

No. 23-175

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

—◆—
CITY OF GRANT'S PASS,

Petitioner,

v.

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

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, CALIFORNIA CITIES
OF SAN JUAN CAPISTRANO, PLACENTIA AND
WESTMINSTER AND THE ASSOCIATION OF
CALIFORNIA CITIES - ORANGE COUNTY
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"), the cities San Juan Capistrano, Placentia and Westminster and the Association of California Cities – Orange County ("ACC-OC").¹ CSSA is a non-profit professional organization that represents each of the 58 California Sheriffs. CPCA represents virtually all of the more than 400 municipal chiefs of police in California. San Juan Capistrano, Placentia and Westminster are cities in Orange County, California. ACC-OC represents the interests of Orange County cities on regional public policy issues.

Amici have identified this matter as one in which their expertise may be of assistance to the Court and wish to draw 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

¹ Pursuant to Sup. Ct. R. 37.6, counsel for amici curiae certify that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than amici curiae, its members, or its counsel has made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Sup. Ct. R. 37.2, all counsel of record for the parties have received timely notice of amici curiae's intent to file.

impact on all cities and law enforcement agencies in California, and the general public.



SUMMARY OF ARGUMENT

Amici are familiar with the Petition filed by the City of Grants Pass and do not seek to duplicate the Petition's arguments. Rather, Amici wish to discuss the practical implications the Ninth Circuit's decision is having and will continue to have on law enforcement throughout 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 every single day.

Local municipalities have the legal authority to pass ordinances that regulate the health, safety and welfare of their citizens and the expertise of how to best address the difficult and sensitive issues raised by increasing homeless individuals on the streets of those municipalities. 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. *Brecht v. Abrahamson*, 507 U.S. 619, 635, 123 L. Ed. 2d 353, 113 S. Ct. 1710 (1993). The problems presented by an increasing homeless population and the proliferation of homeless encampments is a crisis of epic proportions raging on the streets of cities across the United States. On a single night in 2022, 233,000 people were experiencing homelessness and

unsheltered in the United States.² With 155,491 unsheltered homeless – the highest in the Nation – no state has felt the impact of this crisis harder than the State of California.³ Indeed, California accounted for half of all unsheltered people in the country.⁴ This is more than nine times the number of unsheltered people in the state with the next highest number, Washington.⁵ Relevant here, over 42% of the Nation’s homeless population are located in States within the Ninth Circuit.⁶

As first responders, no profession faces this 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 Com. of San Francisco*, 33 Cal. App. 2d 564, 567 (Cal. App. 1939). Indeed, the most basic function of a police department is to protect the safety of the public.

² U.S. Dept. of Housing and Urban Development, 2022 Annual Homelessness Assessment Report (AHAR) to Congress – December 2022 at pg. 2 available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

³ *Id.* at p. 16.

⁴ *Id.* at p. 16.

⁵ *Id.*

⁶ *Id.*

In order to carry out these duties, society has granted police officers enormous power, including the power to cite and arrest persons for violating the law. This enormous power provided to police officers, however, is not without strict limitations designed to ensure that the power is not abused. 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 the Ninth Circuit’s decision in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), amended on denial of reh’g, 920 F.3d 584 (9th Cir. 2019) and now *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), amended on denial of reh’g, 72 F.4th 868 (9th Cir. 2023), enforcement of generally applicable criminal laws was the province of local law enforcement agencies regardless of the alleged “involuntariness” of the conduct at issue. The expansive interpretation given to the Eighth Amendment by the Ninth Circuit, first in *Martin*, and now in *Grants Pass*, impermissibly intrudes on core police 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.

As discussed in more detail below, the *Martin* decision has had disastrous ramifications. Most notably, it has led to the widespread proliferation of homeless encampments across the Ninth Circuit which, in turn, has led to higher call volumes to police agencies, higher

crime, higher rates of drug use and marked decrease in the livability of numerous cities.

Worse, the *Martin* decision made it all but impossible for law enforcement agencies to curb the dangers associated with those encampments despite the enormous risk to public health and safety the encampments pose. While *Martin* may have expanded the rights of those suffering from homelessness, the rights of business owners, taxpayers, children and other housed citizens to clean, safe, drug-free streets and public areas have been completely ignored. Undeterred by this calamity, the Ninth Circuit doubled down in *Grants Pass*, expanding *Martin* and binding the hands of local law enforcement even tighter by further stripping law enforcement agencies of tools they need to protect the health and safety of the public at large.

Under *Grants Pass*, administrative enforcement of ordinances that could result in criminal enforcement violates the Eighth Amendment, local agencies must treat “rudimentary protection against the elements” equivalent to “sleeping,” for purposes of *Martin* (though what constitutes ‘rudimentary protection’ is not defined), anti-camping ordinances violate the Eighth Amendment to the extent they prohibit homeless persons from “taking necessary minimal measures to keep themselves warm and dry while sleeping” (though ‘necessary minimal measures’ are not defined) and individuals are involuntarily homeless when they do not have adequate access to reasonably available shelters (though the parameters of what is ‘reasonably

available' are not defined beyond being non-religious in nature). See *Grants Pass*, supra 72 F.4th at 891.

In short, the *Martin* and *Grants Pass* decisions leave law enforcement on the front lines of a dangerous war without sufficient tools necessary to fight the daily battles. Continued non-enforcement of these municipal laws imposes significant costs, such as loss of intended uses of public parks and other areas, increased need to respond to uncontained fires, contaminated needles, biohazardous waste conditions, damage to critical infrastructure and nature areas, reduced urban livability and desirability and loss of tax revenue.

For law enforcement, the Ninth Circuit's lack of clarity on the legal standard and failure to explain what is meant by basic terms within the decision such as "rudimentary protection," "necessary minimal measures," "shelter," "availability" and "involuntary" present more than an interesting cerebral exercise. Instead, for the 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 leaves law enforcement agencies with little or no direction as to the scope of their authority in those day-to-day policing contacts.

Worse than imposing amorphous standards that are impossible for officers or courts to apply in a fair and consistent way, the *Grants Pass* decision, and the *Martin* decision on which it rests, badly misconstrue multiple areas of binding Supreme Court precedent while forcing law enforcement agencies to suspend

enforcement of core public safety ordinances or face litigation and liability. These ordinances are crucial to law enforcement's ability to address the public health crisis presented by burgeoning homeless encampments.

Amici's members urge this Court to overturn *Grants Pass* and its bedrock, the *Martin* decision, and allow cities to enforce generally applicable laws designed to protect the health and safety of **all** the citizens in a community – both housed and unhoused. At a minimum, Amici require this Court's guidance on a clear, consistent interpretation of the liability standard with respect to law enforcement interactions with the homeless population, the constitutional basis for those duties, and the scope of laws either permitted or not permitted to be enforced against the growing homeless population.

Amici believe the resolution of the questions raised by this case are extremely important and submit this Brief out of concern that the health and safety of the homeless population, and the public at large, should not be compromised by vague and impracticable "constitutional" rules. Amici and their members further have an interest in ensuring that law enforcement agencies and officers have appropriate flexibility to make critical decisions regarding citations and arrests pursuant to basic health and safety laws without facing the specter of money damages and attorneys' fees awards, staggering defense costs, and the distractions of 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 across California remain steadfast in their commitment to improving the outcomes for persons experiencing homelessness, teaming up with various partners such as social service agencies and other governmental departments and building support in communities to address homelessness all while keeping cities safe, clean and accessible to all. To successfully reduce homelessness and homeless encampments, California law enforcement must continue to be creative and must be able to employ each and every tool at their disposal. Enforcement of the type of ordinances at issue in *Martin* and *Grants Pass* is simply one tool, a vital one, that should be available to law enforcement. Accordingly, Amici respectfully support the City of Grants Pass' Petition for Writ of Certiorari.



ARGUMENT

I. Homelessness is a Critical Issue in California Policing Made Exponentially Worse by *Martin*

The disparate practical impact on California of the *Martin* decision, arising out of Boise, Idaho, and of the *Grants Pass* decision, arising out of Grants Pass, Oregon, is staggering. Indeed, after the *Martin* decision, it was noted that the mid-size city of Boise, Idaho “with

its relatively manageable homeless population[,] is setting the enforcement standards for its much larger counterparts in the West.”⁷ More specifically, in 2018 when *Martin* was decided, Boise and the county in which it sits, had 117 unsheltered homeless individuals.⁸ That same year, Los Angeles and the county in which it sits, had 36,461 unsheltered individuals – over 300 times more than Boise.⁹

The impracticality of *Martin* as applied to cities with large homeless populations has now grown exponentially under *Grants Pass*. A small town in Oregon with “a population of approximately 38,000” and with a homeless population between 50 and 600¹⁰ is now setting the enforcement standards for the entire Ninth Circuit – a population of approximately 67 million

⁷ Maria L. La Ganga, *This City in Idaho Is Why L.A. Can't Legally Clear its Streets of Homeless Encampments*, L.A. TIMES (Oct. 15, 2019) available at <https://www.latimes.com/california/story/2019-10-15/homeless-boise-martin-supreme-court>.

⁸ 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 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_ID-500-2018_ID_2018.pdf.

⁹ 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 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_CA-600-2018_CA_2018.pdf.

¹⁰ *Grants Pass*, supra 72 F.4th at 874.

people with a homeless population of approximately 250,000.¹¹

The City of Los Angeles alone has a homeless population of an estimated 46,260 people¹² – between 77 to 924 times as many homeless persons as reside in Grants Pass. *See Grants Pass*, supra 72 F.4th at 874. In fact, in 2022, the entire State of Oregon had a homeless population of 14,586 homeless persons.¹³ Whereas, during that same time period, Los Angeles County alone – one of 58 Counties in the State of California – had a homeless population of nearly five times the size at 69,144 persons.¹⁴

¹¹ Congressional Research Service, *Recommendation for New U.S. Circuit and District Court Judgeships by the Judicial Conference of the United States (118th Congress)*, April 5, 2023; U.S. Dept. of Housing and Urban Development, *2022 Annual Homelessness Assessment Report (AHAR) to Congress – December 2022* at pg. 16 available at <chrome-extension://efaidnbmninnibpcjpcglefindmkaj/https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

¹² *2023 Greater Los Angeles Homeless Count Deck*, Los Angeles Homeless Services Authority (Jan. 24-26, 2023) available at <https://www.lahsa.org/documents?id=7232-2023-greater-los-angeles-homeless-count-deck.pdf>.

¹³ U.S. Dept. of Housing and Urban Development, *2022 Annual Homelessness Assessment Report (AHAR) to Congress – December 2022* at pg. 104 available at <chrome-extension://efaidnbmninnibpcjpcglefindmkaj/https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>.

¹⁴ *2022 Greater Los Angeles Homeless Count Deck*, Los Angeles Homeless Services Authority (Jan. 24-26, 2023) available at <https://www.lahsa.org/documents?id=6545-2022-greater-los-angeles-homeless-count-deck.pdf>.

In short, the gravity of the issues surrounding homelessness and the possible solutions for addressing those issues in cities like Boise or Grants Pass do not, in any way, practically equate to the entirety of the Ninth Circuit. Simply put, the homelessness problems in different cities require different approaches, strategies and tools, and preventing use of a tool by the Boise or Grants Pass Police Departments simply does not have the same effect as preventing the use of the same tool by far larger agencies. Additionally, while the open questions raised by *Martin* and *Grants Pass* may prove difficult to answer in small towns – 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% accurate.

To say that *Grants Pass* and the further restrictions the decision imposes upon law enforcement therein could not have come at a worse time would be an understatement of epic proportions. The practical implications of *Martin* have resulted in local governments having little or no enforcement power over their unhoused populations, leading to an explosion of encampments throughout the State of California. As a result, many unhoused people live in unnecessarily dangerous situations due to crime, trash, human waste and rampant substance abuse. *Grants Pass*, affirming and expanding upon *Martin*, will make a horrific situation even more dire.

In December of 2022, just over three years after *Martin*, the mayor of Los Angeles declared a state of emergency on homelessness.¹⁵ That Declaration contains a number of shocking statistics that demonstrate the extent to which homelessness, particularly in Los Angeles, is a problem of truly epic proportions. The City of Los Angeles represents 9.6% of the State of California’s population but 25% of the State’s unsheltered population.¹⁶ The number of unsheltered people in the City of Los Angeles is approximately 18 times higher than the number in New York City and 14 times higher than the number in Chicago.¹⁷

The Los Angeles County Department of Public Health has reported an average of over 5 deaths per day of unhoused persons as of March 2021, a 200% increase in the death rate of persons experiencing homelessness over the past decade and a 56% increase over just one year prior.¹⁸ Los Angeles recognized that one of the “key performance indicators in addressing the emergency” includes decreasing the number and size of encampments¹⁹ – a goal now made nearly impossible under *Grants Pass*.

¹⁵ Declaration of Local Emergency (Los Angeles), December 12, 2022 available at <https://mayor.lacity.gov/news/mayor-karen-bass-declares-state-emergency-homelessness>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

The financial impact on Los Angeles is equally staggering. In 2021, Los Angeles responded to the rapid increase in its homeless population with unprecedented investments into homeless solutions budgeting \$791 million for initiatives to help homeless residents with an additional \$160 million in roll over funds.²⁰ That spending plan was a nearly ***sevenfold increase*** from the mayor’s budget five years prior.²¹ By 2023, that figure has increased to \$1.3 billion.²²

Sacramento County, in which California’s capitol city is found, saw an astonishing 67% increase in nightly homelessness between 2019 and 2022.²³ Significantly smaller cities have also been substantially impacted by the *Martin* decision with the Police Chief of the City of San Bernardino, a member of Amici CPCA here, finding that the decision “has contributed to the city experiencing a 40% increase in the homeless

²⁰ Benjamin Oreskes and David Zahniser, Doug Smith, *L.A. plans nearly \$1 billion in spending to address homelessness under Garcetti plan*, LOS ANGELES TIMES, April 19, 2021 available at <https://www.latimes.com/homeless-housing/story/2021-04-19/los-angeles-will-increase-budget-for-addressing-homelessness>.

²¹ *Id.* [emphasis added].

²² Press Release: *Mayor Bass Signs Los Angeles County Budget*, May 26, 2023 available at <https://mayor.lacity.gov/news/mayor-bass-signs-los-angeles-city-budget>.

²³ Division of Social Work and the Center for Health Practice, Policy & Research at the California State University, Sacramento, *Homelessness in Sacramento County (Results from the 2022 Point in Time Count)*, July 2022 at p. 1 available at <chrome-extension://efaidnbmninnkpcjpcglclefindmkaj/https://sacramento.stepsforward.org/wp-content/uploads/2022/06/PIT-Report-2022.pdf>.

population since 2019.”²⁴ In that same vein, the NorCal CoC region of California, which encompasses some of the least populous and most rural counties of California including Del Norte, Lassen, Modoc, Plumas, Shasta, Sierra and Siskiyou, saw just under a 36% increase in unsheltered homeless from 2019 to 2022.²⁵

Without question, homelessness presents one of the most significant challenges to California law enforcement today especially with the explosion of homeless encampments in cities up and down the State since *Martin*. In short, the practical consequences of the *Martin* and *Grants Pass* decisions on California law enforcement have proven, and will continue to prove, nothing short of disastrous.

²⁴ Darren Goodman, Police Chief of the City of San Bernardino Police (SBPD), *The Adverse Impacts of Martin v. Boise on SB*, September 18, 2023 [Press Release] available at https://www.sbcity.org/news/whats_new/the_adverse_impacts_of_martin_vs_boise_on_s_b.

²⁵ Shasta County Community Action Agency, *NorCal Continuum of Care’s Annual Point-in-Time Count Executive Summary (2019 Annual Report)* at p. 7 available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.shastacounty.gov/sites/default/files/fileattachments/housing_amp_community_action_programs/page/3427/2019-pit-report.pdf and Shasta County Community Action Agency, *NorCal Continuum of Care’s Annual Point-in-Time Count Executive Summary (2022 Annual Report)* at p. 12 available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://wildrivers.lostcoastoutpost.com/media/blog/post/2253/2022-norcal-CoC-Pit-Report-Final.pdf>.

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

California police and fire agencies are inundated by calls and/or complaints about the homeless. Between 2017 and 2022, San Francisco Police Department SFPD officers received an astonishing 174,176 homeless-related calls for service.²⁶ In 2018, Santa Monica Police Department reported that roughly 30% of the Department's calls for service were homeless-related.²⁷

In a survey of the 58 California Sheriffs comprising Amici CSSA, the San Bernardino County Sheriff's Office reported that San Bernardino County Fire emergency calls related to homeless subjects increased from 2,127 incidents in 2020 to 3,783 incidents in 2022 with an overwhelming 5,484 incidents so far in 2023. Large Counties are by no means the only counties affected by this crisis. Mid-size Placer County reported a 6% increase in homeless population between 2021 and 2022 with a 14% increase in homeless-related calls for service. In 2022, Placer County Sheriff's Office received

²⁶ Press Release: *SFPD Responds to Media Report on Use of Force*, August 24, 2023 available at <https://www.sanfranciscopolice.org/news/sfpd-responds-media-report-use-force#:~:text=SFPD%20officers%20received%20174%2C176%20homeless,using%20a%20physical%20control%20hold>.

²⁷ 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>.

421 homeless-related calls for assaults, disturbances and agency assists.

The Sheriff's Office of Placer County also reports that there are substantially more law enforcement incidents (crimes, calls for service, and self-initiated incidents) today as compared to 2018, i.e., prior to the *Martin* decision. Specifically, 557 homeless-related law enforcement incidents in 2018 and, year-to-date in 2023, there have already been 734. In relatively small Humboldt County, there were 220 incidents tracked by the Sheriff's Office containing the words "transient" or "homeless" in 2018. By 2022, that number had ballooned to 912.

Police calls for service are not the only safety agencies impacted. In Los Angeles, occurrences of fires related to homelessness nearly tripled between 2018 and 2021, averaging 24 fires a day in the first quarter of 2021.²⁸ By December 2021, fires related to homelessness constituted the majority of all fires to which the Los Angeles Fire Department responded.²⁹ Similarly, in San Bernardino, since 2020, there have been 1,093 fires related to transients including everything from encampment fires to trash fires to vacant building fires.³⁰

In sum, it is no exaggeration to say that California law enforcement officers spent a substantial

²⁸ Declaration of Local Emergency (Los Angeles), *supra*.

²⁹ *Id.*

³⁰ SBPD Chief Goodman, September 18 Press Release, *supra*.

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 crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless.

Persons experiencing homelessness are amongst the most vulnerable persons in society. In the City of San Bernardino, “15% of the transient population are victims of crime and almost 50% of vehicle versus pedestrian collisions involve transients.”³¹ In 2017, in Los Angeles, 1,762 persons experiencing homelessness were reported to be victims of a violent or property crime while in 2018 there were 2,965 such victims reflecting a stunning 68% increase in crimes against homeless victims.³² The most significant changes in crimes with a homeless victim from 2017 to 2018 were robbery, with an 89% increase, larceny, with an 86%

³¹ SBPD Chief Goodman, September 18 Press Release, *supra*.

³² Los Angeles Police Department (LAPD), 2018 4th Quarter Report on Homelessness, January 29, 2019 at p. 2 available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.lapdpolicecom.lacity.org/031219/BPC_19-0073.pdf.

increase and rape, with a 71% increase.³³ In Los Angeles, the murder rate for people experiencing homelessness increased by an alarming 47% in 2021 alone.³⁴

However, crimes *against* the homeless 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.³⁵ In 2018, that figure increased to 4,849 violent or property crimes, reflecting a 53% increase in crimes in which a homeless person was the suspect. In the City of San Bernardino, the crime committed by homeless individuals is grossly disproportionate to the rest of the city's population. "While the transient population is slightly less than 1% of the city's population, transients account for 15.88% of misdemeanor arrests and 14.33% of felony arrests."³⁶ Indeed, "statistics in San Bernardino indicate 34% of the transient population has been arrested for various crimes."³⁷ In 2017, the Orange County Sheriff's Department conducted 1,118 consensual contacts in the Santa Ana Riverbed – the County's largest homeless encampment and found that 85% of all those contacted had a prior criminal history.³⁸

³³ *Id.*

³⁴ Declaration of Local Emergency (Los Angeles), *supra*.

³⁵ LAPD, *4th Quarter Report*, *supra*.

³⁶ SBPD Chief Goodman, September 18 Press Release, *supra*.

³⁷ *Id.*

³⁸ 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>.

In short, the exponential increase in the homeless population and encampments in recent years has resulted in an increase in crimes both against the homeless and by the homeless. Law enforcement officers are charged with the safety and security of the public, and it is the duty of an officer to investigate crimes and to confront dangerous situations. This oftentimes unenviable job is becoming increasingly more difficult and dangerous due to the epidemic of homelessness and the growing restrictions on police action such as those set forth in *Martin* and *Grants Pass*, which fail to take into account the reality of the nature of the situation facing officers.

c. Traditional Police Safety Concerns Are Accompanied by Concerns of Disease and Infection

Homeless encampments also raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless people, like all other people, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Though without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public. Further, the opportunity for the spread of

communicable diseases is increased in homeless encampments lacking basic sanitation services and waste collection, with some diseases such as hepatitis A and typhus more likely to occur in homeless populations.

Unfortunately, the law enforcement officers charged with policing in and near these encampments are feeling the full brunt of these dangers. In California, there were 167 cases of typhus from January 1, 2018 through February 1, 2019, whereas there were only 13 cases during the same time span in 2013.³⁹ In 2019, several Los Angeles Police Officers working near the same homeless encampment either contracted typhoid fever and/or showed typhus-like symptoms.⁴⁰

Additionally, statewide, there were 948 cases of hepatitis A in 2017 and 178 in 2018 and 2019 – an 81% increase. *Id.* Some areas of California were hit particularly hard. On September 1, 2017, San Diego County declared a state of emergency due to that County's

³⁹ 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>.

⁴⁰ 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 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>.

hepatitis A outbreak.⁴¹ As of January 9, 2018, there were more than 577 confirmed hepatitis A cases, 20 deaths, and 396 hospitalizations in San Diego County.⁴² The City of Santa Cruz saw a similar outbreak beginning in April 2017 with 76 confirmed cases of hepatitis A.⁴³ Monterey County followed with a hepatitis A outbreak among its homeless population in February 2018.⁴⁴

These diseases spread quickly and widely among people living on the streets, helped along 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 crimes discussed above, bring law enforcement in constant contact with these dangerous conditions. As though facing deadly threats

⁴¹ 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.

⁴² *Id.*

⁴³ County of Santa Cruz, *Hepatitis A Virus (HAV)* available at <https://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunicableDiseaseControl/HepatitisA.aspx>.

⁴⁴ 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>.

posed by suspects wasn't enough, our officers now have medieval diseases to contend with.

The homeless encampments have other consequences that may not be as obvious. For example, encampments have been springing up in parks and in conservation areas for protected species. Park and wetland habitats are now being compromised by the homeless that make shelters there and use the natural water for bathing and toileting. One example is popular Tiscornia Beach on the American River in Sacramento, which is downstream from homeless encampments that aren't served by restrooms, and which in 2019 had "alarmingly high levels of *E. coli* found in water tests."⁴⁵

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 in Orange County with somewhere between 700 to 1,000 homeless persons residing there.⁴⁶ During the

⁴⁵ 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>.

⁴⁶ 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 and 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.ocregister.com/>

clean-up of that encampment, incredibly dangerous fire hazards were observed.⁴⁷ Additionally, and nearly beyond belief, 404 tons of debris, 13,950 hypodermic needles and 5,279 pounds of waste deemed hazardous such as human waste, propane, pesticides and other materials, were removed from the site.⁴⁸

Prior to the Riverbed clean up, the Orange County Sheriff's Department routinely policed inside the encampment both for outreach and enforcement purposes, thus routinely putting those officers inside a breeding ground for disease and in close proximity to tens of thousands of needles and thousands of pounds of human 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.

2018/03/08/thousands-of-pounds-of-human-waste-close-to-14000-hypodermic-needles-cleaned-out-from-santa-ana-river-homeless-encampments/.

⁴⁷ *Id.*

⁴⁸ *Id.*

II. This Court has Long Recognized the Need for Workable Constitutional Standards, Which *Martin* and *Grants Pass* Certainly do 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. Day in and day out, a substantial portion of law enforcement 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 must stop short of preventing 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* and *Grants Pass* decisions do exactly that – strip law enforcement of critical enforcement tools without any consideration of the practical effects on everyday policing.

To many, the dreadful situation resulting from *Martin* has not come as a surprise. Dissenting to the denial of rehearing en banc in *Martin*, Judge M. Smith, joined by five other Judges, warned of “dire practical consequences for the hundreds of local governments within our jurisdiction and the millions of people living there” further stating that the panel’s holding had already begun “wreaking havoc on local governments, residents, and businesses throughout the circuit.” *Martin*, 920 F.3d at 590 and 594.

Judge M. Smith further warned in his dissent that “the panel’s reasoning would soon prevent local governments from enforcing a host of other public health and safety laws, such as those prohibiting public defecation and urination” thus shackling the hands of public officials “trying to redress the serious societal concern of homelessness.” *Id.* In petitioning this Court for Certiorari on *Martin*, the City of Boise gained the support of 7 States and dozens of cities as amici curiae each echoing the very concerns raised by Judge M. Smith.

In *Grants Pass*, the Ninth Circuit issued a splintered 155 page opinion amending the original appellate opinion and denying rehearing en banc by the slimmest of margins – 14 to 13 – over the objections of 17 active and senior judges, who explained that the Ninth Circuit should have reconsidered this ill-conceived judicial experiment. Indeed, again in dissent, Judge M. Smith noted that “*Martin*, particularly now that it has been supercharged by *Grants Pass*, has proven to be a runaway train that has derailed and done substantial collateral damage to the governmental units in which it has been applied and those living therein.” *Grants Pass*, supra 72 F.4th at 943.

The Ninth Circuit’s decisions have led and will continue to lead to an abandonment of a multitude of laws regulating public health and safety due to the threat of incurring civil liability for purportedly violating the Eighth Amendment. The tools law enforcement are being deprived of leave them powerless to address the devastating issues presented by rising numbers of

the homeless and homeless encampments. For these reasons, Amici urge this Court to grant the Petition and overturn *Grants Pass* and *Martin* on which it is founded.

At a minimum, Amici ask for clarification. If the issues in *Martin* and *Grants Pass* are confounding to a number of U.S. Court of Appeals judges, they are infinitely more confounding from the perspective of the officer on the street trying to cope with the thousands of calls for service discussed above while receiving minimal guidance under *Martin* and *Grants Pass* as to which ordinances they can and cannot enforce and when they can and cannot enforce them. For an officer on the street trying to comply with these decisions, the practical hurdles are absurd. What beds can an officer consider when determining whether a bed is “reasonably available”? If the person the officer proposes to cite for camping is on Skid Row in downtown Los Angeles, does an open bed 10 miles away but still in Los Angeles County suffice as available? 5 miles away? 2 miles away? More importantly, once an officer determines what geographical location he must search for beds in, exactly how is he supposed to do that?

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 available of different types with different restrictions.⁴⁹

⁴⁹ Doug Smith, *Q&A: Demystifying L.A.’s System of Homeless Shelters*, LOS ANGELES TIMES, September 29, 2017 available at

Many of the beds are only available seasonally in the winter.⁵⁰ 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 check, 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? And what constitutes “rudimentary protection against the elements”? Is it the same in someplace like Santa Monica, with nearly year round pleasant weather, as it is in the deserts of California, where temperatures can range anywhere from the teens to well over 100 degrees?

Amici respectfully submit that such a constitutional prohibition as is imposed by *Martin and Grants Pass* cannot not be formulated in a manner that would be workable for the police officers on the beat. The categorical constitutional prohibition in these decisions poses insurmountable obstacles to legitimate law enforcement. The vagueness of the decision’s perimeters and expectations placed upon law enforcement fails to come even remotely close to the need for clarity discussed in *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860 (1981). In short, the decision is nearly impossible for officers to employ in practice and does nothing but

<https://www.latimes.com/local/lanow/la-me-shelter-q-a-20170929-htmllstory.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>.

⁵⁰ *Id.*

create confusion and tie the hands of officers who are already facing outrageous challenges due to homelessness every day. *Martin* and *Grants Pass* have, and will continue to have, dire practical consequences upon California cities and law enforcement should they be permitted to stand.



CONCLUSION

For the foregoing reasons, Amici respectfully request that the City of Grants Pass' Petition for Writ of Certiorari be granted.

Respectfully submitted,

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