

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.,

Respondent.

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*On Petition for Writ of Certiorari  
to the U.S. Court of Appeals to the Ninth Circuit*

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**BRIEF OF AMICI CURIAE NATIONAL  
COALITION FOR HOMELESS VETERANS AND  
UCLA VETERANS' LEGAL CLINIC**

**IN SUPPORT OF RESPONDENTS**

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

Amici curiae are XX organizations who provide services to veterans of the U.S. military. Our memberships or clients face the harsh and dehumanizing consequences that accompany criminalization of homelessness, whether through civil infractions or low-level criminal offenses that target survival activities of unhoused persons. We have a duty to ensure that the voices of veterans are included in the resolution of this case. The stories provided in this brief are not outliers. They are representative of the over 35,000 unhoused veterans, who despite having pledged willingness to make the ultimate sacrifice for our country, now find themselves sleeping on our sidewalks, under bridges, on benches, and in abandoned buildings every night.

## SUMMARY OF ARGUMENT

Our nation's leaders have expressed a commitment to veterans of the U.S. military. In recognition of the sacrifices servicemembers make on our collective behalf, government leaders at all levels, regardless of political party, acknowledge the disgrace accompanying the phrase "homeless veteran." Despite numerous statements and initiatives to end

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, amici state that no counsel for a party authored any part of this brief. No person or entity other than amici and their counsel made a monetary contribution to the preparation or submission of this brief.

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veteran homelessness at the federal, state, and local levels, a disproportionate number of unsheltered veterans still stay on our streets every night. The U.S. Department of Housing and Urban Development (HUD) counted 35,574 veterans experiencing homelessness (sheltered and unsheltered) on one night in January 2023.<sup>2</sup> That figure represents an increase of over 7.4% from the previous year<sup>3</sup> and an appalling 14.3% increase in unsheltered veteran homelessness from 2022 to 2023, compared to a 9.7% increase in the unsheltered civilian population.<sup>4</sup>

Reversal in this case will criminalize thousands of veterans merely for being unhoused. To permit Grants Pass and other localities to punish survival—sleeping with adequate coverings—will violate decades of this Court’s Eighth Amendment jurisprudence prohibiting punishment of status. Such a decision eviscerates the minimal protections unhoused veterans have against degrading treatment while sleeping outside and in public spaces.

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<sup>2</sup> *VA Homeless Programs: Point-In-Time Count*, U.S. Dep’t Veterans Affs., [https://www.va.gov/homeless/pit\\_count.asp](https://www.va.gov/homeless/pit_count.asp) [<https://perma.cc/2WPB-BCUS>] (last updated Jan. 3, 2024).

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

<sup>4</sup> *Id.* See also Tanya de Sousa et al., U.S. Dep’t of Hous. & Urb. Dev., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress: Part 1*, at 11, 66 (2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf> [<https://perma.cc/X7NX-9N3G>] [hereinafter *2023 AHAR*].

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This Court cannot ignore the impact their decision will have on our nation's military veterans whose experiences as unhoused veterans are captured in this Brief. Part I presents data and information to understand the intertwined structural barriers and individual risks for homelessness among adult veterans. Part II provides the lived realities of unhoused veterans. The stories depict criminalization like the anti-sleeping laws at issue in this case, as well as sweeps and other enforcement actions. Veterans are less likely to leave homelessness when vital records, medications, and other items needed to receive services are discarded in these actions. Plus, local enforcement creates harsher and more cruel experiences for veterans.

## ARGUMENT

### I. REVERSAL WILL THWART THE U.S. GOVERNMENT'S COMMITMENT TO END VETERAN HOMELESSNESS

Three Presidents have pledged to end veteran homelessness.<sup>5</sup> In 2009, then President Barack Obama promised to “provide new help for homeless veterans, because those heroes have a home; it’s the country they served, the United States of America. And until we reach a day when not a single veteran

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<sup>5</sup> Throughout this brief, “homeless veteran” and “unhoused veteran” are used interchangeably. Researchers often use “homeless experienced” to connote an individual who has experienced homelessness in their lifetime.

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sleeps on our Nation’s streets, our work remains unfinished.”<sup>6</sup> Former President Trump recommitted: “Each warrior who fights for our Nation, along with their families, has earned our eternal gratitude . . . . Together we remain committed to fostering a national community of support for these brave heroes and their families.”<sup>7</sup> President Joe Biden echoed the obligation, stating, “Our Nation has only one truly sacred obligation: to properly prepare and equip our service members when we send them into harm’s way and to care for them and their families when they come home.”<sup>8</sup>

Even with these commitments, and despite an overall reduced percentage of unhoused veterans since 2009,<sup>9</sup> in 2023, HUD’s annual point-in-time count calculated a 7.4% increase in homeless veterans (sheltered and unsheltered) since the previous year.<sup>10</sup> Out of the 35,574 homeless veterans counted, 15,507 veterans experienced unsheltered homelessness on one night in January.<sup>11</sup> These figures

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<sup>6</sup> *Remarks to the 20th Anniversary of the Department of Veterans Affairs*, 1 Pub. Papers 258, 259 (Mar. 16, 2009).

<sup>7</sup> Proclamation No. 9962, National Veterans and Military Families Month, 2019, 3 C.F.R. 206, 207 (2020).

<sup>8</sup> Proclamation No. 10305, Veterans’ Day, 2021, 3 C.F.R. 300 (2022).

<sup>9</sup> *2023 AHAR*, *supra* note 4, at 3 (noting 52% decline in veterans experiencing homelessness since 2009, the baseline year in the AHAR for this count).

<sup>10</sup> *VA Homeless Programs: Point-In-Time Count*, *supra* note 2.

<sup>11</sup> *2023 AHAR*, *supra* note 4, at 66.



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show an appalling 14.3% increase in unsheltered veteran homelessness from 2022 to 2023, compared to a 9.7% increase in the unsheltered civilian population.<sup>12</sup> Veteran women are particularly overrepresented;<sup>13</sup> making up 2.9% of the population of unsheltered women though they only make up 1.3% of the adult population of women.<sup>14</sup> Data collection challenges suggest an undercount in veteran homelessness.<sup>15</sup>

The disproportionality in veteran homelessness is starker when analyzed by state.<sup>16</sup> In Nevada, veterans are 12.6% of the homeless population though they are only 8.3% of the general adult population. Veterans are 16.9% of the homeless population in Wyoming, but only 9.4% of the general adult population. 4.3% of the general population in

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<sup>12</sup> VA *Homeless Programs: Point-In-Time Count*, *supra* note 2; see also 2023 AHAR, *supra* note 4, at 11, 66.

<sup>13</sup> See Gail Gamache et al., *Overrepresentation of Women Veterans Among Homeless Women*, 93 Am. J. Pub. Health 1132, 1134 (2003) (finding “the risk of homelessness to be 2 to 4 times greater for women veterans than for nonveterans.”).

<sup>14</sup> 2023 AHAR, *supra* note 4, at 13, 67; B21001: Sex by Age by Veteran Status for the Civilian Population 18 Years and Over, 2022 American Community Survey, U.S. Census Bureau, <https://data.census.gov/table/ACSDT1Y2022.B21001?q=Veterans%20%20sex> [<https://perma.cc/D3W9-ABY5>].

<sup>15</sup> 2023 AHAR, *supra* note 4, at 65. See also U.S. Gov’t Accountability Off., GAO 20-433, *Homelessness: Better HUD Oversight of Data Collection Could Improve Estimates of Homeless Population* 7–8 (2020), <https://perma.cc/9MWY-XJFX>.

<sup>16</sup> 2023 AHAR, *supra* note 4, at 69–71 & app.

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California are veterans, but they comprise 5.8% of the homeless population.<sup>17</sup>

The Court should take notice that Oregon is one of the few states that experienced an overall increase in veteran homelessness since 2009.<sup>18</sup> Veterans make up 7.8% of the homeless population in Oregon though they only comprise 7.4% of the general adult population.<sup>19</sup> Currently over half (56%) of all veterans experiencing homelessness in Oregon are unsheltered.<sup>20</sup> Additionally, the state witnessed an alarming 23.4% increase in veteran homelessness from 2009 to 2023.<sup>21</sup>

### **A. Structural and Historic Barriers Related to Housing Contribute to Veteran Homelessness**

Reversal in this case jeopardizes the country's success in reducing veteran homelessness in the last 15 years. As this Part shows, structural and historic factors contribute to the rates of veteran

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<sup>17</sup> For statewide homeless veteran calculations, see *2023 AHAR*, *supra* note 4, app. For Veteran general adult population share estimates see *S2101: Percent Veterans, 2022 American Community Survey 1-Year Estimates*, U.S. Census Bureau, [https://data.census.gov/map/040XX00US56/ACSST1Y2022/S2101?q=Veterans&layer=VT\\_2022\\_040\\_00\\_PP\\_D1&loc=38.8595,-103.6826,z3.9030](https://data.census.gov/map/040XX00US56/ACSST1Y2022/S2101?q=Veterans&layer=VT_2022_040_00_PP_D1&loc=38.8595,-103.6826,z3.9030) [<https://perma.cc/M6JC-Q8WM>].

<sup>18</sup> *2023 AHAR*, *supra* note 4, at 71.

<sup>19</sup> *Id.* at 110.

<sup>20</sup> *Id.* at 69–71.

<sup>21</sup> *Id.* at 70.

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homelessness and the likelihood of moving into permanent housing. Community factors such as affordable housing stock, labor market conditions, eviction policies and practices, racial discrimination, and inequality within the military are important to consider alongside the individual-level vulnerabilities discussed below, such as risk of suicide, in-service trauma, and chronic illnesses.<sup>22</sup> Criminalization only exacerbates veterans' experiences of both individual-level and structural dynamics.

First, historic inequity contributes to women, Black, and Indigenous veterans' overrepresentation in the numbers of veterans experiencing homelessness. According to the 2023 Annual Homelessness Assessment Report to Congress:

- “[W]omen veterans experiencing homelessness were more likely to be found in unsheltered locations than their male counterparts (54% vs. 42%).”<sup>23</sup>
- “Black veterans comprised 36% of veterans experiencing sheltered homelessness and 25% of veterans experiencing unsheltered

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<sup>22</sup> Johanna K. Anderson et al., U.S. Dep’t of Veterans Affs. Health Servs. Rsch. & Dev. Serv., *Factors Associated with Homelessness Among U.S. Veterans: A Systematic Review* 4, 13, 27 (2023).

<sup>23</sup> 2023 AHAR, *supra* note 4, at 68.

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homelessness but only 12% of all U.S. veterans.”<sup>24</sup>

- Veterans who identify as American Indian, Alaska Native, or Indigenous made up 5% of the unsheltered veteran population though less than 1% of veterans.<sup>25</sup>

Racial, income, disability, and family discrimination among renters likely compounds the inability of such veterans to find and maintain housing.<sup>26</sup> Owners are less likely to rent to veterans with prior evictions or broken leases, criminal backgrounds, and poor credit.<sup>27</sup>

Second, systemic barriers to securing rental housing in Oregon contribute to its high rate of veteran homelessness. “Between September 2022 to August 2023, the 12 month eviction filing rate [in Oregon] is at 4% (1 in 25 renter households) as compared to 3% in 2019 (1 in 33 renter

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<sup>24</sup> *Id.* Multiple longitudinal studies reported increased homelessness among Black veterans compared to white veterans. Anderson et al., *supra* note 22, at 25.

<sup>25</sup> 2023 AHAR, *supra* note 4, at 13; U.S. Dep’t of Veterans Affs., *American Indian and Alaska Native Veterans: 2017*, at 6 (2020), <https://perma.cc/MC6K-9XJ7>.

<sup>26</sup> See, e.g., Luz Mairena Semeaha et al., *Rental Housing Needs and Barriers From the Perspective of Veterans with Disabilities*, 29 Hous. Pol’y Debate 542 (2019).

<sup>27</sup> See *id.*; see also Funding Opportunity Under Supportive Services for Veteran Families Program, 88 Fed. Reg. 84,396, 84,397 (Dec. 5, 2023).

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households).”<sup>28</sup> One out of three renters in that state pays more than 50% of their income in rent.<sup>29</sup> In Grants Pass, 58% of renters are cost burdened (paying more than 30% of their income in rent) with the highest cost burdens falling on those with the lowest incomes.<sup>30</sup>

### **B. Systemic Barriers to Accessing Important Veterans Affairs Benefits and Services Proven to Uplift Veterans out of Homelessness**

Multiple studies show veterans with higher VA service-connected disability rating—corresponding to higher compensation—had lower chances of experiencing homelessness than individuals with no or lower ratings.<sup>31</sup> Assisting veterans in obtaining VA care and VA benefits, including cash assistance, vocation and employment support, and housing vouchers through HUD-Veterans Affairs Supportive

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<sup>28</sup> *Oregon Eviction Filings*, Eviction Rsch. Network (Nov. 12, 2023), <https://perma.cc/9HJY-GB4P>.

<sup>29</sup> Or. Hous. & Cmty. Servs., *Oregon, Demographic and Housing Profiles* (2017), <https://perma.cc/D475-8V2H>.

<sup>30</sup> *City of Grants Pass Housing Production Strategy*, at I (2020), <https://perma.cc/NK5T-B87N>.

<sup>31</sup> Anderson et al., *supra* note 22, at 17.

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Housing (HUD-VASH) is essential to ending veteran homelessness.<sup>32</sup>

Discharge status plays a central role in access to VA benefits, healthcare, and services. Servicemembers are assigned a “character of service” or “discharge status” upon leaving military service. A servicemember’s character of service may be designated as Honorable, General, Other Than Honorable, Bad Conduct, or Dishonorable. According to a report from prominent veteran’s organizations, “While most servicemembers receive Honorable discharge statuses, a substantial percentage—approximately 7 percent of veterans discharged between 1980 and 2020—receive discharge statuses that are not Honorable, which are known as ‘bad paper.’”<sup>33</sup>

Former servicemembers with “bad paper” are associated with higher rates of homelessness and unemployment. Historically, structural racism,<sup>34</sup> traumatic brain injuries or mental health

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<sup>32</sup> HUD-VASH Vouchers, U.S. Dep’t of Hous. & Urb. Dev., [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/vash](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash) [<https://perma.cc/TUK6-L65W>].

<sup>33</sup> OUTVETS, Harv. L. Sch. Legal Servs. Ctr. & Veterans Legal Servs., *Turned Away: How VA Unlawfully Denies Healthcare to Veterans with Bad Paper Discharges* 1 (2020), <https://perma.cc/7GKS-F7KW> [hereinafter *Turned Away*].

<sup>34</sup> Hilary Herbold, *Never a Level Playing Field: Blacks and the GI Bill*, 6 J. Blacks in Higher Educ. 104 (1994).

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conditions,<sup>35</sup> in-service trauma (including racial harassment and military sexual trauma), and “Don’t Ask, Don’t Tell”<sup>36</sup> have led to downgrading discharge statuses that disqualify former servicemembers from VA healthcare, GI Bill, and VA home loan programs.<sup>37</sup> A report from the Connecticut Veterans Legal Center detailed the inequalities among Black servicemembers and discharge statuses. Based on government data from 2014-2020, Black servicemembers:

- “received over 25% of Other Than Honorable discharges, and over 30% of General discharges”<sup>38</sup>
- “overall—across all service branches—were approximately 1.5 times as likely as white servicemembers to receive an Other Than Honorable rather than Honorable discharge”<sup>39</sup>

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<sup>35</sup> Richard Bryant, *Post-Traumatic Stress Disorder vs. Traumatic Brain Injury*, 13 *Dialogues in Clinical Neuroscience* 251 (2011).

<sup>36</sup> Brandon Alford & Shawna J. Lee, *Toward Complete Inclusion: Lesbian, Gay, Bisexual & Transgender Military Members After Repeal of Don’t Ask, Don’t Tell*, 61 *Soc. Work* 257 (2016).

<sup>37</sup> See *Turned Away*, *supra* note 33, at 2–3, 5, 8; Conn. Veterans Legal Ctr. & Veterans Inclusion Project, *Discretionary Injustice* 14–18 (2022), <https://perma.cc/46DG-TF8Q>.

<sup>38</sup> *Discretionary Injustice*, *supra* note 37, at 5.

<sup>39</sup> *Id.*

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Finally, “[i]n the years 2014–2020, there was no discernable improvement over time in the racial disparities in discharge status.”<sup>40</sup>

Discriminatory discharge statuses contribute to an overall lack of access to VA healthcare for veterans. Veterans without care for their chronic illnesses or mental disabilities are more likely to live in poverty than other veterans,<sup>41</sup> which puts them at heightened risk for experiencing homelessness.<sup>42</sup> Although only 21% of unhoused adults experience Serious Mental Illness (SMI)<sup>43</sup> and only 3.7% of veterans experience SMI,<sup>44</sup> meaning “a mental, behavioral or emotional disorder that results in serious functional impairment, which substantially interferes with or limits one or more major life

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<sup>40</sup> *Id.*

<sup>41</sup> Linda Diem Tran, David Grant & May Ayadin, *The Mental Health Status of California Veterans*, UCLA Ctr. for Health Pol’y Rsch., Apr. 2016, at 1, 3, <https://perma.cc/B6CV-E6E5>.

<sup>42</sup> J. Tsai & D. Hooshyar, *Prevalence of Eviction, Home Foreclosure, and Homelessness Among Low-Income US Veterans: The National Veteran Homeless and Other Poverty Experiences Study*, 218 Pub. Health 181 (2022).

<sup>43</sup> U.S. Dep’t of Hous. & Urb. Dev., *HUD 2023 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations*, <https://perma.cc/2X2E-L955> (last updated Nov. 19, 2023).

<sup>44</sup> Ranak B. Trivedi et al., *Prevalence, Comorbidity, and Prognosis of Mental Health Among US Veterans*, 105 Am. J. Pub. Health 2564, 2565 (2015).



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activities,”<sup>45</sup> structural barriers to healthcare limit access to life improving resources and lead to premature death.<sup>46</sup> Only half of veterans with mental health disabilities related to their military service receive treatment.<sup>47</sup> Post-9/11 veterans have higher rates of severe disability, mental health disorders, trauma-related injuries, and substance use than their nonveteran peers and veterans of prior wars.<sup>48</sup>

Enforcement actions have perilous consequences for the health and survival of houseless people, and their path to housing. Although sweeps are not at issue in this case, they serve as the underlying basis for property confiscation. One study found that sweeps “severed people’s possessions, resources, and social supports needed to sustain health,” forced people to relocate into “more isolated, hazardous, and remote spaces,” were “a persistent source of distress and tension between unhoused

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<sup>45</sup> *Mental Illness*, Nat’l Inst. Mental Health, <https://www.nimh.nih.gov/health/statistics/mental-illness> [<https://perma.cc/843Y-WHRZ>].

<sup>46</sup> Trivedi et al., *supra* note 44, at 2566.

<sup>47</sup> Comm. to Evaluate the Dep’t of Veterans Affs. Mental Health Servs., Nat’l Acads. of Scis., Eng’g & Med., *Evaluation of the Department of Veterans Affairs Mental Health Services* 117 (2018), <https://perma.cc/VNY6-H857>.

<sup>48</sup> Jonathan Vespa, *Post-9/11 Veterans More Likely to Have a Service-Connected Disability*, U.S. Census Bureau (June 2, 2020), <https://www.census.gov/library/stories/2020/06/who-are-the-nations-veterans.html> [<https://perma.cc/M7UC-HUXL>].

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people and authorities.”<sup>49</sup> The National Health Care for the Homeless Council reports: “Health care providers (and other direct service providers) often cannot find their patients after a sweep, and have no knowledge of where they might have gone.”<sup>50</sup> Prescription medications are lost and usually unrecoverable.<sup>51</sup>

Tragically, housing instability and homelessness among veterans increases risk for suicide. Based on a study using a nationally representative sample of veterans, *the rate of suicide attempts is more than five times higher* among veterans who experienced homelessness within the previous two years than veterans without a history of homelessness.<sup>52</sup> Another more recent study found homeless experienced veterans were twice as likely to attempt suicide in their lifetime and had “nearly three times the odds of attempting suicide two or more times.”<sup>53</sup> Older veterans experiencing

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<sup>49</sup> Jamie Suki Chang et al., *Harms of Encampment Abatements on the Health of Unhoused People*, 2 SSM-Qualitative Rsch. Health, no. 100064, Dec. 2022, at 9.

<sup>50</sup> Nat'l Health Care for the Homeless Council, *Impact of Encampment Sweeps on People Experiencing Homelessness* 3 (2022), <https://perma.cc/JQJ2-VSSJ>.

<sup>51</sup> *Id.*

<sup>52</sup> Jack Tsai et al., *Addressing Veteran Homelessness to Prevent Veteran Suicide*, 69 Psychiatric Servs. 935, 936 (2018).

<sup>53</sup> Brandon Nichter, Jack Tsai & Robert Pietrzak, *Prevalence, Correlates, and Mental Health Burden Associated with Homelessness in U.S. Military Veterans*, 53 Psych. Med. 3952, 3959 (2023).

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homelessness are “twice as likely to die by suicide [than] those who were not.”<sup>54</sup> Tragically, the suicide rate among veterans increased by 11.6% from 2020 to 2021, while non-veteran adults increased by 4.5%.<sup>55</sup>

Unhoused veterans face barriers to housing through veteran-specific housing opportunities. With Supportive Services for Veteran Families (SSVF), the housing payments are generally limited to six or nine months and veteran families may be required to share in the cost of rent.<sup>56</sup> In the HUD-VASH program, veterans with mental health or substance use conditions were found to have more difficulty attaining and maintaining housing.<sup>57</sup> Generally, veterans with disabilities identified confusing housing regulations, unknowledgeable housing professionals, and affordable housing shortages in neighborhoods reflecting the veterans’ needs as barriers to finding and maintaining affordable rental housing.<sup>58</sup> One veteran in Part II remarked that although many people believe it is easier for veterans

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<sup>54</sup> *Id.* (citing John A. Schinka et al., *Increased Mortality Among Older Veterans Admitted to VA Homelessness Programs*, 67 *Psychiatric Servs.* 465 (2016)).

<sup>55</sup> VA Off. of Mental Health & Suicide Prevention, *2023 National Veteran Suicide Prevention Annual Report* 5, <https://perma.cc/XG8M-WBP4>.

<sup>56</sup> 38 C.F.R. § 62.34(a)(1), (7) (2023).

<sup>57</sup> Ann Elizabeth Montgomery & Megan Cusack, U.S. Dep’t Hous. & Urb. Dev., *HUD-VASH Exit Study: Final Report* 56, 77 (2017), <https://perma.cc/WQP9-UQ7N>. Cf. Semeaha et al., *supra* note 26 at 549.

<sup>58</sup> Semeaha et al., *supra* note 26, at 547–52.

to escape homelessness, “that is not the case” and “it is not a guaranteed thing,” despite the options available to veterans.<sup>59</sup>

### **C. Bureaucratic Barriers and Paperwork Challenges to Accessing Services**

Although this case involves a challenge to the extreme ordinances in Grants Pass punishing sleeping or resting on public property with only a blanket, in many communities, such laws serve as the basis for property and paperwork confiscation through sweeps of homeless individuals, undermining paths to income stability and housing. Sweeps destroy job-related items, such as uniforms or tools, and create criminal records that disqualify homeless individuals from certain jobs.<sup>60</sup>

A VA psychiatrist whose research and clinical practice centers on homeless experienced veterans recounted the connection between attaining housing and basic access to paperwork: “[T]he average person could not envision how many hours [we] spen[d] getting someone an ID or bank papers.”<sup>61</sup> When asked if she could provide a specific example of a patient struggling to secure housing due to paperwork she

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<sup>59</sup> Invisible People, *Homeless Veteran's ID Taken by Police Stripped of Access to Shelter*, YouTube, at 00:01:52–00:03:05, (July 27, 2023), <https://youtu.be/CcLWFZ56OOU>.

<sup>60</sup> Nat'l Health Care for the Homeless Council, *supra* note 50, at 6.

<sup>61</sup> Interview with VA Psychiatrist (Mar. 15, 2024) (transcript on file with authors).

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mentioned “vividly” remembering one veteran. This person, who was 100% service-connected, had diagnoses of schizophrenia and complex neurological disorder, lived in his vehicle while receiving VA services. He secured competitive employment at the VA. Despite the VA’s best efforts, after 8 months, he does not have necessary paperwork to enroll in HUD-VASH, so he remains unhoused.<sup>62</sup> She continued:

Why isn't this guy housed and he's working a competitive job at the VA. . . . We have these [ ] examples of guys like this. They're actually very engaged. They are seeking care. He was on an injectable medication. He wanted to work. He had made this enormous recovery from being on the streets, but it's like, and why isn't he housed. It's a paperwork problem, and he's been on hold for years.

She explains the significance of paperwork being lost and the connection to housing acquisition:

Hours and hours and days of time spent getting documents sort of go down the drain because we either can't find [the person] or we can't get things mailed and delivered, or we finally get the document and they lose it because it was in a backpack that got confiscated, or in a you know, a shopping cart that they were told they couldn't keep in a transitional housing facility that they had to

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<sup>62</sup> *Id.*

move to because they couldn't be on the street. The documentation thing can't be understated, but it's just hard, and unless you've sat with a veteran [you wouldn't know].<sup>63</sup>

She concluded, “You can see how many people get lost in the shuffle, even in this extremely enriched [VA] system of having so many resources and so many vouchers.”<sup>64</sup>

Veterans are willing to die for our freedom, and the nation’s leaders have pledged to end veteran homelessness. Yet, this Part shows veterans are disproportionality represented among the houseless and provides structural and individual factors contributing to unsheltered veterans.

## **II. UNHOUSED VETERANS REPORT CRIMINALIZATION AND SWEEPS MAKE IT HARDER TO ACCESS SERVICES AND EXACERBATES THE SEVERITY OF HOMELESSNESS**

To show the lived realities of unhoused veterans, Amici present stories of veteran plaintiffs in civil rights actions and video testimonials available at the Invisible People website.<sup>65</sup> They are presented in the present tense, though some cases went to

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Invisible People, <https://invisiblepeople.tv/>, [<https://perma.cc/Q6RQ-KRCJ>].

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judgment, settled, or were dismissed on other grounds.

These stories include enforcement of anti-camping laws before this Court, but also encompass descriptions of sweeps and property confiscation. While this case does not involve sweeps, when homeless people are arrested pursuant to anti-camping ordinances like those in Grants Pass, they face similar consequences to individuals subjected to sweeps. A reversal of *Grants Pass* will lead to harsher circumstances because police could cite and fine more unhoused veterans.

The stories of Erin, Duane, Bob, Lucrecia, Ken, Jerry, Thomas, Doug, Emilio presented here serve three purposes, and sometimes illustrate more than one goal. First, they show how enforcement actions affect those with chronic illnesses and exacerbate or are themselves disabling. Second, they show the routine nature of property destruction—loss of vital records, photos, medals, and medicine—for unhoused veterans. Third, veterans’ stories show the callousness of some localities, including banishment threats and dehumanizing treatment. These are their stories.

### **A. Enforcement Actions Make Homelessness Worse for Disabled, Elderly, and Chronically Ill Veterans; Neglects Their Sacrifices to the Nation**

1. Erin Spencer – Retired Marine With Chronic Pain and Service-Connected

Disabilities Arrested for Habitation and  
Injured in the Process

Erin Spencer is a disabled Marine Corps veteran.<sup>66</sup> He has a shoulder injury from his time in service that “puts pressure on the nerve” under his collar bone, causing him chronic pain, and limiting his mobility.<sup>67</sup> It also limits his ability to lift weighty items.<sup>68</sup> Mr. Spencer also suffers from mental health conditions, stemming from “a childhood of abuse and neglect [and] from his time in the military . . . .”<sup>69</sup>

Mr. Spencer stays at an encampment at 8<sup>th</sup> and Harrison in Berkeley, California.<sup>70</sup> In his shelter, he stores items he uses to make a living, such as tools and bike parts.<sup>71</sup> He cannot move these items because of his disability.<sup>72</sup> Mr. Spencer requested, on numerous occasions, that the City help him move his

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<sup>66</sup> *Prado v. City of Berkeley*, No. 23-cv-04537-EMC, 2023 WL 6307921, at \*3 (N.D. Cal. Sept. 27, 2023).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> First Amended Complaint for Declaratory and Injunctive Relief ¶ 38, *Prado v. City of Berkeley*, No. 23-cv-04537-EMC (N.D. Cal. Nov. 10, 2023), Doc. No. 41.

<sup>70</sup> *Id.* 32.

<sup>71</sup> Plaintiffs’ Emergency Notice of Motion and Motion for a Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Issue at 5, *Prado v. City of Berkeley*, No. 23-cv-04537-EMC (N.D. Cal. Sept. 4, 2023), Doc. No. 2 [hereinafter Pls.’ Emergency Mot.].

<sup>72</sup> *Id.*



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belongings.<sup>73</sup> Despite stating it will help, the City has never done so.<sup>74</sup>

On November 7, 2023, Mr. Spencer was arrested for “illegal lodging” in Berkeley when he was leaving the Harrison Street encampment with his cart.<sup>75</sup>

All of a sudden, I was surrounded by police officers. They grabbed me and surrounded me. They forced me to sit on the sidewalk. They handcuffed me before ever telling me I was arrested or detained. I have a service-connected shoulder disability that makes it very painful to have my arms behind my back and I told them this, but they cuffed me anyway even though I was not resisting. . . . I have PTSD related to previous incarcerations, in addition to other traumas, and I left jail feeling shaken and betrayed. I

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Declaration of Erin Spencer Iso Plaintiffs’ Motion To Enforce ¶¶ 2–3, *Prado v. City of Berkeley*, No. 23-cv-04537-EMC (N.D. Cal. Nov. 13, 2023), Doc. No. 42-2 [hereinafter Decl. of Spencer]. The court temporarily enjoined the City from closing Spencer’s camp. Order Temporarily Enjoining Encampment Closure, *Prado*, No. 23-cv-04537-EMC (N.D. Cal. Nov. 13, 2023), Doc. No. 45, 2023 WL 7558960, and later denied Plaintiffs’ injunctive relief on the abatement order, as the abatement was over. Civil Minutes, *Prado*, No. 23-cv-04537-EMC (N.D. Cal. Nov. 15, 2023), Doc. 50. Litigation continues in this case.

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have been having difficulty processing my thoughts and memories since then.<sup>76</sup>

After leaving jail, when Mr. Spencer came back to the place he stays, “the sidewalk was just empty.”<sup>77</sup> Mr. Spencer’s belongings were gone, confiscated by the City.<sup>78</sup> The arrest and property confiscation added insult to injury, especially because Mr. Spencer repeatedly communicated his need for accommodations to the City.<sup>79</sup>

Mr. Spencer described what it means to be a repeated victim of sweeps and clean-ups:

The massive number of times the City or State have taken all I possess leaves me in a vacuous déjà vu, yet again. . . This is the ninth time the City has taken nearly everything from me after I’ve constructed the carts necessary to keep myself mobile . . . I fear my loved ones will be left seeking redress for a corpse.<sup>80</sup>

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<sup>76</sup> Decl. of Spencer, *supra* note 75, ¶¶ 2–5.

<sup>77</sup> *Id.* 6.

<sup>78</sup> *Id.* See generally Supriya Yelimeli, *Berkeley Police Arrest 2 at West Berkeley Homeless Camp Closure*, Berkeleyside (Nov. 7, 2023, 4:35 PM), <https://www.berkeleyside.org/2023/11/07/berkeley-police-arrest-resident-observer-west-berkeley-homeless-camp-closure> [https://perma.cc/K5YE-AHX9].

<sup>79</sup> Pls.’ Emergency Mot., *supra* note 71, at 5.

<sup>80</sup> Decl. of Spencer, *supra* note 75, 15.

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### 2. Duane Nichols – 60-year-old Homeless Veteran with Multiple Physical Disabilities and Visual Impairment

Duane Nichols is a 60-year-old disabled, homeless Navy veteran<sup>81</sup> living in San Clemente, California with no source of income.<sup>82</sup> Mr. Nichols is disabled and relies on a tricycle for mobility assistance.<sup>83</sup> He suffers from limited vision, chronic obstructive pulmonary disease, arthritis, blood clots, and hip issues.<sup>84</sup> He has been homeless for the last 30 years.<sup>85</sup>

For over two years, Mr. Nichols slept in a train station's parking lot.<sup>86</sup> At night, he was often told he

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<sup>81</sup> Ericka Ritchie, *Homeless at San Clemente's North Beach Relocated to City Lot, as Legal Motion Is Filed to Remove Judge from Related Lawsuit*, Orange Cnty. Reg. (May 24, 2019, 8:03 PM), <https://www.ocregister.com/2019/05/24/homeless-at-san-clemente-s-north-beach-relocated-to-city-lot-as-legal-motion-is-filed-to-remove-judge-from-related-lawsuit/>.

<sup>82</sup> Second Amended Complaint 68, *Hous. is a Hum. Right Orange Cnty. v. Cnty. of Orange*, No. 8:19-cv-00388-PA-JDE (C.D. Cal. Sept. 16, 2019), Doc. No. 99.

<sup>83</sup> *Id.* 70.

<sup>84</sup> *Id.*

<sup>85</sup> Kristen Lago, *San Clemente Homeless Camp Requires Proof of a Tie to the City*, Spectrum News 1 (Sept. 4, 2019, 10:59 AM), [https://spectrumnews1.com/ca/orange-county/news/2019/09/04/san-clemente-homeless-camp-requires-proof-of-a-tie-to-the-city?cid=share\\_clip](https://spectrumnews1.com/ca/orange-county/news/2019/09/04/san-clemente-homeless-camp-requires-proof-of-a-tie-to-the-city?cid=share_clip) [<https://perma.cc/8SBY-XELY>].

<sup>86</sup> Second Amended Complaint, *supra* note 82, 71.

needed to leave and threatened with arrest by Orange County Sheriff's Deputies.<sup>87</sup> However, he had nowhere else to go because the shelters serving the area were always either at or over capacity.<sup>88</sup>

Mr. Nichols takes blood-thinning medication for his blood clot condition.<sup>89</sup> The medication makes it dangerous for Mr. Nichols to be exposed to the sun.<sup>90</sup> Due to his chronic health conditions, San Clemente's law requiring unhoused people to take down their tents everyday is especially burdensome.<sup>91</sup> Amici note sleeping in tents is not the type of law criminalized by the City of Grants Pass and not an issue before the Court.

Because of his age and disabilities, Mr. Nichols tries to avoid encounters with law enforcement.<sup>92</sup> However, avoiding homeless enforcement is unlikely, remarking:

It is very difficult when the police say they will cite and arrest us for camping even with no indoor option available because I am forced to

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.* ¶ 69.

<sup>89</sup> Declaration of Duane Nichols in Support of a Temporary Restraining Order 15, *Hous. is a Hum. Right Orange Cnty. v. Cnty. of Orange*, No. 8:19-cv-00388-PA-JDE (C.D. Cal. June 30, 2019), Doc. No. 69-4 [hereinafter Decl. of Nichols]; Second Amended Complaint, *supra* note 82, ¶ 70.

<sup>90</sup> *Id.* ¶ 16.

<sup>91</sup> *Id.* 18.

<sup>92</sup> *Id.*

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choose between risking arrest and risking threats to my health and safety in an open space with no protection from the elements and no access to food or water.<sup>93</sup>

As a veteran with multiple disabilities, he cannot sustain the shuffling and stress of sweeps.<sup>94</sup>

### 3. Bob –Disabled Veteran in and out of Homelessness for 10 Years Whose Wife was Severely Injured During a Sweep

Bob is a homeless, disabled Marine and Navy veteran living in Los Angeles.<sup>95</sup> He served in the military for 17 ½ years before he was medically discharged.<sup>96</sup> He wanted to re-enlist but was “too damaged” from his years in service.<sup>97</sup>

Despite his lengthy and decorated service to the nation, Bob and his wife, a cancer survivor, are homeless.<sup>98</sup> He has been homeless off and on for ten

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<sup>93</sup> *Id.* 17.

<sup>94</sup> The court dismissed Mr. Nichols’ claims on the law without discounting his story. *Hous. is a Hum. Right Orange Cnty. v. Cnty. of Orange*, No. 8:19-cv-00388-PA-JDE, 2019 WL 8012374 (C.D. Cal. Oct. 28, 2019).

<sup>95</sup> Invisible People, *17 Years Military to 10 Years Homeless in Los Angeles*, YouTube, at 00:00:11–00:00:40 (Sept. 8, 2021), [https://www.youtube.com/watch?v=Pf13p\\_MEZag](https://www.youtube.com/watch?v=Pf13p_MEZag).

<sup>96</sup> *Id.* at 00:00:22–00:00:00:40.

<sup>97</sup> *Id.* at 00:00:22–00:00:46.

<sup>98</sup> *Id.* at 00:02:45–00:02:47.

years.<sup>99</sup> For a short period of time, Bob and his wife rented an apartment, however, they lost it after it was infested with bedbugs and they were unable to afford to fumigate and replace their affected property.<sup>100</sup> Another time they stayed with a friend and helped with rent.<sup>101</sup> Sadly, the friend passed away and they didn't have first and last month's rent, necessary to sign a lease with the landlord.<sup>102</sup>

During sweeps occurring over three years, police discarded Bob's most valuable property. They threw away his tools, which he values at around \$22,000 dollars.<sup>103</sup> The police also took his tent, which was his shelter at the time, leaving him "with nothing."<sup>104</sup>

Bob recounted, "My wife, she got hurt on a clean-up because [the police] were trying to hurry [us] up and we were trying to save my tools."<sup>105</sup> As a result of the police rushing them Bob's wife tripped and fell.<sup>106</sup> She cut her leg so severely that it resulted in a blood infection.<sup>107</sup> At the time Bob shared his

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<sup>99</sup> *Id.* at 00:09:55–00:10:08.

<sup>100</sup> *Id.* at 00:10:08–00:10:31.

<sup>101</sup> *Id.* at 00:10:47–00:11:02.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 00:06:43–00:06:53.

<sup>104</sup> *Id.* at 00:07:26–00:07:38.

<sup>105</sup> *Id.* at 00:11:46–00:12:07.

<sup>106</sup> *Id.* at 00:11:43–00:12:19.

<sup>107</sup> *Id.* at 00:11:46–00:12:07.

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story, his wife was hospitalized for almost two weeks.<sup>108</sup>

Bob's video paints the picture of a man well-known in his community, working to change his circumstances, despite consequences to his health.<sup>109</sup> On good days, he's in the neighborhood fixing cars and taking on odd jobs to make ends meet.<sup>110</sup> However, his disabilities—stemming from his time in service—make it hard to work every day, though he wants to.<sup>111</sup>

### 4. Lucrecia – Homeless Veteran and Cancer Survivor

Lucrecia is a homeless Army veteran and cancer survivor.<sup>112</sup> She lives in Los Angeles's Koreatown.<sup>113</sup> She became homeless three years earlier when she lost her job due to cancer and drug use that started during her cancer treatments.<sup>114</sup> Lucrecia explained how her cancer was central to becoming unhoused:

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<sup>108</sup> *Id.* at 00:11:15–00:11:21.

<sup>109</sup> *Id.* at 00:02:49–00:03:19.

<sup>110</sup> *Id.* at 00:02:57–00:03:19.

<sup>111</sup> *Id.* at 00:00:22–00:00:54; 00:03:01–00:03:19; 00:17:25–00:18:29.

<sup>112</sup> Invisible People, *Cancer Survivor and Homeless Veteran Living in a Tent in Los Angeles's Koreatown*, YouTube, at 00:00:07–00:00:38; 00:01:42–00:01:44 (Feb. 10, 2020), [https://youtu.be/Omevex\\_4MOs](https://youtu.be/Omevex_4MOs).

<sup>113</sup> *Id.* at 00:09:07–00:10:10.

<sup>114</sup> *Id.* at 00:00:38–00:01:40.

So the tumor was very aggressive so that I had [to] miss work. Miss work to the point where I couldn't stay working. My health just got worse. Because even though [the] cancer was gone, my immune system was really, really deteriorated.<sup>115</sup>

While homeless, Lucrecia experienced repeated sweeps and police harassment.<sup>116</sup> On one occasion, the police confiscated all her property, leaving her with just the clothes she was wearing.<sup>117</sup> Property confiscations of this nature became commonplace.

Over a six-week period, police confiscated Lucrecia's property three times:

I was finally able to get an RV and then pay for it little by little . . . [T]hey took it with everything I had and then a week later they took everything I had in a tent. . . . A week later, they wiped me out here, everything. . . . They took all the tents.<sup>118</sup>

Prior to losing her housing, Lucrecia was an advocate of the unhoused. In March 2016, she received an award from the Mayor of Los Angeles for her homeless "charity work."<sup>119</sup> Lucrecia remains

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<sup>115</sup> *Id.* at 00:01:26–00:01:40.

<sup>116</sup> *Id.* at 00:08:25–00:08:58.

<sup>117</sup> *Id.* at 00:08:42–00:08:55.

<sup>118</sup> *Id.* at 00:09:38–00:10:10.

<sup>119</sup> *Id.* at 00:12:19–00:12:48.



determined to transition off the streets and return to helping unhoused people.<sup>120</sup>

**B. Sweeps Make Accessing Services Such as Housing More Difficult**

1. Ken – Homeless Veteran Has His Social Security Card, DD-214, Birth Certificate, and ID Destroyed in Sweep, Leading to Loss of Access to Shelter Space

After Ken concluded his service in the Air Force, he settled in San Diego.<sup>121</sup> He became homeless after losing his fishing boat, which he had operated for work.<sup>122</sup>

One sweep had disastrous effects on Ken and his ability to find shelter and permanent housing. While he was filling out forms at the Alpha Project to get a bed at a shelter, the City “came and yanked [Ken’s] stuff.”<sup>123</sup> He lost his birth certificate, identification documents, DD-214, and Social Security card.<sup>124</sup> Without these documents, Ken reported he was unable to get a bed at the Alpha Project shelter and remained unsheltered.<sup>125</sup> He

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<sup>120</sup> *Id.* at 00:12:04–00:12:17.

<sup>121</sup> Invisible People, *supra* note 59, at 00:00:22–00:00:57, 00:09:42–00:09:46.

<sup>122</sup> *Id.* at 00:00:40–00:01:27.

<sup>123</sup> *Id.* at 00:05:44–00:05:45.

<sup>124</sup> *Id.* at 00:05:40–00:06:58.

<sup>125</sup> *Id.* at 00:05:27–00:06:25.

described how difficult it would be to get back on his feet, saying “it’s really not easy to overcome all the obstacles that are put in place to get a home again.”<sup>126</sup>

2. Jerry Roderick Burton—Police Take Documents Necessary to Appeal VA Disability Decision—and Thomas Peterson—Police Take Medals and Other Property from Wheelchair-Using Army Veteran—Both Subjected to Enforcement Actions in Sub-Freezing Temperatures

*Jerry Roderick Burton* is a 54-year-old disabled Marine Corps veteran.<sup>127</sup> He served in the Marines for two and a half years at Camp Lejeune, North Carolina and Guantanamo Bay, Cuba, before receiving an honorable discharged.<sup>128</sup> He has lived in the Denver area for 26 years.<sup>129</sup> Mr. Burton grapples with a degenerative bone disease.<sup>130</sup> He does not receive a pension or disability, “in part due to [homelessness] . . . and not being able to maintain my

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<sup>126</sup> *Id.* at 00:01:38–00:01:48.

<sup>127</sup> Declaration of Jerry Roderick Burton 2, *Lyall v. City of Denver*, No. 1:16-cv-02155-WJM-CBS (D. Colo. Sept. 9, 2016), Doc. No. 15-8 [hereinafter Decl. of Burton]. Mr. Burton was terminated as a plaintiff on April 11, 2017. Stipulation for Dismissal with Prejudice, *Lyall*, No. 1:16-cv-02155-WJM-SKC (D. Colo. Apr. 11, 2017), Doc. No. 103.

<sup>128</sup> Decl. of Burton, *supra* note 127, 2.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

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records to appeal to the VA.”<sup>131</sup> He has tried to work and attain housing, but his disabilities and high rent prices make it “impossible.”<sup>132</sup>

Despite his disabilities and service to this country, Mr. Burton is told to leave places where he is resting or staying:

The police are always telling me to move along. I can’t go anywhere without them hassling me. I ask them where I can go, and they say go down to the Platte River. Then they come down to the Platte River and tell me to move. Whenever I try to rest, the Denver Police Department comes down on me hard. *They always tell me: ‘if you people would just leave Denver, then this would all stop.’* I have lived here 26 years. I have a son here and a daughter. *This is my home.*<sup>133</sup>

Mr. Burton explains how the constant move-along orders exacerbates his skeletal condition:

I have been woken up again and again by Denver police shining their spotlights in my face, ordering me to get up and move. . . . I am a United States Military veteran and suffer from degenerative bone disease so moving is extremely painful for me. Especially in the morning when my body is locked up and frozen and every move I make makes me want to die

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<sup>131</sup> *Id.* ¶ 3.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* 4 (emphasis added).

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with pain. . . . Getting woken up every night is a nightmare . . . .<sup>134</sup>

He expresses concern his “body is beginning to break down faster than it should” from the police attention.<sup>135</sup>

Beyond move-along orders, Mr. Burton has been the victim of several police enforcement actions. He described one 2016 sweep:

Around 8:30[am] an officer from the Denver Police Department came up to me and . . . started telling me I had to leave. I asked him why I had to leave as I wasn’t breaking any laws and he responded by calling me a ‘bitch’ and . . . threatened [me] with arrest by saying: ‘I will have your black ass in the back of my [squad] car.’”<sup>136</sup>

Police returned soon thereafter and began confiscating all of Mr. Burton’s property he used to survive on the streets.<sup>137</sup>

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<sup>134</sup> Declaration of Jerry Burton in Support of Motion in Limine for Order Suspending Camping Ban Enforcement During Trial ¶¶ 2–3, 5, *Lyall v. City of Denver*, No. 1:16-cv-02155-WJM-SKC (D. Colo. Feb. 4, 2019), Doc. No. 201-1 [hereinafter Burton Limine]. The court denied the plaintiffs’ motion, *Lyall*, No. 1:16-cv-02155-WJM-SKC, 2019 WL 9443748, at \*3 (D. Colo. Feb. 21, 2019).

<sup>135</sup> Burton Limine, *supra* note 134, 6.

<sup>136</sup> Decl. of Burton, *supra* note 127, 5.

<sup>137</sup> *Id.* 6.

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Mr. Burton witnessed dehumanizing sweeps where people were treated without regard for their health or safety:

I was also there December 15, 2015,<sup>138</sup> where there was snow on the ground and it was less than ten degrees and they forced everyone to march out into the snow. I tried to explain to the police that we were human beings and had rights. It meant nothing to them that we were freezing like dogs. They wouldn't give us any help. There were two pregnant women there. They took their stuff, too.<sup>139</sup>

*Thomas Peterson* is a 45-year old disabled Army veteran living in Denver, Colorado.<sup>140</sup> Mr. Peterson has many physical disabilities—a prosthetic right hip, permanently “disabled” jaw line, and chronic pain—all stemming from a hit and run

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<sup>138</sup> The court indicated this event, while not factually refuted, was not a relevant issue for the case because it did not meet the definition of a “mass sweep,” as defined in the class certification. Order on Motions Regarding Dates and Incidents That May Be Explored at Trial at 4, *Lyall v. City of Denver*, No. 1:16-cv-02155-WJM-SKC (D. Colo. Oct. 5, 2018), Doc. No. 190.

<sup>139</sup> Decl. of Burton, *supra* note 127, ¶ 7. Veteran Thomas Peterson described “half a foot of snow on the ground.” Declaration of Thomas Peterson ¶ 4, *Lyall v. City of Denver*, No. 1:16-cv-02155-WJM-CBS (D. Colo. Sept. 9, 2016), Doc. No. 15-10 [hereinafter Decl. of Peterson].

<sup>140</sup> Decl. of Peterson, *supra* note 139, ¶¶ 1–2, 4, *Lyall v. City of Denver*, No. 1:16-cv-02155-WJM-CBS (D. Colo. Sept. 9, 2016), Doc. No. 15-10.

“where [he] was run over.”<sup>141</sup> Mr. Peterson relies on a wheelchair.<sup>142</sup> He describes the repeated police interactions—even when resting in the shade to avoid 103 degree heat or waiting to enter a shelter—as a form of “constant harassment.”<sup>143</sup>

In addition to the physical toll, he experiences indignities during enforcement actions:

- On October 24, 2015, the DPD confiscated Mr. Peterson’s “wheelchair, his military records, his identification and photographs of his family.”<sup>144</sup> He was forced to stand as the City confiscated and destroyed his possessions.<sup>145</sup>
- During the December 15, 2015 enforcement action, “police told us to go to shelters, but . . . there is almost no room [or] space in Denver day shelters, so that we had to stay outside freezing trying to survive.”<sup>146</sup>

As Mr. Peterson poignantly noted: “I served out of a duty to protect our freedoms and our rights, but . . . when it comes to the poor and homeless, there ain’t

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<sup>141</sup> *Id.* 2.

<sup>142</sup> Second Amended Complaint ¶ 61, *Lyall v. City of Denver*, No. 1:16-cv-02155-WJM-SKC (D. Colo. Feb. 1, 2017), Doc. No. 69-1.

<sup>143</sup> Decl. of Peterson, *supra* note 139, 3.

<sup>144</sup> Second Amended Complaint, *supra* note 142, ¶¶ 50, 61.

<sup>145</sup> *Id.* 61.

<sup>146</sup> Decl. of Peterson, *supra* note 139, 4.

no rights. I didn't [serve] to watch something like this happen in America."<sup>147</sup>

**C. Enforcement Actions Risk Banishment for Homeless Veterans and Disrupt Their Sense of Community and Safety**

1. Doug Higgins – Unhoused Disabled Veteran Cited and Fined; Paid Rather than Face Exile from Place He Considers Home

Doug Higgins is a 73-year-old unhoused veteran honorably discharged from the Army.<sup>148</sup> Mr. Higgins lives in San Diego, a place he considers home.<sup>149</sup> He experiences several physical and mental health conditions, including anxiety, depression, and

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<sup>147</sup> *Id.* 4. The parties reached a settlement, which was approved by the District Court. *Lyll v. City of Denver*, No. 1:16-cv-02155-WJM-SKC (D. Colo. Sept. 23, 2019), Doc. No. 226.

<sup>148</sup> Declaration of Doug Higgins in Support of Motion for Summary Adjudication ¶ 2, *Bloom v. City of San Diego*, No. 3:17-cv-02324-AJB-DEB (S.D. Cal. Sept. 22, 2022), Doc. No. 232–35 [hereinafter Decl. of Higgins Summ. Adj.]; Declaration of Doug Higgins in Support of Plaintiff's Motion for Preliminary Injunction ¶2, *Bloom v. City of San Diego*, No. 3:17-cv-02324-AJB-DEB (S.D. Cal. Apr. 30, 2018), Doc. No. 26-12 [hereinafter Decl. of Higgins Prelim. Inj.].

<sup>149</sup> Second Amended Class Action Complaint ¶ 24, *Bloom v. City of San Diego*, No. 3:17-cv-02324-AJB-DEB (S.D. Cal. May 1, 2020), Doc. No. 137.

a back condition.<sup>150</sup> Mr. Higgin’s back condition is so severe that he is unable to stand, sit, or walk for any significant duration.<sup>151</sup>

In November 2016, Mr. Higgins received a habitation citation for living in his RV:

I was sitting on the couch in my RV reading a book when a police car parked directly behind my RV. I got out of my RV and saw the officer writing a ticket. I asked the officer why I was [getting] a ticket and he said that I was ‘habitating.’ The officer did not explain how I was habitating. He just said that he could ticket me at any time at any place. I asked the officer what I could do to avoid a habitation ticket. The officer said that *I could avoid getting a habitation ticket by leaving San Diego*.<sup>152</sup>

In November 2017, the City cited Mr. Higgins again, this time for nighttime RV parking.<sup>153</sup> Paying

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<sup>150</sup> Decl. of Higgins Prelim. Inj., *supra* note 148, 2.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* 4 (emphasis added); *Bloom v. City of San Diego*, No. 3:17-cv-02324-AJB-DEB, 2018 WL 9539239, at \*4 (S.D. Cal. Aug. 21, 2018) (stating Higgins was ticketed for a “benign and lawful” matter when the officer ticketed him though Higgins “was legally parked in his RV reading a book”).

<sup>153</sup> Second Amended Class Action Complaint, *supra* note 149, ¶ 24.



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the tickets was not easy.<sup>154</sup> Nonetheless, he paid to avoid impoundment.<sup>155</sup>

Mr. Higgins is anxious about the City's citation system because the fees place significant burdens on him.<sup>156</sup> The threat of more citations and potential RV impoundment exacerbates his poor health.<sup>157</sup> When Mr. Higgins expressed these concerns to police officers, *they told him that if he did not like the citations, he should leave San Diego.*<sup>158</sup>

#### 2. Emilio Rodriguez –Police Target Marine Veteran, Suggest Leaving City, and Throw Irreplaceable Property Into Irrigation Canal

Emilio Rodriguez is a 54-year-old Marine veteran.<sup>159</sup> He has been homeless for at least three

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<sup>154</sup> *Id.*

<sup>155</sup> Decl. of Higgins Summ. Adj., *supra* note 148, ¶ 4.

<sup>156</sup> Second Amended Class Action Complaint, *supra* note 149, 24.

<sup>157</sup> The District Court enjoined enforcement of the Vehicle Habitation Ordinance (San Diego Municipal Code section 86.0137(f)). The ordinance violated plaintiffs' constitutional rights. *Bloom v. City of San Diego*, No. 3:17-cv-02324-AJB-DEB, 2018 WL 9539239, at \*8 (S.D. Cal. Aug. 21, 2018). The court granted preliminary approval of parties' proposed class action settlement. *Bloom*, No. 3:17-cv-02324-AJB-DEB, 2024 WL 1162103 (S.D. Cal. Mar. 18, 2024).

<sup>158</sup> *Id.*

<sup>159</sup> Declaration of Emilio Moses Rodriguez ¶2, *Kincaid v. City of Fresno*, No. 1:06-cv-01445-LJO-SKO (E.D. Cal. Nov. 6, 2006), Doc. No. 54 [hereinafter Decl. of Rodriguez]; *Kincaid v. City of*

years.<sup>160</sup> Mr. Rodriguez does construction work and painting when he can find the work, “but it is not enough to be able to pay rent on an apartment.”<sup>161</sup> He and a couple of other unhoused people received permission from a church to stay outside of its fence line, near an irrigation canal.<sup>162</sup> Mr. Rodriguez remarks, “They referred to it as providing us sanctuary. They just told us to keep our area clean, which we did.”<sup>163</sup>

Mr. Rodriguez had an encounter with police that set him on a path towards escalating criminalization:

I had a run-in with two Fresno police officers, Officers Lee and Montoya, who patrol the area where I live. While I was waiting outside a Chinese restaurant for it to open for lunch, they came up and issue me a ticket for loitering . . . . Then they asked me where I was staying. They told me ‘We don’t like you people’ and dismissed the idea that the church could allow us to live where we were.<sup>164</sup>

When Mr. Rodriguez returned to the church, his neighbors living in nearby tents informed him the

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*Fresno*, No. 1:06-cv-1445 OWW SMS, 2006 WL 3542732, at \*9 (E.D. Cal. Dec. 8, 2006).

<sup>160</sup> Decl. of Rodriguez, *supra* note 159, 2.

<sup>161</sup> *Id.* 2.

<sup>162</sup> *Id.* 3.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* ¶ 4.

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police came by after learning where he lives.<sup>165</sup> The police pushed Mr. Rodriguez's shopping cart filled with his belongings into a surging canal.<sup>166</sup> The Court describes the incident:

Around the end of June 2006, a Fresno police officer destroyed Ms. Nelson's and Mr. Rodriguez's property, which Ms. Nelson was watching, by pushing their shopping carts packed with their belongings into an irrigation canal of rushing water. There was no prior notice of this seizure and destruction . . . Mr. Rodriguez lost his cart containing his stereo, clothing, bedding, toiletries and his prized photo album containing pictures of him as a young man in the Marine Corps, his children and grandsons.<sup>167</sup>

Mr. Rodriguez commented, "Almost all of my possessions had washed away. . . ."<sup>168</sup>

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<sup>165</sup> *Id.* ¶ 5.

<sup>166</sup> *Kincaid v. City of Fresno*, No. 1:06-cv-1445 OWW SMS, 2006 WL 3542732, at \*11 (E.D. Cal. Dec. 8, 2006).

<sup>167</sup> *Id.*

<sup>168</sup> Decl. of Rodriguez, *supra* note 159, ¶ 6. The District Court approved two settlement agreements in this case. Final Order Approving Settlement, *Kincaid*, 1:06-cv-1445-OWW-SMS (E.D. Cal. July 25, 2008), Doc. No. 323; Memorandum in Support of Motion for Preliminary Approval of Settlement, *Kincaid*, No. 1:06-cv-1445-LJO-SKO (E.D. Cal. June 5, 2008), Doc. No. 304.

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The structural, bureaucratic, and individual risks for veteran homelessness are provided Part I. The stories in Part II show the lived realities for unhoused veterans. This brief demonstrates that criminalization, sweeps, and property confiscation make the situations of unhoused veterans exponentially worse and undermine the national commitment to ending veteran homelessness.

### CONCLUSION

This Court should affirm the Ninth Circuit.

Respectfully submitted,

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