

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.*

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**On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit**

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**BRIEF OF *AMICI CURIAE*  
CURRENT U.N. SPECIAL RAPPORTEURS  
IN SUPPORT OF RESPONDENTS**

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## INTRODUCTION

Professor Balakrishnan Rajagopal, the United Nations (“U.N.”) Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (“Special Rapporteur on Adequate Housing”); and Professor Olivier De Schutter, U.N. Special Rapporteur on extreme poverty and human rights (“Special Rapporteur on Extreme Poverty”) respectfully submit this brief as amici curiae in support of Respondents. They bring expertise in human right standards as well as knowledge of lived reality with respect to housing and homelessness including criminalization, extreme poverty, and cruel, inhuman, or degrading treatment and can provide the Court with relevant analysis.

### IDENTITY AND INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* are experts appointed by the U.N. Human Rights Council “with mandates to report and advise on human rights from a thematic or country-specific perspective.”<sup>2</sup> *Amici* serving as Special Rapporteurs are part of “[t]he system of Special Procedures” that “is a central element of the United Nations human rights machinery and covers all

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<sup>1</sup> Pursuant to Supreme Court Rule 36.7 amici state that: 1) this brief build on an amicus brief presented in the Ninth Circuit in *Johnson v. City of Grants Pass*; and 2) no person or entity other than the amici, their members and counsel have made a monetary contribution intended to fund the preparation or submission of this brief.

<sup>2</sup> Office of the High Commissioner for Human Rights (“OHCHR”), *Special Procedures of the Human Rights Council*, <https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx> (last visited March 25, 2024).



human rights: civil, cultural, economic, political, and social.”<sup>3</sup> As mandate-holders, *amici* are independent human rights experts selected for their “(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.”<sup>4</sup> Special Rapporteurs “undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith” and “do not receive financial remuneration.”<sup>5</sup>

In the performance of their mandates, the Special Rapporteur on Adequate Housing, and the Special Rapporteur on Extreme Poverty are accorded certain privileges and immunities as experts on mission for the U.N. pursuant to the Convention on the Privileges and Immunities of the U.N., adopted by the U.N. General Assembly on 13 February 1946, to which the United States (“U.S.”) is a party since 29 April 1970. This brief is submitted voluntarily without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the U.N., its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the U.N. Authorization for the position and views expressed as Special Rapporteurs, in full

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<sup>3</sup> *Id.*

<sup>4</sup> Human Rights Council, Institution-building of the United Nations Human Rights Council, A/HRC/RES/5/1 (June 18, 2007), [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/5/1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1) (last visited March 25, 2024).

<sup>5</sup> OHCHR, *Special Procedures of the Human Rights Council*, *supra* note 2.

accordance with the independence afforded to their mandates, was neither sought nor given by the U.N., the U.N. Human Rights Council, the Office of the U.N. High Commissioner for Human Rights, or any of the officials associated with those bodies.

This case involves claims that a city's ordinances prohibiting camping in public cannot constitutionally be applied to individuals who have no access to indoor shelter. That question implicates substantial interests of the U.N. Special Rapporteurs, global experts appointed by the U.N. Human Rights Council to promote the realization of all relevant human rights standards with regards to housing including homelessness, extreme poverty, and cruel, inhuman, and degrading treatment. The U.S. is a member of the Human Rights Council, recognizing the authority of the Special Rapporteurs and expertise in these matters. *Amici* have a strong interest in ensuring that countries respect human rights and interpretations of rights are consistent with international human rights law.

## SUMMARY OF THE ARGUMENT

*Amici* are the top experts in various aspects of international human rights in the U.N. system, including housing, homelessness, extreme poverty, and cruel, inhuman and degrading treatment. *Johnson v. Grants Pass* carries profound human rights implications for the treatment of people experiencing homelessness across the U.S. Originating from Grants Pass, Oregon, this case centers on a lawsuit filed by a group of individuals experiencing homelessness, who face fines and jail time for sleeping outdoors. The crux of the matter lies in whether municipalities can penalize individuals for residing outside when they lack alternative shelter. The Ninth Circuit's ruling, in line with the prior case of *Martin v. Boise*, affirmed that punishing homeless individuals for sleeping outdoors, absent adequate shelter options, constitutes cruel and unusual punishment, contravening the Eighth Amendment.

The Ninth Circuit's decision is in accordance with international human rights law. In defining "cruel and usual punishment," U.S. courts have looked to the international human rights analogue of "cruel, inhuman, or degrading treatment" ("CIDT") as a benchmark. Human rights bodies have consistently found that punishing homelessness and involuntary acts of survival constitutes CIDT, a stance supported by the U.S. itself.

Moreover, while beyond the question presented in this case, the root cause of this issue lies in the failure to recognize the right to adequate housing, which is inherently violated by homelessness. This violation extends to various civil and political rights.

Specifically, we underscore the intersection of homelessness with racial justice and the need for affirmative measures to address racial discrimination in housing.

The Supreme Court's review of *Johnson v. Grant Pass* provides an opportunity to ensure the fundamental constitutional and human rights of people experiencing homelessness. We urge the Court to uphold the lower court's decision and prevent a backsliding on critical rights.

## ARGUMENT

### I. PUNISHING HOMELESSNESS VIOLATES FUNDAMENTAL HUMAN RIGHTS.

#### A. International Human Rights Standards Are Evidence of an Evolving Standard of Decency Crucial to Interpreting Violations of “Cruel and Unusual Punishment” under the Eighth Amendment.

The right to be free from “cruel, inhuman, and degrading treatment or punishment” (“CIDT”) is set out in core international instruments drafted with the leadership of the U.S. These include the Universal Declaration of Human Rights (“UDHR”);<sup>6</sup>

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<sup>6</sup> Universal Declaration of Human Rights, art. 7, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]. The UDHR holds normative force as the foundational document of the international human rights system, with parts of it binding customary law. Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 289 (1996). The U.S. played a key role in the UDHR's drafting, and it has “perhaps been referred to

International Covenant on Civil and Political Rights (“ICCPR”)<sup>7</sup> and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”),<sup>8</sup> treaties ratified by the U.S.;<sup>9</sup> and Convention on the Rights of the Child (“CRC”).<sup>10</sup>

CIDT is an expansive concept that applies not only to “acts that cause physical pain but also to acts

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more frequently by U.S. courts than by courts in any other jurisdiction.” *Id.* at 304-05 (1996).

<sup>7</sup> International Covenant on Civil and Political Rights art. 16(1), *ratified* Jun. 8, 1992, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>8</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16(1), *ratified* Oct. 21, 1994, 1465 UNTS 85, 113 [hereinafter CAT].

<sup>9</sup> Treaties that the U.S. has ratified are legally binding. U.S. CONST. art. VI (“[A]ll Treaties made . . . shall be the supreme Law of the Land.”). Upon ratification of these human rights treaties, however, the U.S. also entered a declaration that they are not self-executing (Catherine Powell, *Dialogic Federalism, Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 258–259 (2001)), meaning they do not on their own create a private right of action directly enforceable in U.S. courts. Hum. Rts. Comm., United States of America Initial Report to the Human Rights Committee, para. 8, CCPR/C/81/Add.4 (Aug. 24, 1994).

<sup>10</sup> Convention on the Rights of the Child art. 37, *signed* Feb. 16, 1995, 1577 U.N.T.S. 3 [hereinafter CRC]. While the U.S. has only signed and not ratified the CRC, upon signature, it must “avoid actions which could . . . defeat [the treaty’s] basic purpose.” RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018); *see also* Vienna Convention on the Law of Treaties, art. 18(a), Apr. 24, 1970, 1155 U.N.T.S. 331 (“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty.”).

that cause mental suffering to the victim.”<sup>11</sup> This definition encompasses punishing individuals for engaging in life-sustaining activities.<sup>12</sup>

The Supreme Court has referred to these CIDT provisions in determining the meaning of “cruel and unusual punishment” within the Eighth Amendment. In *Roper v. Simmons*, the Court consulted international standards when applying the “evolving standards of decency” test, which looks to “the progress of a maturing society’ to determine which punishments are so disproportionate as to be ‘cruel and unusual.’”<sup>13</sup> The Court noted that the “overwhelming weight of international opinion” reflected in the CRC’s ban provided “significant confirmation” for its determination that the death penalty for juvenile offenders is cruel and unusual punishment.<sup>14</sup>

The Court in *Graham v. Florida* again found the consensus of the international community persuasive in determining whether the Eighth

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<sup>11</sup> Hum. Rts. Comm., *CCPR General Comment No. 20: Art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10, 1992).

<sup>12</sup> Hum. Rts. Comm., *Concluding Observations on the Fourth Report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) [hereinafter HRC Concluding Observations: United States] (“The Committee notes that such criminalization [of homelessness] raises concerns of discrimination and cruel, inhuman or degrading treatment.”).

<sup>13</sup> *Roper v. Simmons*, 543 U.S. 551, 551 (2005) (citing *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958)).

<sup>14</sup> *Id.* at 554.

Amendment’s prohibition of “cruel and unusual punishment” applies to life without parole sentences for juvenile offenders who had not committed homicide.<sup>15</sup> In finding that this punishment violates the Eighth Amendment, the Court noted that the U.S. is “the only Nation that imposes this type of sentence,” applying the “evolving standards of decency” test.<sup>16</sup> The Court looked to the practices of other countries and international agreements as evidence “that a particular sentencing practice is inconsistent with basic principles of decency” within the meaning of the Eighth Amendment.<sup>17</sup>

**B. Human Rights Bodies Articulate a Clear and Consistent Standard that Punishing Homelessness Constitutes CIDT.**

Punishing people experiencing homelessness simply for engaging in life-sustaining conduct constitutes CIDT under international law, as repeatedly articulated by various human rights bodies, including with direct reference to practices in the U.S. During its review of the U.S. for its compliance with ICCPR, the U.N. Human Rights Committee (“HRC”) concluded that the U.S.’s “criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas. . . raises concerns of . . . cruel,

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<sup>15</sup> *Graham v. Florida*, 560 U.S. 48, 52–53 (2010).

<sup>16</sup> *Id.* at 81.

<sup>17</sup> *Id.* at 82.

inhuman or degrading treatment.”<sup>18</sup> In its recent 2023 review, the HRC called upon the U.S. to “[a]bolish the laws and policies criminalizing homelessness at all levels,” which includes fining people merely for engaging in life-sustaining conduct, and “redirect[] funding from criminal justice response towards adequate housing and shelter programs.”<sup>19</sup> In its review of the U.S., the U.N. Committee on the Elimination of Racial Discrimination (“CERD”) issued this same recommendation.<sup>20</sup>

Previous U.N. Special Rapporteurs have likewise condemned punishing homelessness as CIDT. During her August 2011 visit to the U.S., the Special Rapporteur on Extreme Poverty, remarked, “Where

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<sup>18</sup> HRC Concluding Observations: United States, *supra* note 12, ¶19.

<sup>19</sup> Hum. Rts. Comm., *Concluding Observations on the Fifth Report of the United States of America*, ¶ 41, U.N. Doc. CCPR/C/USA/CO/5 (Dec. 7, 2023); *see also* HRC Concluding Observations: United States, *supra* note 12, ¶19.

<sup>20</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth periodic reports of the United States of America*, CERD/C/USA/CO/10-12, ¶ 40 (Sep. 21, 2022) [hereinafter CERD Concluding Observations: USA] (calling upon the U.S. to “abolish laws and policies that criminalize homelessness” and “redirect funding from criminal justice responses towards adequate housing and shelter programmes”); *see also* Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, CERD/C/USA/CO/7-9, ¶ 12 (2014) (calling upon the U.S. to “[a]bolish laws and policies making homelessness a crime”; “intensify efforts to find solutions for the homeless, in accordance with human rights standards”; and “[o]ffer incentives to decriminalize homelessness”).



there is insufficient public infrastructure and services to provide families with alternative places to perform such behaviours, persons living in poverty and homelessness are left with no viable place to sleep, sit, eat or drink. These measures can thus have serious adverse physical and psychological effects on persons living in poverty. . . even amounting to cruel, inhuman or degrading treatment.”<sup>21</sup> In 2017, the subsequent Special Rapporteur on Extreme Poverty and Human Rights highlighted the cruelty of regimes that fine people experiencing homelessness for existing in public: “Ever more demanding and intrusive regulations lead to infraction notices for the homeless, which rapidly turn into misdemeanours, leading to warrants, incarceration, unpayable fines and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing.”<sup>22</sup> In 2019, the Special Rapporteur on Adequate Housing further noted that the very existence of homelessness itself is “a profound assault on dignity, social inclusion and the right to life. It is a prima facie violation of the right to... freedom from cruel, degrading and inhuman treatment.”<sup>23</sup> She thus

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<sup>21</sup> Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), *Extreme Poverty and Human Rights*, ¶ 36, U.N. Doc. A/66/265 (Aug. 4, 2011).

<sup>22</sup> Hum. Rts. Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶¶ 45, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

<sup>23</sup> Hum. Rts. Council, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context,

recommended that “any and all laws or measures that criminalize, impose fines on or restrict homeless people or behavior associated with being homeless, such as sleeping or eating in public spaces, must be immediately repealed.”<sup>24</sup>

Universal Periodic Reviews (“UPR”) of the U.S.’s compliance with human rights standards, a peer review process under the U.N. Human Rights Council, have further pointed to the need to address the criminalization of homelessness and poverty. During such reviews, countries have recommended that the U.S. “[a]mend laws that criminalize homelessness and which are not in conformity with international human rights instruments”<sup>25</sup>; that that the U.S. refrain from using “policing as a response to societal problems largely related to poverty” and instead focus on solutions “that do not involve criminalization”<sup>26</sup>; and that the U.S. “[e]nd the criminalization of poverty.”<sup>27</sup> While the U.S. did not

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*Guidelines for the Implementation of the Right to Adequate Housing*, ¶ 30, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019).

<sup>24</sup> *Id.* at ¶ 91(e).

<sup>25</sup> HRC Recommendations to U.S.A. A/HRC/30/12/Add.1 – 176.310; *Police Violence Against Homeless, Poor Persons, Housing & Homelessness Addressed at Global Review of U.S. Human Rights Record*, HOMELESSNESS LAW (May 14, 2015), <http://homelessnesslaw.org/2015/05/police-violence-against-homeless-poor-persons-housing-homelessness-addressed-at-global-review-of-u-s-human-rights-record/>.

<sup>26</sup> Hum. Rts. Council, *Draft Report of the Working Group on the Universal Periodic Review*, United States of America, 26.255 U.N. Doc. A/HRC/WG.6/36/L.11 (2020).

<sup>27</sup> *Id.* at 26.284.

concede that current laws violate international standards, it declared that it is “committed to helping communities pursue alternatives to criminalizing homelessness.”<sup>28</sup> The U.S. has also affirmed that it “supports investing in direct solutions to alleviate the personal and social problems surrounding the issues of poverty.”<sup>29</sup>

Other countries have further concluded that punishing homelessness constitutes CIDT. For instance, the United Kingdom Parliament expressed concern that preventing a local housing authority from allocating housing to certain groups of people experiencing homelessness violated the right to be free from CIDT under the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>30</sup> Additionally, the African Court on Human and Peoples’ Rights found that vagrancy laws, which “punish the poor and underprivileged, including

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<sup>28</sup> U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/30/12/Add.1, ¶ 12 (Sept. 14, 2015), [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A\\_HRC\\_30\\_12\\_Add\\_1\\_ENG.DOCX](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_12_Add_1_ENG.DOCX).

<sup>29</sup> Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, ¶ 12 U.N. Doc. A/HRC/46/15/Add.1 (2021).

<sup>30</sup> THE JOINT COMMITTEE ON HUMAN RIGHTS, HOMELESSNESS BILL, 2001-4, HC First Report-2 (UK), <https://publications.parliament.uk/pa/jt200102/jtselect/jtrights/30/3003.htm#n8>. See also European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, Art. 3, E.T.S. No. 5.

... the homeless,”<sup>31</sup> violate the African Charter on Human and Peoples’ Rights’ prohibition on “cruel, inhuman or degrading punishment and treatment.”<sup>32</sup> The Advisory Opinion also held that the enforcement of vagrancy laws is contrary to States’ obligation to protect the rights of women, children, and persons with disabilities<sup>33</sup> and held such laws with discriminatory effect towards marginalized groups to be in violation of the right to equal protection.<sup>34</sup> This is an important issue before the Court, as nearly a quarter of the people experiencing homelessness in the U.S. have a disability.<sup>35</sup>

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<sup>31</sup> Afr. Ct. H.P.R., *Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa*, para. 70, No. 001/2018, Advisory Opinion of Dec. 4, 2020, <http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018 - PALU-Advisory Opinion.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa, No 001/2018 Afr. Ct. Hum. People’s Rts. ¶ 139 (2020), <https://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018 - PALU-Advisory Opinion.pdf>.

<sup>34</sup> *Id.* at para. 73.

<sup>35</sup> Erin Vinoski Thomas and Chloe Vercruysse, *Homelessness Among Individuals with Disabilities: Influential Factors and Scalable Solutions*, NACCHO (Jun. 14, 2019), <https://www.naccho.org/blog/articles/homelessness-among-individuals-with-disabilities-influential-factors-and-scalable->

### **C. The U.S. has Itself Acknowledged Punishment of Homelessness as a Violation of Human Rights and CIDT.**

The U.S. federal government has on multiple occasions acknowledged that punishing life-sustaining conduct violates human rights and is ineffective. In 2012, the U.S. Interagency Council on Homelessness (“USICH”) issued a report noting that “individuals who are arrested or fined for ‘act of living’ crimes in public spaces now have a criminal record, resulting in barriers to work and difficulty in receiving mainstream services and housing that often bar individuals with criminal histories.”<sup>36</sup> The report continues, “[i]n addition to violating domestic law, criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”<sup>37</sup> The USICH, representing the expertise of 19 federal agencies, thus recognizes that these laws are not only cruel, but perpetuate a cycle of homelessness and constitute potential treaty violations.

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development

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[solutions#:~:text=Point%2Din%2Dtime%20counts%20\(,health%20and%2For%20substance%20abuse.](#)

<sup>36</sup> U.S. Interagency Council on Homelessness, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 1 (2012), <https://www.usich.gov/tools-for-action/searching-out-solutions>.

<sup>37</sup> *Id.* at 8.

(“HUD”) have likewise acknowledged the cruel futility of laws punishing homelessness. In 2014, the DOJ filed a brief in *Bell v. Boise* (later *Martin v. Boise*) stating, “It should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment.”<sup>38</sup> In 2016, the DOJ later affirmed that its position in *Bell* was an “acknowledgement of the human rights of people experiencing homelessness.”<sup>39</sup> The DOJ reiterated these same sentiments in its *amicus* brief in this case.<sup>40</sup> HUD’s website also states “criminalization policies further marginalize men and women who are experiencing homelessness, fuel inflammatory attitudes, and may even unduly restrict constitutionally protected liberties and violate our international human rights obligations.”<sup>41</sup> HUD endorses USICH’s 2012 report, which emphasizes a “human rights approach to ending homelessness and points out that criminalization measures are not

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<sup>38</sup> Statement of Interest of the United States, *Bell v. City of Boise*, 993 F. Supp. 2d. 1237 (D. Idaho 2014) (No. 1:09-cv-00540-REB).

<sup>39</sup> Letter from Lisa Foster, Dir., Off. for Access to Just., U.S. Dept. of Just., to Seattle City Council Members 3 (Oct. 13, 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf>.

<sup>40</sup> Brief for the United States as Amicus Curiae at 19, *City of Grants Pass v. Johnson*, No. 23-175 (petition for cert. filed Aug. 22, 2023), [http://www.supremecourt.gov/DocketPDF/23/23-175/302264/20240304183726571\\_23-175npUnitedStates.pdf](http://www.supremecourt.gov/DocketPDF/23/23-175/302264/20240304183726571_23-175npUnitedStates.pdf).

<sup>41</sup> *Decriminalizing Homelessness*, HUD EXCH. (2014), <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness/>.

aligned with this approach.”<sup>42</sup> These prominent acknowledgements by the U.S. government that punishing homelessness violates basic rights, combined with universal condemnation from the international community, establish a clear standard this Court should use to inform its interpretation of the Eighth Amendment. Propping up laws punishing homelessness through fines and fees would entail a step backwards from “the evolving standards of decency that mark the progress of a maturing society.”<sup>43</sup>

The U.S. has signed the Habitat II Declaration,<sup>44</sup> adopted in Istanbul in 1996, along with the subsequent Habitat III New Urban Agenda,<sup>45</sup> established in Quito in 2016. The New Urban Agenda, adopted by the U.N. General Assembly with the

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<sup>42</sup> *SNAPS in Focus: The Case Against Laws that Criminalize Homelessness*, HUD EXCH. (Oct. 6, 2014), <https://www.hudexchange.info/news/snaps-in-focus-the-case-against-laws-that-criminalize-homelessness>.

<sup>43</sup> *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958).

<sup>44</sup> U.N. Conference on Human Settlements (Habitat II), Istanbul Declaration on Human Settlements, 14 June 1996, A/CONF.165/14, available at: <https://unhabitat.org/istanbul-declaration-on-human-settlements-1996-habitat-agenda>.

<sup>45</sup> U.N. Conference on Housing and Sustainable Urban Development (Habitat III), The New Urban Agenda, 20 October 2016, A/RES/71/256, available at: <https://habitat3.org/the-new-urban-agenda/>.

affirmative vote of the U.S.,<sup>46</sup> calls upon States to “prevent and eliminate homelessness, as well as to combat and eliminate its criminalization.”<sup>47</sup> In 2023, the Report of the U.N. Secretary General on inclusive policies and programmes to address homelessness, called on States to review “legislation, regulations and policies that may result in discriminatory outcomes and taking steps to repeal or reform laws that penalize or criminalize homelessness and essential activities such as sleeping, begging, eating, or maintaining personal hygiene in public spaces.”<sup>48</sup> These documents underline the international community's position against the criminalization of homelessness and underscore the need for holistic strategies to address the root causes of homelessness.

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<sup>46</sup> Jesse Walter, *Explanation of a Position on a Resolution on the New Urban Agenda and Strengthening of the United Nations Human Settlements Program*, UNITED STATES MISSION TO THE UNITED NATIONS (Nov. 24, 2020), <https://usun.usmission.gov/explanation-of-position-on-a-resolution-on-the-new-urban-agenda-and-strengthening-of-the-united-nations-human-settlements-program/>.

<sup>47</sup> G.A. Res. 71/256, *New Urban Agenda*, ¶ 33 (Dec. 23, 2016), [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_71\\_256.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_256.pdf).

<sup>48</sup> U.N. Secretary-General, *Inclusive policies and programmes to address homelessness*, ¶ 82(f), U.N. Doc. A/78/236 (Jul. 24, 2023), <https://digitallibrary.un.org/record/4018593?ln=en&v=pdf>.



**D. The City of Grants Pass Has Violated Domestic and International Standards by Punishing Homelessness.**

The City of Grants Pass has no shelters for homeless individuals and a single transitional housing program.<sup>49</sup> Further, the City Council President of Grants Pass testified that the purpose of the ordinances was to “make it uncomfortable,” so that affected individuals “will want to move on down the road.”<sup>50</sup> This kind of intentional cruelty in punishing sleep, a universal and involuntary human requirement, is the exact type of “punishing conduct” that the DOJ states “uncontroversially” violates the Eighth Amendment,<sup>51</sup> as well as human rights standards.<sup>52</sup> The U.N. Committee against Torture (“CAT Committee”) has noted that sleep deprivation for prolonged periods is itself a form of torture or CIDT.<sup>53</sup> Moreover, anti-camping ordinances not only

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<sup>49</sup> *Grants Pass v. Johnson*, Brief in Opposition to Petition for Writ of Certiorari, No. 23-175, at 7, U.S. Supreme Court (2023).

<sup>50</sup> *Id.* at 1.

<sup>51</sup> Statement of Interest of the United States, *Bell v. City of Boise*, 993 F. Supp. 2d. 1237 (D. Idaho 2014) (No. 1:09-cv-00540-REB).

<sup>52</sup> Letter from Lisa Foster, Dir., Off. for Access to Just., U.S. Dept. of Just., to Seattle City Council Members 3 (Oct. 13, 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf> (affirming that the DOJ’s position in the *City of Boise* case was an “acknowledgement of the human rights of people experiencing homelessness.”).

<sup>53</sup> Committee Against Torture, U.N. GAOR, 52d Sess., Supp. No. 44, at ¶ 257, U.N. Doc. A/52/44 (1997). *See also* Committee Against Torture, Concluding Observations on the Third to Fifth

fail to address homelessness but impede “subsequent employment and access to most housing,” trapping individuals in poverty and exacerbating homelessness.<sup>54</sup>

Additionally, by defining its prohibition on camping so expansively to include any bedding or protection from the elements,<sup>55</sup> Grants Pass forces individuals who have nowhere else to go to “choose” between arrest or exposure to extreme temperatures. Both the CAT Committee and Special Rapporteur on Torture have identified exposure to extreme temperatures as a form of torture or CIDT.<sup>56</sup> In fact,

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Periodic Reports of United States of America, U.N. Doc. CAT/C/USA/3-5, at its 1264th and 1267th meetings, and adopted at its 1276th and 1277th meeting (Nov. 20, 2014), available at <https://www.justsecurity.org/wp-content/uploads/2014/11/UN-Committee-Against-Torture-Concluding-Observations-United-States.pdf> (identifying sleep deprivation as a form of prisoner and detainee abuse practiced by the U.S. Government in Guantanamo Bay and other detention facilities).

<sup>54</sup> Hum. Rts. Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶¶ 45, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

<sup>55</sup> *Grants Pass v. Johnson*, Brief in Opposition to Petition for Writ of Certiorari, No. 23-175, at 3, U.S. Supreme Court (2023).

<sup>56</sup> Committee Against Torture, Summary Record of the 339th Meeting, 20th Sess., U.N. Doc. CAT/C/SR.339 (18 May 1998), available at <https://www.un.org/unispal/document/auto-insert-184891/>; Torture Convention/Israel special report – CAT meeting – Summary record, “Consideration of Reports Submitted by State Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Israel,” <https://www.un.org/unispal/document/auto-insert-187716/>; Hum. Rts. Council, Report of the Special Rapporteur on the Question of

even without an ordinance punishing people for sleeping outside, the lack of shelter beds in Grants Pass forcing people to sleep in the cold is already cruel and a violation of human rights. Grants Pass is thus heaping punishment on top of suffering. This year, a majority of Oregon, and specifically the City of Grants Pass, experienced one of the harshest winters in years.<sup>57</sup> Oregon's Department of Transportation ("ODOT") reported that "[s]tatewide, this [was] one of the biggest and most wide stretching storms that we've seen in a long time."<sup>58</sup> The storms brought high winds, icy roads, and deep snowfall to most of the state, and the ODOT has stated that some communities are still recovering.<sup>59</sup> Based on these

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Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 17, U.N. Doc. A/59/324 (2004) (explaining that even without other forms of abusive interrogation or detention techniques, exposure to extreme temperatures constitutes torture or CIDT).

<sup>57</sup> Average Winter Weather in Grants Pass, Oregon, United States, WEATHERSPARK, <https://weatherspark.com/s/379/3/Average-Winter-Weather-in-Grants-Pass-Oregon-United-States>; Kelsey McGee, Mid-January Series of Severe Winter Storms Spikes ODOT's Hours in Overtime, Tons of Salt, Many Gallons of Deicer Used, KTVZ (Jan. 26, 2024, 9:00 PM), <https://ktvz.com/news/oregon-northwest/2024/01/26/mid-january-series-of-severe-winter-storms-spikes-odots-hours-in-overtime-tons-of-salt-many-gallons-of-deicer-used/>.

<sup>58</sup> Kelsey McGee, Mid-January Series of Severe Winter Storms Spikes ODOT's Hours in Overtime, Tons of Salt, Many Gallons of Deicer Used, KTVZ (Jan. 26, 2024, 9:00 PM), <https://ktvz.com/news/oregon-northwest/2024/01/26/mid-january-series-of-severe-winter-storms-spikes-odots-hours-in-overtime-tons-of-salt-many-gallons-of-deicer-used/>.

<sup>59</sup> *Id.*

extreme weather conditions, it is clear that residents of Grants Pass would have died had they attempted to sleep outside without any protection.<sup>60</sup>

## **II. THE ROOT CAUSE OF THE CRIMINALIZATION AND PUNISHMENT OF HOMELESSNESS IS THE FAILURE TO RECOGNIZE THE RIGHT TO ADEQUATE HOUSING.**

### **A. International Human Rights Law Recognizes the Right to Adequate Housing.**

Rights violations caused by the punishment of homelessness stem from the failure to recognize the right to adequate housing—a fundamental right under international law. International instruments that provide for this right include the UDHR,<sup>61</sup> International Convention on the Elimination of Racial Discrimination (“ICERD”),<sup>62</sup> International Covenant on Economic, Social and Cultural Rights (“ICESCR”),<sup>63</sup> and Convention on the Elimination of

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<sup>60</sup> 60-Day Extended Weather Forecast for Grants Pass, OR, ALMANAC.COM (2024), <https://www.almanac.com/weather/longrange/OR/Grants%20Pass>.

<sup>61</sup> UDHR, *supra* note 6 at art. 25(1).

<sup>62</sup> International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iii), *ratified* Oct. 21, 1994, 660 UNTS 195, 212 [hereinafter ICERD].

<sup>63</sup> International Covenant on Economic, Social, and Cultural Rights art. 11, *signed* Oct. 05, 1977, 993 U.N.T.S. 3.

all Forms of Discrimination Against Women.<sup>64</sup> As the U.N. Committee on Economic, Social and Cultural Rights (“CESCR”) has explained, the right to adequate housing is not merely a right to shelter, nor does it require that governments provide a house to every person free of charge.<sup>65</sup> Instead, it requires that governments take steps to ensure all people are able to house themselves with dignity.<sup>66</sup> This obligates housing with security of tenure, including protection against forced eviction, and availability of services, materials and infrastructure—both of which are affordable, habitable, accessible, well-located, and culturally adequate.<sup>67</sup>

**B. Homelessness is a Prima Facie Violation of the Right to Adequate Housing, as well as a Violation of Civil and Political Rights.**

Homelessness itself is a prima facie violation of the right to adequate housing. As CESCR explained, “a State party to [ICESCR] in which any significant number of individuals are deprived of basic shelter and housing is, prima facie, failing to discharge its

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<sup>64</sup> Convention on the Elimination of All Forms of Discrimination Against Women art. 14(2)(h), *signed* July 17, 1980, 1249 U.N.T.S. 13.

<sup>65</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, ¶ 7, U.N. DOC. E/1992/23 (1991).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at ¶ 8.

obligations under the Covenant.”<sup>68</sup> While the U.S. has not yet ratified ICESCR, as a signatory, it must not act in any way that violates the Covenant’s object and purpose.<sup>69</sup> Homelessness itself violates this and punishing it makes it far worse. As the Special Rapporteur on Adequate Housing noted, the “right to adequate housing is, at its core, the right to a place to live in dignity and security.”<sup>70</sup> Punishment heaped upon people already experiencing homelessness for engaging in life sustaining activities directly undermines their dignity and security. Evolving standards of human rights recognize that such punishments of extremely vulnerable people are inconsistent with international law.<sup>71</sup>

Moreover, homelessness is not just a violation of the right to adequate housing, but also a violation of various civil and political rights, espoused in treaties the U.S. has ratified.<sup>72</sup> In addition to violating

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<sup>68</sup> Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, ¶ 48, U.N. Doc. A/HRC/31/54 (2015) (citing CESCR, General Comment No. 3 (1990), ¶ 10).

<sup>69</sup> RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018)

<sup>70</sup> Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, ¶ 11, U.N. Doc. A/HRC/34/51 (2017).

<sup>71</sup> *Lăcătuș v. Switzerland*, 14065/15 Eur. Ct. H.R. (2021).

<sup>72</sup> Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate*

the prohibition against CIDT, punishing homelessness violates the rights to life,<sup>73</sup> liberty and security of person,<sup>74</sup> freedom of movement,<sup>75</sup> and equality and non-discrimination.<sup>76</sup> As the Special Rapporteur on Adequate Housing explained, “homelessness is an extreme violation of the rights to adequate housing and non-discrimination and often also a violation of the rights to life, to security of person, to health, to protection of the home and family and to freedom from [CIDT].”<sup>77</sup>

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*standard of living, and on the right to non-discrimination in this context*, ¶ 4, U.N. Doc. A/HRC/31/54 (2015).

<sup>73</sup> ICCPR, *supra* note 7 at art. 6. Human Rights Committee, General Comment No.36, ¶ 26 (“The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include ... deprivation of indigenous peoples’ land, territories and resources... widespread hunger and malnutrition...and homelessness. available at <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.”)

<sup>74</sup> ICCPR, *supra* note 7 at art. 9.

<sup>75</sup> ICCPR, *supra* note 7 at art. 12.

<sup>76</sup> ICCPR, *supra* note 7 at art. 4(1) and art. 26; ICERD, *supra* note 62 at art. 5.

<sup>77</sup> Hum. Rts. Council, *supra* note 54 at ¶ 4.

### **C. The U.S. Is Obligated to Address Racial Discrimination in Homelessness and its Criminalization.**

Having ratified the ICERD, the U.S. has undertaken “to eliminate racial discrimination” and “guarantee” equality “in the enjoyment of . . . the right to housing.”<sup>78</sup> However, in the U.S., homelessness is deeply intertwined with racial discrimination and systemic racism. Despite only constituting approximately 12% of the general population in the U.S., Black people account for 37% of unhoused persons, due to long-standing laws and policies adversely affecting Black communities.<sup>79</sup> As such, the criminalization of homelessness disproportionately impacts Black communities. Moreover, Black people are more likely to receive citations under laws that prohibit life-sustaining activities than white people.<sup>80</sup> As the U.N. Special Rapporteur on Racism has recognized, “The enforcement of minor law enforcement violations . . . take a disproportionately

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<sup>78</sup> ICERD, *supra* note 62 at art. 5(e)(iii).

<sup>79</sup> Tanya de Sousa et al., *The 2022 Annual Homeless Assessment Report (AHAR) to Congress*, U.S. DEP’T HOUS. & URB. DEV. 2 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

<sup>80</sup> NAT’L L. CTR. HOMELESSNESS & POVERTY, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES 3 (2014), [https://homelesslaw.org/wp-content/uploads/2018/10/cerd\\_housing\\_report\\_2014.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/cerd_housing_report_2014.pdf). *See also* LAWYERS’ COMMITTEE FOR CIVIL RIGHTS, CITED FOR BEING IN PLAIN SIGHT 5-6 (2020), [https://lccrsf.org/wp-content/uploads/2020/09/LCCR\\_CA\\_Infraction\\_report\\_4WEB-1.pdf](https://lccrsf.org/wp-content/uploads/2020/09/LCCR_CA_Infraction_report_4WEB-1.pdf).



high number of African American homeless persons to the criminal justice system.”<sup>81</sup> The USICH has itself acknowledged that “Anti-Black racism continues to be ignored as a root cause of homelessness, and Black unhoused persons continue to be inadequately protected from housing discrimination, over-policing, criminalization of poverty, and other systemic forces that contribute to their overrepresentation in the total population of unhoused persons.”<sup>82</sup> Criminalization further places law enforcement as front-line responders to homelessness, all too often resulting in violations of physical integrity that have a disparate impact by race.<sup>83</sup> In its 2023 report, the U.N. Expert

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<sup>81</sup> Hum. Rts. Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diene, mission to the United States of America*, ¶ 64, U.N. Doc. A/HRC/11/36/Add.3 at para. 64 (Apr. 28, 2009).

<sup>82</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 28 (2022), [https://www.usich.gov/sites/default/files/document/All\\_In.pdf](https://www.usich.gov/sites/default/files/document/All_In.pdf) (quoting a homeless rights advocate from Washington, District of Columbia).

<sup>83</sup> Comm. Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, *Concluding observations on the combined third and fifth periodic reports of the United States of America*, ¶ 26, U.N. DOC. CAT/C/USA/CO/3-5 (Dec. 19, 2014) (highlighting the disproportionate and increasing incidents of police brutality against people of color in the U.S.). *See, e.g.* Gregory Yee, *O.C. sheriff's deputy who fatally shot unarmed, homeless Black man won't be charged*, L.A. TIMES (Feb. 11, 2022), <https://www.latimes.com/california/story/2022-02-11/orange-county-sheriffs-deputy-no-charges-kurt-reinhold-fatal-shooting>; AP, *Indianapolis police officer accused of kicking homeless man in the face*, WDRB (Oct. 13, 2021), <https://www.wdrb.com/news/indianapolis-police-officer-accused->

Mechanism on Law Enforcement and Racism expressed its “deep[] concern[] . . . that homelessness persecution and criminalization is ineffective in addressing the issue and deeply damaging to individuals and communities” and urged the U.S. “to address the root causes of homelessness, including the confluence of various and intersecting layers of discrimination and systemic racism at the heart of the housing problem.”<sup>84</sup>

### CONCLUSION

As the top international human rights experts on housing, homelessness, extreme poverty, as well as cruel, inhuman and degrading treatment, we unequivocally condemn laws that force human beings to make a choice between keeping themselves alive through life-sustaining activities due to lack of available alternatives, or subjecting themselves to arrest or other punishment that becomes a slippery slope of escalating vulnerability. By using such laws to purposefully and cruelly exclude people experiencing homelessness from its public spaces and subjecting them to arrest, fines, and fees, Grants Pass

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[of-kicking-homeless-man-in-the-face/article\\_e0a2bc3e-2c2b-11ec-8714-8787cda497e3.html](https://www.ohchr.org/en/press-releases/2023/09/ohchr-reports-on-homelessness-in-the-us).

<sup>84</sup> Hum. Rts. Council, *Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement, Visit to the United States of America*, ¶¶ 121, 123, U.N. Doc. A/HRC/54/CRP.7 (Sept. 26, 2023). See also CERD Concluding Observations: USA, *supra* note 20 at ¶ 39 (noting with concern “the increasing number of state and local laws that criminalize homelessness and ... the disproportionately high number of persons belonging to racial and ethnic minorities affected by homelessness”).

has violated fundamental human rights. In defining “cruel and unusual punishment” under the Eighth Amendment, this Court has relied on international human rights standards as a moral benchmark in line with “evolving standards of decency.” Similarly, this Court should apply the clear and consistent standard, articulated by numerous human rights bodies, that laws punishing homelessness in the absence of any adequate alternative housing constitute CIDT and analogously violate the Eighth Amendment. Upholding the 9th Circuit’s ruling in this case is a first step, but ultimately, addressing the underlying causes of homelessness requires recognition of the right to adequate housing and measures to enable access to adequate housing for people experiencing homelessness.

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April 3, 2024

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