

No. 23-175

In the Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,
Petitioner,

v.

**GLORIA JOHNSON, ET AL., ON BEHALF OF
THEMSELVES AND ALL OTHERS SIMILARLY
SITUATED,**
Respondents.

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

**BRIEF FOR THE CITY OF CHICO
AS AMICUS CURIAE
SUPPORTING PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The City of Chico, California (“Chico”) is the largest city in Butte County, with a population of just over 100,000 people. If figures from the 2023 point-in-time count are accurate, there are 366 homeless persons residing in Chico.² Despite having a far smaller number of homeless persons than cities such as San Francisco and Los Angeles, Chico has nevertheless experienced tremendous difficulty as its public officials try to protect the health and safety of all residents after *Martin v. City of Boise*, 920 F.3d

¹ Under Supreme Court Rule 37.2, *amicus curiae* provided timely notice to all parties of its intention to file this brief. Under Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* and its counsel made any monetary contribution intended to fund the preparation and submission of this brief.

² BUTTE COUNTY CONTINUUM OF CARE, *2023 Point-In-Time Executive Summary* (2023) at 13, https://www.buttehomelesscoc.com/uploads/1/1/7/5/117500423/2023_pit_executive_summary.pdf.

584 (9th Cir. 2019) and *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023).

In April 2021, the United States District Court for the Eastern District of California enjoined Chico from enforcing anti-camping and related laws. The parties ultimately settled, one product of which was Chico's creation of a 177-unit non-congregate shelter. In the year since Chico's shelter opened, the city removed 908 tons of trash from public grounds, outreach and engagement personnel assessed 401 homeless persons for placement in shelter, and 207 homeless individuals resided at the Chico-run shelter as of the year anniversary date. Despite these improvements, Chico is unable to timely address threats to public health and safety.

Pursuant to the terms of the settlement Chico entered into, homeless persons may be relocated from an encampment into shelter as long as the city has enough shelter availability to house all individuals residing at the specific location(s) being cleared. That process requires counting people and shelter

availability, and thereafter providing at least seventeen days' notice before completely cleaning up an encampment. Residents do not understand why Chico cannot immediately address issues of open drug use, violence, theft, uncontrolled fires, environmental degradation, and other threats to a person's physical and mental well-being.

On July 22, 2022, homeowners adjacent to the area variously known as "Windchime Park" and "Humboldt Park" expressed their frustration to local media that Chico was unable to quickly ameliorate issues associated with a large encampment located at the park.³ Similar complaints were made on July 24, 2022, regarding camps along a bike path, and on October 17, 2022, with respect to an encampment in Teichert Ponds where a shooting occurred next to a

³ Ryan Matthey, *Chico Homeowners Call Out Police for Lack of Action as Homeless People Evade Enforcement*, KRCR (July 22, 2022), <https://krcrtv.com/news/local/chico-homeowners-call-out-police-for-lack-of-action-as-homeless-people-evade-enforcement>.

residential development.⁴ Those are some of the complaints reported in local media, but do not reflect the constant pleas for help that residents make to the city. Like many other public agencies, Chico is interested in ensuring its public officials will be able to exercise their discretion to combat homelessness-related threats to public health and safety, as they were able to before the Ninth Circuit heavily restricted the same.

INTRODUCTION

This brief is too long and too short. It is likely that most municipalities within the Ninth Circuit would suffer from the same issue: there is simply not enough room to fully describe the devastating impact

⁴ Chloe Curtis, *Neighbors Want Homeless Encampment Along Highway 99 Bike Path Cleared*, ACTION NEWS NOW (July 24, 2022), https://www.actionnewsnow.com/news/neighbors-want-homeless-encampment-along-highway-99-bike-path-cleared/article_8cfb7040-0bb8-11ed-873c-4339992fd021.html; Tori Apodaca, *Neighbors Fear Increase in Violence at the Teichert Ponds Homeless Camp*, ACTION NEWS NOW (Oct. 17, 2022), https://www.actionnewsnow.com/news/neighbors-fear-increase-in-violence-at-the-teichert-ponds-homeless-camp/article_4e7e5a56-4e86-11ed-9b6a-67c17bef11a6.html.

Martin and its progeny have wrought, yet such lengthy discourse should not be required. Chico's residents should not be worried that their public officials will be unable to prevent sprawling homeless encampments in or adjacent to their neighborhoods, parks, waterways, schools, retail shopping centers, city centers, and other areas where all members of the general population should be, and until recently have been, able to enjoy.

Martin and *Johnson* arrived at a time when the reputation of all law enforcement officers in this country has been tarnished, in large part due to the actions of select individuals in multiple states who have been convicted of various offenses. This has led to fewer people applying to be police or sheriffs and agencies having a diminished ability to retain current staff. In Chico, additional police officers are needed and this has made it relatively more difficult to stop the proliferation of homeless encampments where increased populations tend to result in a greater occurrence of criminal and otherwise adverse events.

Chico's homeless population has become significantly more defiant with city personnel and the general public as the immunity afforded by *Martin* strips away the deterrence that anti-camping laws provide. More broadly, headlines reveal these trends have permeated much of our country as national retailers close storefronts threatened by crimes against persons and property. To the extent constitutional infirmity contributes to these negative progressions, Chico respectfully requests the same be corrected.

SUMMARY OF THE ARGUMENT

In the following sections, Chico has focused primarily on factual information to illustrate the sundry problems *Martin* and *Johnson* have created. Dissenting opinions filed in *Martin* and *Johnson*, and arguments already provided by other *amici*, offer a helpful review of the relevant legal arguments. That said, Chico is particularly concerned that *Martin* and *Johnson* have misinterpreted the Eighth Amendment.

More specifically, the first section of the following argument begins with a subsection framing the legal principles Chico has identified as relevant, followed by a second subsection setting forth the facts revealing how those legal principles have impacted the city. The remaining subsections alternate in the same fashion until the second section of the argument, which contends the Eighth Amendment does not restrict state and local governments from enforcing anti-camping laws if penalizing a person for the violation thereof results in no more than a misdemeanor conviction carrying little, if any, incarceration and minimal fines, because such punishment is neither *cruel* nor *unusual*. Chico concludes by respectfully requesting that this Court grant the petition for a writ of certiorari to correct the Ninth Circuit's errors, thereby enabling states and local governments to decide how the homelessness crisis should be addressed.

ARGUMENT

I. The Widespread Adverse Impacts Warned of in the Dissenting Opinions in *Martin* and *Johnson* Have Come to Fruition in Chico.

1. Local Governments Cannot Enforce Public Health and Safety Ordinances if Unable to Provide Shelter.

Ninth Circuit Judge Milan D. Smith, Jr., filed a prescient opinion dissenting from the majority in *Martin*, joined by Circuit Judges Consuelo M. Callahan, Carlos T. Bea, Sandra S. Ikuta and Ryan D. Nelson, summarizing the practical consequences of the majority's decision as follows:

[O]ur court ... crafted a holding that has begun wreaking havoc on local governments, residents, and businesses throughout our circuit. Under the panel's decision, local governments are forbidden from enforcing laws restricting public sleeping and camping unless they provide shelter for every

homeless individual within their jurisdictions. Moreover, the panel's reasoning will soon prevent local governments from enforcing a host of other public health and safety laws, such as those prohibiting public defecation and urination. Perhaps most unfortunately, the panel's opinion shackles the hands of public officials trying to redress the serious societal concern of homelessness.

Martin, 920 F.3d at 590 (M. Smith, J., dissenting). Later, in *Johnson*, Circuit Judge Daniel P. Collins reiterated those concerns, found the same issues to exist in Grants Pass, Oregon, and cautioned: "Other cities in this circuit can be expected to suffer a similar

fate.” *Johnson*, 72 F.4th at 914 (D. Collins, J., dissenting). Chico has.

2. Chico’s Public Health and Safety Efforts Have Been Hamstrung.

The purpose of this section is not to recount the various adverse impacts experienced in Chico. That is done in Section I.6., below. Instead, this section is focused on the ways in which Chico has been prevented from addressing public health and safety issues.

As of August 2, 2021, Chico was under a preliminary injunction enjoining it from enforcing anti-camping and related laws. *Warren v. City of Chico*, 2021 WL 2894648 at *4 (E.D. Cal. July 8, 2021). At that time, Chico’s Fire Chief, Steve Standridge, reported a substantial increase in transient-related fires.⁵ The problem was not only that Chico had been restrained from enforcing various

⁵ Kelly DeLeon, *911 Response to Chico’s Homeless Encampments*, KTVL (Aug. 2, 2021), <https://ktvl.com/news/911-response-to-chicos-homeless-encampments>.

public health and safety laws, but also that the increase in vegetation fires strained the fire department's resources.⁶ Chief Standridge explained that responding to vegetation fires at homeless encampments could take hours, which causes a significant burden when there are seventeen fire personnel available on a given day.⁷ Responding to fires at homeless encampments consumes more time because those locations are not designed for efficient fire response, a problem faced in many other places such as the San Francisco Bay Area.⁸

Chico settled its homelessness litigation in January 2022, yet problems persist. The general framework of the settlement allows city personnel to:

⁶ Kelly DeLeon, *911 Response to Chico's Homeless Encampments*, KTVL (Aug. 2, 2021), <https://ktvl.com/news/911-response-to-chicos-homeless-encampments>.

⁷ *Id.*

⁸ Sarah Ravani, *'People are Really Scared': Why Fires at the Bay Area's Largest Homeless Encampments are so Tough to Fight*, SAN FRANCISCO CHRONICLE (Aug. 24, 2022), <https://www.sfchronicle.com/eastbay/article/People-are-really-scared-Why-fires-at-the-17395847.php>.

(1) count the number of homeless persons in a limited geographic area or areas; (2) confirm sufficient shelter exists for those individuals; (3) assess those persons to determine which shelter option is most suitable for their needs; (4) offer shelter according to the assessments; and (5) enforce anti-camping and related laws on any persons who remain in the limited geographic area(s) after receiving notice of the enforcement operation. Nevertheless, that process leaves those Chico residents who are not near an active enforcement location needing more.

In June 2022, Chico commenced enforcement operations at one of the city's largest homeless encampments in a location known as the "Comanche Creek Greenway." That operation provided little solace to those living near Windchime Park. By July 2022, one resident near Windchime Park remarked, "The quality of life here is not good at all. They come right into your lawn and steal your stuff from you.

They take yard tools and things like that.”⁹ Another recalled when a homeless person began banging on her door at three in the morning and waking her son up.¹⁰ That resident further explained, “There’s many fights that break out [and] that’s not healthy. They’re just not healthy for my son to hear or be around.”¹¹ Responding to those reports, Chico Police Captain Greg Keeney explained that officers address most calls for service but can be forced to triage based on the severity of the reported offense, and that “quality of life” calls such as those relating to non-violent encounters with homeless persons may not be the highest priority.¹²

Police and fire are not the only departments in Chico strained by the impacts the Ninth Circuit’s

⁹ Ryan Matthey, *Chico Homeowners Call Out Police for Lack of Action as Homeless People Evade Enforcement*, KRCR (July 22, 2022), <https://krcrtv.com/news/local/chico-homeowners-call-out-police-for-lack-of-action-as-homeless-people-evade-enforcement>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

decisions have caused. Addressing a local Rotary Club, Chico's Chief of Police, Billy Aldridge, commented, "The biggest challenge, or complaint, is just the amount of garbage that has accumulated in these areas. Public Works goes through and tries to clean up as much as they can as regularly as they can."¹³ It is not surprising that public works personnel cannot clean up all garbage in Chico at all times. As City Manager Mark Sorensen reported, the cleanup of Comanche Creek Greenway removed "153 tons of garbage, two 40-yard dumpsters of recyclable metal and multiple propane bottles, 12-volt automotive batteries, used motor oil, used antifreeze and gasoline cans."¹⁴ Operations of that magnitude require a significant allocation of resources toward

¹³ Mike Mangas & Adam Robinson, *Chico Police Chief Prioritizes Homeless Camp Cleanups and a Unified Police Station for the Future*, KRCR (Aug. 8, 2023), <https://krctv.com/news/local/chicos-new-police-chief-tackles-homelessness-and-plans-for-a-modern-police-station>.

¹⁴ Ryan Matthey, *Chico Homeowners Call Out Police for Lack of Action as Homeless People Evade Enforcement*, KRCR (July 22, 2022), <https://krctv.com/news/local/chico-homeowners-call-out-police-for-lack-of-action-as-homeless-people-evade-enforcement>.

one effort, necessarily making it more difficult to clean other parts of the city.

The backbone of any local government's public health and safety apparatus is comprised of the police, fire and public works departments. In Chico, those resources have been severely hampered. This is but one adverse impact flowing from the Ninth Circuit's jurisprudence.

3. It is Impossible to Determine the Number of Unsheltered Homeless Persons Within a City and How Much Shelter is Available.

To comply with *Martin*, Judge Smith noted that, "volunteers or government employees must painstakingly tally the number of homeless individuals block by block, alley by alley, doorway by doorway." *Martin*, 920 F.3d at 594 (M. Smith, J., dissenting). Likewise, defining what constitutes "shelter" and, by extension, how much is available, yields troublesome results. Judge Smith's dissenting opinion in *Johnson* recited that one district court

“concluded the airport shelter was not *Martin*-type shelter, and subsequently enjoined Chico from enforcing its anti-camping laws against ‘homeless persons in violation.’” *Johnson*, 72 F.4th at 942 (M. Smith, J., dissenting). Unfortunately, Chico’s experience has revealed that such issues merely scratch the surface of the problem.

4. Chico’s Experience has Failed to Reveal Any Solutions for Counting Persons and Shelter.

Prior to settling the *Warren* litigation, Chico endeavored to provide a large space on the property where its municipal airport is located, as referenced in the immediately preceding section. Chico prepared a compacted aggregate surface, protective fencing, large water totes, handwashing stations, portable toilets, dumpsters, a large canopy for shade and spaces where its homeless population could stay. The District Court held that insufficient, yet *Martin* and

Johnson fail to set forth all minimum criteria for what would constitute adequate shelter.

Chico thereafter settled the *Warren* litigation by agreeing to refer people to either the Torres Community Shelter or a new shelter Chico constructed using tiny homes known as “pallet shelters.” One might think it would be easy to count how many beds are available at the two shelters. However, plaintiffs’ counsel have objected that sufficient shelter space is unavailable because, despite the number of open spaces, those spaces that are open arguably are not suitable for particular individuals.¹⁵

Each time Chico endeavors to move homeless persons into shelter through an enforcement operation, the settlement terms it operates under require notice to be provided to counsel for plaintiffs.

¹⁵ City of Chico, *City of Chico’s Progress on Encampment Removal Halted Again by Legal Services of Northern California* (Sept. 29, 2022), https://chico.ca.us/sites/main/files/file-attachments/encampment_removal_halted_9-29-22.pdf?1673560309.

Chico must wait seven days prior to notifying homeless persons (who then receive an additional ten days' notice before being required to leave the location), during which time, plaintiffs' counsel can object to the proposed enforcement. An objection halts all further enforcement actions.

Plaintiffs' counsel has objected to enforcement operations on the basis that even the two shelters agreed on during settlement may not be suitable for a particular individual. For example, plaintiffs' counsel objected to a September 2022 enforcement operation on the basis that Chico should be required to resolve reasonable accommodation requests a person might make.¹⁶ The objection further sought to require Chico to make such determination before a person entered shelter.¹⁷ Consequently, Chico has been unable to

¹⁶ City of Chico, *City of Chico's Progress on Encampment Removal Halted Again by Legal Services of Northern California* (Sept. 29, 2022), https://chico.ca.us/sites/main/files/file-attachments/encampment_removal_halted_9-29-22.pdf?1673560309.

¹⁷ *Id.*

easily determine how much shelter is available and no city will be able to if *Martin* requires this type of analysis. Cities would be required to determine issues dealing with a person's claim of being unable to enter because, for example, they allege: owning a pet(s) and the shelter has a restriction on the number of pets allowed; having a mental health issue that requires them to be in a congregate rather than non-congregate shelter; or being unable to observe quiet hours at a particular shelter because they must work at night by picking up cans for recycling. A nearly never-ending list of idiosyncratic issues is not difficult to imagine. And even if the claims made are not valid, significant time and resources are consumed addressing the same.

Chico also receives objections that the number of homeless persons it counted in a particular location is incorrect. That will always be an issue due to a variety of factors. Is there any time when all homeless people living in a particular location are simultaneously present? If a Chico representative

asks a homeless person how many other homeless people live with them, will that person provide a different answer to a non-Chico representative who they may be more familiar with and who is trying to gauge the accuracy of Chico's count? Will Chico's initial count cause additional homeless persons to relocate to a proposed enforcement area for the purpose of being placed into shelter such that later counts reflect a shifting population?

In Chico's experience, differences in counting people are significant. For example, Chico counted forty-five persons at Windchime Park.¹⁸ Volunteers for a group known as the North State Shelter Team reported counting ninety individuals in the same location.¹⁹ Are those volunteers using the same methodology for counting people that Chico does? Will these issues be any easier for larger cities? What

¹⁸ Michael Webber, *Chico Back in Court for Warren v. Chico Settlement Dispute*, CHICO ENTERPRISE-RECORD (Oct. 1, 2022), <https://www.chicoer.com/2022/10/01/chico-back-in-court-for-warren-v-chico-settlement-dispute/>.

¹⁹ *Id.*

about in cities that have homeless populations as small as the one at Chico's Windchime Park?

Notably, these issues prevent cities from ensuring the health and safety of all and did not exist prior to *Martin*. Objections to another enforcement operation resulted in multiple health and safety issues. That operation focused on a location known as "Little Chico Creek," a portion of which runs near a local high school. As Public Works Director Erik Gustafson reported, "These operations could not have come at a better time of year, when students at Marsh Jr. High School have just resumed classes and will be able to enjoy a safer academic year."²⁰ Chico described other issues via a press release, which stated, "The City of Chico is proud to resume remediating the environmental damage to our waterway and greenways, reducing the fire danger

²⁰ City of Chico, *City of Chico's Progress on Encampment Removal Set to Resume on September 6th* (Sept. 1, 2022), https://chico.ca.us/sites/main/files/file-attachments/enforcement_resumes_-_9-1-22.pdf?1673560309.

during this time of year, and reconstructing the infrastructure we use on a daily basis.”²¹

The issues associated with counting available shelter and homeless persons are not confined to the above examples.²² Likewise, the erosion of Chico’s ability to quickly protect public health and safety is not confined to the above-described problems. A

²¹ *Id.*

²² *E.g.*, City of Chico, *The City Works to Address Encampment Issues at Intersection of Eaton Road and Cohasset Road* (Feb. 14, 2023), https://chico.ca.us/sites/main/files/file-attachments/alternate_site_02-14-2023.pdf?1676477451; City of Chico, *The City Works to Address Encampment Issues at Depot Park* (July 28, 2023), https://chico.ca.us/sites/main/files/file-attachments/depot_park_july_2023_press_release.pdf?1690574641.

review of additional publicly reported health and safety issues is presented in the next two sections.

5. Cities Cannot Effectively Manage Threats to Public Health and Safety.

California Governor Gavin Newsom has allocated \$15 billion toward resolving homelessness issues, yet problems persist. And, as explained in Sections I.3. and I.4., above, counting homeless persons is likely an impossible feat in most cities. Consequently, the “Hobson’s choice,” as expressed through Judge Smith’s dissenting opinion in *Martin*, appears generous. As framed:

[Cities] must either undertake an overwhelming financial responsibility to provide housing for or count the number of homeless individuals within their jurisdiction every night, or abandon

enforcement of a host of laws regulating public health and safety.

Martin, 920 F.3d at 594 (M. Smith, J., dissenting). If cities are without adequate funding and lack the ability to count homeless persons, Judge Smith concluded: “[O]ur neighborhoods will soon feature ‘[t]ents ... equipped with mini refrigerators, cupboards, televisions, and heaters, [that] vie with pedestrian traffic’ and ‘human waste appearing on sidewalks and at local playgrounds.’” *Martin*, 920 F.3d at 596 (M. Smith, J., dissenting). In Chico, far greater issues have arisen.

6. Without the Ability to Enforce Public Health and Safety Laws, Chico Has Suffered Tremendously.

The below examples of acts of violence, property crime and damage, fires and environmental degradation, and adverse impacts to one’s physical or mental health, each relate to Chico’s homeless population. This is not an exhaustive recitation, but

instead reveals the wide range of problems Chico has faced.

Chico presents these facts to illustrate the types of problems it cannot timely prevent due to the Ninth Circuit's precedent, which substantially delays the swift exercise of reasonable discretion. When these issues arise, Chico lacks the ability to promptly move a homeless encampment away from residential and commercial areas. Likewise, Chico does not have the ability to readily move camps where large amounts of trash and other types of waste exist. It needs to be able to do so to protect its residents and properties.

Acts of Violence.

- On August 1, 2021, a homeless man stabbed another homeless man in the heart, killing him, at the camps located in the Comanche Creek Greenway, which is adjacent to several businesses and contains recreational area that

was practically unavailable to the public while camps overtook the property.²³

- Later in January 2022, a homeless person randomly began punching and kicking an elderly man who was throwing away garbage near the city center, causing the victim abrasions and a broken hip.²⁴
- On June 29, 2022, Chico police officers arrested a man hiding in a homeless encampment who was evading county law enforcement personnel after shooting into a vehicle.²⁵
- Two homeless individuals robbed another homeless person at gunpoint and hit him with

²³ Butte County District Attorney, *Comanche Creek Stabber Convicted of Murder* (June 3, 2022), <https://www.buttecounty.net/DocumentCenter/View/2108/June-06-2022---Comanche-Creek-Stabber-Convicted-of-Murder-PDF>.

²⁴ City of Chico, *Elder Abuse Assault of Chico Downtown Ambassador* (Jan. 13, 2022), <https://chico.ca.us/post/elder-abuse-assault-chico-downtown-ambassador>.

²⁵ City of Chico, *Felony Arrest* (June 29, 2022), <https://chico.ca.us/post/felony-arrest>.

a ukulele on July 26, 2022.²⁶ Chico police eventually found the stolen handgun used in the altercation, which was in the possession of another homeless person who lived at the encampment common to all parties—the Comanche Creek Greenway—and who was found to be in possession of fentanyl and heroin.²⁷

- Chico police arrested a homeless man in a store on August 9, 2022, who was acting as if he would strike customers with a shopping cart while pointing his fingers as a gun toward them.²⁸ Unfortunately, the arrest did not occur

²⁶ City of Chico, *Don't Rob Your Neighbor* (July 26, 2022), <https://chico.ca.us/post/dont-rob-your-neighbor>.

²⁷ *Id.*

²⁸ City of Chico, *Battery on a Peace Officer* (Aug. 9, 2022), <https://chico.ca.us/post/battery-peace-officer>.

before the man punched an officer, breaking a bone in the officer's face.²⁹

- On October 16, 2022, Chico police arrested three individuals for their roles in entering the homeless encampment at Teichert Ponds, which is adjacent to residential and commercial properties, and shooting a homeless person—who fortunately survived—while he was in his tent.³⁰
- The morning of January 13, 2023, two homeless men became engaged in a fight across from the city plaza, one attempting to stab the other.³¹ Chico police arrested the man with the knife for assault with a deadly weapon, and the

²⁹ *Id.*

³⁰ City of Chico, *Teichert Ponds Shooting* (Oct. 16, 2022), <https://chico.ca.us/post/teichert-ponds-shooting>.

³¹ City of Chico, *Assault with a Deadly Weapon* (Jan. 13, 2023), <https://chico.ca.us/post/assault-deadly-weapon>.

other for violation of probation and public intoxication.³²

- A fight broke out between two occupants of the Torres Community Shelter, which is near several businesses frequented by the general public, on February 3, 2023.³³ One of the individuals was arrested on a warrant from Utah for the violation of the terms of his parole relating to his sentence for beating a 91-year-old man to death in 1980.³⁴
- On February 21, 2023, Chico police arrested a man near the Torres Community Shelter who had three felony warrants, began physically

³² *Id.*

³³ City of Chico, *Fugitive Arrested* (Feb. 3, 2023), <https://chico.ca.us/post/fugitive-arrested>.

³⁴ *Id.*

fighting with officers, and attempted to stab one officer.³⁵

Property Crimes and Damage.

- At the end of March 2022, Chico police located a smartphone stolen from an unlocked vehicle at a camp in the Lindo Channel waterway and arrested the homeless man in possession of the phone after he attempted to flee.³⁶
- On April 13, 2022, firefighters responded to a railroad trestle engulfed in flames less than half of a mile from homeless encampments at the Comanche Creek Greenway.³⁷ The fire caused millions of dollars in damages and firefighters suspected a warming fire created

³⁵ City of Chico, *Assault on an Officer Arrest* (Feb. 21, 2023), <https://chico.ca.us/post/assault-officer-arrest>.

³⁶ City of Chico, *Arrest for Possession of Stolen Property* (Mar. 26, 2022), <https://chico.ca.us/post/arrest-possession-stolen-property>.

³⁷ Ryan Matthey, *Multi-Million Dollar Railroad Trestle Fire Suspected to Ignite Via Homeless Warming Fire*, KRCR (Apr. 14, 2022), <https://krcrtv.com/news/local/multi-million-dollar-railroad-trestle-fire-suspected-to-ignite-via-homeless-warming-fire>.

by a homeless person was the cause.³⁸ This event also fits within the next category.

Fires and Environmental Degradation.

- In February 2021, Chico fire personnel responded to a fire in the Comanche Creek Greenway that burned multiple tents, caused a series of small explosions, and severely burned a woman.³⁹
- The following month, Chico fire personnel responded to a vegetation fire and found a ten-by-one-hundred-foot area near Bidwell Park “burning in debris, refu[s]e, and camping tents” and causing explosions from some source within the fire.⁴⁰ Bidwell Park is a large

³⁸ *Id.*

³⁹ City of Chico, *City of Chico Fire Department Responds to Fire in Comanche Creek Greenway* (Feb. 3, 2021), https://chico.ca.us/sites/main/files/file-attachments/chico_fire_press_release_comanche_creek_fire_020321.pdf?1612399530.

⁴⁰ City of Chico, *City of Chico Fire Department Responds to Fire Alongside Highway 99* (Mar. 29, 2021),

recreational area frequented by the general public when it is not occupied by the homeless.

- On May 4, 2022, Chico firefighters extinguished a vegetation fire in the Lindo Channel waterway caused by homeless persons who created a nearby campfire.⁴¹
- About one month later, a homeless person dropped a candle in their camp at Teichert Ponds, which reportedly ignited propane tanks and caused the area to become “fully engulfed” in flames.⁴² In addition to the environmental degradation caused at the ponds, this event jeopardized the physical safety of homeless individuals and nearby residents, and could

⁴¹ Brandon Downs, *Firefighters Extinguish Homeless Campfire at Lindo Channel*, ACTION NEWS NOW (May 4, 2022), https://www.actionnewsnow.com/news/fire-watch/firefighters-extinguish-homeless-campfire-at-lindo-channel/article_de2d6a16-cbc3-11ec-9124-eb9c86d83a08.html.

⁴² City of Chico, *One Arrested After Fire is Started in South Chico* (June 2, 2022), <https://chico.ca.us/post/one-arrested-after-fire-started-south-chico>.

have resulted in additional damage if the fire spread to a nearby department store.⁴³

- A fire destroyed three tents and items of personal property on July 11, 2022, that were located near several homes and businesses.⁴⁴ Fortunately, no injuries occurred.⁴⁵
- On September 21, 2023, firefighters responded to extinguish a fire that started in a homeless encampment and headed toward a highway.⁴⁶

Adverse Impacts to Physical or Mental Health.

⁴³ *Id.*

⁴⁴ Jake Hutchison, *Fire Ravages Homeless Camp*, CHICO ENTERPRISE-RECORD (July 13, 2022), <https://www.chicoer.com/2022/07/13/fire-ravages-homeless-camp-photo/>.

⁴⁵ *Id.*

⁴⁶ Margot Rowe, *CAL FIRE Contains Early Morning Fire Near Highway 99*, ACTION NEWS NOW (Sept. 21, 2023), https://www.actionnewsnow.com/news/cal-fire-contains-early-morning-fire-near-highway-99/article_8531b5bc-58a7-11ee-8b87-d775b2d79dcd.html.

- Chico police discovered somebody who died of unknown causes in a tent located in the Lindo Channel waterway on June 4, 2022.⁴⁷
- While readying the homeless at Windchime Park for an enforcement operation in October 2022, police witnessed a vehicle pull up to the encampment to engage in a drug transaction.⁴⁸ Law enforcement officers discovered the driver of the vehicle had two grams of fentanyl, three misdemeanor warrants from another county, and arrested him.⁴⁹ Again, Windchime Park is located next to several homes.
- On July 14, 2023, a pack of seven to eight pit bull, or pit bull cross, dogs escaped a homeless encampment and attacked a man and woman,

⁴⁷ City of Chico, *Death in the Public Right of Way* (June 4, 2022), <https://chico.ca.us/post/death-public-right-way-8>.

⁴⁸ City of Chico, *Fentanyl Bust at Windchime Park* (Oct. 26, 2022), <https://chico.ca.us/post/fentanyl-bust-windchime-park>.

⁴⁹ *Id.*

injuring both.⁵⁰ That encampment is near a shopping center where business owners and shoppers have regularly complained not only about unleashed dogs, but also about violent acts, property damage, and unease in dealing with those suffering from mental illness.

II. This Court Should Intervene to Overturn *Martin*.

Chico agrees with the arguments presented by the jurists dissenting in the *Martin* and *Johnson* decisions, and the City of Grants Pass, together with *amici*, in this matter, with respect to their arguments that: a circuit split exists, the law regarding standing has been ignored, the principles of class certification have been flouted, evidentiary standards have been rendered virtually non-existent, and myriad practical problems plague the evasive formula created by the majority in *Martin*. That said, perhaps the most striking issue pertains to whether the Ninth Circuit

⁵⁰ City of Chico, *Dog Attack* (July 14, 2023), <https://chico.ca.us/post/dog-attack>.

has decided an important question of federal law that has not been, but should be, settled by this Court. Rule 10(c). Circuit Judge Diarmuid O'Scannlain addressed this issue well in his dissenting opinion below.

Judge O'Scannlain began to parse the meaning of the Eighth Amendment as follows:

The Eighth Amendment provides, "Excessive bail shall not be required, nor excessive fines imposed, nor *cruel and unusual punishments inflicted.*" U.S. Const. amend. VII (emphasis added). The Amendment's bar on excessive "bail," excessive "fines," and the infliction of cruel and unusual "punishments" indicates the Amendment's punitive focus. And the text of the Cruel and Unusual Punishments Clause itself provides no substantive limit on what conduct may be punished. Instead, it only prohibits

“punishments” (i.e., pain or suffering inflicted for a crime or offense) that are “cruel” (i.e., marked by savagery and barbarity) and “unusual” (i.e., not in common use), reflecting a constitutional prohibition originally and traditionally understood to forbid the government from “authorizing particular forms or ‘modes’ of punishment—specifically, cruel methods of punishment that are not regularly or customarily employed.” *Harmelin v. Michigan*, 501 U.S. 957, 976 (1991) (opinion of Scalia, J.)

Johnson, 72 F.4th at 927-928 (D. O’Scannlain, J., dissenting).

Sentencing a homeless person for violating anti-camping laws is neither cruel—insofar as the punishment consists of, at most, misdemeanor-level fines and detention—nor unusual—because such punishment has been imposed throughout this

country long before *Martin*. Thus, Judge O’Scannlain aptly noted:

It is troubling that our Circuit—in inventing a new individual ‘right’ unmoored from text, history, or tradition—has twisted the Eighth Amendment to displace the substantive authority of local officials to prohibit a species of antisocial conduct that was neither originally nor traditionally thought to warrant the protection of the Constitution, let alone immunity under the Cruel and Unusual Punishments Clause.⁵¹

Johnson, 72 F.4th at 928 (D. O’Scannlain, J., dissenting).

In Chico, city officials regularly receive complaints as to what change has occurred rendering

⁵¹ *Johnson v. City of Grants Pass*, 72 F.4th 868, 928 (9th Cir. 2023) (D. O’Scannlain, J., dissenting).

them unable to timely address public health and safety issues by incentivizing the homeless to change their behavior through the deterrent effect anti-camping citations provide. The present constitutional infirmity created by *Martin* should not be permitted to fester and proliferate throughout the United States.

CONCLUSION

Based on the foregoing reasons, Chico respectfully requests that the petition for a writ of certiorari be granted.

Respectfully submitted,

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