

No. 19-247

IN THE
Supreme Court of the United States

CITY OF BOISE,

Petitioner,

v.

ROBERT MARTIN, LAWRENCE LEE SMITH,
ROBERT ANDERSON, JANET F. BELL, PAMELA S.
HAWKES, AND BASIL E. HUMPHREY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF FOR *AMICI CURIAE* MARYROSE
COURTNEY AND KETCHUM-DOWNTOWN
YMCA IN SUPPORT OF PETITION FOR A
WRIT OF CERTIORARI**

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INTEREST OF AMICI¹

MARYROSE COURTNEY: My brother has been experiencing homelessness as a result of mental illness and substance abuse on and off for the past twenty years. Our system for providing good access to mental health care and housing is badly broken. I know the problems all too well from my efforts to help my brother.

For the last several years, I have been working with policy makers and professionals who are bringing hope to the challenging work of addressing this intractable problem. They are making significant strides.

I am deeply concerned that the Ninth Circuit's decision in this case will seriously set back these efforts. The decision is well intentioned, but it will harm the very people it is intended to help by prescribing an unworkable standard for local governments to follow. It is already apparent that local governments face the prospect of defending litigation alleging that their actions violate the Ninth Circuit's decision in this case if they pursue creative policies intended to address the societal problems associated with homelessness. Those problems affect both homeless people themselves and their surrounding communities. In response to the risk of litigation, local

1. No counsel for a party authored this brief in whole or in part, and no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae made any monetary contribution to its preparation or submission. Amici curiae gave notice of their intent to file this brief to all parties in accordance with Rule 37.2. A blanket consent to the filing of amicus curiae briefs has been filed and docketed.

governments abandon their efforts, even if they are confident they could prevail on the merits after a long, expensive fight. The result, as I have already seen first-hand with my brother, is the deployment of more aggressive policing tactics against people experiencing homelessness, which raises long-term barriers to their ability to obtain stable housing and leaves them in a cycle of periodic incarceration.

KETCHUM-DOWNTOWN YMCA: For 137 years, people have joined the Y in Downtown Los Angeles to find positive relationships and support for their goals in youth development, healthy living, and social responsibility. The Ketchum-Downtown YMCA's community reflects the economic diversity of Downtown Los Angeles. A homeless mother seeking respite from the streets in parent-child swim lessons, a CEO recovering from surgery, and a teen needing a mentor to pursue a dream of college and career all come to the Y. Communities form where people gather, and the most vulnerable in our society, such as the homeless, need the best kind of community support. Members support members, and no one cares about income levels during a cycling class. At the Y, members, including the homeless, participate in programs that strengthen spirit, mind, and body; prevent chronic disease; reduce the impact of some mental illnesses; and give people hope for the future.

This brief tells the story of MaryRose Courtney's first-hand experiences with her homeless brother, John, and is written in significant part in her voice. That story reinforces Ketchum-Downtown YMCA's conviction that local jurisdictions need flexibility to adopt creative approaches when addressing the devastating impact of

homelessness and encampments. The decision of the Ninth Circuit in this case, although undoubtedly well-intentioned, will undermine the efforts of Ketchum-Downtown YMCA and other well-intentioned organizations to help make downtown Los Angeles a great place to live and to raise a family.

SUMMARY OF ARGUMENT

Homelessness is an epidemic across the country, adversely affecting both the homeless and their surrounding communities. Many homeless people live in encampments for understandable reasons.

But homeless encampments have created a public health nightmare, both for those living in the encampments and others in the area. Diseases associated with the Middle Ages, and long since largely eradicated in the developed world, are returning in these encampments. Sexual assault and other violent crimes are rampant.

Encampments also severely damage the communities in which they are located. Drug use, prostitution, burglaries, theft, and arson are commonplace. Public safety suffers as encampments interfere with the ability of firefighters to do their job. Encampments disrupt daily life for local citizens, including by impeding both public transportation and roadways. And poor communities suffer the most because that is where most encampments are located.

My experience with my brother, John, demonstrates the human toll of homelessness and the complexity of the problem. John suffers from mental disease that

complicates efforts to help him, and his public urination and masturbation has resulted in his being convicted of felonies and classified as a sex offender. John is not alone in these experiences. Homeless people routinely suffer basic human indignities from living on the street.

The Ninth Circuit decision in this case cannot be reconciled with the precedents of this Court and conflicts with decisions from other courts. It is also having an immediate and severely adverse impact on the very people it is intended to help.

Under the Ninth Circuit decision, a government cannot enforce its laws prohibiting public camping unless it provides on each night sufficient eligible beds in shelters for every homeless person in the “jurisdiction.” That standard is hopelessly vague, and it imposes enormous costs on local government.

Ambiguities in the Ninth Circuit decision abound. What is the relevant jurisdiction? May a large jurisdiction like Los Angeles City or County address particular neighborhoods as distinct units? How is the number of homeless people determined day by day? Do beds in shelters with any sort of religious affiliation count? Do beds in shelters that impose rules regarding sobriety, hours, or behavior count? The Ninth Circuit’s failure to answer these and other critical questions leave governments with intolerable uncertainty about their obligations.

The Ninth Circuit’s ruling has many other severely adverse consequences. The inability to enforce anti-encampment laws means existing encampments will persist and more encampments will appear. Those

encampments bring with them the disease, crime, and safety risks mentioned above, both for the people living in them and for others in the neighborhood. Downtown Los Angeles could be a wonderful place to live and raise a family. But no family wants to live in a place where parents must push strollers around encampments, young children learn to step over drug paraphernalia, and human waste threatens basic health and safety.

Moreover, the Ninth Circuit's ruling is already leading to more aggressive policing, as police prohibited from enforcing anti-camping laws turn to arresting homeless people for more serious offenses, like public urination, public defecation, and public nudity. As John's experience shows, convictions on these more serious charges can lead to homeless people being classified as sex offenders. Homeless persons with felony records or who are registered sex offenders will find it considerably more difficult to obtain stable employment or find landlords that are willing to rent to them.

The bottom line is that governments need flexibility to promote housing and safety for a variety of vulnerable people who suffer from a variety of conditions. Some homeless people simply cannot afford housing, but others have mental health and substance abuse problems. Court rulings like the Ninth Circuit's in this case do far more harm than good because they lead to deregulation and generate apathy and inaction, as well as a sense of frustration that discourages further efforts to help the homeless.

ARGUMENT

I. This Court should grant review because the Ninth Circuit's decision significantly and unjustifiably undermines the ability of local governments to address problems associated with public encampments.

A. Homelessness is an epidemic across the country, adversely impacting both the homeless and their surrounding communities.

1. Amici know Los Angeles County best and focus in significant part on the problems of that community. Homelessness, however, is an epidemic across the United States with tragic consequences for people experiencing homelessness and with serious adverse impact on the surrounding communities. Over one hundred thousand people are living on the streets on any given day. <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/09/AR2010070902357.html>. Each person has a unique story about the path to, and current struggles with, homelessness. Taken together, though, those stories show that the homeless are particularly vulnerable to a constellation of dangers and harms.

Homeless people are regularly victims of violent crimes. Accounts of unconscionable violence against the homeless abound. Typical are the stories occurring in September 2018 of someone beating to death with a bat two men sleeping on the sidewalks of Los Angeles, of someone burning with acid a homeless couple in the San Fernando Valley, and of someone in Denver gunning three homeless people to death. <https://www.latimes.com/>

opinion/op-ed/la-oe-shortt-homeless-victims-20181015-story.html. These are but a tiny sample of documented accounts of violence—with countless more undoubtedly suffered in silence.

Statistics show that the homeless are disproportionately affected by violence. For example, a recent survey in Los Angeles revealed that half of homeless women experienced physical or sexual abuse in the last year. *Id.* The CDC, by contrast, reports that women in general experience sexual or physical violence at about half that rate. <https://www.ncbi.nlm.nih.gov/pubmed/24672998>.

Homelessness has also resulted in a public health crisis, with myriad contagious diseases devastating homeless communities in large cities across the country. <https://www.usatoday.com/story/news/nation/2019/06/18/homeless-homelessness-disease-outbreaks-hepatitis-public-health/1437242001/>. Without access to clean water, bathrooms, and other basic necessities, homeless people are uniquely susceptible to contagion. *Id.* Lack of sanitation and close proximity of individuals living in homeless encampments create a perfect storm for transmission of fecal-oral diseases like hepatitis A.

The risk is not simply a higher rate of otherwise prevalent diseases. Diseases harkening from the Middle Ages that were all but extinguished in the United States are now rampaging through homeless communities: typhus, tuberculosis, and possibly bubonic plague. *Id.*; <https://www.latimes.com/opinion/op-ed/la-oe-randall-plague-climate-change-rats-20190516-story.html>. These diseases are rare in developed countries, but they thrive in homeless encampments because of abundant rats,

fleas, and other pests that can carry them. Conditions the homeless face, especially in Los Angeles County, raise the specter of other deadly diseases, like leprosy, which also have historically resulted in ostracism of the destitute. <https://thehill.com/opinion/healthcare/460442-is-a-dark-ages-disease-the-new-american-plague-threat>; <https://nypost.com/2019/09/09/its-only-a-matter-of-time-before-homeless-leprosy-outbreak-nyu-doc/>. The risks of these diseases create unimaginable hardships for people living on the street.

2. Homelessness in the United States is concentrated in urban areas, with nearly half of homeless people living in large cities. <https://www.forbes.com/sites/niallmccarthy/2018/12/20/the-u-s-cities-with-the-most-homeless-people-in-2018-infographic/>. In 2018, the City of Los Angeles had the second-highest number of homeless people of any major city. *Id.* As of 2019, Los Angeles City has more than 36,000 homeless people, representing a sixteen percent increase over the number in 2018. <https://www.latimes.com/local/california/la-me-ln-homeless-point-in-time-count-qa-housing-20190604-story.html>. Los Angeles County has even more—nearly 59,000 homeless people, representing a twelve percent increase over 2018 numbers. *Id.*

The homeless in Los Angeles face heightened risk of succumbing to disease, being victims of violent and sexual assault, and turning to substance abuse. <https://www.usnews.com/news/healthiest-communities/articles/2019-04-23/homeless-dying-in-record-numbers-on-the-streets-of-los-angeles>. Every day, three homeless people die on Los Angeles County streets. *Id.* In Los Angeles County, the average life expectancy of homeless

people is about fifty years, <https://nationalhomeless.org/category/mortality/> compared to about eighty years for others, <https://www.cdc.gov/nchs/products/databriefs/db328.htm>. The adversities of life on the streets leave the homeless in Los Angeles essentially with only half-lives.

The encampments in Los Angeles (and no doubt in other cities as well) exacerbate these problems. Encampments form for a number of reasons. For some, reliance on and accountability to a group, create a sense of community that makes encampments attractive. Tony Sparks, *Citizens Without Property: Informality and Political Agency in a Seattle, Washington Homeless Encampment*, 49 ENVIRONMENT AND PLANNING 86, 92 (2017). Other homeless people seek to live in encampments because they believe they are *less* dangerous than shelters, which they attest are often overcrowded and filled with “unstable people.” <http://www.adcogov.org/sites/default/files/Adams%20Homelessness%20Assessment.pdf>. Still others choose to live in encampments for easy access to services, such as meals at nearby shelters, canals for drinking and bathing, or other public infrastructure. Jessie Speer, “*It’s Not Like Your Home*”: *Homeless Encampments, Housing Projects, and the Struggle over Domestic Space*, 49 ANTIPODE 517, 523 (2017).

But encampments amplify the problems that homeless people already face. Living conditions in encampments create fertile breeding grounds for deadly infection: pervasive fecal matter in the same area where people eat and sleep, combined with close proximity, have led to outbreaks of typhus, hepatitis A, and other communicable diseases. <https://www.theatlantic.com/health/archive/2019/03/typhus-tuberculosis-medieval-diseases-spreading-homeless/584380/>.

Crime has also become a routine part of life in encampments. My brother is frequently beaten up and bears scars from his life on the streets. A homeless woman in Los Angeles was raped right in the open near an encampment. <https://www.dailynews.com/2018/06/08/homeless-woman-raped-by-two-men-on-canoga-park-sidewalk-lapd-says/>.

Crime is common because of the prevalence of uniquely vulnerable individuals among the homeless. In a recent survey, nearly seventy percent of homeless women reported being survivors of child abuse. <https://www.dailynews.com/2017/06/24/ive-had-to-become-tough-how-homeless-women-survive-the-dangers-of-skid-row/>. More generally, forty percent of homeless women surveyed reported experiencing physical or sexual abuse. *Id.*

Crime also proliferates because of difficulties in detection and an unwillingness to report crimes resulting from a fear of retaliation, ostracism, and other consequences. Gang members and other perpetrators of violent crimes hide in plain sight in the encampments, frustrating law enforcement efforts. <https://www.nbclosangeles.com/news/local/LA-Officials-Gear-for-Changes-to-Provide-Resources-for-Skid-Row-Residents-475978593.html>.

Other cities have experienced similar increases in violence and disease in encampments. In the District of Columbia, for example, areas surrounding encampments have seen more crimes, especially violent crimes, and exhibit many of the same concerning disease-carrying qualities, such as extensive fecal waste in living and sleeping spaces. <https://washingtonpost.com/local/cold->

callous-letter-critical-of-dc-homeless-encampments-stirs-controversy/2019/08/28/bd90bf2c-c91b-11e9-a058-7c0b3f4b623a_story.html.

3. Encampments pose risks to people living in the communities surrounding them. As a result of the unsanitary conditions in encampments, surrounding communities are regularly exposed to a variety of highly contagious diseases. In Los Angeles, for example, both typhus and hepatitis A have infected non-homeless individuals living near encampments. <https://www.scientificamerican.com/article/medieval-diseases-flare-as-unsanitary-living-conditions-proliferate/>. Local residents near encampments have experienced more crime, including drug use, prostitution, burglaries, theft, and even arson. <https://www.dailynews.com/2017/05/15/business-owners-struggle-with-homeless-crime-along-orange-line-in-van-nuys/>.

Encampments create other significant safety hazards, such as fire risks. Firefighters in Los Angeles County extinguish nearly seven fires *every day* in homeless encampments. <https://www.nbclosangeles.com/news/local/Map-2018-Homeless-Encampment-Fires-Los-Angeles-513201591.html>. Daily activities by people in encampments create significant fire risks, such as unlawful redirection of power lines into camps without proper equipment and despite the presence of highly flammable objects. <https://www.nbclosangeles.com/investigations/Firefighters-Lose-Critical-Tool-to-Battle-Rise-in-Homeless-Fires-513057481.html>. Compounding this issue, encampments use fire hydrants as water sources, which prevents hydrant use during firefighting—in addition to the more obvious issue of encampments creating physical barriers to hydrant access. *Id.*

Encampments also disrupt daily life for Los Angeles residents. Homeless encampments near railroad tracks, for example, impede public transportation. <https://www.foxnews.com/us/homeless-encampments-increasingly-affecting-california-train-traffic>. Likewise, encampments on sidewalks make it difficult to move around freely within Los Angeles. For example, the Los Angeles Police Department and the Department of Transportation were forced to shut down sidewalks and prohibit pedestrian traffic near encampments because of increased crime. <https://www.dailynews.com/2017/05/15/business-owners-struggle-with-homeless-crime-along-orange-line-in-van-nuys/>. Many people understandably avoid areas with encampments because of the extensive reporting of harassment and illicit activities.

Poor communities disproportionately bear the burden of the inability to deal with the increasing number of encampments after the Ninth Circuit's ruling, simply because most of the encampments are located in poor communities. In Fresno, for example, encampments are more typically cleared out in affluent downtown areas when compared to less well-off industrial areas. <https://www.huduser.gov/portal/sites/default/files/pdf/Understanding-Encampments.pdf>.

Encampments further exacerbate all these societal challenges by re-entrenching homelessness. Many homeless people faced with the opportunity to move out of an encampment will choose to stay, for a variety of reasons including mental illness, access to illicit substances, and fear of losing the community of the encampment or of facing the unfamiliar challenges of living outside encampments. Encampments thus result in fewer homeless people escaping from homelessness.

B. My experience with my brother confirms the human toll of homelessness and the complexity of the problem.

My experience with my brother, John, demonstrates the human toll of homelessness and the complexity of the problem. Last December, John was in jail again for offences related to homelessness. My niece found him on an inmate search. He was doing alright, and my sister got him into a shelter upon release. He disappeared for the Holidays, and my sister did not find him again until January. He had some medical issues related to being on the street for long periods of time, like intractable lice and skin rashes. We were checking on him every day. After a few days, however, he walked away from another shelter and began to stay in a nearby encampment.

About two weeks later, my sister found him sitting on a wall near her local coffee shop. It was about ten miles from the shelter at which he had been staying. He said that he didn't feel safe and needed to move. She dressed him in clean, warm clothes, he had dinner with our family, and we bought him a hotel room. But he disappeared to stay in a different encampment.

A few weeks later, we received a call from my nephew who is a firefighter and paramedic. He was onsite at a call and my brother was there, covered in feces. A kind passerby had called the paramedics. John did not want medical care, and those present did not believe that he met any criteria for diminished capacity that would allow them to force him to the hospital. He was covered in feces, refused help, refused housing, and limped back to his encampment. A few hours later he was arrested for urinating in public.

John has told me that he is covered in feces because he isn't feeling well, or because he doesn't have access to bathrooms. He has also told me that he will sometimes defecate or urinate in his pants to avoid being arrested again. After learning at a Town Hall in May that repeated arrests for public urination can result in a person being classified as a sex offender, we urgently researched John's status. He in fact had been classified as a sex offender due to repeated arrests for public urination and one arrest for masturbation.

John is not alone in these experiences. Other homeless people suffer the basic human indignity of having to defecate or urinate in their pants. And many others are repeatedly charged with crimes or required to register as sex offenders, which makes it difficult for them to find housing or hold steady employment and leaves them with no obvious options for improving their lives.

C. The Ninth Circuit's decision, although well-intentioned, not only departs from established law but also will harm the very people it is intended to help.

The Ninth Circuit no doubt intended its decision to help homeless people by declaring that local governments may not enforce laws against public camping unless the jurisdiction provides sufficient beds in shelters to accommodate all homeless people. Amici applaud the Ninth Circuit's good intentions, and share its desire to see housing available for all homeless people. But good intentions are not enough.

The Ninth Circuit's decision cannot be reconciled with this Court's precedent and conflicts with decisions of other courts, as the Petition for a Writ of Certiorari demonstrates. But the Ninth Circuit decision is not merely wrong. It is having an immediate and substantial adverse impact on the very people it was intended to help and to their communities.

Governments need flexibility and creativity to create housing and safety for a variety of vulnerable people who suffer from a variety of conditions. Some homeless people simply cannot afford housing, but others have mental health and substance abuse problems. Court rulings like that of the Ninth Circuit in this case do far more harm than good because they lead to deregulation and generate a sense of frustration that discourages further efforts to help the homeless. Review by this Court is critical to eliminate the substantial harm being caused by the decision.

1. Governments have a strong interest in preventing the harms associated with public encampments. *See Kelo v. City of New London*, 545 U.S. 469, 480 (2005). This Court has consistently upheld the power of governments to adopt policies to combat blight and the ills associated with it. *See, e.g., id.*; *Berman v. Parker*, 348 U.S. 26 (1954) (upholding redevelopment plan targeting a blighted area of Washington, D.C.). Los Angeles's restriction on public camping and its other policies aimed at reducing the problems associated with homelessness, and encampments in particular, are valid exercises of this power.

The Ninth Circuit's decision unjustifiably limits that power. Under the decision, local jurisdictions like Los

Angeles and other cities in the Los Angeles area cannot enforce public encampment laws unless there is shelter available for all homeless people.

The cost of attempting to comply with the Ninth Circuit's standard is daunting. For example, currently, Los Angeles City has enough beds for only 27% of its homeless population. There are 27,000 homeless people remaining on the street. Building shelters for all of those homeless people would be exorbitantly expensive. In just the past year, Los Angeles City spent more than \$20 million to build emergency temporary shelters under the Bridge to Home program, but due to threats of litigation, efforts to remove, regulate, or prohibit encampments nearby have not been successful. https://laist.com/2019/06/03/a_bridge_home_year_one.php.

These costs are exacerbated by ambiguities in the Ninth Circuit opinion. For example, although stating that jurisdictions must provide beds for "all" homeless people, the opinions leaves ambiguous who is considered to be homeless and what counts as appropriate shelter. As a result, there is no clarity as to how much housing a jurisdiction must build before it will be permitted to regulate encampments to provide for the safety of both homeless people and residents.

The Ninth Circuit's opinion is also hopelessly vague about who must bear those costs. Although requiring the jurisdiction to provide beds for all their homeless, the court did not define what constitutes the relevant "jurisdiction." This ambiguity will undoubtedly result in efforts to pass off costs and responsibility to other jurisdictions. Smaller cities in Los Angeles County will

likely disclaim an obligation to provide beds and pawn that responsibility off on to the County and surrounding cities. Indeed, for decades, the small city in which my brother grew up has contended, falsely, that it has no homeless people and no need for low-cost housing. Police pick up homeless people and drop them across the border. The Ninth Circuit decision will encourage such behavior.

In addition to the cost, building shelters to house all of the homeless people in Los Angeles County would take years. There are nearly 60,000 homeless people in Los Angeles at any given time and over 100,000 during the course of the year. <https://www.lahsa.org/documents?id=3437-2019-greater-los-angeles-homeless-count-presentation.pdf>. Thus, under the Ninth Circuit decision, it would be years before Los Angeles could have any hope of being permitted to enforce its laws to break up encampments that pose a threat to health and safety.

The Ninth Circuit imposed limits on counting beds in shelters that substantially increase these costs.² In particular, it stated that beds in a shelter will not count if the shelter limits the amount of time that a person may stay. It also refused to count beds that permitted individuals to stay only 17 consecutive days. *See* 920 F.3d at 610 (“The “17-day . . . limits . . . functionally limit access to [shelters] even when space is nominally available.”). Likewise, the Ninth Circuit suggested that beds in

2. The Ninth Circuit raised these limitations only in addressing Article III standing. *See* 920 F.3d 609-610. But it implicitly considered them in concluding that Boise’s law violated the Eighth Amendment by stating that the Eighth Amendment prohibits the enforcement of Boise’s law “when no sleeping space is practically available in any shelter.” *Id.* at 618.

shelters will not count if the shelter limits access to people who leave the shelter after they have been allocated a bed for a night, *see id.* (discounting beds in a shelter that “turns individuals away if they voluntarily leave the shelter before the 17-day limit”), or if individuals turned away at other shelters cannot get to the shelter before curfew, *see id.* (discounting beds in a shelter with a curfew that occurred before another shelter assigned beds off the wait list). The court also refused to count beds in a shelter with a “religious component.” *Id.* at 609.

Thus, under the Ninth Circuit’s decision, it is not enough for local government to provide beds for every homeless person. Governments can enforce encampment laws only if they provide all homeless people with unlimited and unconditional access to beds in shelters of certain types, with certain rules, and with no religious characteristics. Among other adverse effects, the Ninth Circuit’s decision discourages a host of creative efforts to help people escape homelessness because it leaves unclear (and doubtful) whether transitional housing programs that include rules and conditions intended to help their residents work toward permanent housing, or to recover from addiction, “count” toward meeting the Ninth Circuit’s requirement.

2. In sum, the Ninth Circuit’s decision not only erred in its basic holding but also left unanswered critical questions about the scope of its ruling.

- The Ninth Circuit stated that governments cannot enforce anti-encampment laws “so long as there is a greater number of homeless individuals in a jurisdiction than the number of available beds in

shelters,” *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018). As noted above, the court did not define “jurisdiction.” Does “jurisdiction” mean the area immediately around an encampment, the locality that enforces the encampment law, or the locality that enacted the encampment law? These different approaches can have significant ramifications for the number of beds that must be available. For instance, it would dictate for officials in Los Angeles City seeking to enforce the encampment law whether there must be 1,000 or so beds available for the homeless in and around a particular encampment; 36,000 beds available for the homeless in Los Angeles City; or 60,000 beds available for all the homeless in Los Angeles County.

- The Ninth Circuit decision also leaves ambiguous whether the right to enforce the laws against public camping depends on providing beds only for those who are chronically homeless or also for people who are temporarily homeless. Of the nearly 36,000 people who are homeless in Los Angeles City on any given day, around 26,000 are only temporarily so. That number fluctuates daily. Some people may be homeless for a single night because of personal circumstances. Likewise, some homeless people who ordinarily reside in Los Angeles County may temporarily cross the border into the City. The Ninth Circuit decision does not even hint whether enforcement of laws depends on the availability of beds for all of these people or only some particular subset of them.

- The Ninth Circuit’s decision does not count beds in shelters that have a “religious component,” without defining the term. It provides only examples of what constitutes a religious component, suggesting that religious messages on the intake form and religious iconography on the wall suffice. The decision thus leaves unclear whether, for example, a shelter would count if it were sponsored by a religious organization but otherwise was indistinguishable from a secular shelter, or if a volunteer wears a crucifix.
- In refusing to count beds in shelters that impose time-limits on individuals stays, the Ninth Circuit decision left unanswered whether shelters should not be counted if they place other limits on intake, such as curfews, sobriety requirements, or behavior codes.
- Although it prohibited blanket enforcement of encampment laws, the Ninth Circuit left unresolved whether other laws, such as restrictions on “particular times or [o]n particular locations” of encampments, are constitutional. This ambiguity leaves local governments with yet another unanswered question about their ability to act.

These uncertainties invite endless litigation and increase the cost of attempting to comply with the Ninth Circuit’s erroneous decision.

3. The ambiguities in the Ninth Circuit’s decision create sweeping uncertainty about the legality of other policies aimed at addressing homelessness. This uncertainty unduly hampers the ability of governments to adopt creative and nimble solutions to homelessness.

For example, in 2018, Los Angeles City launched the Bridge to Home program, designed to establish interim emergency housing in neighborhoods with encampments. <https://www.lamayor.org/mayor-garcetti-la-city-council-declare-shelter-crisis-mayor-signs-package-ordinances-address-la%E2%80%99s>. To keep the area around these sites safe, the program prohibits the erection of tents on streets surrounding the shelters during daytime hours. Communities often resist low-income housing or temporary shelters being located in their neighborhoods. This creative and promising program was well-designed to encourage communities to accept shelter housing in their neighborhood, with the inducement of being protected from the ills of permanent encampments.

City officials have largely abandoned the program because of threats of litigation contending that enforcement of the restrictions on permanent tenting violate the Ninth Circuit's vague decision. It is an open question whether the program would be upheld under the Ninth Circuit decision. It is clear-cut, however, that the City would incur substantial litigation expense and the other burdens of litigation defending the program. The mere threat of litigation was largely enough to derail the program.

Similar dynamics will inevitably interfere with future efforts to establish shelters. Many people who live near proposed shelters will demand restrictions on camping to prevent an influx of homeless people into their neighborhood, and members of the homeless community will threaten litigation if the City acquiesces to those demands. *See* <https://www.nytimes.com/2019/05/22/opinion/california-housing-nimby.html>. Programs like Bridge to Home seek to honor the legitimate concerns of both groups, creating a “win-win” whereby homeless

people receive housing and hope to escape homelessness and community members receive protection from dangerous and unhealthy conditions in their neighborhood. These kinds of programs are models that should be encouraged. But most City officials will no doubt choose to avoid navigating the Scylla of community resistance to programs without restrictions on camping and the Charybdis of litigation challenging programs with those restrictions by not launching any new shelter programs at all.

The uncertainty about how to count shelters that restrict entry also threatens other targeted programs. For example, the Winter Shelter program provides emergency shelters for adults age 18 or over, <https://www.lacity.org/blog/lahsas-winter-shelter-program-reopens-for-those-experiencing-homelessness>. It is unclear whether the Ninth Circuit's decision precludes counting beds in these shelters because of the age restriction; that uncertainty could make maintaining the Winter Shelter program less attractive to Los Angeles officials. The same would hold true for immediate housing targeted at women or families.

In short, the uncertainty surrounding the Ninth Circuit's ruling significantly limits the ability of Los Angeles and other cities to pursue creative, nimble, multi-pronged approaches to addressing homelessness and encampment.

D. The Ninth Circuit's decision has other adverse consequences.

In addition to unjustifiably handcuffing local governments by limiting the tools for combatting the problems associated with encampments, the Ninth

Circuit's decision has other negative ramifications for homeless people and local communities.

The inability to break up encampments will result in the continuation of existing encampments and, as the homeless population in Los Angeles continues to increase, the development of new encampments. These encampments will increasingly pose a risk of crime and disease to their residents and to others. They will increasingly create fire and other safety hazards. They will increasingly disrupt the daily lives of those who live near the encampments or travel through the encampments to work.

Ketchum-Downtown YMCA sees every day that the urban center of Los Angeles can be a great place to live and work: a place with culture, history, opportunity and diversity. Members of the YMCA hail from all walks of life, the organization strives to provide an inclusive environment where everyone, including the homeless, may find solace. But the YMCA community's strength derives from its ability to include and assist its most vulnerable members and provide a healthy community space for all. Encampments and the attendant health and safety risks to both the homeless and surrounding communities, considerably impede this goal.

Encampments also perpetuate homelessness. As explained above, many homeless people prefer to stay in encampments rather than in shelters or other, more permanent, housing for a variety of reasons including fear of losing the community of the encampments and of losing access to controlled substances. Moreover, encampments discourage their residents from finding a job or seeking public assistance because of the threat that others in the encampment will take any money, often through violence.

The Ninth Circuit’s decision inhibits governments from adopting multi-pronged approaches to battling homelessness. Under the decision, governments can enforce encampment laws only if they devote what in many cases would be enormous resources to constructing shelters, resources far beyond those realistically available in some jurisdictions. Because each government has only limited resources, governments must choose between building those shelters, or instead launching programs aimed at constructing permanent housing, providing food or medical services, or reducing safety hazards posed by encampments. Requiring governments to make this choice instead of permitting them to pursue all avenues to address homelessness will inevitably harm homeless people and others.

Further, the Ninth Circuit’s decision will inevitably lead to more aggressive policing of the homeless. Before the decision, government officials could disband encampments by invoking Los Angeles County’s municipal restriction on public camping to ask residents of the encampments to disperse when those encampments posed an unacceptable health or safety risk. The Ninth Circuit’s decision bars that course of action. Officials will likely turn to other laws—including state prohibitions on public nudity, urination, or defecation—to break up encampments that pose a significant threat to health and safety. *See* Cal. Penal Code §§ 314 (indecent exposure), 372 (public nuisance) (West 2019).

The potential punishment for breaching these laws is more significant than the penalty for violating anti-encampment laws. Violation of Los Angeles anti-encampment law is a misdemeanor, with a potential

punishment of a \$1,000 fine and six months of imprisonment. *See* L.A. Mun. Code § 11.00(m) (“Every violation of this Code is punishable as a misdemeanor unless provision is otherwise made, and shall be punishable by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.”).

By contrast, although the first conviction for public nudity, urination, or defecation is a misdemeanor, every subsequent conviction is a felony, Cal. Penal Code § 314, and requires the offender to register as a sex offender, *see id.* § 290(c) (requiring registration of those convicted for violating Cal. Pen Code § 314) (West 2019). These consequences create virtually insurmountable obstacles to escaping homelessness. Homeless people with felonies on their record or who are required to register as a sex offender will find it considerably more difficult to obtain stable employment or find a landlord that is willing to rent to them.

E. My personal experience with my brother demonstrates that prohibiting enforcement of anti-encampment laws can lead to homeless people facing more serious criminal charges.

My personal experience demonstrates that prohibiting enforcement of anti-encampment laws can result in homeless people facing more serious criminal charges, which make it substantially more difficult for them ever to find suitable housing. My brother now has a felony record and was required to register as a sex offender following repeated arrests for public urination and one arrest for masturbation.

My brother's experience is not an outlier. I have heard others express concerns about enforcement of these laws. At a Town Hall held last May on the need for greater access to mental health and shelters, several parents of children who are currently homeless testified that their greatest fear was that their child would be arrested for public urination and classified as a Sex Offender. Their fears are well founded. The inability to enforce the encampment laws only increases the risk that their fears are realized, as officials have fewer options to deal with health and safety threats posed by encampments.

CONCLUSION

The Ninth Circuit's decision cannot be reconciled with the rationale of this Court's decisions and conflicts with decisions of other lower courts. That decision is having an immediate and profound adverse impact on homeless people and on local communities. The petition for a writ of certiorari should be granted.

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