mentioned above, “[r]ural and suburban parts of the state are equally impacted by this crisis – the largest percentage increases since 2007 have been in the far north (330 percent), El Dorado County (151 percent), Sonoma County (121 percent), Monterey and San Benito counties (115 percent), Yuba and Sutter counties (94 percent) and Placer and Nevada counties (74 percent).”<sup>5</sup>

California law enforcement agencies are inundated by calls and/or complaints related to homeless persons and homeless encampments. For example, Sacramento Police Department received 3,416 homeless-related calls for service in April 2019, 3,286 calls in March 2019, and 3,357 calls in February 2019.<sup>6</sup> When a new shelter opened in that City, the

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<sup>5</sup> League of California Cities, *Homelessness Task Force Report: Tools and Resources for Cities and Counties February 2018* p. 2 available at <https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Homeless-Resources/League-CSAC-Task-Force/HTF-Homeless-2018-Web.aspx>.

<sup>6</sup> Sacramento Police Department, *Homeless Response Metrics (2019)* available at <https://www.cityofsacramento.org/Police/Resources/Homeless-and-Mental-Health-Outreach/Homeless-Metrics>.

Sacramento Police received nearly 800 calls made from in and around the shelter alone during the 17 months the facility was open.<sup>7</sup> In 2018, the Santa Monica Police Department reported that roughly 30 percent of the Department's calls for service were homeless-related.<sup>8</sup> And, in 2015, San Francisco Police Department officers were dispatched to a staggering 57,249 incidents initiated by calls from the public about homeless-related quality of life legal violations.<sup>9</sup> As such, it is no exaggeration to say that California peace officers spent a substantial portion of their day-to-day policing dealing with homeless-related issues.

#### **b. Homelessness Has A Significant Impact on Crime Rates**

In addition to simply dealing with an overwhelming volume of calls for service, the homelessness problem in California impacts the very heart of law enforcement – crime rates. Homelessness-related

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<sup>7</sup> Theresa Clift and Michael Finch II, *Police called nearly 800 times to a Sacramento homeless shelter. Will new shelters be safer?*, SACRAMENTO BEE, September 11, 2019 available at <https://www.sacbee.com/news/local/homeless/article234710487.html>.

<sup>8</sup> Madeleine Parker, *Serious Crime in Santa Monica Rises 8.8 Percent*, SANTA MONICA DAILY PRESS, January 30, 2019 available at <https://www.smdp.com/serious-crime-in-santa-monica-rises-8-8-percent/172447>.

<sup>9</sup> Board of Supervisors of the City and County of San Francisco, *Performance Audit of Homeless Services in San Francisco* June 13, 2016 p. iii available at <http://hsh.sfgov.org/wp-content/uploads/2016/06/Homeless-Services-in-SF-BLA-Report-June-13-2016.pdf>.

crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless. In Los Angeles in 2017, there were a total of 4,400 “homeless involved” violent and property crimes, defined as crimes involving either a homeless suspect, homeless victim or both.<sup>10</sup> In 2018, there were a total of 6,671 homeless involved violent and property crimes – reflecting a 52 percent increase in those crimes. *Id.* This increase is particularly disturbing in light of the fact that there was a 2 percent *decrease* in overall citywide crime in Los Angeles between 2017 and 2018.

Persons experiencing homelessness are amongst the most vulnerable persons in society. In 2017 in Los Angeles, 1,762 persons experiencing homelessness were reported to be victims of a violent or property crime. In 2018 there were 2,965 such victims reflecting a stunning 68 percent increase in crimes against homeless victims. *Id.* The most significant changes in crimes with a homeless victim between 2017 and 2018 were robbery, with an 89 percent increase, larceny, with an 86 percent increase, and rape with a 71 percent increase. *Id.*

Statewide, the National Coalition for the Homeless found that in 2016 and 2017, there were 26 lethal attacks against the homeless.<sup>11</sup> Indeed, the problem of

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<sup>10</sup> Los Angeles Police Department, *2018 4th Quarter Report on Homelessness*, January 29, 2019 p. 2 available at [http://www.lapdpolicecom.lacity.org/031219/BPC\\_19-0073.pdf](http://www.lapdpolicecom.lacity.org/031219/BPC_19-0073.pdf).

<sup>11</sup> National Coalition for the Homeless, *Vulnerable to Hate: A Survey of Bias-Motivated Violence Against People Experiencing Homelessness in 2016-2017* p. 41 available at <https://national>

crime against the homeless was severe enough to be addressed by the California Legislature. In enacting California Penal Code section 13519.64, requiring the Commission on Peace Officer Standards and Training to develop training for all law enforcement agencies on crimes against homeless persons, and how to deal effectively and humanely with homeless persons, the California Legislature found “that California has had serious and unaddressed problems of crime against homeless persons, including homeless persons with disabilities.” CAL. PENAL CODE § 13519.64(a).

However, crimes *against* homeless persons are not the only homeless-related crime statistics of concern to law enforcement in California. In Los Angeles in 2017, there were 3,166 violent or property crimes in which a homeless person was the suspect.<sup>12</sup> In 2018, that crime figure increased to 4,849 violent or property crimes, reflecting a 53 percent increase in crimes in which a homeless person was the suspect. The most significant changes in crimes with a homeless suspect between 2017 and 2018 were rape, with a 78 percent increase, robbery, with a 64 percent increase and aggravated assault, with a 56 percent increase. *Id.* In 2017, the Orange County Sheriff’s Department conducted 1118 consensual contacts in the Santa Ana Riverbed, the County’s largest homeless encampment, and found

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homeless.org/wp-content/uploads/2019/01/hate-crimes-2016-17-final\_for-web2.pdf.

<sup>12</sup> Los Angeles Police Department, *2018 4th Quarter Report on Homelessness*, January 29, 2019 p. 2 available at [http://www.lapdpolicecom.lacity.org/031219/BPC\\_19-0073.pdf](http://www.lapdpolicecom.lacity.org/031219/BPC_19-0073.pdf).

that 85 percent of all those contacted had a prior criminal history.<sup>13</sup>

In short, with the significant increase in the homeless population and encampments in recent years has come an alarming increase in crimes, both against the homeless and by the homeless. Peace officers are charged with the safety and security of the public, and it is the duty of a peace officer to investigate crimes and to confront dangerous situations. This, often times unenviable job, is becoming increasingly more difficult and dangerous due to the epidemic of homelessness and the growing restrictions on law enforcement actions, such as those in *Martin*, which fail to take into account the reality of the nature of the situation facing officers.

**c. Traditional Public Safety Concerns Are Now Accompanied by Concerns of Disease and Infection**

Homeless encampments raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless persons, like everyone else, generate waste associated with their daily activities of food preparation and consumption, shelter building and maintenance and storage of their

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<sup>13</sup> Capt. [fmr Lt.] Jeffery Puckett, *Orange County Sheriff's Department Internal Memo re Santa Ana Riverbed*, October 26, 2017 p. 12 available at [https://1ccaxf2hhhh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSA\\_Internal\\_Memo\\_SAR\\_Update.pdf](https://1ccaxf2hhhh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSA_Internal_Memo_SAR_Update.pdf).

possessions. Without any place or method of proper storage or disposal of this waste, the resulting waste becomes a food source for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances affecting community standards. Further, the opportunity for the spread of communicable diseases is increased in homeless encampments, which typically lack basic sanitation services and waste collection. As a result, some diseases, such as hepatitis A and typhus, are more likely to occur and spread in homeless populations.

Unfortunately, California law enforcement officers charged with policing in and near these encampments are feeling the full brunt of these dangers. Typhus is a bacterial infection that is more common in overcrowded and trash-filled areas that attract rats. In California, there were 167 cases of typhus reported from January 1, 2018 through February 1, 2019, whereas there were only 13 cases during the same time span of 2013.<sup>14</sup> This year, several Los Angeles Police Officers working near the same homeless encampment have either contracted typhoid fever and/or shown typhus-like symptoms.<sup>15</sup>

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<sup>14</sup> California Dep't of Health, *Human Flea-Borne Typhus Cases in California Vector-Borne Disease Section (2001-2019)* available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Flea-borneTyphusCaseCounts.pdf>.

<sup>15</sup> See Emily Zanotti, *LAPD Officers Treated for Typhoid Fever, 'Typhus-Like' Symptoms After Working Near Homeless Encampments*, DAILY WIRE, June 2, 2019 available at <https://www.dailywire.com/news/47935/lapd-officers-treated-typhoid-fever-typhus-emily-zanotti>; see also Anthony Rivas, *LAPD Officers*

Additionally, between 2016 and 2018, California experienced a hepatitis A outbreak. Hepatitis A is caused by a virus usually transmitted when people come in contact with the feces of infected people. The majority of people who have been infected with hepatitis A virus in this outbreak were people experiencing homelessness and/or using illicit drugs in settings of limited sanitation.<sup>16</sup> Statewide, there were 98 cases of hepatitis A in 2017 associated with homelessness and 178 in 2018 and 2019 – an 81% increase. *Id.* Some areas of California where hit particularly hard.

On September 1, 2017, San Diego County declared a state of emergency due to that County's hepatitis A outbreak associated with the homeless population.<sup>17</sup> The San Diego County Department of Sanitation was brought in to assist with trash removal, and to begin a program to spray bleach on surfaces that were

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*Being Treated for Typhoid Fever*, CBS NEWS, May 30, 2019 available at <https://abcnews.go.com/Health/lapd-officers-treated-typhoid-fever-typhus-symptoms/story?id=63371616>.

<sup>16</sup> California Dep't of Health, "Hepatitis A Outbreak Associated with Drug Use and Homelessness in California, 2016-2018" available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Immunization/2016-18CAOutbreakAssociatedDrugUseHomelessness.pdf>.

<sup>17</sup> Tom Christensen, *Local Public Health Emergency for Hepatitis A Outbreak Ratified by Board of Supervisors*, COUNTY NEWS CENTER, September 6, 2017 available at <https://www.countynewscenter.com/local-public-health-emergency-for-hepatitis-a-outbreak-ratified-by-board-of-supervisors/>; see also San Diego County Health and Human Services Agency, *Hepatitis A Outbreak*, available at [https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community\\_epidemiology/dc/Hepatitis\\_A/outbreak.html](https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/Hepatitis_A/outbreak.html).

potentially affected by this outbreak. *Id.* As of January 9, 2018, there were more than 577 confirmed hepatitis A cases, 20 deaths, and 396 hospitalizations in San Diego County. *Id.* The City of Santa Cruz saw a similar outbreak beginning in April 2017, with 76 confirmed cases of hepatitis A.<sup>18</sup> Monterey County followed with a hepatitis A outbreak among its homeless population in February 2018.<sup>19</sup>

These diseases spread quickly and widely among people living on the streets, promoted by sidewalks contaminated with human feces, crowded living conditions, weakened immune systems, and limited access to health care. Unfortunately, the abundance of calls for service along with the necessity to investigate the litany of homeless-related crime discussed above, bring law enforcement in constant contact with these dangerous conditions. As though facing deadly threats posed by some criminal suspects wasn't enough, our officers now have diseases to contend with.

The homeless encampments have other consequences that may not be as obvious. For example, encampments have been appearing in parks and in conservation areas for protected species. Park and wetland habitats are being compromised by the homeless

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<sup>18</sup> County of Santa Cruz, *Hepatitis A Virus (HAV)* available at <https://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunicableDiseaseControl/HepatitisA.aspx>.

<sup>19</sup> Erika Mahoney, *Monterey County Declares Hepatitis A Outbreak Among Homeless*, KQED NEWS, February 7, 2018 available at <https://www.kqed.org/news/11648643/monterey-county-declares-hepatitis-a-outbreak-among-homeless>.



persons who construct shelters there and use the natural water for bathing and toileting. One example of this is occurring at the popular Tiscornia Beach on the American River in Sacramento. Tiscornia Beach is downstream from homeless encampments that aren't served by restrooms and suffered from "alarmingly high levels of E. coli recently found in water tests."<sup>20</sup>

Ironically, the magnitude of danger posed by these encampments becomes most evident when the encampments are cleared and cleaned. The Santa Ana Riverbed encampment, mentioned above, was the largest encampment in Orange County with somewhere between 700 to 1,000 homeless persons residing there.<sup>21</sup> During the clean up of that encampment, incredibly dangerous fire hazards were observed. *Id.* Additionally, and nearly beyond belief, 404 tons of debris were removed from the site, 13,950 hypodermic needles were recovered and disposed of and 5,279 pounds

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<sup>20</sup> Daniel Kim, 'When You Gotta Go, What Do You Do?' *Popular Beach Near Homeless Camps Tests High for E. Coli*, SACRAMENTO BEE, September 11, 2019 available at <https://www.sacbee.com/news/local/sacramento-tipping-point/article234979472.html#storylink=cpy>.

<sup>21</sup> Capt. [fmr Lt.] Jeffery Puckett, *Orange County Sheriff's Department Internal Memo re Santa Ana Riverbed*, October 26, 2017 p. 12 available at [https://1ccaxf2hhhh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSA\\_Internal\\_Memo\\_SAR\\_Update.pdf](https://1ccaxf2hhhh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSA_Internal_Memo_SAR_Update.pdf); Theresa Walker, *Thousands of Pounds of Human Waste, Close to 14,000 Hypodermic Needles Cleaned Out from Santa Ana River Homeless Encampments*, ORANGE COUNTY REGISTER March 8, 2018 available at <https://www.oregister.com/2018/03/08/thousands-of-pounds-of-human-waste-close-to-14000-hypodermic-needles-cleaned-out-from-santa-ana-river-homeless-encampments/>.

of hazardous waste, such as human waste, propane, pesticides and other materials, was removed. *Id.*

Prior to the Santa Ana Riverbed clean up, the Orange County Sheriff's Department routinely policed inside the encampment both for outreach and enforcement purposes. Accordingly, those peace officers were exposed to this breeding ground for disease and placed in close proximity to tens of thousands of needles and hazardous waste. Encampments simply cannot be permitted to exist and grow, and most certainly should not be constitutionally protected to the effect of tying the hands of law enforcement to deal with these massive threats to the health and safety of the homeless population and public in general. However, homeless advocates are relying upon the *Martin* decision to assert that law enforcement agencies are forbidden from ameliorating these types of encampments.

## **II. This Court has Long Recognized the Need for Workable Constitutional Standards Which *Martin* Certainly Does not Provide**

While cities and counties tend to think about homelessness globally in terms of how to reduce the number of unsheltered homeless on their streets, law enforcement has more immediate concerns. As noted above, a substantial portion of peace officer time is devoted to homeless issues. The restrictions placed upon officers must allow them to protect their own safety and the safety of the public and cannot prevent them from effectively carrying out their duties. "We must

never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day.” *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992). The *Martin* decision does exactly that – it strips law enforcement of a critical enforcement tool without any consideration of the practical effects on everyday policing.

First and foremost, the *Martin* decision fails to account for the makeup of the homeless population that peace officers contend with. There are 31,168 homeless persons in California who are severely mentally ill and 22,475 who have chronic substance abuse problems.<sup>22</sup> The City of Anaheim receives over 1,000 emergency mental health calls per year for unsheltered homeless individuals, resulting in more than 300 involuntary holds.<sup>23</sup> And, in just a three month time span in 2017, the Los Angeles Police Department’s Mental Health Evaluation Unit received 1,559 mental health calls for service regarding homeless persons.<sup>24</sup> *Martin*’s assumed vision of law enforcement easily conversing

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<sup>22</sup> U.S. Dept. of Housing and Urban Development, *2018 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations – California* January 24, 2018 available at [https://files.hudexchange.info/reports/published/CoC\\_PopSub\\_State\\_CA\\_2018.pdf](https://files.hudexchange.info/reports/published/CoC_PopSub_State_CA_2018.pdf).

<sup>23</sup> City of Anaheim, *Anaheim Homeless Census* November 2016 p. 2 available at <https://www.anaheim.net/DocumentCenter/View/14920/Anaheim-Homeless-Census-Results-and-Findings-3-21-17>.

<sup>24</sup> Los Angeles Police Department, *2018 4th Quarter Report on Homelessness* January 29, 2019 available at [http://www.lapdpolicecom.lacity.org/031219/BPC\\_19-0073.pdf](http://www.lapdpolicecom.lacity.org/031219/BPC_19-0073.pdf).

with homeless persons, determining their needs and offering available shelter is not reflected in reality when dealing with mentally ill and drug-addicted persons.

Furthermore, Amici here are familiar with the Briefs filed by Amici Curiae, California Cities and Counties and by Cities in Orange County, and wholeheartedly agree with the issues raised therein. Specifically, that the *Martin* decision conjures numerous practical questions affecting law enforcement. These questions include: 1) what is meant by “shelter”; 2) at what time is availability of shelter to be determined; 3) how can one effectively calculate the total homeless population in any given jurisdiction on a day-to-day basis; 4) how can one effectively assess the available number of shelter beds; 5) what is meant by “available”; 6) and, most importantly, what other laws are called into question beyond anti-camping and disorderly conduct ordinances? If the issues raised by other Amici are confounding to the cities and counties, which Amici here agree they are, they are infinitely more confounding from the perspective of the peace officer on the street attempting to cope with the thousands of calls for service discussed above while the *Martin* decision fails to provide them with clear guidance concerning which ordinances they can and cannot enforce.

For an officer on the street trying to comply with *Martin*, the practical hurdles are absurd. What beds can an officer consider when determining whether a bed is “available”? If the person the officer proposes to cite for camping is on Skid Row in downtown Los

Angeles, does an open bed ten miles away, but still in Los Angeles County suffice as “available”? Five miles away? Two miles away? More importantly, once an officer determines what geographical location he or she must search for shelter availability, exactly how is he or she supposed to accomplish that task?

Amici are not aware of any comprehensive list, in any city or county, of shelters and their various restrictions. For example, in Los Angeles County there are hundreds of shelters with thousands of beds of different types with different restrictions.<sup>25</sup> Many of the beds are only available seasonally in the winter. *Id.* Many shelters do not permit men, or pets, or persons with convictions for sex offenses. *Id.* How is an officer standing on the street supposed to determine, not only the current occupancy rate, but also be aware of whether the person he or she is speaking to is even eligible for an empty bed if found?

A 2017 San Diego Regional Task Force report shows a growing number of people are choosing a tent

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<sup>25</sup> Doug Smith, *Q&A: Demystifying L.A.’s System of Homeless Shelters*, LOS ANGELES TIMES, September 29, 2017 available at <https://www.latimes.com/local/lanow/la-me-shelter-q-a-20170929-htmstory.html>; *see also* Los Angeles Homeless Services Authority, *2017-2018 Final Report* available at <https://www.lahsa.org/dashboards?id=34-17-18-final-report>; *see also* Los Angeles Homeless Services Authority, *2017 HIC Data Summary* available at <https://www.lahsa.org/documents?id=1562-2017-hic-data-summary.pdf&ref=hc>.

over a shelter bed.<sup>26</sup> In fact, the number of people staying in shelters dropped 6 percent over last year despite vacancies in shelters. Some of the reasons for this phenomenon include strict shelter rules, such as not being able to bring pets or grocery carts filled with belongings. *Id.* Is a bed “available” under *Martin* if sleeping in it requires a person to abandon their dog or belongings? Indeed, prior to the Santa Ana Riverbed clean up efforts discussed above, less than 1 percent of homeless persons residing in that encampment accepted supportive services offered by law enforcement and social services personnel.<sup>27</sup> It wasn’t until the Riverbed was cleaned up and enforcement via arrest for return threatened that that percentage of homeless persons in that area accepting supportive services increased to almost 50 percent.<sup>28</sup> This statistic demonstrates concretely that enforcement of laws regulating trespass and anti-camping can be a vital tool in assisting homeless persons by fostering acceptance of supportive services.

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<sup>26</sup> San Diego Regional Task Force on the Homeless, *2017 Weallcount Annual Report* available at <https://www.rtfhsd.org/wp-content/uploads/2017/07/comp-report-final.pdf>.

<sup>27</sup> Capt. [fmr Lt.] Jeffery Puckett, *Orange County Sheriff’s Department Internal Memo re Santa Ana Riverbed*, October 26, 2017 p. 12 available at [https://1ccaxf2hhhbh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSD\\_Internal\\_Memo\\_SAR\\_Update.pdf](https://1ccaxf2hhhbh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSD_Internal_Memo_SAR_Update.pdf).

<sup>28</sup> County of Orange, *Building the System of Care* April 17, 2018 p. 40 available at [http://cams.ocgov.com/Web\\_Publisher\\_Sam\\_Special/Agenda04\\_17\\_2018\\_files/images/APRIL%2017%202018%20PRESENTATION%20-%20FINAL%20-%204.24.2018\\_9851680.PDF](http://cams.ocgov.com/Web_Publisher_Sam_Special/Agenda04_17_2018_files/images/APRIL%2017%202018%20PRESENTATION%20-%20FINAL%20-%204.24.2018_9851680.PDF).

Another primary concern of Amici regarding peace officers on the street consists of the lack of clarity in the *Martin* decision with respect to which laws peace officers can continue to enforce, and which laws are now constitutionally infirm. The Ninth Circuit's decision exempts individuals from obeying a generally applicable law because the conduct at issue is purportedly "involuntary" or life-sustaining. A host of conduct could be interpreted as "involuntary" when applied to those living on the street. Is law enforcement to permit public urination and defecation because such acts are necessary acts of the human condition? What about public nudity? Bathing and changing clothes are also necessary acts of the human condition? Since eating is certainly a necessity, must law enforcement permit open fires or unsafe use of propane stoves? If a person has no means to afford food but must eat, must law enforcement look the other way if they steal food? Due to the lack of clarity as to what the terms "involuntary" and "life-sustaining" mean, Amici fear the *Martin* decision will result in the failure to enforce a multitude of laws regulating public health and safety due to the threat of incurring civil liability for violating the Eighth Amendment.

Amici respectfully submit that the constitutional prohibition imposed by the *Martin* decision cannot be delineated in a manner that would be workable for application by peace officers on the street. This Court has made it abundantly clear that peace officers require clear rules of straightforward application that they can

feasibly and fairly apply under the stressful conditions of day-to-day policing.

In the context of the Fourth Amendment, this Court explained in *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860 (1981):

Fourth Amendment doctrine . . . is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.' *Belton*, 453 U.S. at 458 *quoting* LaFave, 'Case-by-Case Adjudication' Versus 'Standardized Procedures,' 1974 Sup. Ct. Rev., at 141.

The same logic should hold true here with respect to the Eighth Amendment. The categorical constitutional prohibition proposed by *Martin* is unworkable and poses insurmountable obstacles to legitimate law enforcement activities. The vagueness of the decision's parameters and expectations placed upon law enforcement fails to come even remotely close to the need for clarity noted in *Belton*. In short, the decision is nearly impossible for officers to employ in practice and does nothing but create confusion and tie the hands of



officers who are already facing difficult challenges related to homelessness every day. *Martin* has, and will continue to have, dire practical consequences upon California law enforcement that should not be permitted to stand.



### CONCLUSION

For the foregoing reasons, Amici respectfully request that the Court grant the City of Boise's Petition for Writ of Certiorari.

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