

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 *AMICI CURIAE* STRONGHEARTS NATIVE
HELPLINE AND ADDITIONAL TRIBAL ADVOCACY
ORGANIZATIONS IN SUPPORT OF RESPONDENTS**

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IDENTITY AND INTEREST OF *AMICI CURIAE*¹

The leading signatory, StrongHearts, is an independent nonprofit organization that offers an anonymous, confidential, and culturally appropriate helpline to American Indians and Alaska Natives (AI/AN)² impacted by domestic and sexual violence. StrongHearts offers a variety of victim advocacy services, including: (1) peer support and advocacy, (2) personalized safety planning, (3) crisis intervention, (4) domestic violence and sexual violence information and education and (5) referrals to shelter and alternative housing resources.

Given the unique and disproportionate experience of homelessness among the AI/AN population, and on victims of domestic and sexual violence, StrongHearts' has a significant interest in the outcome of this case.

StrongHearts is joined by three organizations (collectively, the “StrongHearts *Amici*”) that are invested in policy advocacy and support networks for AI/AN survivors of domestic violence and homelessness. These organizations devote resources, time and effort

¹ Pursuant to Supreme Court Rule 37, *Amici Curiae* states that no counsel for any party authored this brief in whole or in part, and that no entity or person other than *Amici* and their counsel made any monetary contribution toward the preparation and submission of this brief.

² The term “AI/AN” is used herein because it is a term that has been used by the Bureau of Indian Affairs to refer to American Indian and Alaska Native peoples collectively. *See, e.g.*, Bureau of Indian Affairs, *Tracing American Indian and Alaska Native Ancestry* (last visited Apr. 1, 2024), <https://www.bia.gov/guide/tracing-american-indian-and-alaska-native-AIAN-ancestry>.

to issues impacting AI/AN survivors of domestic violence and other AI/AN communities susceptible to housing insecurity and homelessness.

The Alaska Native Women's Resource Center ("AK-NWRC") is an Alaska-Native nonprofit policy and advocacy organization that focuses on the strengthening of local and tribal government responses to safety issues facing AIAN women and children, particularly those involving domestic abuse and violence. The AK-NWRC offers training and technical assistance, tools, and resources to tribes and organizations serving AIAN survivors of domestic violence, among other services.

The National Indigenous Women's Resource Center, Inc. ("NIWRC") is a Native-led nonprofit organization dedicated to ending violence against Native women and children. In connection with its advocacy for safe, affordable housing, economic security, and other basic resources for AI/AN women, children and tribal nations, NIWRC maintains the STTARS Indigenous Safe Housing Center, an advocacy organization centered on the intersection of domestic violence and housing instability.

The Alliance of Tribal Coalitions to End Violence ("ATCEV") is a Native organized and led nonprofit founded to advance tribal sovereignty and the safety of AI/AN women by providing support to tribal coalitions and tribal communities in their efforts to address equal justice for survivors of violence. The organization's efforts include the advocacy of public policies targeted towards domestic and sexual violence, and the intersections thereof, and the collection of data on tribal lands relating to crimes of domestic and sexual violence perpetrated against AI/AN communities.

StrongHearts *Amici*, in support of respondents, submit this brief to share their collective experience and policy expertise to highlight the causes and ramifications of homelessness in AI/AN communities. StrongHearts *Amici* respectfully request that the Court affirm the Ninth Circuit’s determination that the anti-camping ordinances implemented by Grants Pass (collectively, the “Ordinances”) violate the Eighth Amendment by criminalizing the status of being homeless.

SUMMARY OF ARGUMENT

The Ninth Circuit correctly determined that the Ordinances criminalize homelessness in violation of the Eighth Amendment. The effects of the Ordinances are not unforeseen or unintended. The City of Grants Pass intended to rid itself of the homeless population by making “it uncomfortable enough” that “they will want to move on down the road.” *Johnson v. City of Grants Pass*, 72 F.4th 868, 876 (9th Cir. 2023).

In *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417 (1962), this Court held that a law that criminalizes an individual’s status violates the Eighth Amendment. That is precisely what the Grants Pass Ordinances do. StrongHearts *Amici* respectfully submit this brief to call to the Court’s attention the unique and disparate impact these laws will have on the AI/AN population. This is a distinct political group, where tribal Nations are sovereigns with “government to government” relationships with the federal government.³ Though the federal government has committed to a

³ See U.S. COMM’N ON C. R., BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS at 1 (Dec. 2018), <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf> (hereinafter USCCR, *Broken Promises*).

“trust” relationship with Nations as a result of statutes and hundreds of individual treaties, the AI/AN population suffers from deprivations and deficits resulting from two hundred years of policies and laws that have forcibly removed the population from historic tribal lands and resulted in a violent mass disruption of tribal ways of life.⁴

A large majority — estimated at 70 percent — of the AI/AN population lives outside of reservation lands in metropolitan areas.⁵ Multiple studies demonstrate that this population is at significant risk of housing insecurity and homelessness, with higher rates of poverty⁶ and unsheltered homelessness than virtually any other population group in the United States.⁷ Accordingly, the Ordinances will have an outsized and deleterious effect on the AI/AN population. The Ordinances also have the potential to further remove the AI/AN homeless population from its supportive community. Available data shows that many AI/AN individuals live in urban areas near tribal lands, and strive to remain close to their tribal communities — a

⁴ *Id.*

⁵ ALYCE SPOTTED BEAR AND WALTER SOBOLEFF COMMISSION ON NATIVE CHILDREN, *THE WAY FORWARD: REPORT OF THE ALYCE SPOTTED BEAR & WALTER SOBOLEFF COMMISSION ON NATIVE CHILDREN* at 2 (Feb. 20, 2024), <https://commissiononnativechildren.org/reports/TheWayForward.pdf> (hereinafter Commission Native Children, *Way Forward*).

⁶ *Id.* at 4-5.

⁷ See U.S. DEP’T OF HOUS. AND URB. DEV., *HOUSING NEEDS OF AMERICAN INDIANS AND ALASKA NATIVES IN URBAN AREAS: A REPORT FROM THE ASSESSMENT OF AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING NEEDS* at iii (Jan. 2017), <https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-UrbanStudy.pdf> (hereinafter HUD, *AI/AN Urban Areas Report*).

goal this country should support.⁸ It is only by retaining access and a cohesive structure that AI/AN communities can preserve and strengthen their cultural roots and unique characteristics. Ordinances that punish the unsheltered homeless can have the effect of forcing AI/AN individuals to move further away from their tribal communities, causing further disruption and loss to this population. For these reasons, the Ordinances will disproportionately affect the AI/AN population, and StrongHearts *Amici* urge this Court to take the circumstances of the AI/AN community into account and affirm the decision of the Ninth Circuit.

ARGUMENT

I. The Challenged Ordinances Violate the Eighth Amendment as Applied to Unsheltered Homeless Persons by Effectively Prohibiting Their Continued Presence in the City

The Ordinances collectively make it a crime for individuals without shelter to fulfill the basic human need for sleep with even modest protection from the elements, thus criminally punishing them for the status of being human and homeless. Although purporting merely to regulate “camping,” the Ordinances effectively criminalize homelessness by defining a campsite as “any place where bedding, sleeping bag, or other material used for bedding purposes . . . is placed,” regardless of “whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure.” GPMC § 5.61.010(B). The Ordinances impose a system of fines for violators. GPMC

⁸ *Id.* (noting that 65 percent of AI/AN individuals living in urban areas remain near tribal lands).

§ 1.36.010(I)-(J). Repeat violators face a compounding citation structure that includes an order barring the individual from public parks, the violation of which can and has led to incarceration. Or. Rev. Stat. § 164.245; *see also id.* §§ 161.615(3), 161.635(1)(c).

There are numerous factors that can contribute to one becoming homeless—gender-based violence, adverse health conditions, and loss of financial security, to name a few.⁹ The homeless, like each and every one of us, need to sleep. But in Grants Pass, sleeping outdoors when there is no shelter available with even a rolled-up sweater under one’s head is prohibited. GPMC § 5.61.010(B) (a “Campsite” includes a place with “other material used for bedding purposes”). An individual with no access to shelter who brings a covering for protection from the elements can be punished for the mere fact of being unhoused. The Ordinances accordingly fall within the scope of the principles defined by this Court as violative of the Eighth Amendment in *Robinson v. California*. 370 U.S. 660, 82 S. Ct. 1417 (1962) (holding that a California law criminalizing an addiction to narcotics without the corresponding purchase, sale or possession of narcotics inflicts cruel and unusual punishment). There is no meaningful difference between the status of being homeless and the status of being addicted that was at issue in *Robinson*.

The scope and scale of the Ordinances is no accident. The record demonstrates an intent by Grants Pass city officials to effectively banish the homeless from the city with a deliberate indifference to the deleterious and potentially life-threatening effects of sleeping outdoors without protection. The councilmembers of Grants Pass sought to force unsheltered

⁹ *Id.* at xi.

homeless people to leave the city by making “it uncomfortable enough for [homeless persons] in our city so they will want to move on down the road.” *Johnson v. City of Grants Pass*, 72 F.4th 868, 876 (9th Cir. 2023). Exposure to extreme temperatures and precipitation is dangerous and can lead to serious illness and death.¹⁰ By forcing homeless individuals to face such danger simply because they have no access to shelter, Grants Pass officials have acted with deliberate indifference to “unnecessary pain . . . contrary to contemporary standards of decency.” *Helling v. McKinney*, 509 U.S. 25, 32, 113 S. Ct. 2475, 2480 (1993) (citing *Estelle v. Gamble*, 429 U.S. 97, 103-104, 97 S. Ct. 285, 290-91 (1976)). Even if the pain caused by the Ordinances was “not formally imposed as a sentence for a crime,” this Court has found that such acts may constitute cruel and unusual punishment in violation of the Eighth Amendment where the officials’ state of mind reflects such a deliberate indifference. *Id.* (quoting *Wilson v. Seiter*, 501 U.S. 294, 303, 111 S. Ct. 2321, 2326 (1991)).

The unsheltered homeless are some of the most vulnerable individuals in our country. To escape this status, they need access to resources and the support of their community. The Ordinances have the intention and effect of removing unsheltered homeless persons

¹⁰ See, e.g., REBECCA STURGIS ET AL., NATIONAL COALITION FOR THE HOMELESS, WINTER HOMELESS SERVICES: BRINGING OUR NEIGHBORS IN FROM THE COLD, at 8-9 (Jan. 2010), https://nationalhomeless.org/wp-content/uploads/Winter_weather_report_2010.pdf (“[M]any homeless people do not have . . . clothing necessary for cold weather, and do not have extra outfits to change into whether their clothing becomes wet. . . . People experiencing homelessness are three to six times more likely to become ill than housed people.”).

from their communities that can be the most important source of support and assistance.

II. An Ordinance Like the Challenged Ordinances Would Have a Profound and Disproportionate Impact on the AI/AN Population

A. The Historical Treatment of the AI/AN Population Has Resulted in Deprivations That Make the AI/AN Population More Vulnerable to Homelessness Than the General Population

The United States has committed to a special trust relationship with the AI/AN population, under which the federal government is obligated to protect and assure tribal sovereignty and self-government, as well as protect the lands, culture, and well-being of tribes and villages.¹¹ As described by Justice Gorsuch in addressing the Indian Child Welfare Act:

Our Constitution reserves for the Tribes a place—an enduring place—in the structure of American life. It promises them sovereignty for as long as they wish to keep it. And it secures that promise by divesting States of authority over Indian affairs and by giving the federal government certain significant (but limited and enumerated) powers aimed at building a lasting peace. In adopting the Indian Child Welfare Act, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the

¹¹ USSCR, *Broken Promises*, *supra* note 3, at 1.

right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution's original design.¹²

To effectuate this relationship, the United States signed 375 treaties and enacted statutes defining this sovereign-to-sovereign relationship.¹³

But notwithstanding this commitment, policies implemented in the United States for over two centuries have resulted in incredibly disparate and intentionally detrimental impacts to the AI/AN population. For a substantial portion of the nation's history, AI/AN individuals were removed from their homes through forcible mass displacements now universally condemned as atrocities, such as the Trail of Tears,¹⁴ and statutory enactments intended to eliminate their homelands and disperse the AI/AN population. Although there are many, we provide a few examples below of the statutes and policies that reduced tribal lands and are largely responsible for the current conditions faced by the AI/AN population today.

The Indian Removal Act of 1830 permitted the President to transfer “lands west of the Mississippi [River] to ‘such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there,’” and ultimately served as the legislative backdrop to the Trail of Tears. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 861 F. Supp. 784, 793 (D. Minn. Aug. 24, 1994) (quoting the Indian

¹² *Haaland v. Brackeen*, 599 U.S. 255, 333, 143 S. Ct. 1609, 1661 (2023) (Gorsuch, J., concurring) (citing 25 U.S.C. § 1901 et seq.).

¹³ USCCR, *Broken Promises*, *supra* note 3, at 1.

¹⁴ See Equal Justice Initiative, *Indian Removal Act Forces Indigenous Peoples to Migrate West*, <https://calendar.eji.org/racial-justice/may/28> (last visited Mar. 30, 2024).

Removal Act, 4 Stat. 411 (1830)). The Donation Land Claim Act of 1850¹⁵ and the Homestead Act in 1862 led to tribal lands in the West being divided and conveyed to homesteaders settling the Western United States.¹⁶ The General Allotment Act, often referred to as the “Dawes Act,” allowed the President to “break up reservation land . . . into small allotments to be parceled out to individuals.¹⁷ These actions significantly reorganized, limited or ultimately removed historic AI/AN homeland boundaries.

The policies of removal and resettlement in tribal lands were implemented in the region of Oregon where Grants Pass is located. The City of Grants Pass is situated near the Rogue River and Illinois valleys, the historical home to AI/AN communities including the Takelma, Shasta, and Athabaskan tribes.¹⁸ Through the implementation of the Donation Land Claim Act of 1850, “over 2,500,000 acres of native land was claimed” by homesteaders in the Oregon Territory.¹⁹

¹⁵ See Josh Stellmon, *Under the Guise of “Treaty Rights:” The Nez Perce Tribe of Idaho, Steelhead, and Gillnetting*, 29 PUB. LAND & RES. L. REV. 63, 68 (2008) (citing Donation Land Claim Act of 1850, 9 Stat. 496 (1850)) (“[T]he passing of the Oregon Land Donation Act of 1850, [] authorized homesteading of Indian land, free of charge, to those who the minimal requirements.”).

¹⁶ Homestead Act, 12 Stat. 392 (1862); see generally National Park Service, *Native Americans and the Homestead Act*, <https://www.nps.gov/home/learn/historyculture/native-americans-and-the-homestead-act.htm#:~:text=The%20Homestead%20Act%20increased%20the,home-lands%20or%20crowded%20onto%20reservations.>

¹⁷ Dawes Act, 24 Stat. 388 (1887).

¹⁸ Cate Battles, *Native Heritage of the Rogue and Illinois Valleys*, VISIT GRANTS PASS (Nov. 30, 2023), <https://visit-grantspass.com/blog/native-heritage-of-the-rogue-and-illinois-valleys/>.

¹⁹ *Id.*

This action triggered the “Rogue River Wars,” in which settlers attacked the AI/AN tribes.²⁰ The “war” ended with the forced removal of the tribal populations in the Rogue River Valley to Siletz Reservation land.²¹

As this Court has recognized, federal policies included the forced removal of children into non-tribal education systems with the intent to assimilate the AI/AN population and effectively destroy their culture. *See Haaland v. Brackeen*, 599 U.S. 255, 265, 143 S. Ct. 1609, 1623 (2023) (Noting that the Indian Child Welfare Act was enacted in part due to “Indian families . . . broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies.”).

This long history of devastating policies has shaped the current state of the AI/AN population in the United States. A 2018 United States Commission on Civil Rights report addressed to the President and Congress described the current status of the Native American population:

Due at least in part to the failure of the federal government to adequately address the wellbeing of Native Americans

²⁰ *Id.*

²¹ *Id.*; see also E.A. Schwartz, *Rogue River War of 1855-1856*, OREGON ENCYCLOPEDIA (last visited Mar. 31, 2024), https://www.oregonencyclopedia.org/articles/rogue_river_war_of_1855-1856/ (“[The final Rogue River War] ended in June 1856 with the removal of most of the Natives in southwestern Oregon to the Coast Reservation, which later become the Siletz Reservation.”); Confederated Tribes of Grand Ronde, *Trail of Tears* (last visited Mar. 31, 2024), <https://www.grandronde.org/history-culture/history/trail-of-tears/> (“Thus began Oregon’s ‘Trail of Tears.’ The Rogue River and Chasta Tribes were the first to be removed from their aboriginal lands.”).

over the last two centuries, Native Americans continue to rank near the bottom of all Americans in terms of health, education, and employment. Many Native Americans face unique challenges and harsh living conditions resulting from the United States having removed their tribes to locations without access to adequate resources and basic infrastructure upon which their tribal governments can foster thriving communities. . . . Native Americans are more likely to live in poverty, be unemployed, experience rape or abuse, and be killed by police than any other ethnic or racial group. Native Americans have 1.6 times the infant mortality rate of non-Hispanic whites, and the life expectancy for Native peoples is 5.5 years less than the national average. Native American students have the lowest high school graduation rates in the nation. The broken treaties have left many reservations without adequate access to clean water, plumbing, electricity, internet, cellular service, roads, public transportation, housing, hospitals, and schools. The often-isolated locations, lack of accurate and full inclusion in the media and in textbooks, and persistent discrimination have rendered their reality often invisible to other Americans.²²

The 2020 census counted approximately 9.7 million self-identified AI/AN persons residing in the United

²² USCCR, *Broken Promises*, *supra* note 3, at 1.

States, including individuals that identified as multi-racial.²³ The census data indicates that 13% of that population “lived on an American Indian reservation, on off-reservation trust land, or in a tribal statistical area.”²⁴ “Nearly 70% of the greater AIAN population lives in metropolitan areas.”²⁵

B. The AI/AN Population Both Within and Outside of Tribal Lands Faces Unique Challenges Resulting in High Rates of Homelessness

1. The Poverty Rate Among the AI/AN Population is Higher Than That of the United States Population as a Whole

The poverty rate among the AI/AN population both within and outside of tribal lands has consistently exceeded that of the general population of the United States.

The February 2024 report of the Commission on Native Children concluded that the “overall economic well-being of the AIAN population remains generally more problematic than that of non-AIAN individuals almost everywhere.”²⁶ Between 2006 and 2010, “AIAN-alone poverty rates stood at 22 percent in metropolitan counties outside Indian country, 28 percent in the surrounding counties, and 32 percent in tribal

²³ COMMISSION NATIVE CHILDREN, *Way Forward*, *supra* note 5, at 2.

²⁴ *Id.*

²⁵ *Id.*

²⁶ HUD, *AI/AN Urban Areas Report*, *supra* note 7, at xvi.

areas.”²⁷ In contrast, the overall poverty rate during that time period was 13.5 percent.²⁸

The United States Census Bureau data shows that in 2021 and 2022 the poverty rate for AI/AN populations remained at 24 percent—more than double that of the general population poverty rate of 11.6 percent.²⁹ Data collected by the U.S. Commission on Civil Rights shows that the unemployment rate among the AI/AN population is more than double the national average.³⁰ A 2017 Housing and Urban Development (HUD) study found that nearly 25 percent of AI/AN households “had family incomes that [were] less than 50 percent of the federal poverty line[,]” compared to the 6.6 percent rate in the United States as a whole.³¹

Children in AI/AN communities are particularly affected by poverty. Studies show that one in three

²⁷ *Id.* at xvi–xvii.

²⁸ U.S. CENSUS BUREAU, *Changes in Poverty Rates and Poverty Areas Over Time: 2005 to 2019* at 1 (2020), <https://www.census.gov/content/dam/Census/library/publications/2020/acs/acsbr20-008.pdf>.

²⁹ JOHN CREAMER ET AL., POVERTY IN THE UNITED STATES: 2021 CURRENT POPULATION REPORTS at 4 (Sept. 2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-277.pdf>; EMILY A. SHRIDER, JOHN CREAMER, POVERTY IN THE UNITED STATES: 2022 CURRENT POPULATION REPORTS at 4 (Sept. 2023), <https://www.census.gov/content/dam/Census/library/publications/2023/demo/p60-280.pdf>.

³⁰ USCCR, *Broken Promises*, *supra* note 3, at 157.

³¹ HUD, *AI/AN Urban Areas Report*, *supra* note 7, at 83.

AI/AN children live in poverty³² compared to the national average of 15.3 percent.³³ The Commission on Native Children found that the proportion of AI/AN children in foster care is 2.8 times that of the general population.³⁴

Poverty and homelessness are inextricably linked. Poverty leads to housing insecurity, which, in turn, increases the risk of homelessness. As income level decreases, the cost of housing as a percentage of income increases. Analysis of the effect of housing costs on homelessness shows that “the expected homelessness rate in a community increases sharply” when housing costs rise above 30 percent of income.³⁵

2. The AI/AN Population Faces a Severe Housing Crisis – Increasing the Risk of Homelessness

Lack of affordable housing is a root cause of homelessness.³⁶ In 2017, HUD reported that there was “a

³² Allison Empey, MD et al., *American Indian/Alaska Native Child Health and Poverty*, J. ACAD. PEDIATRIC ASS’N (2021), <https://doi.org/10.1016/j.acap.2021.07.026>.

³³ FORUM ON CHILD AND FAMILY STATISTICS, *Child Poverty and Income Distribution* (last visited Apr. 1, 2024), <https://www.childstats.gov/americaschildren/ecol.asp>.

³⁴ COMMISSION NATIVE CHILDREN, *Way Forward*, *supra* note 5, at 5. USCCR, *Broken Promises*, *supra* note 3, at 136.

³⁵ USCCR, *Broken Promises*, *supra* note 3, at 136.

³⁵ Chris Glynn et al., *Inflection Points in Community-Level Homeless Rates*, ANNALS OF APPLIED STATISTICS at 4 (2021), https://wp-tid.zillowstatic.com/3/Homelessness_InflectionPoints-27eb88.pdf.

³⁶ U.S. DEPT’ OF HOUS. AND URB. DEV., OFF. OF POL’Y DEV. AND RSCH., *Examining the Connection Between Housing Supply and Homelessness* (Mar. 21, 2023), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-032123.html> (noting that

pervasive housing crisis in Indian Country, which is reflected in substandard housing conditions as well as a shortage of affordable housing.”³⁷ HUD concluded that “the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to the tribes.”³⁸ According to that report, at least 37.5% of AI/AN households cannot access affordable housing.³⁹

3. The Lack of Resources, High Crime Rates, and Gender Based Violence Ex-tant in AI/AN Communities Further Contribute to Homelessness in the AI/AN Population

Those who experience homelessness are often the most vulnerable, forced into this situation by external forces.

i. Health Issues and Lack of Medical Care in AI/AN Communities

AI/AN populations face higher mortality and morbidity rates than other population groups. The U.S. Commission on Civil Rights catalogued the disparity in these rates in its 2024 Report:

housing affordability is “inextricably intertwined with the prevalence of homelessness”).

³⁷ USCCR, *Broken Promises*, *supra* note 3, at 136.

³⁸ *Id.*

³⁹ U.S. DEP’T OF HOUS. AND URB. DEV., FISCAL YEAR 2017 CON-
GRESSIONAL JUSTIFICATIONS at 11–12 (2017),
[https://www.hud.gov/sites/documents/FY_2017_CJS_COM-
BINED.PDF](https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF); HUD, *AI/AN Urban Areas Report*, *supra* note 7, at
67.

The life expectancy for Native peoples is 5.5 years less than the national average. Native Americans die at higher rates than those of other Americans from chronic liver disease and cirrhosis, diabetes mellitus, unintentional injuries, assault/homicide, intentional self-harm/suicide, and chronic lower respiratory diseases. . . . According to one study, Native American women are 4.5 times more likely than non-Hispanic white women to die while pregnant or “within 42 days of the termination of pregnancy, irrespective of the duration and site of the pregnancy or its management, but not from accidental or incidental causes.” The Center for Disease Control (CDC) found that, between 2005 and 2014, every racial group experienced a decline in infant mortality, except for Native Americans. Native Americans experience infant mortality rates 1.6 times higher than non-Hispanic whites and 1.3 times the national average.⁴⁰

On tribal lands, the Indian Health Services (IHS) “provides health care to members of the 573 federally recognized tribes.”⁴¹ For many AI/AN individuals, “IHS-supported programs are the only source of health care.” But medical care services provided through IHS have been chronically underfunded.⁴²

When faced with such severe lack of medical resources, AI/AN individuals may be forced to leave

⁴⁰ USCCR, *Broken Promises*, *supra* note 3, at 65.

⁴¹ *Id.* at 64.

⁴² *Id.* at 66.

tribal lands to seek medical services elsewhere.⁴³ HUD has reported that AI/AN individuals who are forced to leave their tribal areas to obtain needed medical treatment at times cannot afford the return trip to tribal areas or are not healthy enough to travel.⁴⁴ The “vulnerable patients who have just received medical treatment often have no safe place to recover, because they are unable to remain in the hospital; have no network in the city; and are unable to stay the whole day in a homeless shelter.”⁴⁵

This severely under-resourced population, already suffering from challenging medical conditions, is at risk of homelessness merely because it lacks the resources to return to tribal areas.

ii. The Rate of Domestic Violence, Which Can Lead to Homelessness in a Severely Under-Resourced Population, is Greater Among AI/AN Women Than That of the General Population

Domestic and sexual violence are leading causes of homelessness. Numerous studies have sought to quantify the relationship between domestic violence and homelessness. Several studies conducted in the last decade indicate between 22 and 57 percent of homeless women report that domestic violence was the cause of their homelessness.⁴⁶ The ABA Commission on Domestic and Sexual Violence advises that 38 percent of

⁴³ HUD, *AI/AN Urban Areas Report*, *supra* note 7, at 18.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ U.S. DEP'T OF HEALTH & HUM. SERVS., OFF. OF FAM. VIOLENCE PREVENTION AND SERVS., *Domestic Violence and Homelessness: Statistics (2016) Fact Sheet* (last visited Apr. 1, 2024), <https://www.acf.hhs.gov/ofvps/fact-sheet/domestic-violence-and-homelessness-statistics-2016>.

domestic violence survivors experienced homelessness at some point in their life.⁴⁷ Moreover, tribes have inadequate funding for domestic violence shelters and there are currently less than 50 tribal domestic violence shelters across the country.⁴⁸

A disproportionately high number of AI/AN women suffer from domestic violence.⁴⁹ The National Institute of Justice (NIJ) reported in 2016 that 55% of AI/AN women experience physical violence from intimate partners.⁵⁰ The same study shows that 84.3 per-

⁴⁷ Matthew J. Breiding, et al., *Economic Insecurity and Intimate Partner and Sexual Violence Victimization*, AM. J. PREVENTATIVE MED., May 10, 2017, at 457, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6426442/>.

⁴⁸ ALASKA NATIVE WOMEN'S RESOURCE CENTER ET AL., AN NGO ALTERNATIVE REPORT EVALUATING MEASURES TAKEN BY THE UNITED STATES OF AMERICA TO IMPLEMENT THE CONCLUDING OBSERVATIONS SELECTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION FOR A ONE-YEAR FOLLOW-UP REPORT ON: PARAGRAPH 50(E) (INDIGENOUS PEOPLES) at 9 (2023), <https://indianlaw.org/sites/default/files/documents/Alternative%20NGO%20Report%20to%20US%20Follow%20Up%20Report%20on%20MMIW%20%289-6-23%29.pdf>. (hereinafter Alaska Center, *Alternative Report*); Memorandum from Secretary Marcia L. Fudge to Principal Staff, U.S. Dep't of Hous. and Urb. Dev. (April 12, 2022), https://www.hud.gov/sites/dfiles/Main/documents/Memo_on_Criminal_Records.pdf.

⁴⁹ See generally, Nat'l Cong. of Am. Indians, NCAI President Keel Testifies at Senate Judiciary Committee Hearing on the Need to Reauthorize the Violence Against Women Act (Mar. 20, 2018), <https://archive.ncai.org/resources/testimony/ncai-president-keel-testifies-at-senate-judiciary-committee-hearing-on-the-need-to-reauthorize-the-violence-against-women-act> (explaining statistics on violence suffered by AI/AN women).

⁵⁰ Andre B. Rosay, *Violence Against American Indian and Alaska Native Women and Men* (2016), <http://nij.gov/journals/277/Pages/violence-againstamerican-indians-alaska-natives.aspx> (hereinafter Rosay, *Violence Against AI/AN*).

cent of AI/AN women experienced some form of violence in their lifetime,⁵¹ and that that 56.1% of AI/AN women have experienced sexual violence.⁵² The United States Congress and this Court have both recognized this horrifying situation. “[N]ational studies indicate that Indian women experience domestic and sexual assaults at a far greater rate than other groups of women in the national population.” 151 Cong. Rec. 84873 (daily ed. May 10, 2005) (statement of Sen. McCain); *see also United States v. Bryant*, 579 U.S. 140, 144, 136 S. Ct. 1954, 1959 (2016) (“[C]ompared to all other groups in the United States, Native American women ‘experience the highest rates of domestic violence.’”) (citations omitted). The Commission on Civil Rights noted that AI/AN women are “ten times more likely to be murdered and four times more likely to be sexually assaulted than the national average.”⁵³

The 2017 HUD report on housing needs of the AI/AN population makes clear that the “the AIAN homeless population includes victims of domestic violence.”⁵⁴ Critically important, StrongHearts *Amici* reports, based on its own internal data, that 90.7 percent of its AI/AN contacts nationwide experiencing homeless or housing instability are women.

⁵¹ U.S. DEP’T OF JUST., NAT’L INST. OF JUST., FIVE THINGS ABOUT VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN (May 2023), <https://www.ojp.gov/pdffiles1/nij/249815.pdf>.

⁵² Rosay, *Violence Against AI/AN*, *supra* note 50.

⁵³ USCCR, *Broken Promises*, *supra* note 3, at 31.

⁵⁴ HUD, *AI/AN Urban Areas Report*, *supra* note 7, at 18.

4. Cultural and Historical Factors Affect the Ability of the AI/AN Population to Obtain Access to Safe and Affordable Housing

The AI/AN population faces unique challenges in accessing and securing affordable housing for reasons rooted in the historical experience of the AI/AN population due to the policies and practices of the United States government.

The 2017 HUD study on the housing needs of the AI/AN population identifies three important factors that have stymied the ability of the AI/AN population to access housing resources.⁵⁵ The study indicates that the failure of relevant agencies to communicate with the AI/AN population has led to a lack of pertinent information and guidance.⁵⁶

Perhaps more significantly, cultural factors and historical experiences can affect the ability of the AI/AN community to access housing assistance programs and shelters. Specifically, AIAN peoples have such a pervasive lack of peer to peer or tribally created resources that AI/AN individuals are often forced to seek services that are not intended to benefit them and are often established in such a way as to cause them real harm.⁵⁷

A lack of trust in government agencies and fear contribute to reduced access to housing facilities. The 2017 HUD study shows that AI/AN families facing housing insecurity are fearful that the social service agencies will separate or remove their children.⁵⁸

⁵⁵ *Id.* at 48.

⁵⁶ *Id.*

⁵⁷ Alaska Center, *Alternative Report*, *supra* note 48 at 8-9.

⁵⁸ HUD, *AI/AN Urban Areas Report*, *supra* note 7 at 48.

These fears are not irrational: As this Court has recognized, historically, children were removed from their families by various agencies and placed in adoptive homes or sent to off-reservation boarding schools. This practice occurred for over a century between 1819 and 1969.⁵⁹

In 1978, Congress enacted the Indian Child Welfare Act (ICWA) out of concern that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies.” 92 Stat. 3069, 25 U.S.C. § 1901(4). Congress found that many of these children were being “placed in non-Indian foster and adoptive homes and institutions,” and that the States had contributed to the problem by “fail[ing] to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” §§ 1901(4), (5). This harmed not only Indian parents and children, but also Indian tribes. As Congress put it, “there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children.” § 1901(3).

⁵⁹ See generally, BUREAU OF INDIAN AFFAIRS, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT (May 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf.

Haaland v. Brackeen, 599 U.S. 255, 265, 143 S. Ct. 1609, 1623 (2023).

5. The Rate of Homelessness Among the AI/AN Population is Higher Than That in the United States Generally

HUD studies show that AI/AN individuals living outside of tribal lands are disproportionately represented in their communities' homeless populations.

A 2020 study of homeless populations conducted by HUD determined that “American Indian, Alaska Native, Pacific Islander and Native Hawaiian populations account for one percent of the U.S. population,” but AI/AN individuals comprised 15,074 (3.7 percent) of the total 408,891 homeless.⁶⁰ The percentage of AI/AN individuals in the overall homeless population remains steady. In 2023 HUD found that AI/AN individuals comprised 3.5 percent of the total U.S. homeless population.⁶¹ This data is based on annual HUD studies which are conducted on a single day each January. The studies therefore capture only the number of homeless people on that day and likely represents only the lower bound of the number of homeless individuals.⁶²

⁶⁰ U.S. DEP'T OF HOUS. AND URB. DEV., THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS (2020), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-ahar-part-1.pdf>.

⁶¹ U.S. DEP'T OF HOUS. AND URB. DEV., THE 2023 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS at 13 (2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

⁶² *Id.* at 12.

6. The AI/AN Population Is More Likely to Experience Unsheltered Homelessness Than the Population in General

The 2023 HUD study of homeless populations found that AI/AN individuals were nearly twice as likely to experience unsheltered homelessness than sheltered homelessness.⁶³ Data from the 2023 study show that of the 23,116 AI/AN individuals identified as homeless across the United States, 12,642 were unsheltered.⁶⁴ The AI/AN population constitutes only 1 percent of the United States total population, but 4.9 percent of the unsheltered homeless population.⁶⁵

III. The Grants Pass Ordinance Has a Unique and Disparate Impact on the AI/AN Population and Can Result in Cultural Displacement

The AI/AN population has a disproportionately high rate of housing insecurity and unsheltered homelessness resulting in significant part from centuries of damaging policies. Ordinances such as the Grants Pass Ordinances will have a devastating effect on AI/AN communities. People who cannot find shelter are struggling just to survive. It is unconscionable to punish them for their mere existence.⁶⁶ The application of criminal penalties to unsheltered individuals will only exacerbate the fundamental problems. It will be more difficult in the future for such persons, with a

⁶³ *Id.* at 27.

⁶⁴ *Id.* at 13.

⁶⁵ *Id.*

⁶⁶ Jake Micucci, *Rooted in Trauma: Homelessness in Native Communities*, NATIONAL LEAGUE OF CITIES (Mar. 15, 2023), <https://www.nlc.org/article/2023/03/15/rooted-in-trauma-homelessness-in-native-communities/>.

criminal record, to obtain access to housing resources and employment.⁶⁷

The AI/AN population is uniquely affected for another reason. Ordinances that criminalize the status of homelessness, like the Ordinances challenged here, can have a further deleterious effect on the AI/AN population by forcing the homeless AI/AN individuals further away from their tribal or urban/rural Native communities. The 2017 HUD report found that “65 percent of American Indians and Alaska Natives who identify as having only one race (that is, who do not consider themselves multiracial) live in an MSA [Metropolitan Statistical Area] and that they often are concentrated within or near tribal land that falls within the MSA.” This indicates that the most AI/AN individuals are likely to seek to remain close to their tribal lands and there would be no reason to believe that those who are homeless would be any different.⁶⁸

The viability of the AI/AN population as sovereign peoples depends on maintaining their culture, which requires connection to the homeland and tribal communities:

Indian people and their relationship
with land is central to their worldview.
The care of the land (as opposed to the

⁶⁷ Alaska Center, *Alternative Report*, *supra* note 48 at 8; Memorandum from Secretary Marcia L. Fudge to Principal Staff, U.S. Dep't of Hous. and Urb. Dev. (April 12, 2022), https://www.hud.gov/sites/dfiles/Main/documents/Memo_on_Criminal_Records.pdf.

⁶⁸ HUD, *AI/AN Urban Areas Report*, *supra* note 7, at 4. A MSA is a metropolitan area grouped by demographics and population studied in the HUD report.

ownership) holds lessons, and these lessons transmit values that relate to how people interact with each other (Kimmerer 2013). A breakdown of these values, through the various eras of Federal Indian law and policy (precontact, colonization, removal, assimilation and allocation, recognition, termination, and self-determination), has resulted in communities struggling to regain the culture and tradition which have consistently operated as preventative to violence (Agtuca 2015).⁶⁹

We do not contend that the City of Grants Pass is responsible for preserving tribal culture. However, by forcing the AI/AN unsheltered homeless population to leave the area, the Grants Pass Ordinances have the effect of removing the unsheltered homeless AI/AN community even farther from the location they chose and potentially further from their tribal connections.

As the distance between the population and the home reservation increases, the ability of the tribes to provide support decreases,⁷⁰ and ties between AI/AN homeless individuals and their home reservations or

⁶⁹ Caroline LaPorte, HANDBOOK OF INTERPERSONAL VIOLENCE AND ABUSE ACROSS THE LIFESPAN, *Chapter 10 - Intimate Partner Violence in Tribal Communities: Sovereignty, Self-Determination, and Framing*, at 2603 (2021).

⁷⁰ See, e.g., John Eligon, *Native American Homeless Crisis in Minnesota Inspires an Unlikely Alliance*, N.Y. TIMES (Dec. 23, 2018), <https://www.nytimes.com/2018/12/23/us/native-americans-homeless-minneapolis-reservations.html>.

villages may be further frustrated, affecting their ability to exist as AI/AN people (both culturally and politically) in their own homeland.⁷¹

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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⁷¹ Cf. HUD, *AI/AN Urban Areas Report*, *supra* note 7, at 18 (“The strength and maintenance of ties can depend on the distance between the MSA and the individual’s home reservation and village.”).