

No. 23-175

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IN THE  
Supreme Court of the United States

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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

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**AMICUS BRIEF OF JUVENILE LAW CENTER,  
LAMBDA LEGAL DEFENSE & EDUCATION  
FUND, INC. AND 223 EXPERTS ON UNHOUSED  
YOUTH IN SUPPORT OF RESPONDENTS**

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## INTEREST OF *AMICI*<sup>1</sup>

A diverse group of more than 223<sup>2</sup> national, state, regional, and local organizations who work directly or indirectly with the staggering number of unhoused youth or youth at risk of housing instability; individuals who currently or formerly experienced housing instability as youth; legal professionals; child services professionals; academics; advocates; and others (collectively “*Amici*”) join as *amici* in the filing of this brief.

*Amici* are deeply invested in promoting laws, policies, and practices that are consistent with children’s unique developmental characteristics and human dignity. *Amici* submit this brief because the unconstitutional criminalization of homelessness is uniquely harmful for youth, particularly marginalized youth who are disproportionately impacted by homelessness. Further proliferation of laws and regulations that criminalize homelessness creates barriers to safe and stable housing, which negatively impact youth, families, and communities.

## SUMMARY OF ARGUMENT

The unique factors that place youth at risk of homelessness and the particular barriers that young people face to both temporary shelter and longer-term housing underscore the harms and unconstitutionality of the Grants Pass ordinances.

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<sup>1</sup> Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

<sup>2</sup> See App., *infra*, 1A for a complete list of *Amici*.

Unhoused youth, like adults, are subject to the proscriptions and penalties of the Grants Pass ordinances which, if permitted to stand, will make these youth vulnerable to myriad risks and harms inherent in enforcement of the ordinances.

Specifically, while the lack of affordable housing is a principal cause of homelessness among both youth and adults, young people are particularly vulnerable to homelessness because of their physical, mental, social, and emotional characteristics. Indeed, youth are particularly vulnerable to becoming unhoused due to several factors, many of which are beyond their control. These include family dysfunction and rejection, sexual abuse, juvenile legal system involvement, “aging out” of the foster care system, and economic hardship. *See infra* Section I. These risks are magnified for youth who have been in foster care, youth who identify as LGBTQIA+, youth of color, and youth with juvenile or criminal legal system involvement. *See infra* Section I.A.

Once unhoused, these youth face substantial obstacles to obtaining suitable shelter, including insufficient dedicated shelter beds for young people, age-restrictions for shelter services, and the risk of violence. *See infra* Section I.B. These risks render the few shelters that do exist unsafe and inadequate for most youth; nearly a third of homeless youth in one study expressed concerns about “the inability of shelters to provide a safe environment.” Sharon B. Garrett et al., *Homeless Youths’ Perceptions of Services and Transitions to Stable Housing*, 31 Evaluation &

Program Plan. 1, 5 (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2610537/pdf/nihms79689.pdf>.

With a heightened risk of homelessness and unique challenges in securing shelter, the consequences of enforcement of the Grants Pass ordinances against young people, including the imposition of criminal fines and other penalties, will have particularly harsh and adverse consequences. Rather than addressing or limiting homelessness among youth, criminalization will impede their path to stability and a successful transition to adulthood. Youth subject to the ordinances' sanctions will face a variety of risks and obstacles to future success. *See infra* Section II.

These include the risk that police encounters will escalate as youth are developmentally less able to navigate interactions with law enforcement and more likely to run or become confrontational, as well as the risk of probation and incarceration if they are unable to pay the fines that are imposed. Incarceration not only extends justice system involvement, but research shows that incarceration also increases youth's rates of mental illness, depression, suicide, and medical concerns, as well the risk of recidivism. *See infra* Section II.A-B.

Additionally, as unpaid fines are converted into civil judgments and follow youth into adulthood, these judgments can directly foreclose expungement of juvenile or criminal records or release from probation and impede youth's ability to obtain education or housing loans, for example. Similarly, unpaid fines can mar a youth's credit history, which can also



substantially interfere with a young people's educational, housing and employment goals. Collectively, these harms and risks actually limit young people's access to the very resources and opportunities they need to obtain housing. *See infra* Section II.C. *Amici* respectively request that this Court affirm the ruling below.

### ARGUMENT

The Eighth Amendment guarantees that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. As this Court has repeatedly affirmed, the Amendment embodies “broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . ,’ against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with ‘the evolving standards of decency that mark the progress of a maturing society.’” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (alteration in original) (first quoting *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968); and then quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). More specifically, the Eighth Amendment prohibits punishment for behaviors inseparable from people's innocent or involuntary status, such as being unhoused; such punishments are also unconstitutionally disproportionate. *See Robinson v. California*, 370 U.S. 660, 667 (1962) (“Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”).

Penalizing unhoused people for behaviors upon which their survival depends—such as sleeping with

the covering needed to avoid hypothermia—runs far afield of our evolving standards of decency. *See Powell v. Texas*, 392 U.S. 514, 551 (1968) (White, J., concurring) (noting that when individuals are unhoused and have “no place else to go,” then the Eighth Amendment would prohibit punishment for a necessary activity that is “impossible” to avoid); *see also Timbs v. Indiana*, 139 S. Ct. 682, 688 (2019) (noting that the Eighth Amendment protects against “draconian fines for violating broad proscriptions on ‘vagran[cy]’ and other dubious offenses”).

While the Grants Pass ordinances violate the Constitution under any reading of the Eighth Amendment, this Court has repeatedly confirmed that “youth matters” in determining whether government action passes muster under the Eighth Amendment. *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (holding mandatory life without parole sentences for those under the age of 18 unconstitutional); *see also, e.g., Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding life without parole sentences unconstitutional for youth charged with non-homicide offenses); *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding the death penalty unconstitutional for youth). Young people’s “vulnerability and comparative lack of control over their immediate surroundings” highlight why it is particularly important that they “be forgiven for failing to escape negative influences in their whole environment.” *Id.* at 553. Youth have “limited ‘contro[l] over their own environment[s],” no matter how “brutal or dysfunctional,” and are particularly susceptible to “familial and peer pressures.” *Miller*, 567 U.S. at 471, 477 (first alteration in original) (quoting *Roper*, 543 U.S. at 570). They have “no place else to go,” *Powell*, 392 U.S. at 551, and should not be

penalized for trying to survive. *See also Roper*, 543 U.S. at 571 (recognizing that a law that fails to serve a penological purpose for youth will likely violate the Eighth Amendment).

### **I. Millions of Youth<sup>3</sup> Are Forced Out of Housing and Face Barriers to Accessing Shelter Each Year**

*Faith became unhoused during her last year of college as she was finishing a degree in social work. Despite having the highest GPA in her program, Faith's college expelled her after learning that she had been charged with a crime—her arrest coming when she objected to police detaining her after she intervened to stop a fellow student from attempting suicide. When Faith got out on bail, she discovered she had lost everything—her belongings, her campus housing, her meal plan, her education, and her support system of trusted adults.*

*“I was a kid. I was in school. My basic needs were being met by someone else, until without warning they weren't. I didn't know how to find a safe place to sleep, or shower, much less how to locate and secure a job and housing on my own,” she explained. “After a cold night with significant snowfall, I learned of a shelter and tried to gain admission, only to learn it was a men's shelter. I was also told that there was a bed available at a detox shelter for women, but that I did not qualify since I was not using any substances.”*

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<sup>3</sup> The term “youth” used throughout this brief is fully inclusive of individuals ages 13 to 25.

*“Later, I remember holding a loaf of bread that cost me all the money I had, carefully rationing out a single slice a day to make it last as long as possible, and thinking to myself that my only chance at a job and safe housing was if I could obtain work before the last slice was gone, otherwise my lack of access to hygiene items would become too evident.”<sup>4</sup>*

Each year, nearly 4.2 million youth across the United States experience some form of homelessness. Amy Dworsky et al., Chapin Hall at the Univ. of Chi., *Missed Opportunities: Pathways from Foster Care to Youth Homelessness in America* 1, 16 (2019), [https://www.chapinhall.org/wp-content/uploads/Chapin-Hall\\_VoYC\\_Child-Welfare-Brief\\_2019-FINAL.pdf](https://www.chapinhall.org/wp-content/uploads/Chapin-Hall_VoYC_Child-Welfare-Brief_2019-FINAL.pdf) (“Homelessness describes the experience of sleeping in places in which people are not meant to live, staying in shelters, or temporarily staying with others (‘couch surfing’) and not having a safe and stable alternative.”). One study found that 1 in 10 youth ages 18 to 25 and at least 1 in 30 youth ages 13 to 17 will be unhoused over the same 12-month period. Matthew Morton et al., Chapin Hall at the Univ. of Chi., *Missed Opportunities: Youth Homelessness in America National Estimates* 5 (2017) [hereinafter *Youth Homelessness in America National Estimates*], [https://www.chapinhall.org/wp-content/uploads/ChapinHall\\_VoYC\\_NationalReport\\_Final.pdf](https://www.chapinhall.org/wp-content/uploads/ChapinHall_VoYC_NationalReport_Final.pdf). Being unhoused leads to adverse health and developmental consequences for youth—often resulting in “both immediate and long-term negative health and psychological outcomes, including behavioral health problems (e.g. posttraumatic stress disorder,

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<sup>4</sup> Phone Interview with Faith (Mar. 28, 2024).

depression), physical health complications,” and substance abuse. Eric R. Pedersen et al., *Predictors of Housing Trajectories Among Young Adults Experiencing Homelessness in Los Angeles*, 51 *J. Behav. Health Servs. & Rsch.* 31, 32 (2024). Further, “[s]uicide is the leading cause of death among youth experiencing homelessness . . . with studies reporting that between 20 and 68% report a lifetime suicide attempt.” Natalie Slesnick et al., *Youth Experiencing Homelessness with Suicidal Ideation: Understanding Risk Associated with Peer and Family Social Networks*, 57 *Cmty. Mental Health J.* 128, 128 (2021). Unhoused youth face high rates of physical and sexual violence—a 2016 survey found that almost 61% experience victimization with almost a third experiencing physical assault and over 14% experiencing sexual assault or rape. Fam. & Youth Servs. Bureau Street Outreach Program, Admin. for Child. & Fams., *Data Collection Study Final Report 33* (2016), [https://www.acf.hhs.gov/sites/default/files/documents/fysb/data\\_collection\\_study\\_final\\_report\\_street\\_outreach\\_program.pdf](https://www.acf.hhs.gov/sites/default/files/documents/fysb/data_collection_study_final_report_street_outreach_program.pdf).

Across the United States, youth are forced out of housing for various reasons, including family dysfunction and rejection, sexual abuse, juvenile legal system involvement, “aging out” of the foster care system, and economic hardship. Nat’l Network for Youth, *Homeless Youth in America: Who Are They?* 1-2, <https://www.nn4youth.org/wp-content/uploads/Homeless-Youth-in-America-Who-Are-They.pdf> (last visited Mar. 29, 2024). These factors are multiplied for

Black and Brown and LGBTQIA+<sup>5</sup> youth. See Sarah Berger Gonzalez et al., *Youth of Color Disproportionately Impacted by Housing Instability*, Chapin Hall at the Univ. of Chi. (2021), <https://www.chapinhall.org/research/youth-of-color-disproportionately-impacted-by-housing-instability/>; Matthew Morton et al., *LGBTQ Young Adults Experience Homelessness at More than Twice the Rate of Peers*, Chapin Hall at the Univ. of Chi. (2018), <https://www.chapinhall.org/research/lgbtq-young-adults-experience-homelessness-at-more-than-twice-the-rate-of-peers/>. While the root cause of homelessness is the same for young people and adults—a lack of affordable housing, system failures in healthcare and other social supports, and barriers created by the juvenile and criminal legal systems—young people are particularly vulnerable to homelessness because of their physical, mental, social, and emotional characteristics. See *Solutions: Supporting Communities to Prevent and End Homelessness*, Canadian Observatory on Homelessness, <https://www.homelesshub.ca/solutions/priority-populations/youth> (last visited Mar. 28, 2024). Unlike many adults who lived independently prior to experiencing homelessness, most youth who become homeless have never lived on their own—a task for which they are almost invariably unprepared. See *id.*

Numerous factors can exacerbate the likelihood of youth experiencing homelessness, including economic insecurity, violence at home, behavioral health, lack of social support, and involvement in the

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<sup>5</sup> LGBTQIA+ is an acronym for lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, agender, and more identities.

child welfare system. Yumiko Aratani, Nat'l Ctr. for Child. in Poverty, *Homeless Children and Youth: Causes and Consequences* 5-6 (2009), <https://www.nccp.org/publication/homeless-children-and-youth-causes-and-consequences/>. A 2016 study funded by the federal Family and Youth Services Bureau (FYSB) of over 650 unhoused youth across 11 cities in the United States found the following:

- Participants first experienced homelessness at age 15, on average.
- 74% had been kicked out of their homes, and 71% said they could not go home if they wanted to.
- When asked why they became homeless for the first time, 51% said they were asked to leave by others they were living with, 25% said they could not find a job, 24% said they were being physically abused or beaten, and 23% said they became homeless because of a caretaker's drug or alcohol issues (respondents could choose more than one answer).
- 57% had been physically abused.
- 30% had been sexually abused during childhood.
- 50% had foster care histories, and those youth experienced longer periods of homelessness (27.5 months compared to 19.3 months for other youth).
- 30% received in-patient mental health care.
- About 62% had been arrested and almost 44% had stayed in juvenile detention, jail, or prison.
- An estimated 53% reported they were unable to stay at shelters because they were full, and almost 43% could not stay at shelters due to lack of transportation.

See Lisa Pilnik, Nat'l Network for Youth, *Responding to Youth Homelessness: A Key Strategy for Preventing Human Trafficking* 6-7 (2018), <https://nn4youth.org/wp-content/uploads/NN4Y-2018-white-paper-human-trafficking-v4-012021-1.pdf>.

Alleviating youth homelessness requires making permanent, affordable housing available to young people. It also requires local municipalities to provide services and resources that address youth needs, including support for families struggling with addiction, safe living situations for young people experiencing abuse, supports for young people seeking employment and self-sufficiency, and opportunities for young people who have been court-involved. See Annie E. Casey Found., *Preventing and Ending Youth Homelessness in America* 4-5 (2023), <https://assets.aecf.org/m/resourcedoc/aecf-youthhomelessness-2023.pdf>. Criminalization, in contrast, undermines youth trust in adults and therefore creates barriers, rather than opportunities, to stable housing for youth. See *infra* Section II. These barriers create a pipeline from youth to adult homelessness. See Nathan Yuan, *Gaps in Social Services are Leaving Homeless Youth with 'No Good Choices,'* Ctr. for Pub. Integrity (Dec. 5, 2023), <https://publicintegrity.org/education/unhoused-and-undercounted/gaps-in-social-services-are-leaving-homeless-youth-with-no-good-choices/> (an estimated “85% of people who experience long-term homelessness, defined in the study as longer than 12 months, come from the ‘youth-to-adult’ pipeline”).



**A. Marginalized groups are disproportionately impacted by homelessness**

*Jaxsyn, 20, identifies as Two-Spirit and is Lakota, Cheyenne River Sioux Tribe. They live in Rapid City, South Dakota and were raised primarily by their grandparents. Jaxsyn navigated homelessness most of their youth. When Jaxsyn was young, they lived with their grandparents. Because Jaxsyn's mother did not provide financial support, they lived mostly in hotel rooms. They obtained stable housing when Jaxsyn's mother moved in, but Jaxsyn came out as transgender and in response to that announcement and the loss of a family member, Jaxsyn's mother abandoned the family and began using drugs. Without funds to pay bills, they lived without water and electricity, and eventually, they were evicted, ending up in hotel rooms or sleeping in cars.*

*Jaxsyn received constant negative remarks from family members about their gender identity. At 16, Jaxsyn cut their hair short and due to the culture and religious significance of their hair, their grandma kicked them out of the hotel. Jaxsyn was left to fend for themselves and to ask friends for shelter in their homes. There was no youth shelter in Rapid City that accepted youth not in foster care. Eventually, Jaxsyn's friends said they could no longer stay and left Jaxsyn confronting the reality of sleeping outside. As they scouted areas outside in town to sleep, all Jaxsyn could think about was the cold—cold from the weather and a cold response from their friends.<sup>6</sup>*

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<sup>6</sup> Phone Interview with Jaxsyn (Mar. 26, 2024).

Certain youth are more susceptible to becoming unhoused. Youth who have been in foster care, youth who identify as LGBTQIA+, youth of color, and youth with juvenile or criminal legal system involvement disproportionately experience homelessness. Matthew Morton et al., Chapin Hall at the Univ. of Chi., *Voices of Youth Count Comprehensive Report: Youth Homelessness in America* 41, 57 (2018) [hereinafter *Voices of Youth Count Comprehensive Report*], <https://www.chapinhall.org/wp-content/uploads/Voices-of-Youth-Report.pdf>.

#### Youth With Foster Care Experience

Up to one-third of youth experiencing homelessness have a foster care history. Dworsky et al., *supra*, at 1. Even youth who were reunified with their families or adopted later are at greater risk of homelessness. *Id.* at 6-7. For many youth in foster care, homelessness occurs when they “age out” of the system at the age of 18 without sufficient supports to succeed as independent adults. Nadine M. Hasenecz, *Aging Out of Foster Care: Why It Happens and How Social Workers Can Help*, 19 Soc. Work Today 24 (2019), <https://www.socialworktoday.com/archive/ND19p24.shtml> (“Aging out’ generally refers to an individual in foster care who has reached the age of 18 but has [not] achieved some type of permanency, whether that be reunification with a parent or adoption by, or permanent legal custody with, another caregiver.”). While many children living with their parents continue to receive an array of emotional and financial supports well after the age of 18, each year an estimated 22,000 youth age out of foster care without any such supports. A significant number therefore become unhoused. Sarah C. Narendorf et al.,

*System Involvement Among Young Adults Experiencing Homelessness: Characteristics of Four System-Involved Subgroups and Relationship to Risk Outcomes*, 108 *Child. & Youth Servs. Rev.* 1, 2 (2020). While certain states, such as California, offer housing options for those who age out of the system, the opportunities are often limited and generally expire when youth turn 21. See *Independent Living Program (ILP)*, Ca. Dep't of Soc. Servs., <https://www.cdss.ca.gov/inforesources/foster-care/independent-living-program> (last visited Mar. 29, 2024). While most states offer basic services to those who age out of foster care, many youth leave before they reach the maximum age permitted to remain in foster care, leaving these youth especially vulnerable to homelessness. Garet Fryar et al., Child Trends, *Supporting Young People Transitioning from Foster Care: Findings from a National Survey 2*, 6-7 (2017), <https://cms.childtrends.org/wp-content/uploads/2017/11/SYPTFC-Findings-from-a-National-Survey-11.3.17.pdf>.

#### LGBTQIA+ Youth

LGBTQIA+ youth also make up a disproportionate percentage of all unhoused youth. LGBTQIA+ youth, ages 18 to 25, are more than twice as likely to experience homelessness in the preceding year than non-LGBTQIA+ youth and approximately 20% of the current unhoused youth population identifies as LGBTQIA+. Matthew Morton et al., Chapin Hall at the Univ. of Chi., *Missed Opportunities: LGBTQ Youth Homelessness in America* 7 (2018) [hereinafter *LGBTQ Youth Homelessness in America*], <https://www.chapinhall.org/wp-content/uploads/VoYC-LGBTQ-Brief-FINAL>.

pdf. The reason LGBTQIA+ youth most often cite for causing their homelessness is “being kicked out or asked to leave the home of a parent, relative, foster home, or group home,” with LGBTQIA+ identification being a contributing factor. *Id.*; see also *Youth and Young Adult Homelessness*, Annie E. Casey Found. (Mar. 2, 2021), <https://www.aecf.org/blog/what-we-know-about-youth-and-young-adult-homelessness> (“Some young people face a greater risk of experiencing homelessness than others . . . [including] members of the LGBTQ community, who are 120% more likely to experience homelessness compared to their heterosexual and cisgender peers.”); *LGBTQ+ Youth Homelessness*, Nat’l Network for Youth, <https://nn4youth.org/lgbtq-homeless-youth/> (last visited Mar. 29, 2024) (“With up to 40% of the 4.2 million youth experiencing homelessness identifying as LGBTQ+, while only 9.5% of the U.S. population [identified as LGBTQ+], LGBTQ+ youth disproportionately experience homelessness compared to their straight and cisgender peers.”). Black LGBTQIA+ youth, especially Black young men, experience the highest rates of homelessness. *LGBTQ Youth Homelessness in America*, *supra*, at 7.

#### Youth of Color

Youth of color have a higher risk of becoming unhoused—Black youth are 83% more likely and Hispanic, non-white youth are 33% more likely to report homelessness. *Youth Homelessness in America National Estimates*, *supra*, at 12. Native American and other Indigenous youth are two times more likely to report experiencing homeless in the last 12 months. *Voices of Youth Count Comprehensive Report*, *supra*, at 15. Structural inequalities, including racial

discrimination, economic disparities, and limited access to resources and opportunities, contribute to racial disparities in the unhoused population. See *Homelessness and Racial Disparities*, Nat'l All. to End Homelessness (Dec. 2023), <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/>. Systemic racism within housing, employment, and juvenile and criminal legal systems further compounds the challenges faced by Black, Brown, and Indigenous youth. See Danyelle Solomon et al., *Systemic Inequality: Displacement, Exclusion, and Segregation: How America's Housing System Undermines Wealth Building in Communities of Color*, Ctr. for Am. Progress (Aug. 7, 2019), <https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation/>.

#### Youth Who Have Been Incarcerated

Incarceration exacerbates the risk of homelessness. Researchers estimate that nearly 50% of unhoused youth have been in a juvenile detention facility, jail, or prison. Pilnik, *supra*, at 6. Many of these youth may have only been adjudicated delinquent of so-called “status crimes,” or those that are primarily due to age such as breaking curfew or running away from home or a foster home. See Coal. for Juv. Just., *Youth Homelessness and Juvenile Justice: Opportunities for Collaboration and Impact 2* (2016), [https://www.juvjustice.org/sites/default/files/resource-files/policy%20brief\\_FINAL.compressed.pdf](https://www.juvjustice.org/sites/default/files/resource-files/policy%20brief_FINAL.compressed.pdf). Once unhoused, youth are at increased risk of arrest for crimes such as sleeping on public property. *Id.*

**B. Youth face countless barriers to obtaining shelter and permanent housing**

*Gina, 26, is a queer Latina, undocumented, transgender woman, and lives in New York City. When Gina moved to New York from Los Angeles at age 22 she was unable to afford housing because she was not able to work legally. Her temporary work authorization through Deferred Action for Childhood Arrival (“DACA”) expired and she could not afford legal assistance to help renew it. Gina’s only option was a temporary shelter. While at the shelter she experienced sexual harassment, physical altercations with other residents, exposure to illegal drugs, smoking, drinking, unsanitary living conditions, and unsafe food. Although she filed numerous grievances about the conditions, they never improved, and staff retaliated against her. Although she is again experiencing homelessness after losing her job because of a medical emergency, she does not feel safe returning to the shelter system.<sup>7</sup>*

Unhoused youth face numerous obstacles to obtaining suitable shelter. First, there are simply an insufficient number of youth shelter beds. According to the U.S. Department of Housing and Urban Development’s (HUD), there are only 31,478 federally funded beds dedicated to youth (just 3% of all federally funded beds), compared to the “estimated 2.3 million unaccompanied teenagers and young adults experience[ing] ‘explicit homelessness,’ usually meaning that they are sleeping on the street, in

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<sup>7</sup> Phone Interview with Gina (Mar. 28, 2024).

shelter or in cars.” Yuan, *supra*; see also Tanya de Sousa et al., U.S. Dep’t of Hous. & Urb. Dev., *The 2022 Annual Homelessness Assessment Report (AHAR) to Congress, Part I: Point-in-Time Estimates of Homelessness* 87-88 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>. This grim statistic means that shelters are simply unavailable for nearly all youth experiencing homelessness.

Second, youth may have restricted access to shelters or be unable to access age-appropriate services. See Pamela H. Bowers et al. *Homeless Youth Shelters and Services for Transgender and Gender Non-Conforming (TGNC) Clients: Results from a Nationwide Survey*, 35 *J. Gay & Lesbian Soc. Servs.* 298, 300-01 (2023); Sharon B. Garrett et al., *Homeless Youths’ Perceptions of Services and Transitions to Stable Housing*, 31 *Evaluation & Program Plan.* 1, 5 (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2610537/pdf/nihms79689.pdf> (“Age restrictions were specifically discussed by almost half of the sample as a barrier to service engagement and participants expressed a keen awareness of how their age determined what services they could access. They expressed concern about aging out of services because they would be ineligible for and separated from familiar service providers.”). Youth may also need parental consent to stay in a shelter. For example, the 18-bed youth shelter in Grants Pass requires parental consent for a young person to stay beyond 72 hours. See Brief for Appellee at 12, *Johnson v. Grants Pass*, 72 F.4th 868 (9th Cir. 2023) (Nos. 20-35752, 20-35881). Some states even threaten criminal penalties for offering shelter to minors without parental consent. See, e.g., Fla. Stat. Ann. §

984.085(1)(a). For unhoused youth whose family situations may have contributed to or precipitated their lack of housing, parental consent requirements effectively bar entry into shelter facilities.

Finally, the risk of physical or sexual assault in shelters can be pervasive and traumatizing. Sanna J. Thompson et al., *Insights from the Street: Perceptions of Services and Providers by Homeless Young Adults*, 29 *Evaluation & Program Plan.* 34, 40 (2006) (“In locations where shelter services were not available for young people, they were forced into shelters with the adult homeless population where victimization was common.”); Aratani, *supra*, at 7 (“While homeless children and youth are more likely to witness or experience violence prior to homeless episodes, they are also exposed to violence due to the public nature of their lives and vulnerable living conditions associated with poverty, such as being on the streets, in shelters, doubling up with others, or crowded housing.”). These risks are especially acute for LGBTQIA+ youth who are unable to access all-too-rare LGBTQIA+-affirming services. *LGBTQ Youth Homelessness in America*, *supra*, 12-13. These risks render the few shelters that do exist unsafe and inadequate for most youth. One study reported that nearly a third of the unhoused youth interviewed expressed concerns about “the inability of shelters to provide a safe environment.” Garrett et al., *supra*, at 5.



## II. Criminalization Is a Harmful and Ineffective Response to Homelessness, Especially for Youth

*Alexander, who became unhoused at age 22, shared that their criminal record “added a lot of barriers to . . . actually getting gainful employment and being able to stay off of the streets.” After paying off upwards of \$10,000 in court fines, finally receiving much needed mental health care, and starting to get on their feet, their criminal record continued to pop up as they tried to obtain employment that could allow them to become or stay housed. “I’m not the same person,” Alexander said. Unhoused youth, they say, need support and understanding. “We just want to be loved and to know that we’re not, we’re not seen as a problem. We need to look at the roots of a system that has been inherently transactional. People live and painful circumstances happen. We understand this in movies. We need to understand this in real life. Healing and love are the answer. Not punishment, not criminalization.”<sup>8</sup>*

Contrary to the unsupported argument that cities need criminal penalties to address homelessness,<sup>9</sup> criminalization exacerbates, rather than alleviates, homelessness. See Nat’l L. Ctr. on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* 32-34

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<sup>8</sup> Zoom Interview with Alexander (Mar. 21, 2024).

<sup>9</sup> See, e.g., Brief for Brentwood Community Council as Amicus Curiae Supporting Petitioner at 11-12, *Grants Pass v. Johnson*, No. 23-175 (Mar. 4, 2024); Brief for City of Phoenix & The League of Arizona Cities and Towns as Amicus Curiae Supporting Petitioner at 14-18, *Grants Pass v. Johnson*, No. 23-175 (Mar. 4, 2024).

(2014), [https://homelesslaw.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](https://homelesslaw.org/wp-content/uploads/2019/02/No_Safe_Place.pdf). Criminalization, particularly of Black, Brown, Indigenous, and LGBTQIA+ youth who are already disproportionately represented at every stage of the juvenile and criminal legal systems,<sup>10</sup> is destabilizing, creating barriers to the things they need to exit homelessness: positive physical and mental health support systems, employment, and education. Instead of setting youth up for secure futures, criminalization cuts them down and, for many, keeps them ensnared in the legal system.

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<sup>10</sup> Data consistently show that Black, Brown, Indigenous, and LGBTQIA+ youth are disproportionately represented at every stage of the juvenile and criminal legal systems with the disproportionality increasing as penalties become more severe. See Richard Mendel, The Sent'g Project, *Why Youth Incarceration Fails: An Updated Review of the Evidence* 17-18 (2022), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf> (describing racial disparities in the juvenile and criminal legal systems); Alexi Jones, *Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System*, Prison Pol'y Initiative (Mar. 2, 2021), <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/> (data show that while around 10% of youth are LGBTQIA+, 20% of youth in the juvenile legal system are LGBTQIA+); U.S. Comm'n on C.R., *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications* 19-25 (2017), [https://www.usccr.gov/files/pubs/docs/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/files/pubs/docs/Statutory_Enforcement_Report2017.pdf); Jessica Feierman et al., Juv. L. Ctr., *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System* 8 (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf> (describing disparities in the imposition of fines).

**A. Imposing penalties on unhoused youth can lead to criminal legal system involvement with severe consequences**

By authorizing police to cite individuals, including unhoused youth, for sleeping with bedding, the Grants Pass ordinances increase youth contact with police for harmless and unavoidable behavior.<sup>11</sup> Youth’s developmental stage and trauma histories heighten the risk that these encounters will escalate, leading to system involvement for minor adolescent behaviors like talking back or running. *See* Sarah Childress, *Why Some Officers Are Policing Kids Differently*, PBS: Frontline (June 10, 2016), <https://www.pbs.org/wgbh/frontline/article/why-some-officers-are-policing-kids-differently> (“[K]ids’s brains are ruled by their amygdalas, the part responsible for the ‘fight or flight’ response. . . . Confronted by an officer, they might mouth off, resist or simply run away, all actions that have led to arrests and even violence.”); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (recognizing that youth may react differently to

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<sup>11</sup> Unhoused youth are already subject to almost constant surveillance. *See, e.g.*, Tammy S. Garland et al., *Victims Hidden in Plain Sight: The Reality of Victimization Among the Homeless*, 23 *Crim. Just. Stud.* 285, 286 (2010) (unhoused people “may be more at risk for arrest and incarceration as a result of their higher visibility”); Jerreed D. Ivanich & Tara D. Warner, *Seen or Unseen? The Role of Race in Police Contact among Homeless Youth*, 36 *Just. Q.* 816, 817, 834 (2019) (noting that “homeless youth are especially visible, and such visibility also increases their risk of ‘negative attention’ from law enforcement” (citing Constance L. Chapple et al., *Gender and Arrest Among Homeless and Runaway Youth: An Analysis of Background, Family, and Situational Factors*, 2 *Youth Violence & Juv. Just.* 129 (2004))).

police than adults); *Roper*, 543 U.S. at 569 (recognizing the relevance of youth impulsiveness to the Eighth Amendment analysis). These developmentally appropriate reactions can also lead to arrests on more serious charges. *See, e.g.*, Kristin Henning, *The Rage of Innocence: How America Criminalizes Black Youth* 220-23 (2021).

Inability to pay fines can then lead to still deeper system involvement. A fine is an absurd punishment for anyone who cannot afford housing and can be particularly problematic for unhoused youth, who typically do not have any real earning capacity, may not be old enough to work at all or to work full time under federal law, and may be unable to seek employment because they must attend school. *See* Feierman et al., *supra*, at 7. Failure to pay a fine under the Grants Pass ordinances (or similar statutes nationwide), can then lead to extended probation, incarceration, and other harsh consequences. *See* Grants Pass, Or., Municipal Code § 6.46.350; Or. Rev. Stat. Ann. §§ 164.245, 161.615(3), 161.635(1)(c) (establishing incarceration as a penalty for failure to pay); *see also* Feierman et al., *supra*, at 23-24. Thus, unhoused youth who are fined or face the threat of a fine are pulled deeper into the justice system and exposed to a heightened risk of additional harm.

Critically, both incarceration and fines increase recidivism, effectively ensuring a never-ending cycle of re-arrest, new adjudications, and reincarceration for young people. Mendel, *supra*, at 14; *see also* Alex R. Piquero & Wesley G. Jennings, *Justice System-Imposed Financial Penalties Increase Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 *Youth Violence & Juv. Just.* 325, 334 (2017) (finding a strong positive correlation between monetary

sanctions and youth recidivism); Alex R. Piquero et al., *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity* 40 (2023), [https://jlc.org/sites/default/files/attachments/2023-02/Piquero\\_et\\_al\\_AV\\_Fees\\_%26\\_Restitution\\_Report\\_wTables\\_011723.pdf](https://jlc.org/sites/default/files/attachments/2023-02/Piquero_et_al_AV_Fees_%26_Restitution_Report_wTables_011723.pdf).

### **B. Criminalization harms youth’s mental and physical health**

Penalizing unhoused young people for sleeping with bedding puts them at grave risk of post-traumatic stress and other negative mental health consequences. Justice system involvement, from arrest through incarceration, causes long-term mental health challenges.

Interactions with police can undermine young people’s mental health and engagement with support services like school and medical providers. See Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 *J. Adolescent Health* 627, 631 (2019) (finding that “youth who have been stopped more frequently [by police] were more likely to report heightened emotional distress and posttraumatic stress symptoms after the encounter”); Juan Del Toro et al., *The Policing Paradox: Police Stops Predict Youth’s School Disengagement Via Elevated Psychological Distress*, 58 *Developmental Psych.* 1402, 1409 (2022) (“Adolescents who were stopped by the police experienced elevated next-day psychological distress, which in turn predicted increased school disengagement.”); Sarah Brayne, *Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment*, 79 *Am. Socio. Rev.* 367, 385 (2014) (“[I]ndividuals who have been

stopped, arrested, convicted, or incarcerated are less likely to interact with institutions that keep formal records, such as hospitals, banks, employment, and schools, than their counterparts without criminal justice contact.”).

When police then issue a fine, as they do under the Grants Pass ordinances, this, too, can cause emotional stress for youth. Research shows that fines imposed on young people create anxiety, damage family well-being, and undermine trust in the legal system. See Leslie Paik & Chiara Packard, *Impact of Juvenile Justice Fines and Fees on Family Life: Case Study in Dane County, WI* 10-13 (2019), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf> (examining the harms of fines and fees on young people in the juvenile legal system).

When unhoused youth cannot pay their fines, they face incarceration that, in turn, “harms young people’s physical and mental health, impedes their educational and career success, and often exposes them to abuse.” Mendel, *supra*, at 4. Indeed, youth incarceration increases rates of depression, suicide, and physical illness. *Id.* at 5, 16. Numerous studies demonstrate that incarceration is associated with a shorter life expectancy. See *id.* at 16 (noting that in some jurisdictions, incarcerated youth were more than four times more likely to die between the ages of 15 and 24 than youth in the general population and 48% more likely to die prematurely (citing Linda A. Teplin et al., *Early Violent Death Among Delinquent Youth: A Prospective Longitudinal Study*, 115 *Pediatrics* 1586 (2005); Matthew C. Aalsma et al., *Mortality of Youth Offenders Among a Continuum of Justice System Involvement*, 50 *Am. J. Preventative Med.* 303 (2016))). These risks are heightened in the many

detention facilities rife with abuse, including physical and sexual abuse, use of restraints and pepper spray, and extended solitary confinement. *See Mendel, supra*, at 15-18.<sup>12</sup>

**C. Criminalization creates obstacles to education and employment, and economic stability**

Research confirms that fines destabilize young people, undermining their economic security. Most immediately, fines imposed on youth force them to choose between paying for basic necessities and paying off court debt. *See Feierman et al., supra*, at 6-7. Moreover, in many jurisdictions, fines become a civil judgment, creating still more obstacles to economic stability. *See id.* at 23-24. Civil judgments

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<sup>12</sup> Attempting to avoid police surveillance, arrests, fines, and incarceration may also place youth at greater risk of victimization. An estimated 41% of unhoused youth engage in survival sex—exchanging sex for money, other basic needs, or housing—compared to 3.5% of housed youth. Edward J. Alessi et al., *Victimization and Resilience Among Sexual and Gender Minority Homeless Youth Engaging in Survival Sex*, 36 *J. Interpersonal Violence* 11236, 11239 (2020) (citing J.M. Edwards et al., *Prevalence and Correlates of Exchanging Sex for Drugs or Money Among Adolescents in the United States*, 82 *Sexually Transmitted Infections* 354 (2006)). While survival sex is common among all unhoused youth, it is particularly common for Black and Brown and LGBTQIA+ youth. *Id.* These youth are then at increased risk of experiencing violence including sexual and physical assault and sex trafficking. Stephen Gaetz et al., Just. for Child. & Youth, *Surviving Crime and Violence: Street Youth and Victimization in Toronto* 56 (2010), [https://www.homelsshub.ca/sites/default/files/attachments/Surviving%20the%20Streets.JFCY\\_.September16.2010.pdf](https://www.homelsshub.ca/sites/default/files/attachments/Surviving%20the%20Streets.JFCY_.September16.2010.pdf).

can interfere with the ability of young people to get loans for higher education or housing. *Id.* at 23. Youth may be unable to expunge their records if they have outstanding court debt. *See id.* at 23-24; *see also, e.g.*, Ariz. Rev. Stat. Ann. § 8-349(B)(5); Kan. Stat. Ann. § 38-2312(e)(2). Thus, even a “small” fine imposed for sleeping on a park bench may result in a juvenile or criminal record, limited transportation, obstacles to secure housing and education, and no financial resources.

Additionally, as is true in Oregon, failure to pay a fine imposed under Grants Pass Municipal Code § 1.36.010(I)-(J) can be reported to credit agencies, a devastating consequence for youth with little or no other credit history. *See Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 WL 4209227, at \*17 (D. Or. July 22, 2020). Bad credit history can limit access to higher education, employment, stable housing, healthcare, and even basic utilities. Shawn Fremstad & Amy Traub, Demos, *Discrediting America: The Urgent Need to Reform the Nation’s Credit Reporting Industry* 16-22 (2011), [https://www.demos.org/sites/default/files/publications/Discrediting\\_America\\_Demos.pdf](https://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf); Gary Rivlin, *The Long Shadow of Bad Credit in a Job Search*, N.Y. Times (May 11, 2013), <http://nyti.ms/2MpaY4A>. Because of bad credit, youth may be denied access to the very resources they need to obtain housing.

Similarly, failure to pay fines and subsequent arrest or processing in the juvenile or criminal legal systems can also leave youth with lasting records that create barriers to school, work, and even housing. *See Riya Saha Shah & Jean Strout, Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 9-11 (2016), <http://juvenilerecords.jl>



c.org/juvenilerecords/documents/publications/future-interrupted.pdf (noting that even an arrest can create problematic records for youth). Youth's court records may be reported to educational institutions, appear on background checks, disqualify them for public housing, and prevent them from joining the military, *see id.* at 9-18, further undermining their educational and employment goals and chance at stable housing.<sup>13</sup>

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*As Lexi explained, "Everything feels more possible when you are stable. I just feel like when you have a safe secure house and you know where you're gonna sleep every night . . . , it's easier to get to school. Easier to go to work. It's easier to get to those places on time. It's easier to . . . secure basic needs."*<sup>14</sup>

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<sup>13</sup> As unhoused youth work to obtain stable housing, they not only need to work to find a job and an apartment, they also may be dealing with grief, trauma, mental illness, health problems, or addiction. *See Voices of Youth Count Comprehensive Report, supra*, at 52-81.

<sup>14</sup> Zoom Interview with Lexi (Mar. 22, 2024).

**CONCLUSION**

For the foregoing reasons, *Amici* respectfully request that this Court affirm the ruling below.

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## **APPENDIX**

**TABLE OF APPENDICES**

APPENDIX: LIST OF AMICI CURIAE..... 1A

**APPENDIX**

**List of *Amici Curiae***

Community, Legal, and Youth Services and Advocacy  
Organizations

180 Degrees  
A Way Home America  
Advancing Real Change, Inc.  
African American Juvenile Justice Project  
Alabama Criminal Defense Lawyers Association  
The Ali Forney Center  
Alliance for Children's Rights  
American Academy of Child and Adolescent  
Psychiatry  
Andrxgenesis LLC  
Asian Counseling and Referral Service  
Barton Child Law and Policy Center, Emory Law  
School  
Big Brothers Big Sisters of Connecticut  
Briarpatch Youth Services  
Center for Children & Youth Justice  
Center for Children's Advocacy  
Center for the Study of Social Policy  
Center on Race, Inequality, and the Law at NYU  
School of Law  
Child and Family Services Northeast (DBA) NE MI  
Family Resource Center  
Children & Family Justice Center  
Children's Advocacy Institute  
The Children's Center Inc.  
Children's Law Center of California  
Children's Rights  
Citizens' Committee for Children of NY

Civitas ChildLaw Center, Loyola University of  
Chicago School of Law  
Collective Justice  
Colorado Criminal Defense Bar  
Community Legal Services of Philadelphia  
Covenant House Alaska  
Covenant House California  
Covenant House Florida  
Covenant House International  
Covenant House Michigan  
Covenant House New Jersey  
Covenant House New York  
Covenant House Texas  
CUREIL  
Defender Association of Philadelphia  
The Gault Center  
East Bay Community Law Center  
Eddie's House  
Education Law Center-PA  
Educational and Treatment Council, Inc.  
El Centro de la Raza  
Evident Change  
Families and Friends of Louisiana's Incarcerated  
Children  
Fenix Youth Project Inc.  
Florida Legal Services  
Foster Forward  
FosterAdopt Connect  
The Harbour, Inc  
Haus of Codec  
Human Rights for Kids  
Impact Fund  
Interface Children & Family Services  
James B. Moran Center for Youth Advocacy  
Janus Youth Programs

The Justice for Children Project at the Moritz  
College of Law  
Juvenile Defenders Association of Pennsylvania  
Larkin Street Youth Services  
Law Offices of the Public Defender, 11th Judicial  
Circuit of Florida  
Lawyers For Children  
Legal Counsel for Youth and Children  
Legal Rights Center  
Lifeology AZ, Inc  
Lone Star Justice Alliance  
Lutheran Social Service of Minnesota  
Michigan State Appellate Defender Office  
Mothers Against Murderers Association  
National Association of Social Workers - NJ  
National Association of Criminal Defense Lawyers  
National Black Women's Justice Institute  
National Center for Youth Law  
National Network for Youth  
National Safe Place Network  
National Youth Justice Network  
New Jersey Office of the Public Defender  
The Night Ministry  
NJOPD Office of Law Guardian  
The Office of the Ohio Public Defender  
Pacific Juvenile Defender Center  
Partners for Our Children  
Pathfinders Milwaukee, Inc.  
Policy Advocacy Clinic, U.C. Berkeley School of Law  
PYD Solutions and Support  
Real Change Homeless Empowerment Project  
Rights4Girls  
Safe Places for Youth Central Illinois  
Sanctuary of Hope



Sayra and Neil Meyerhoff Center for Families,  
Children and the Courts  
Signify Consulting, LLC  
SMYAL  
Support Center for Child Advocates  
The Synergy Project - Valley Youth House  
Tahoe Youth & Family Services  
Texas Appleseed  
Transformative Justice Project of Colorado  
True Colors United  
Waypoint NH  
Worcester County Youth Action Board  
Youth Advocacy & Policy Lab, Harvard Law School  
Youth Advocate Programs, Inc.  
Youth Collaboratory  
Youth Correctional Leaders for Justice  
Youth Law Center  
Youth MOVE National  
Youth Represent  
Youth Services of Tulsa

Child and Youth Service Professionals, Legal  
Professionals, Academics, and Advocates

Adam Zufelt  
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Erin Rutherford  
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Gena D Graves  
Hailey Brown  
Heidi Huppert\*  
Holly G Pereira  
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\* Denotes a current or former unhoused youth.

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