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 WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF OF *AMICUS CURIAE* THE NATIONAL HOMELESSNESS LAW CENTER IN SUPPORT OF RESPONDENTS


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## INTEREST OF *AMICUS CURIAE*[1]

The National Law Center on Homelessness & Poverty, doing business as the National Homelessness Law Center (the "Law Center") is a nonprofit organization based in Washington, D.C. The Law Center was founded in 1989 and is the only national legal organization with the mission to prevent and end homelessness. In connection with its mission, the Law Center engages in policy advocacy at the federal, state, and local levels, and educates the public about policies affecting homeless people. The Law Center has developed the only national data set on laws and policies punishing the life-sustaining conduct of homeless people in 187 cities across the country, which the Law Center has analyzed in a series of national reports beginning in 2006. In addition to the Law Center's policy advocacy and nationwide reporting efforts, the Law Center litigates across the country to protect the civil rights of homeless persons, such as in *Martin v. City of Boise*, 920 F.3d 684 (9th Cir. 2019), *cert. denied sub nom.*, *City of Boise v. Martin*, 140 S. Ct. 674 (2019).

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[1] No counsel for any party authored this brief in whole or in part. No entity or person other than *amicus curiae* or their counsel made any monetary contribution toward the preparation and submission of this brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The Law Center, the only national legal organization with the mission to prevent and end homelessness, is intimately familiar with the long history of political animosity directed at people facing homelessness. In Grants Pass, as in other communities across the country, the failure to provide enough affordable housing, or even adequate emergency shelter, for its residents has created a population of unsheltered homeless persons. Public dissatisfaction with the growth of visible unsheltered homelessness has urged quick responses from elected officials, who, in the case of Grants Pass and other jurisdictions, have decided to misdirect the blame for homelessness onto people without homes, instead of solving the underlying cause of homelessness, the lack of affordable housing. Some politicians have resorted to cultivating fear and disgust directed at unhoused persons to pass policies to effectively banish them from public spaces.

This Court has long stood as a bulwark against attempts to cast out or penalize those "others" who suffer the double harm of public resentment and attempted erasure through punitive laws. Today, the Court must again stand against attempts to punish a group solely because legislators believe it the politically expedient course.

Petitioner's ordinances adopt the cruelest aspects of nearly a century of social policy and laws designed to exclude certain people from public spaces. These exclusionary measures included both vagrancy statutes and policies like Jim Crow and "anti-Okie"

laws legislators used to criminalize those deemed as "others." At its most extreme, this Nation sent all Americans of Japanese descent to internment camps far away from their home communities; a decision this Court first endorsed in *Korematsu v. United States*, 323 U.S. 215 (1944), and later explained was "gravely wrong" on "the day [the case] was decided." *Trump v. Hawaii*, 585 U.S. 667, 710 (2018).

Today, those policies and statutes are rightly regarded as relics of societal misunderstanding and prejudice. Nevertheless, Petitioner seeks to punish the very existence of a marginalized group—those without homes—and to banish them from public spaces enjoyed by everyone else. Notably, although even the bygone vagrancy statutes required enacting municipalities to care for their residents who could not afford housing, Petitioner rejects any obligation to care for its own citizens. Petitioner would cast those without homes out of Grants Pass with no support and nowhere to go, or else imprison them.

Although politically expedient, that decision is irreconcilable with the fundamental protections of the United States Constitution. And state-sanctioned persecution of the "other" has a sordid history in this Nation, including in this Court. By affirming the Ninth Circuit's decision, the Court will honor its oath to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. § 453.

The Ninth Circuit correctly determined that Petitioner's ordinances violate the United States Constitution. This Court should affirm.

## ARGUMENT

### I. When Elected Branches Make Politically Expedient Encroachments on Citizens' Basic Rights, This Court Has Provided Minimum Legal Safeguards.

#### A. Petitioner's Ordinances Draw From Some Of The Worst Aspects Of Historical Laws Targeting Vulnerable Groups Under The Guise Of Regulating "Undesirable" Conduct.

Petitioner's ordinances are cruel and unusual. As a matter of American history, they are a recent iteration of our Nation's shameful attempts to use the power of law to exclude disfavored and vulnerable groups from public spaces enjoyed by the rest of the citizenry, whether based on poverty, geography, race, or ability.

Dating back to colonial America, vagrancy laws have been used to target poor outsiders and to protect the economic status quo. Demonstrating the way that dehumanization and fear were used to pass them, many of these laws characterized poor and migratory citizens as a "moral pestilence." *Mayor of New York v. Miln,* 36 U.S. 102, 142 (1837). Sometimes known as "warning-out laws," these provisions empowered colonial authorities to force new arrivals in a town to leave. *See* JOSIAH H. BENTON, WARNING OUT IN NEW ENGLAND, 1657-1817 at 18 (1911), *available at* https://bit.ly/4a1bDi5. Unlike Petitioner's ordinances, however, those laws were part of a cohesive set of legal frameworks that imposed a duty to *aid* a jurisdiction's own citizens who were unable to work. *See* William P.

Quigley, *Five Hundred Years of English Poor Laws, 1349–1834: Regulating the Working and Nonworking Poor*, 30 AKRON L. REV. 73, 101 (1996). Through these laws, jobs within a town could be reserved for existing residents and new arrivals could be excluded from public spaces and services. *See* Sandra Wachholz, *Hate Crimes Against the Homeless: Warning-Out New England Style*, 32 J. SOCIO. & SOC. WELFARE 143 (2005), *available at* https://bit.ly/43oAry3. Regardless, the effect of these laws was to wholly prohibit migrants from settling within the geographic areas that enforced them.[2]

Though constitutionally suspect from their inception, vagrancy laws remained on the books for many years and in some cases became a method of forcing minorities and poor persons into involuntary servitude. For example, an 1846 New Mexico Territory law gave courts "supervision of vagrants and those who have no visible means or support," allowing them to punish those convicted with hard labor by either: (a) "binding them out" or (b) "placing them on public works for not more than three months." THE AVALON PROJECT, YALE LAW SCHOOL, LAWS FOR THE GOVERNMENT OF THE TERRITORY OF NEW MEXICO; SEPTEMBER 22, 1846 (2008), available at: https://bit.ly/3x0tZ3X (last accessed Mar. 29, 2024). In Louisiana, Alabama, and South Carolina, vagrancy

[2] In a sense, these early vagrancy laws were the inverse of Petitioner's ordinances, in that they focused on excluding newcomers from joining the community, whereas Petitioner has attempted to force its unhoused residents out. Early vagrancy laws at least sought to protect existing residents rather than legislate them out of existence.

laws were used during Reconstruction to force formerly enslaved people into labor contracts. John K. Bardes, *Redefining Vagrancy: Policing Freedom and Disorder in Reconstruction New Orleans, 1862–1868*, 84 J. S. HIST. 69 (2018); GEO. W. STONE & J.W. SHEPARD, THE PENAL CODE OF ALABAMA, OTHER SPECIAL ACTS OF THE LEGISLATURE 10 (1866). As at their inception, vagrancy laws remained a tool to consciously control and marginalize vulnerable populations.

In a similar vein, the Jim Crow laws of the late 1800s, the constitutional illegitimacy of which is now beyond dispute, forced an entire class of people out of public life. Such laws outlawed African Americans right to share certain public spaces, such as restaurants, parks, transportation, and schools, with non-African Americans. David Pilgrim, *What Was Jim Crow*, JIM CROW MUSEUM (ed. 2012), *available at* https://bit.ly/3TXw89K. Passed during the economic turmoil and uncertainty that roiled the South after the Civil War, exacerbated by elected officials stoking fears of formerly enslaved persons, these laws segregated newly freed African Americans and criminalized them based on their race alone. C. VANN WOODARD, THE STRANGE CAREER OF JIM CROW (2d rev. ed. 1966), *available at* https://bit.ly/3x05Pqp. These laws were necessary, their supporters argued, to prevent "mongrelization," communism, and "horrible condition[s] that would drench the South in blood." *See* Gregory Briker & Justin Driver, Brown *and Red: Defending Jim Crow in Cold War America*, 74 STAN. L. REV. 447, 464–66 (2022).

Comparable in effect but targeting a different disfavored population were the so-called Ugly Laws that also came into favor in the late 1800s. *See* Dan Thompson, *Ugly Laws: The history of disability regulation in North America*, PROGRESS, Spring 2011, *available at* https://bit.ly/3THgijk. For example, a Chicago ordinance prohibited those deemed "diseased, maimed, mutilated, or in any way deformed," from "expos[ing themselves] to public view." *Id.* Other local governments even paid for citizens with disabilities to move to other cities under the guise of improving the quality of life for non-disabled residents. *See* JAVIER ORTIZ & MATTHEW DICK, SEATTLE UNIVERSITY HOMELESS RIGHTS ADVOCACY PROJECT, THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN & HISTORICAL CRIMINALIZATION LAWS 10 (Sara Rankin ed. 2015).

In the 1930s and 40s, as the Great Depression and the Dust Bowl caused an influx of migrant farmers to the Western states, many jurisdictions, including California, passed constitutionally suspect laws targeting and oppressing these individuals. *See* Stephen Loffredo, *"If You Ain't Got the Do, Re, Mi": The Commerce Clause and State Residence Restrictions on Welfare,* 11 YALE L. & POL'Y REV. 147, 157 (1993). These laws, which were sometimes called "anti-Okie" laws (employing a pejorative term for the Oklahoma farmers they targeted), punished migrant farmers trying to establish permanent residency in California and those who assisted indigent Americans from other states in coming to the state. *See Edwards v. California,* 314 U.S. 160, 173 (1941). Again, poor Americans were vilified in an effort to protect the status quo. *See* WILLIAM H. MULLINS, OKLA. HIST.

SOC., ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE (2010), https://bit.ly/4ambGVr. And again, the effect was to wholly exclude a disfavored class of Americans from living within a protected geographic space.

Additionally, laws and customs creating "Sundown Towns" systematically excluded minorities from certain communities—including Grants Pass and indeed the entire state of Oregon—in the late nineteenth and early twentieth centuries. JAMES W. LOEWEN, SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM (2005). These prohibitions took the form of ordinances that barred minorities from being within the city limits, property covenants limiting land ownership to white Americans, or even public signage directing minorities to leave the city limits after dark. Peter Carlson, *When the Signs Said "Get Out,"* WASH. POST, Feb. 21, 2006, at 3, https://wapo.st/3x5sWA1. A Grants Pass article from 1924 urged retaining jobs for white residents only to prevent African American families from relocating to the town. *Let's Keep Grants Pass a White Man's Town,* S. OR. SPOKESMAN, May 24, 1924. Whatever their form, the effect of these policies was to control public space and eliminate disfavored groups from using it.

The removal and internment of American citizens of Japanese descent is one of the worst stains on American history. Fear and prejudice whipped up by public figures and the media of the time stoked concerns of a "Yellow Peril" and presented Japanese persons as "closer to unreasoning animals than human beings." Patricia Miye Wakida, *How a Public Media Campaign Led to Japanese Incarceration*

*during WWII*, PBS, Sept. 23, 2021, https://to.pbs.org/3VHCUla. President Franklin D. Roosevelt signed Executive Order 9066 authorizing the exclusion of persons from the west coast, and ultimately resulting in the relocation of people with no more than what they could carry to inland military camps under threat of arrest. *Id.* Although never accused of any wrongdoing, Toyosaburo Korematsu, an American citizen of Japanese descent, was convicted for failure to comply with a military order based on Executive Order 9066. *See Korematsu*, 323 U.S. at 215–16. In 1945, a scholar—later dean of Yale Law School—noted that "the dominant factor in the development of this policy" was "race prejudice." Eugene V. Rostow, *The Japanese American Cases—A Disaster*, 54 YALE L.J. 489, 496 (1945); *see also id.* at 501 n.35 (detailing violence targeted at Americans of Japanese descent, including "terroristic shooting," arson, and desecration of cemeteries).

Whether based on poverty, race, ability, or geography, when elected officials stoke fears and prejudices, America's most regrettable policies emerge.

### B. Courts, Including This Court, Have Invalidated Laws Targeting Vulnerable Groups, Providing Legal Guardrails For Basic Human Rights.

Fortunately, when the elected branches failed to protect the most basic human rights of vulnerable groups, the courts—and in particular, this Court—stepped in to do so.

For example, this Court put an end to the "anti-Okie" California vagrancy laws excluding and disadvantaging migrant farmers in *Edwards v. California,* 314 U.S. 160 (1941). The Court found that, by attempting to bar impoverished persons from migrating to California, the state violated the Commerce Clause. *Id.* at 173. The Court noted that California was burdening other states' social services by closing its doors. *Id.* at 174–75. It reasoned that the United States Constitution prohibits "attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders." *Id.* at 173. One such national difficulty was "the task of providing assistance to the needy," which "ha[d] ceased to be local in character" as "[t]he duty to share the burden . . . has been recognized not only by State governments, but by the Federal government, as well." *Id.* at 174–75. In other words, California could not simply legislate the poor out of sight and out of mind.

Similarly, in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), this Court invalidated an ordinance prohibiting "nightwalking," "neglecting all lawful business," being "able to work but habitually living upon the earnings of" others, and being a "habitual loafer[]." *Id.* at 156 n.1, 158, 163. The Court concluded the statute was void for vagueness, explaining that "[t]he poor among us, the minorities, the average householder, are not in business and not alerted to the regulatory schemes of vagrancy laws; and we assume they would have no understanding of their meaning and impact if they read them." *Id.* at 162–63. And the Court recognized

that "[p]overty and immorality are not synonymous." *Id.* at 163. Again, the Court protected vulnerable poor citizens from a law that would have criminalized their very existence.

In addition, it was this Court, and not any elected branch of government, that ended the scourge of Jim Crow laws. In 1938, the Court concluded that it was unconstitutional for Missouri to require African Americans to attend separate schools from non-African Americans when the result was that there was no law school in Missouri that African Americans could attend. *Missouri ex rel. Gaines v. Canada,* 305 U.S. 337, 352 (1938). In 1946, the Court struck down a Virginia law that segregated train passengers by race as an undue burden on interstate commerce. *Morgan v. Virginia,* 328 U.S. 373, 386 (1946). A 1948 decision applied the Fourteenth Amendment to strike down enforcement of contractual agreements that purported to prevent African Americans from purchasing property in an all-white neighborhood. *Shelley v. Kraemer,* 334 U.S. 1, 20 (1948). And, of course, the landmark *Brown v. Board of Education* ended racial segregation in public education as a violation of equal protection, with spillover effects far beyond education. 347 U.S. 483, 495 (1954). These cases demonstrate this Court's understanding of its fundamental role to prevent the elected branches from excluding various ostracized groups from public life for reasons of political expedience. In so doing, the Court stopped the threat of a "banishment race" that might otherwise arise. *See* Resp't Br. at 13.

Indeed, the decision of this Court that underlies the Ninth Circuit's approach to Petitioner's ordinances and other laws targeting homeless persons is another manifestation of this principle. In *Robinson v. California,* a state statute had attempted to sidestep a difficult social problem by targeting an unpopular group and making it illegal to "be addicted to the use of narcotics." 370 U.S. at 660. While recognizing that "the vicious evils of the narcotics traffic have occasioned the grave concern of government," the Court reasoned that persons with substance use disorder suffered from a disease and that to make "a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." *Id.* at 666–67. The Court suggested that California instead address the issue of drug abuse head on through one of the "countless fronts on which those evils may be legitimately attacked." *Id.* at 667–68. These included "public health education . . . [and] efforts to ameliorate the economic and social conditions under which those evils might be thought to flourish." *Id.* at 665.

The Ninth Circuit's decision below properly followed the rationale of *Robinson* and these other cases in which the Court has stepped in to prevent elected officials from scapegoating unpopular social groups to avoid doing the work of remediating social ills. As Grants Pass has demonstrated, homelessness is fundamentally an economic issue. As Grants Pass's population doubled, the demand for the limited supply of housing caused rents to increase beyond what long-time residents could afford. Homelessness is structurally caused by a lack of housing and income to

pay for that housing. *See*, *e.g.*, GREGG COLBURN & CLAYTON PAGE ALDERN, HOMELESSNESS IS A HOUSING PROBLEM 143 (2022) (arguing that housing market conditions and income inequality cause homelessness). The elected branches must not be permitted to sidestep their responsibilities to ensure the general welfare of their citizens by depriving homeless persons of their basic right to exist in public. Rather, as it did in *Robinson*, this Court should exercise the powers entrusted to it to push cities like Grants Pass to confront the "grave concern" of homelessness through the "countless fronts on which th[is] evil[] may be legitimately attacked." 370 U.S. at 667–68. Surely, communities in one of the wealthiest nations on the planet can and should undertake legitimate efforts to improve the economic, social, and other conditions that have allowed homelessness to become the scourge it has, rather than scapegoating and punishing homeless persons. This Court has the power to encourage that result by supporting legal safeguards to protect the rights of our nation's most vulnerable, rather than allowing them to be criminalized out of existence.

### C. History Has Condemned The Court's Failure To Act.

Where the Court succumbed to public pressure, it strayed from its role and issued one of the most infamous of its opinions in *Korematsu v. United States*, 323 U.S. 215 (1944). Although *Korematsu* was decided on the basis of race, it fundamentally implicated issues of exclusion of disfavored persons from public spaces based on animus similar to that displayed today against persons experiencing homelessness.

In *Korematsu*, the Court concluded that "[c]ompulsory exclusion" was among the "responsibilities" of citizenship required by the "threatened danger" of "modern warfare." *Id.* at 219–20. This conclusion was reached despite the failure of the government to prove its case:

> The submissions by the military showed no particular factual inquiry into the likelihood of espionage or sabotage by [American citizens of Japanese descent], only generalized conclusions that they were "different" from other Americans. But the military has no special expertise in this field, and it should have taken far more substantial findings to justify this sort of discrimination, even in wartime.

WILLIAM H. REHNQUIST, ALL THE LAWS BUT ONE (1st ed. 1998).

The proof of these public pressures' immensity is reflected in the count of the Court's vote. The *Korematsu* majority's unprincipled reasoning attracted six votes, but wartime pressures were not so overwhelming as to defeat rationality altogether. Three members of the Court, on "the day [the case] was decided," recognized that the opinion was "gravely wrong." *Trump*, 585 U.S. at 710; *see Korematsu*, 323 U.S. at 225–48 (opinions of Roberts, Murphy, and Jackson, JJ., dissenting). Such public pressure pushed this Court to allow for the forcible relocation of U.S. citizens in what is now deemed a "morally repugnant" decision. *Trump*, 585 U.S. at 710.

## II. This Court Has The Opportunity To Uphold Its Obligation To Protect Citizens' Basic Rights When Elected Branches Enlist Law Enforcement Against Their Own Marginalized Citizens.

Principles of law are most important when their application is uncomfortable or unpopular. It is in those circumstances that the Court proves itself an arbiter of law rather than an endorser of popular fiat. In times of tumult, strife, and uncertainty, the pressure to distort our Nation's primary document, the United States Constitution, presses down on courts all the more. Resistance to these pressures requires the clear and unfailing application of principles of law to ensure that vulnerable populations are not punished simply because it may be politically expedient to do so.

This Court now has the opportunity to safeguard the rights of homeless individuals in Grants Pass and beyond through principled application of law. In the merits briefing, Respondents have explained clearly how this case is resolved by the Court's precedent. By contrast, *amici* supporting Petitioner have—untethered to the question actually before the Court—flooded this Court's docket with lurid descriptions of violence, which evoke similar themes to the prejudice stoked against Black, Japanese, impoverished, and disabled persons discussed above. The Law Center urges the Court to take the "more measured course," *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 348 (2022) (Roberts, C.J., concurring in judgment), and apply *Robinson v.*

*California*, 370 U.S. 660 (1962), as Respondents advocate.

### A. The Court's Protection Is Necessary Here Because Petitioner's Ordinances Prohibit Homeless Persons—And Only Homeless Persons—From Existing In The City.

Petitioner characterizes the Grants Pass ordinances as "generally applicable laws regulating camping on public property" that "protect[] public health and safety." Pet. Br. i, 6. The ordinances' plain language, however, shows that they are far from neutral. Unlike the famous maxim that "in its majestic equality, the law forbids rich and poor alike to sleep under bridges," ANATOLE FRANCE, THE RED LILY (1894), Petitioner specifically and cruelly applies its laws *only* to those who need to sleep or shelter themselves outside because they have nowhere else to go. As defined by the ordinances, a "campsite" includes "any place where bedding, sleeping bag, or other material used for bedding purposes . . . is placed . . . *for the purpose of maintaining a temporary place to live*." Pet. App. 221a–222a (emphasis added). Facially, this language targets only those who need "a temporary place to live," not regularly housed picnickers, concertgoers, or stargazers who may have bedding or sleeping bags for recreational, non-survival use. So those who are housed can play outside protected from the elements, but those who are unhoused will be punished if they do so out of necessity. Indeed, one need not have any belongings of any kind to be found to have violated the ordinances, as they prohibit sleeping "on public sidewalks, streets, or alleyways at any time" or "in any

pedestrian or vehicular entrance to public or private property abutting a public sidewalk." *Id.* Because every human needs to sleep, Petitioner's ordinances have the effect of forcing those who lack a home in which to safely rest to leave the city or face penalties they cannot afford, the risk of future criminal prosecution, and ultimately jail and banishment.

The history of the ordinances' enforcement shows that they were designed as a tool to push homeless residents out of Grants Pass into neighboring jurisdictions and "leav[e] them there." *Id.* at 17a. At a March 2013 City Council meeting, the Grants Pass Public Safety Director lamented that although officers had previously "tried buying [homeless persons] a bus ticket" out of town, they later returned to Grants Pass. *Id.* The City Council president proposed instead "mak[ing] it uncomfortable enough for [homeless persons] in our city so they will want to move on down the road." *Id.* Other city councilors suggested "having a 'most unwanted list' to disseminate to local service agencies." JA at 121. In practice, the Grants Pass Deputy Chief of Police Operations acknowledged that he was not aware of "any non-homeless person ever getting a ticket for illegal camping in Grants Pass." Dist. Ct. ECF 63-4 at 93:8-11.[3] These ordinances may be designed to look "generally applicable," but, in purpose and effect, they target only homeless residents of Grants Pass.

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[3] Citations to "Dist. Ct." refer to the U.S. District Court for the District of Oregon case *Blake v. City of Grants Pass*, No 1:18-cv-01823-CL (D. Or. Aug. 26, 2020).

Of course, even absent the express goal of targeting homeless persons, these ordinances would be unlikely to be neutrally applied. The reason for this is simple: homeless persons lack options to avoid violating these ordinances, while those with homes have many such options. A housed person does not need to sleep on a sidewalk because he can sleep in his home, at his office, or perhaps even at any number of businesses that would welcome him. *See* ORTIZ & DICK, *supra*, at 23. Thus, Petitioner's ordinances are not narrow or neutral, but broad, subject to wide discretion in their interpretation, and likely to be used to target a vulnerable population's very ability to exist.

Respondent Gloria Johnson is among the Grants Pass residents impacted by this targeting. She is 68 years old and experiencing unsheltered homelessness because she cannot afford housing and there are no emergency shelter beds she can access in Grants Pass. JA at 1. She worked as a nurse for decades. *Id.* Twelve years ago, Johnson moved to Grants Pass. *Id.* Her social security retirement could not keep up with rising housing prices. Three years ago, she lost her home. *Id.* She now lives with her dog, Echo, in a 2002 Dodge Grand Caravan. *Id.* For her refusal to accept banishment from city limits under Petitioner's purported "camping" ordinance, Ms. Johnson—along with class members similarly situated—faces criminal sanction. For her years of healthcare service, she has been rewarded with homelessness. Now, she faces the prospect of involuntarily leaving her community for another

jurisdiction that has not *yet* prohibited her very presence.[4]

The ordinances at issue do not deal with "camping" in the traditional sense. Petitioner seeks to outlaw Ms. Johnson's very existence in the city. The only purported conduct of class members in this case is the use of limited protection from the elements while resting—an essential, unavoidable, innocent aspect of being human. The inescapable conclusion is that Petitioner's ordinances punish individuals based on their status. But it is well-settled that conduct may not be implied by status.

It would do the Court no good to allow Petitioner to "make an otherwise innocent act a crime merely because" Ms. Johnson lost her housing. *Korematsu*, 323 U.S. at 243 (Jackson, J., dissenting). Because the conduct in question is only that which is required for survival, these ordinances have the effect of punishing the status of homelessness in Grants Pass. Such ordinances are squarely prohibited by *Robinson v. California*, 370 U.S. 660 (1962). The Court need decide no more. *See Dobbs*, 597 U.S. at 348 (Roberts, C.J., concurring in the judgment) ("If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more.").

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[4] "[I]f every jurisdiction in the Nation adopted ordinances like those at issue here, there would be nowhere for people without homes to lawfully reside." U.S. Br. 27; *see also* Resp't Br. 4 ("After two citations, the police may issue an exclusion order that renders the person guilty of criminal trespass if she remains on public property." (citation omitted)).

### B. This Court's Protection Is Necessary Here Because The Elected Branches Are Treating Their Citizens' Rights As Expendable For Their Own Political Convenience

Although the rhetoric espoused by Petitioner and its *amici* is inflaming the moment, the Court has heard cases during the most trying moments in the Nation's history. The Court again faces public pressures, now manifesting as, among others, dozens of *amicus* briefs and numerous jurisdictions seeking to banish or exile persons experiencing homelessness from public spaces by punishing them for their mere existence, even when there is no shelter to which they may turn.[5] These reactionary activities[6] are responsive to a legitimate American crisis amidst post-pandemic global unrest. More than a half-million people experience homelessness in the United States. *See* U.S. DEP'T OF HOUS. & URB. DEV., THE 2023 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 10 (2023), *available at* https://bit.ly/49kJmC0. This number is likely an undercount. *See* HOUSING NOT HANDCUFFS 2019, *supra*, at 28 ("Obtaining an accurate count of the number of homeless people in America has proven to

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[5] *See* H.B. 1365, 2024 Reg. Sess. (Fla. 2024), https://bit.ly/3Tnni3H.

[6] *See also* NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019, at 57-59 (2019) [hereinafter HOUSING NOT HANDCUFFS 2019], *available at* https://bit.ly/3vjWjOm (describing government activities that include pouring bleach on food being given to homeless people, efforts to impose involuntary detention of homeless people, and activation of police task forces against homeless people).

be a nearly impossible task . . . [but] almost 1.4 million school children experienced homelessness during the 2016-2017 school year.").

Millions of Americans are suffering the long-term impacts of a post-pandemic economy and global unrest that has left them behind. An increasing number of ordinary Americans find themselves without shelter on a daily basis. People who are forced to live on the street face daily degradation and insults, including from elected officials wielding the power of law enforcement to misdirect public attention away from the officials' own failure to address the suffering of their citizens.

Although it must decide the case in front of it, the Court must understand the current context of an increasing number of jurisdictions actively seeking to push their unhoused citizens into jails, locked psychiatric facilities, or "relocation camps" far away from city centers. *See* NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *Emergent Threats: State Level Homelessness Criminalization*, HOUSING NOT HANDCUFFS, https://bit.ly/3vEQHyw (last updated Feb. 2024). Like the internment camps to which Japanese Americans were removed during World War II, a recent Florida law creates a process for counties to designate land far outside city centers as relocation camps for homeless persons, under threat of arrest, among other harmful provisions. H.B. 1365, 2024 Leg., Reg. Sess. (Fla. 2024). In support of the Florida law, Governor DeSantis stoked fear by reinforcing unsupported violent prejudices that Florida residents "should not be accosted by a homeless [sic] like we see." Adam Gabbatt & Richard Luscombe, *DeSantis*

*bans Florida's unhoused people from sleeping in parks*, THE GUARDIAN, Mar. 21, 2024, https://bit.ly/4aCbf9F.

To avoid emboldening the political branches to banish homeless persons by legislation, and repeat shameful history, the Court should affirm the Ninth Circuit and recommit to protecting the rights of marginalized citizens in the face of public hostility.

### C. This Court Should Not Be Guided By Political Expediency

Since the Founding, the Court's role has been to "operate[] as a check upon the legislative body in passing" laws that reflect "the effects of occasional ill humors in the society." THE FEDERALIST NO. 78 (Alexander Hamilton). That charge is never more important than where the Court prevents the passions of a displeased citizenry from targeting "others" for punishment. As this Court knows, from what it recently recognized as one of its most "morally repugnant" decisions, *Trump*, 585 U.S. at 710, the Court should not again allow animosity and disregard for the fundamental rule of law to carry the day, and enable the banishment under threat of arrest of those most in need of the Court's protection.

Here, the Court faces a legislative scheme making illegal the very existence of a homeless person who lacks shelter.[7] Allowing enforcement of the

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[7] *See* Resp't Br. 3–4 ("The operative provisions, §§ 5.61.010 and 5.61.030, purport to prohibit 'camping' on public property. 'Camping,' however, is expansively defined: A person 'camps' whenever she 'occup[ies]' a 'place where bedding, sleeping bag, or other material used for bedding purposes … is placed,

ordinances at issue would enable Petitioner to force Ms. Johnson—and similarly situated people—outside of city limits by threat of fine quickly followed by exclusion order and incarceration. *See* Resp't Br. 4.

Today, Petitioner and its *amici* seek to use the hammer of law enforcement to shirk their own responsibilities of governance. The nationwide crisis of affordable housing has resulted in more than a half-million Americans experiencing homelessness. *See supra*, at 20. Rather than implementing straightforward, holistic policy solutions, Petitioner and its *amici* seek to outlaw sleeping for its own residents like Gloria Johnson, the 68-year-old nurse who lived in Grants Pass for nine years before falling on hard times and becoming homeless. *See* JA 1.

Throughout its history, the Court has shown itself to be a bastion of individual rights, even in the face of severe public backlash. *See, e.g.*, *Edwards*, 314 U.S. 160; *Papachristou*, 405 U.S. 156; *Missouri ex rel. Gaines*, 305 U.S. 337; *Shelley*, 334 U.S. 1; *Brown*, 347 U.S. 483; *Robinson*, 370 U.S. 660. Today is another opportunity for the Court to reaffirm its commitment

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established, or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent … or any other structure.' It is undisputed that 'bedding' could be as little as a blanket, which is necessary to survive Grants Pass's cold temperatures. And a homeless person temporarily 'lives' wherever she rests or sleeps, including her car if she has one. The ordinances thus equate camping with living as a homeless person outside. Because this prohibition on 'camping' extends to all 'publicly-owned property' at all times, it is physically impossible for a homeless person who lacks shelter access to live in Grants Pass without violating the ordinances." (alterations in original) (cleaned up)).

to individual rights and to protect the Nation's most vulnerable citizens.

## CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully urges this Court to affirm.

Respectfully submitted,

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