

In the
Supreme Court of the United States

CITY OF GRANTS PASS,

Petitioner,

v.

GLORIA JOHNSON AND JOHN LOGAN,
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
ADVOCATES FOR SURVIVORS OF
GENDER-BASED VIOLENCE
IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE *AMICI CURIAE*¹

Amici include local, state, and national nonprofit organizations devoted to ending gender-based violence (GBV), including domestic violence, dating violence, sexual assault, stalking, and human trafficking. *Amici* serve survivors by offering direct services, such as counseling, shelter, and housing, as well as legislative advocacy, legal representation, and community education. They are also leaders who developed and implemented the Violence Against Women Act (VAWA) and other laws that protect the Constitutional rights of survivors so that they can be safe, heal, and gain independence. *Amici* have hundreds of years of collective experience working with such survivors, including extensive efforts to improve both the criminal and civil justice systems' response to survivors as well as to build up resources critical to recovery, including trauma-informed care, economic support, and housing.

Amici have first-hand experience and have also collected data and histories from survivors that underscore the myriad of barriers that force them into homelessness and put them at risk of criminalization. Many staff at these organizations identify as survivors themselves. Each organization is familiar with the challenges GBV survivors face, particularly Black, Indigenous, and People of Color (BIPOC) survivors,

¹ No counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation of submission or the brief. No person other than amici curiae and its counsel made a monetary contribution to fund the preparation of the brief.

immigrant survivors, disabled survivors, and Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex (LGBTQI+) survivors, when seeking safety. As advocates for survivors of GBV, *amici* have a strong interest in ensuring survivors are not unconstitutionally criminalized by the government and further traumatized if unsheltered and experiencing homelessness.



SUMMARY OF ARGUMENT

Gender-based violence is both a cause and consequence of homelessness. With almost 60 million American women having experienced sexual violence, physical violence, and/or stalking in their lifetime,² GBV greatly increases their risk of housing and economic insecurity. At the same time, housing and economically insecure individuals are at greater risk of experiencing GBV. Economic exploitation and abuse are key features of GBV, posing even more barriers to survivors trying to gain independence and stability.

The resulting poverty means survivors desperately need access to safe and affordable housing. But there is an unfortunate lack of affordable housing that is safe and other housing resources throughout this country, which often forces survivors not only into homelessness but also into staying with perpetrators, facing sexual violence, or further trafficking. Indeed,

² Ruth W. Leemis et al., *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence*, 4 (2022), Ctr. for Disease Control & Prevention, https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReport onIPV_2022.pdf.

in a recent nationwide one-day survey of domestic violence survivors, more than half reported needing but unable to access emergency shelter, hotels, motels, transitional housing, and other housing support.³

Even survivors with the resources to afford housing face barriers to securing safe housing, including discrimination, denials due to poor credit and renter histories resulting from the violence, and landlord harassment and sexual exploitation. Landlords who become aware of their survivor status often deny admission out of bias and concern that a perpetrator may pose a future threat to the property or other renters.

Survivors are often criminalized for the acts of violence against them and the steps they take to survive. Contact with the criminal legal system, especially for BIPOC survivors, further complicates their ability to gain a stable footing, which often leads to a never-ending cycle of homelessness and further violence. Increased contact with law enforcement because of homelessness further destabilizes survivors, and can result in the loss of their children to the child welfare system or what few possessions they may have left. Thus, when the act of living outside as a means of survival results in their criminalization, survivors are often forced to return to continued violence and abuse solely for a roof over their head. Local governments like Grants Pass who use local laws to criminalize the act of being homeless give

³ Nat'l Network to End Domestic Violence, *18th Annual Domestic Violence Counts Report: 24 Hour Survey of Domestic Violence Shelters and Services*, <https://nnedv.org/content/domestic-violence-counts-18th-annual-report/> (last visited Mar. 24, 2024).

perpetrators a huge amount of power to continue to exploit and harm their victims.

On the other hand, state and local governments who dedicate resources to safe, affordable housing and supportive services for survivors help to end the violence. As one advocate noted:

An Oregon survivor and her four children, all under the age of six, were forced into homelessness when they fled abuse. Low vacancy rates and high rents meant that there were no apartments available to her, and shelters were full. Over a three-year period, the family struggled with homelessness, finding temporary shelter space when they could, or sleeping in a store basement or parks when there was no shelter available. Despite their rough sleeping conditions, her children regularly attended school. The threat of violence from the abusive partner was always present. With supportive services and resources, the survivor was able to get into long-term shelter and then gain employment and housing.⁴

This Court should affirm the lower court's decision that the Eighth Amendment prohibits a local government from criminalizing homelessness and sleeping outdoors. A decision in support of the Petitioner would intensify the criminalization of survivors, significantly

⁴ The survivor stories recounted in this brief were collected by *amici* and have been included anonymously. Anonymity is paramount to protect the identities of the survivors from the real and immediate danger posed by their abusers and from the threat of continued trauma.

increasing their exposure to continued violence and trauma.



ARGUMENT

I. GENDER-BASED VIOLENCE, PAIRED WITH HOUSING AND ECONOMIC INSECURITY, INCREASES THE RISK OF HOMELESSNESS.

Gender-based violence is an epidemic that “cuts across all racial, class, and cultural lines.”⁵ Experiencing GBV in its different forms—sexual assault, dating violence, stalking, trafficking, or domestic violence—leaves survivors particularly vulnerable to homelessness.⁶ Domestic violence is among the leading causes of homelessness nationally for women.⁷

⁵ Elizabeth Marsh Das et al., *Understanding Children, Immigration, And Family Violence: A National Examination of The Issues*, 3, Fam. Violence Prevention Fund for Robert Wood Johnson Found. (2006); Michael Runner et al., *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices, and Recommendations*, 10, Fam. Violence Prevention Fund for Robert Wood Johnson Found. (2009).

⁶ Though not discussed in detail here, dating violence and stalking are both independent acts of violence and at the same time, common components of domestic violence, sexual assault, and trafficking. Both involve power and control and behaviors directed at a specific person. See Stalking Prevent Awareness and Resource Center, *What is Stalking? Definition and FAQs*, <https://www.stalkingawareness.org/definition-faqs/> (last visited Mar. 25, 2024); Office on Women’s Health, *Dating Violence and Abuse*, <https://www.womenshealth.gov/relationships-and-safety/other-types/dating-violence-and-abuse> (last visited Mar. 25, 2024).

⁷ Charlene Baker et al., *Domestic Violence, Housing Instability, and Homelessness: A Review of Housing Policies and Program*

Homeless women are raped more than housed women.⁸ Homelessness and housing insecurity are both a cause and consequence of human trafficking.⁹ Thus, criminalizing acts of being homeless has dire consequences for homeless survivors and survivors facing homelessness.

A. Domestic Violence Survivors Have an Increased Risk of Homelessness, Housing and Economic Insecurity.

Domestic violence is a terrifying reality, primarily for women and their children, across the county. National estimates of the prevalence of domestic violence report “about 1 in 3 women (36.3%) and nearly 1 in 6 men (17.1%) experience[] some form of contact sexual violence during their lifetime.”¹⁰ Nearly half (47%) of transgender or nonbinary people experience

Practices for Meeting the Needs of Survivors, 15 AGGRESSION AND VIOLENT BEHAVIOR 430 (Nov. 2010).

⁸ Lisa A. Goodman et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women*, VAWnet: a project of the Nat'l Res. Ctr. on Domestic Violence, Sept. 2006, <https://vawnet.org/material/no-safe-place-sexual-assault-lives-homeless-women>.

⁹ Polaris, *Homelessness as a Cause and a Consequence of Human Trafficking*, 3 (2022), https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/reporthrc54/submission-slavery-hrc54-cso-polaris_0.pdf.

¹⁰ Sharon Smith et al., *The National Intimate Partner And Sexual Violence Survey: 2010-2012 State Report*, 1, Ctr. for Disease Control & Prevention (2017). See also Erika A. Sussman & Sara Wee, *Accounting for Survivors' Economic Security: An Atlas For Direct Service Providers*, 1, Ctr. for Survivor Agency & Just. (2016).

sexual violence in their lifetime.¹¹ Low-income women are five times more likely to experience domestic violence.¹² Incidents of domestic violence and economic abuse sharply increased during the global pandemic, especially for BIPOC survivors.¹³ Women from these marginalized communities are already more likely to experience intimate partner violence, compounded by systemic inequities that exacerbate the conditions for abuse and coercive control.¹⁴

Domestic violence is “widely understood as an ongoing pattern of behavior defined by both physical

¹¹ Ctr. for Disease Control and Prevention, *Youth Risk Behavior Survey: Data Summary & Trends Report*, 53-55 (2023); see also Sandy E. James et. al., *The Report of the 2015 U.S. Transgender Survey*, 198, Nat’l Ctr. for Transgender Equality (2016).

¹² Claire M. Renzetti, *Economic Stress and Domestic Violence*, 2 (VAWnet: a project of the Nat’l Res. Ctr. on Violence Against Women, Oct. 2009); Erika A. Sussman & Sara Wee, *Accounting For Survivors’ Economic Security: An Atlas For Direct Service Providers*, 1, Ctr. for Survivor Agency & Just. (2016).

¹³ Brad Boserup et al., *Alarming Trends in US Domestic Violence During Covid-19 Pandemic*, 2753, AM. J. OF EMERGENCY MED. (2020); Elena Ruiz et al., *Me Too & Free Form, Measuring the Economic Impact of Covid-19 on Survivors Of Color*, 9 (2020), https://metoomvmt.org/wpcontent/uploads/2020/11/MeTooFreeFrom_CovidImpactReport2020.pdf; Leemis et. al., *supra* note 2;

¹⁴ John Creamer et al., *Poverty in the United States:2021*, 31, 33, 39 U.S. Census Bureau (2022); Bianca D.M. Wilson et al., *LGBT Poverty In The United States: Trends At The Onset Of COVID-19*, 3-4, UCLA Williams Inst. (2023); see generally Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersection Of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11, VIOLENCE AGAINST WOMEN (Jan. 2005).

and non-physical manifestations of power.”¹⁵ Battering is defined as something “premised on an understanding of coercive behavior and of power and control—including a continuum of sexual and verbal abuse, threats, economic coercion, stalking, and social isolation—rather than ‘number of hits.’”¹⁶ Abusers seek complete possession and control of their partners, preventing them from “doing for themselves by appropriating their resources; undermining their social support; subverting their rights to privacy, self-respect, and autonomy; and depriving them of substantive equity.”¹⁷

Leaving a perpetrator is the most dangerous time for a survivor of domestic violence.¹⁸ Abusers repeatedly go to extremes to prevent the survivor from leaving, including threatening to harm or kill them or their children, or ruining them financially,

¹⁵ Deborah Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY, 959, 962-963 (2004) (noting that this is “a remarkably uncontroverted proposition”).

¹⁶ Elizabeth M. Schneider, BATTERED WOMEN AND FEMINIST LAWMAKING, 65 (2000); *see also* Mary M. Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1204-1206 (1993).

¹⁷ Evan Stark, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, 13 (2009).

¹⁸ Carolyn Rebecca Block, *How Practitioners Help an Abused Woman Lower Her Risk of Death*, 250 NAT’L INST. OF JUST. J., 5 (Nov. 2003) (“Three-fourths of homicide victims and 85 percent of women who had experienced severe but nonfatal violence had left or tried to leave in the past year.”).

among other tactics.¹⁹ Survivors fear their leaving will only escalate the violence and cut off the financial means to support themselves or their children, leading to homelessness.²⁰

Up to 57% of all homeless women report domestic violence as the immediate cause of their homelessness.²¹ Thirty-eight percent of all domestic violence survivors experience homelessness at some point in their lifetime.²² Women who experienced intimate partner violence in the last year were four times more likely to report housing instability than women who did not experience intimate partner violence.²³ And the number of homeless women and children who have left their homes in order to flee abuse continues to grow, because there are not enough resources and housing to support them.²⁴

¹⁹ Nat'l Coalition Against Domestic Violence, *Why Do Victims Stay?* <https://ncadv.org/why-do-victims-stay> (last visited Mar. 24, 2024).

²⁰ *Id.*

²¹ Nat'l Network to End Domestic Violence, *Domestic Violence, Housing, And Homelessness*, 421-22 (2018).

²² A.B.A., *Five Facts About Domestic & Sexual Violence And Homelessness* (last visited Mar. 21, 2024), https://www.americanbar.org/groups/domestic_violence/Initiatives/five-for-five/five-facts-homelessness/.

²³ Matthew J. Breiding et al., *Economic Insecurity and Intimate Partner and Sexual Violence Victimization*, 53 AM. J. OF PREVENTATIVE MED. (May 10, 2017).

²⁴ Judith C. Hilbert & Satya P. Krishnan, *In Search of Sanctuary: Addressing Issues of Domestic Violence and Homelessness at Shelters*, 310 (Sept. 1998).

1. Economic Abuse Drives Housing Insecurity and Homelessness.

One of the most salient features of domestic violence is economic abuse. Economic abuse involves tactics that “control a woman’s ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency.”²⁵ In a study of economic abuse, researchers found that 99% of survivors were subjected to economic abuse during their relationships.²⁶ Abusers commonly sabotage a survivor’s economic stability and isolate them from their family and friends.²⁷ Some perpetrators “intentionally deplete women’s available resources, as a means of limiting their options . . . including stealing partners’ money, creating costs, and generating debt.”²⁸ Abusers also prevent their partner from acquiring resources, including preventing them from working, sabotaging the use of a car, refusing to put the survivor’s name on a lease, denying them access to a bank account, or incurring debt in the survivor’s name.²⁹ One advocate described the spiraling effects of domestic violence and economic abuse when a client was “evicted after she lost a job she loved. Her abuser stalked her on her way to and

²⁵ Block, *supra* note 18.

²⁶ Adrienne Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN, 553, 580 (2008).

²⁷ Amanda M. Stylianou, *Economic Abuse Within Intimate Partner Violence: A Review of the Literature*, 33 VIOLENCE AND VICTIMS 3 (2018).

²⁸ Adrienne Adams et al., *supra* note 26 at 553, 563.

²⁹ *Id.* at 565-67.

from work, came to her place of work, and threatened to harm family members while she was at work.” The resulting lack of financial resources, including access to affordable housing, serves as one of the main reasons why survivors remain with or return to their abusers.³⁰

Many survivors also face the loss of housing because abusers intentionally do not pay the rent or mortgage or damage the home, all to render their survivors homeless, dependent, and forced to return to them.³¹ In *Amici*’s experience, abusers know that their conduct can jeopardize a survivor’s housing stability and lead to serious consequences for survivors, such as losing custody of their children because of housing insecurity. Thus, abusers will carry out threats in order to trigger foreclosure or eviction.³² To counteract these acts of sabotage, safe and affordable housing—rather than threats of criminalization or

³⁰ *Id.*; Amber Clough et al., *Having Housing Made Everything Else Possible: Affordable, Safe and Stable Housing for Women Survivors of Violence*, 7 (2014); The Allstate Foundation https://allstatefoundation.org/wp-content/uploads/2020/03/2018-Research-Deck_Final.pdf (last visited March 24, 2024)(finding that financial abuse not only jeopardizes a person’s physical safety but also prohibits them from leaving).

³¹ See e.g., Rebekah Levin, et al., *Pathways to and from Homelessness: Women and Children in Chicago Shelters*, 3 (Jan. 2004) (finding that for a substantial portion of women surveyed in Chicago shelters, housing arrangements were destroyed due to intimate partner violence).

³² See e.g., *Ashby v. Ashby*, 68 Cal.App.5th 491, 517 (2021) (upholding the trial court’s decision to renew the domestic violence order based on the abuser seizing the family car and supporting the eviction of the survivor from the family home in order to pressure her to terminate a protective order).

fines-must be provided so survivors can focus on education, employment, and counseling.³³

For its part, the U.S. Congress has sought to end this cycle of power, control, and homelessness by committing resources and setting legal mandates to help survivors secure and maintain safe housing.³⁴ Starting in 2005, the Reauthorization of the Violence Against Women Act protected domestic violence, dating violence, and stalking survivors from threats of eviction or admission denials from federally subsidized housing.³⁵ The 2013 Reauthorization extended protections to sexual assault survivors, while the 2022 Reauthorization marked the first time domestic violence survivors became eligible for help in cases involving economic or technological abuse.³⁶ It would be a perverse result if local governments' criminalization of homelessness would be sanctioned to act contrary to Congress's goals.

³³ Krishnan, *supra* note 24.

³⁴ H.R. Rep. No. 109-223, sec. 601 (2006) (recognizing “a strong link between domestic violence and homelessness” and the fact that “abusers frequently manipulate finances in an effort to control their partners” (internal citations omitted).

³⁵ Violence Against Women and Dep't of Just. Reauthorization Act of 2005, Pub. L. No. 109-162, § 41401(1), (10) (Jan. 5, 2006), 119 Stat. 2960, 3041-49; 34 U.S.C. § 12491(b).

³⁶ Violence Against Women and Dep't of Just. Reauthorization Act of 2013, Pub. L. No. 113-4, § 41401(1), (Mar. 7, 2013), 127 Stat. 541; Violence Against Women and Dep't of Just. Reauthorization Act of 2022, Pub. L. No. 117-103 (March 15, 2022), 136 Stat. 49, 34 U.S.C. § 12291(a)(12).

B. Sexual Assault Survivors Have an Increased Risk of Homelessness, Housing and Economic Insecurity.

Similar to domestic violence, there is a high correlation between people who have experienced sexual assault and those who now are experiencing homelessness. Sexual assault drives homelessness and economic insecurity. *Amici* have learned through their work and their own lived experiences how sexual assault can lead to substance abuse, addiction, and physical and psychological trauma that exponentially increase the risk of homelessness. People who lack access to shelter are also at higher risk of sexual violence than people who have stable homes.³⁷ In one Florida study, 78.3% of homeless women in the study had been subjected to rape, physical assault, and/or stalking at some point in their lifetimes.³⁸

A national survey of sexual violence advocates found that across the country, sexual violence jeopardizes housing options and is a catalyst for economic insecurity.³⁹ One advocate in Illinois shared this story describing the stark impact on housing security for sexual assault survivors:

³⁷ United Way of Greater Los Angeles, *Everyone In: Powered by United Way, Sexual Assault and Our Homelessness Crisis*, <https://everyoneinla.org/blog/2020/04/29/sexual-assault-and-our-homelessness-crisis/> (last visited Mar. 26, 2024).

³⁸ Jana L. Jasinski et al., *The Experience of Violence in the Lives of Homeless Women: A Research Report*, 22 (Nov. 2005).

³⁹ Nat'l Sexual Violence Resource Ctr., *National Survey of Advocates on Sexual Violence, Housing & Violence Against Women Act 5* (2011).

A survivor and her mom became homeless after she was sexually assaulted by a family member; she lost her family's support after disclosing the abuse. She was previously reliant on her family, because she is disabled and unable to work full time.

The cycle of violence continues—once survivors lose their housing after sexual violence, homelessness exacerbates risk factors, which lead to more sexual violence.⁴⁰ Criminalization of homelessness will only compound their victimization.

Survivors already experiencing housing and economic insecurity are also more susceptible to sexual assault, including from landlords and their agents who may sexually harass them or demand sex for rent.⁴¹ Sexual violence advocates have noted that “women are so limited on housing and feel so grateful to get into a place that they have become vulnerable to the landlord.”⁴² As one advocate shared, “If a tenant has a poor rental or credit history, I’ve known landlords (sic) use those as excuses to sexually exploit women living in their properties.”⁴³ *Amici* have worked with survivors who are controlled by sexually coercive

⁴⁰ *Id.* at 21.

⁴¹ Griff Tester, *An Intersection Analysis of Sexual Harassment in Housing*, 22 *GENDER & SOC.* 349 (Jun. 2008); see also Kate Sablosky Elengold, *Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing*, *YALE L.J. & FEMINISM*, 227, 269 (2016) (“A landlord’s access to his female tenants and their families is structural, not a result of deviancy”).

⁴² Nat’l Sexual Violence Resource Ctr., *supra* note 39 at 21.

⁴³ *Id.*

and assaultive landlords in order to avoid homelessness:⁴⁴

I have had one client situation where the perpetrator was a landlord and it took the client years to disclose the abuse because she did not want to lose her housing. Even when she disclosed [the violence] the perpetrator tried to bribe her to be quiet and when she refused, he threatened her life. I think that perpetrators have too much power and control and it's even worse if a perpetrator is the victim's landlord. How will she feel safe and be able to function well in such an environment.

Thirty-eight percent of respondents to a national survey of advocates reported receiving reports from tenants of landlord sexual assault; in these cases, 79% of women reported that at the same time their landlords refused to repair locks, supply heat, hot water, or make the space 'safe.'⁴⁵ In another study of rape crisis centers and legal aid providers, 58% of respondents stated that at least one tenant reported sexual assault by a landlord during the survey period.⁴⁶ Due to the lack of adequate, affordable housing for survivors, in addition to the discrimination and sexual

⁴⁴ *Id.*

⁴⁵ Theresa Keeley, *Landlord Sexual Assault and Rape Of Tenants: Survey Findings And Advocacy Approaches*, 4 (Nov. 2006).

⁴⁶ Safe Housing Partnerships, *Featured Statistics* (2020), <https://safehousingpartnerships.org/stats#:~:text=%22In%20a%202006%20study%20of,landlord%20during%20the%20survey%20period.%22> (internal citation omitted).

exploitation they may experience when looking for housing, survivors often end up in substandard housing and/or undesirable neighborhoods.⁴⁷ Living in an unsafe environment further places a survivor at risk for revictimization and other forms of exploitation by landlords or others.⁴⁸

C. Trafficking Survivors Have an Increased Risk of Homelessness, Housing and Economic Insecurity.

Homelessness and housing insecurity are both a cause and consequence of human trafficking. Housing is the number one request of trafficking survivors.⁴⁹ In 2022, the Polaris Project conducted a national study, surveying 457 trafficking survivors. The study found that 83% faced poverty and 84% faced homelessness. Additionally, 64% reported losing their housing due to trafficking or related abuse, and 70% identified that one of their primary needs upon escaping their trafficking situation was finding a safe place to stay.⁵⁰

The largest study on the relationship between human trafficking and homelessness was conducted between 2014 and 2016, where 641 participants at the Covenant House, one of the nation's largest charities

⁴⁷ Oyesola Oluwafunmilayo Ayeni, *Needs Assessment Report: Promising Practices & Interventions to Address The Needs Of Domestic Violence Survivors*, 6, Nat'l Res. Ctr. on Domestic Violence, (Aug. 2022).

⁴⁸ *Id.* at 7.

⁴⁹ Polaris, *Human Trafficking and Housing & Homelessness*, <https://polarisproject.org/human-trafficking-and-housing-homelessness/> (last visited Mar. 21, 2024).

⁵⁰ Polaris, *supra* note 9.

providing support for young people facing homelessness and survivors of trafficking, were interviewed.⁵¹ Nearly 1 in 5 (19%) of those surveyed reported being a victim of human trafficking. Fourteen percent reported being trafficked for sex or “engaging in survival sex,”⁵² and of those, 68% reported doing so while homeless. One LBGTQI+ survivor interviewed explained the grim circumstances that led to survival sex: “I was living in my car at the time, so I kind of needed—I didn’t have a job, so I kind of needed money. So I had to do something. I just, you know, resorted to that.”⁵³

Trafficking survivors face substantial barriers to obtaining housing. Only 36% of survivors surveyed had regular work, and 43% of all respondents made less than \$25,000 per year.⁵⁴ Further, 61% of survivors reported that traffickers committed financial abuse, making it difficult for survivors to open bank accounts, get loans, apply for credit cards, or other steps to secure employment and housing.⁵⁵

⁵¹ Laura T. Murphy, *Labor and Sex Trafficking Among Homeless Youth: A Ten-City Study*, 3, Loyola Univ. New Orleans (2016).

⁵² Survival sex refers to the exchange of sexual acts for basic needs, such as food and shelter, and typically occurs in situations of extreme poverty, homelessness, and other forms of vulnerability. Sara E. Clingan et al., *Survival Sex Trading In Los Angeles County, California, USA*, 57:2 J SEX RES. 2020 137 (Sept. 1, 2021).

⁵³ Murphy, *supra* note 51.

⁵⁴ U.S. Dept. of Housing and Urb. Dev., *Housing Needs of Survivors of Human Trafficking Study*, 13 (2024).

⁵⁵ *Id.* at 36.

Trafficking advocates found that shelter was the top commodity traded for survival sex.⁵⁶ Survival sex is a form of abuse and exploitation, as it is non-consensual sexual conduct to which survivors would not otherwise consent if basic needs for survival were met. It exposes trafficking survivors to more violence, including higher risk of sexual assault and HIV.⁵⁷ Criminalization of homelessness laws force trafficking survivors into these profoundly harmful situations.

II. HOUSING RESOURCES ARE EXTREMELY LIMITED FOR GBV SURVIVORS.

Eighty-four percent of survivors in domestic violence shelters reported that they needed help finding affordable housing.⁵⁸ *Amici* National Network to End Domestic Violence's (NNEDV) one day annual count of adults and children seeking domestic violence services in a single 24-hour period found that the majority of survivors' unmet needs are often related to housing and shelter.⁵⁹ A program in Vermont reported that "[a] survivor called asking for emergency shelter, but we had to turn her away because we don't have the funding for shelter capabilities or staff. We tried to help her as best we could, but she was sobbing and scared for her safety."⁶⁰ In another nationwide study, more than half of the survivors who identified

⁵⁶ Clingan et al., *supra* note 52.

⁵⁷ *Id.*

⁵⁸ Elanor Lyon & Shannon Lane, *Meeting Survivors' Needs: A Multi-State Study of Domestic Violence Shelter Experiences*, 62 (Oct. 2008).

⁵⁹ NNEDV, *supra* note 3.

⁶⁰ *Id.* at 6.

a need for housing services did not receive them.⁶¹ Their only path then to end the abuse becomes homelessness and the threat of criminalization.

A. There Are Not Enough Shelters for Survivors.

Amici National Domestic Violence Hotline (“Hotline”) has seen the number of calls from homeless survivors triple over the last three years, with many survivors unable to access housing resources.⁶² There are just not enough shelters for survivors. One Hotline caller could not go to a domestic violence shelter outside of the county because they would lose their job and income, and all county domestic violence shelters were full. When the caller reached out to 211 to get connected to regular homeless shelters, they were also

⁶¹ David Lee, *Need to Prevent Intimate Partner Violence*, Prevent Connect (Feb. 26, 2014), <https://www.preventconnect.org/2014/02/need-to-prevent-intimate-partner-violence/>.

⁶² Nat’l Domestic Violence Hotline, *Hospitalization Due to Abuse—EMTALA Stories* (March 21, 2024) (unpublished report) (on file with *amici*). This brief contains stories from August 2020 to March 2024 that were collected by The National Domestic Violence Hotline’s highly-trained advocates, who interact via phone, text and chat with survivors experiencing domestic violence or questioning unhealthy aspects of their relationships. During those interactions, The Hotline systematically collects data that reflects the demographic and situational details of those who seek assistance; however, The Hotline does not collect any personally identifiable information. The information, referrals and resources provided to individuals who contact The Hotline are anonymous and confidential. Data is managed at the highest level of sensitivity, then aggregated and summarized to better inform key decisions on how best to respond to those seeking help. Data may also derive from The Hotline’s youth-focused healthy relationship and dating abuse prevention helpline, “love is respect.”

full. And unlike domestic violence, there are no sexual assault shelters. For survivors of rape or sexual assault where the abuse was not perpetrated by an intimate partner or household member, the only shelter option are regular homeless shelters, which are most often full and lack trauma-informed support and services. An *amici* sexual assault program shared how a client survivor of multiple sexual assaults has lived outside in parks or doubled up with friends on and off for years. She is unable to enter a homeless or domestic violence shelter, given its likelihood to retraumatize her.

For certain communities, traditional shelters or transitional housing do not provide a safe alternative. Where LGBTQI+ survivors already experience homophobia, biphobia, and transphobia, many survivors report experiencing anti-LGBTQI+ bias from shelter providers and a lack of LGBTQI+ competent resources to meet their housing needs.⁶³ The Center for American Progress reported that only 30% of shelters surveyed were willing to house transgender women with other women and 21% flatly refused to shelter transgender women entirely.⁶⁴ Other research confirmed that barriers related to gender identity were the most reported reason for survivors being denied shelter (71%).⁶⁵

⁶³ Ayeni, *supra* note 47 at 11.

⁶⁴ Caitlin Rooney, Laura E. Durso & Sharita Gruberg, *Discrimination Against Transgender Women Seeking Access to Homeless Shelters*, American Progress (Jan. 7, 2016), <https://www.americanprogress.org/article/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>.

⁶⁵ Ayeni, *supra* note 47 at 12.

Many immigrant survivors decline critical housing assistance because they fear it will jeopardize their immigration status or impact their ability to keep their family together.⁶⁶ *Amici* have worked with immigrant survivors who are homeless because many shelters and housing programs do not allow extended families. For example, one *amici*'s immigrant client is now homeless and searching for affordable housing close to her job that will accommodate her children, their young cousin whose parents have been deported, and her elderly mother. Because she cannot provide a stable home, she has been forced to fight her abusive partner for continued custody of her children.

Similarly, some Native American survivors live within a clan system, caring relatives and children who are not biologically or legally adopted. In these cases, Native American survivors encounter situations where housing programs demand legal paperwork survivors do not have (such as birth certificates), thereby refusing to provide housing for survivors to live in the same unit with their children.⁶⁷ The lack of a culturally responsive housing system often leads Native survivors to opt out of emergency shelters and other housing services that do not meet their family's needs.⁶⁸

⁶⁶ Shaina Goodman, *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims' Economic Security*, VAWnet: A Project of the Nat'l Res. Ctr. on Domestic Violence (Jan. 2018), <https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and>.

⁶⁷ Ayeni, *supra* note 47 at 15.

⁶⁸ *Id.*

Amici have worked with survivors who have not been able to get into shelters because the shelter will not allow children above a certain age or gender, forcing the survivor into homelessness. For example, in one case a survivor had no option except for homelessness when she fled with her adult son from her abusive partner, because staying in shelter meant they would have to split up and she could not take care of her son who is disabled. For many survivors with physical disabilities, including children, homelessness becomes the only option when local shelters and housing programs fail to accommodate their needs. In one study, nearly 24% were barred from housing due to inaccessibility.⁶⁹

In a national survey of victim service providers, one third reported up to 20% of survivors struggling to find or keep housing because of sexual violence.⁷⁰ Survivors with multiple dependents are also often forced to wait longer to access safe housing because of additional barriers such as an inadequate supply of housing for large families.⁷¹

In March 2024, HUD released a first of its kind report to the U.S. Congress on the housing needs of trafficking survivors.⁷² In this study, HUD found

⁶⁹ Margot Kushel, *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness*, 81, Univ. Cal. San Francisco (June 2023).

⁷⁰ Safe Housing Partnerships, *supra* note 46.

⁷¹ Ayeni, *supra* note 47 at 7.

⁷² U.S. Dep't of Housing and Urb. Dev., *HUD Releases First-of-its-Kind Report to Congress on the Housing Needs of Survivors of Human Trafficking*, HUD PRESS RELEASE (Mar. 21, 2024).

that trafficking survivors cannot access safe housing or shelters, are judged by shelter staff for their trafficking experiences, and are often traumatized by shelter rules resembling their trafficking experience.⁷³ An advocate shared a trafficking survivor's story confirming HUD's findings:

A survivor of child trafficking spent roughly half of their childhood homeless all over the West Coast, fleeing their trafficker. They spent time as a teenager homeless near Grants Pass, Oregon. Youth shelters were not always safe places to stay. They experienced rape in a Portland, OR, youth shelter and were pushed out onto the streets again, choosing to sleep outside where they had more control of their surroundings. They were trafficked again as a teenager by traffickers who groomed them in another youth homeless shelter in Oregon. Trafficking survivors often make tradeoffs to seek relative safety. For many, this means that sleeping outside is safer than staying with their trafficker or sleeping in a shelter that is not always safe.

To respond to this crisis, HUD recommends, not the passage of laws to criminalize homelessness, but an increase in survivor-specific housing resources, with particular focus on increasing access to long-term housing assistance and wraparound services.⁷⁴

⁷³ *Housing Needs of Survivors of Human Trafficking Study*, *supra* note 54 at 29.

⁷⁴ *Id.* at 64.

B. Survivors Face Significant Housing Discrimination.

Sexual assault, trafficking, and domestic violence impacts a survivor's ability to find housing. Abusers may undermine a survivors' economic stability by making them economically dependent. Survivors may also be unemployed, have poor credit, or poor rental history due to the violence. These economic barriers make finding stable housing nearly impossible.⁷⁵ Survivors are considered undesirable tenants because of previous evictions, negative credit reports, family structure, and limited finances.⁷⁶

Even in cases where survivors have the economic resources to find housing, landlords turn them away out of concern their presence is a potential risk to other tenants or property damage if the abuser comes to the premises.⁷⁷ When an abusive partner damage property or disturbs the peace, survivors are often evicted. For example, in the case of *Lewis v. North End Village*, Case No. 2:07-cv-10757 (E.D. Mich. 2007), the survivor obtained a protection order against her abusive ex-boyfriend. Months later, the ex-boyfriend attempted to break into the apartment, breaking the windows and front door. The management company evicted the survivor based on the property damage caused by the perpetrator.⁷⁸ Sometimes

⁷⁵ A.B.A., *supra* note 22.

⁷⁶ Ayeni, *supra* note 47 at 6.

⁷⁷ Baker, *supra* note 7 at 431.

⁷⁸ See also Sara K. Pratt, *Memorandum on Assessing Claims of Housing Discrimination against Victims of Domestic Violence*

through the course of fleeing violence, survivors are forced to break leases to secure safe housing the abuser does not know about. These multiple moves create a poor rental history, including debts and evictions that show up on a tenant screening report, that make securing future rental housing difficult.⁷⁹ This cycle of losing and being unable to maintain stable housing due to violence makes homelessness all but inevitable.

There are also barriers to homeownership for survivors, such as lack of access to capital and credit, low credit scores (often due to experiences of economic abuse), continued housing discrimination, and the lack of access to financial resources.⁸⁰ As noted *supra* Section I., A., 1., abusers may affect survivors' economic stability and make finding stable housing nearly impossible.⁸¹ Affordability is also a continued barrier because of the limited housing supply and resources. As one Florida advocate noted,

“[s]ecuring safe, affordable housing has always been a challenge for survivors, and the COVID-19 pandemic has exacerbated the housing crisis. Programs like transitional housing are successful in setting survivors

Under the Fair Housing Act and VAWA, 7, U.S. Dept. of Hous. and Urb. Dev (Feb. 9, 2011).

⁷⁹ *Id.*; see also Chi Chi Wu et al., *Digital Denials*, 5, 22, National Consumer Law Center (Sept 2023); Yvette N.A. Pappoe, *The Scarlet Letter “E”: How Tenant Screening Policies Exacerbate Housing Inequity for Evicted Black Women*, 103 BOSTON UNIV. L. REV. 269 (Aug. 26, 2022).

⁸⁰ Ayeni, *supra* note 47 at 8.

⁸¹ A.B.A., *supra* note 22.

up for safe, affordable, independent housing, but there is not enough funding to help everyone in need.”

III. CRIMINALIZING ACTS RELATED TO HOMELESSNESS INCREASES THE RISK OF CONTINUED VIOLENCE, TRAUMA, AND HOUSING INSECURITY FOR SURVIVORS.

Survivors who are trying to escape abuse or heal from their trauma need an array of services to access safety and stability. These services include immediate crisis intervention such as food and shelter, and longer-term assistance to overcome the psychological impact of domestic violence, sexual assault, or trafficking on survivors and their children. They also need support to gain economic security and housing stability. In particular, research has demonstrated the critical importance of tangible resources for survivors during this recovery period, with stable housing being one of the most important of these tangible resources.⁸² On the other hand, criminalizing or fining their homelessness only prevents survivors from accessing crucial resources needed to regain their safety and stability.

A. Homelessness Is Not a Choice but a Result of Housing Insecurity.

Escaping abuse typically takes several attempts. *Amici* National Domestic Violence Hotline found on average a survivor attempts leaving seven times before successfully escaping for good.⁸³ This is due in

⁸² Baker, *supra* note 7 at 430.

⁸³ Nat'l Domestic Violence Hotline, *Supporting Someone Who Keeps Returning to an Abusive Relationship*, <https://www.thehotline.com>.

no small part to how hard it is to start over after an abuser has made a survivor dependent through coercive control, which is exacerbated by lack of resources to safely live without the abusive person.

Survivors sleeping outside are often doing so as a last resort. They are already too socially isolated to have a safe loved one who can take them in during their time of crisis, and unable to obtain safe space in a shelter that will meet their needs. The safest places for a homeless person to sleep are in a vehicle or tent, and if they are without shelter, near a city hall or church.⁸⁴

Criminalizing survivors through fines makes their financial situation even more desperate, and sets back any progress towards a different life free from their abuser. One advocate described how “[a] survivor was matched with Rapid Re-housing, but could not find a landlord that would rent to her based on a money judgment from late fees and an eviction order she had received related to the abuse she had experienced. She was denied from all three of the largest landlords in the area.” When they inevitably cannot pay the initial fines imposed, survivors face additional fines and charges, leading to a compounding criminal history and ongoing involvement with the criminal legal system. For survivors, carceral settings can be sources of new trauma, and

[org/resources/supporting-someone-who-keeps-returning-to-an-abusive-relationship/](https://caufsociety.com/8-safe-places-to-sleep-when-homeless/) (last visited Mar. 26, 2024).

⁸⁴ Kyle J. Cassaday, *8 Places to Sleep When Homeless, Cold and Uncared for Society* (Jan. 4, 2024), <https://caufsociety.com/8-safe-places-to-sleep-when-homeless/>.

trigger past traumas, exacerbating the symptoms and behaviors stemming from trauma history.⁸⁵

B. Criminalizing Homelessness Destabilizes Survivors and Increases Risk Exposure to Continued Violence.

Further, increased contact with the criminal legal system because of homelessness creates barriers to housing access.⁸⁶ The criminal history that results from these citations, convictions, and periods of incarceration, are reflected in tenant screening reports, making the ability to obtain safe housing even less likely.⁸⁷ For BIPOC survivors especially, housing providers commonly deny admission based upon contact with the criminal legal system.⁸⁸ A criminal record can also make survivors ineligible for cash assistance

⁸⁵ Stephanie Covington, *Creating A Trauma-Informed Justice System For Women*, 174 (2022) (finding that routine correctional practices like strip searches and pat downs may trigger previous trauma).

⁸⁶ Many survivors, for a variety of reasons related to survival, victimization, and coercion already have contact with the criminal legal system. Between 60 to 80% of incarcerated women report experiencing some or many forms of gender-based violence. Marisa E. Dichter & Sue Osthoff, *Women's Experiences of Abuse As a Risk Factor for Incarceration: A Research Update* 10 (Jul. 2015).

⁸⁷ Calvin Johnson, *Tenant Screening with Criminal Background Checks: Predictions and Perceptions are not Causality*, PD&R EDGE, May 17, 2022, <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>.

⁸⁸ Janet Garcia-Hallet et al., *Reclaiming Our Stories: Centering the Voices, Experiences, and Expertise of Black, Indigenous, and Women of Color (BIWOC) on the Carceral State*, 11 QUALITATIVE CRIM. 251, 252 (May 2022).

and other public benefits, which can support survivors through their transition period after leaving abuse.⁸⁹ These collateral consequences cascade, building upon one another, creating cycles of never-ending homelessness. The inevitability of homelessness makes the prospect of truly escaping abuse impossible.

C. Survivors Are Forced into Unsafe Situations or Back into Abusive Relationships.

Survivors fleeing abuse who cannot sleep in their vehicles (if they have one) or public places without criminalization will seek more remote and exposed places to rest, which in turn makes them susceptible to further violence and victimization. Secluded areas can be very dangerous for women, as well as non-binary and trans individuals, who can be singled out for violence when found sleeping alone in an isolated area. In one study, 23% of a sample of 394 homeless women reported having been physically or sexually victimized in the last 30 days.⁹⁰ Thirty-nine percent of transgender and nonbinary homeless

⁸⁹ Ctr. for Law and Social Policy, *No More Double Punishments: Lifting the Ban on SNAP and TANF for People With Prior Felony Drug Convictions*, <https://www.clasp.org/publications/report/brief/no-more-double-punishments/> (last visited Mar. 28, 2024).

⁹⁰ Suzanne L. Wenzel, Paul Koegel & Lillian Gelberg, *Antecedents of Physical and Sexual Victimization Among Homeless Women: A Comparison to Homeless Men*, 28 AM. J. OF CMTY. PSYCH. 367, 374 (2000).

people reported being attacked while homeless.⁹¹ Further, survivors victimized while illegally sleeping outside may not seek assistance from law enforcement for fear of being fined or prosecuted themselves. This reality drives survivors even further into the shadows, away from the rest of society and support.

When survivors are unable to exit homelessness and are further isolated and ostracized, they are faced with an impossible choice: continued homelessness or continued abuse.⁹² Many will choose the devil they know and return to an abusive relationship or situation over the uncertainty or further violence and criminalization from sleeping outside. Others may be forced into sexually coercive or exploitative situations for housing or a safe place to sleep. Human trafficking survivors may be forced back into trafficking in order to secure housing stability.⁹³ Abusive people target and take advantage of these vulnerabilities. Criminalizing homelessness increases a survivor's vulnerabilities and gives abusers and predators a powerful tool to exploit an already very defenseless population.

⁹¹ Nat'l Alliance to End Homelessness, *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tells Us*, 2 (2019).

⁹² Goodman, *supra* note 8.

⁹³ Polaris, *supra* note 9 at 3.



CONCLUSION

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

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List of Amici Curiae.....	1a
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LIST OF AMICI CURIAE

- Abused Adult Resource Center
- Alabama Coalition Against Domestic Violence
- Alaska Network on Domestic Violence and Sexual Assault
- Arizona Coalition to End Sexual and Domestic Violence
- Asian Pacific Institute on Gender-Based Violence
- California Partnership to End Domestic Violence
- Battered Mothers Custody Conference
- CAWS North Dakota
- Cia Siab, Inc.
- Connecticut Coalition Against Domestic Violence
- Coordinadora Paz para las Mujeres
- DC Coalition Against Domestic Violence
- Delaware Coalition Against Domestic Violence
- Downtown Women's Center
- Embrace Services, Inc.
- End Domestic Abuse Wisconsin
- Freedom Network USA
- GBV Consulting
- Georgia Coalition Against Domestic Violence

App.2a

- Hawai'i State Coalition Against Domestic Violence
- Healthy Alternatives To Violent Environments
- Housing Justice for Survivors Project, Legal Services Center of Harvard Law School
- Illinois Coalition Against Domestic Violence
- Illinois Coalition Against Sexual Assault
- Iowa Coalition Against Domestic Violence
- Kansas Coalition Against Sexual and Domestic Violence
- Legal Voice
- Maryland Network Against Domestic Violence, Inc.
- Mississippi Coalition Against Domestic Violence
- Missouri Coalition Against Domestic and Sexual Violence
- Montana Coalition Against Domestic and Sexual Violence
- National Alliance to End Sexual Violence
- National Domestic Violence Hotline
- National Housing Law Project
- National Network to End Domestic Violence
- National Organization of Sisters of Color Ending Sexual Assault

App.3a

- National Resource Center on Domestic Violence
- National Runaway Safeline
- National Safe Place Network
- Nebraska Coalition to End Domestic and Sexual Violence
- Nevada Coalition to End Domestic and Sexual Violence
- New Jersey Coalition to End Domestic Violence
- New York State Coalition Against Domestic Violence
- North Carolina Coalition Against Domestic Violence
- Ohio Domestic Violence Network
- Oregon Coalition Against Domestic and Sexual Violence
- Oregon Sexual Assault Task Force
- Pennsylvania Coalition Against Domestic Violence
- Pennsylvania Coalition to Advance Respect
- Respect Together
- Rhode Island Coalition Against Domestic Violence
- SAFE Alliance
- Safe Exit Initiative, Inc.

App.4a

- San Francisco Office of Sexual Harassment and Assault Response and Prevention
- Sea Haven Youth Services
- Sexual Violence Law Center
- South Carolina Coalition Against Domestic Violence and Sexual Assault
- South Dakota Network Against Family Violence and Sexual Assault
- Tennessee Coalition to End Domestic and Sexual Violence
- The ROAR Center at the University of Maryland Baltimore
- The Women's Law Center of Maryland
- Utah Domestic Violence Coalition
- Venugopals Consulting Services
- Vermont Network Against Domestic or Sexual Violence
- Victim Rights Law Center
- Violence Free Colorado
- Violence Free Minnesota
- Virginia Sexual and Domestic Violence Action Alliance
- Washington State Coalition Against Domestic Violence
- West Virginia Coalition Against Domestic Violence
- Wisconsin Coalition Against Sexual Assault

App.5a

- Women's Foundation of California
- YWCA USA
- Youth In Need
- ZeroV