

No. 20-55522

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**IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH  
CIRCUIT**

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JANET GARCIA, ET AL.,

*Plaintiffs-Appellees,*

v.

CITY OF LOS ANGELES,

*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 2:19-cv-06182-DSF-PLA  
The Honorable Dale S. Fischer

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**BRIEF OF *AMICUS CURIAE*  
NATIONAL HOMELESSNESS LAW CENTER**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(A), each amicus states that is a nonprofit organization with no parent corporation and in which no person or entity owns stock.

## **STATEMENT REGARDING CONSENT TO FILE**

Pursuant to Rule 29(a)(2), counsel for amicus curiae represents that all parties have consented to the filing of this amicus brief.

## **STATEMENT REGARDING PREPARATION OF BRIEF**

No counsel for any party authored this brief in whole or in part, and no party or person other than amici and counsel for amici contributed any money to prepare or submit this brief.

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

The National Homelessness Law Center (“Law Center”) is a nonprofit organization based in Washington, D.C. that was founded in 1989 and is the only national legal organization with the mission to prevent and end homelessness. The Law Center is formerly known as the National Law Center on Homelessness & Poverty. In connection with its mission, the Law Center engages in policy advocacy at the federal, state and local levels, and educates the public about policies affecting homeless people. The Law Center has developed the only national data set on policies punishing the life-sustaining conduct of homeless people in 187 cities across the country, which we have analyzed in a series of national reports beginning in 2006.

In addition to our policy advocacy and nationwide reporting efforts, the Law Center litigates across the country to protect the civil rights of people experiencing homelessness. For example, undersigned counsel is counsel of record in *Martin v. City of Boise*, 920 F.3d 684 (9<sup>th</sup> Cir.), *cert. denied sub nom. City of Boise, Idaho v. Martin*, 140 S.Ct. 674 (2019).

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Housing is unaffordable and a growing number of people are priced out of the housing market. Without access to housing, people have few options for meeting their basic human needs, and even fewer options for living with stability and dignity. People who attempt to shelter themselves outside with their property are at constant risk of property loss due to policies that penalize homeless people for living outside, even when they have no realistic option to live inside. Punitive approaches to homelessness, are harmful and ineffective. Moreover, they traumatize and destabilize unhoused people and violate their legal rights. Cities need not and should not violate the rights of unhoused people to properly manage public space—indeed, everyone benefits when governments respect basic rights and pursue constructive solutions to homelessness.

## **ARGUMENT**

### **I. HOMELESSNESS IS A LARGE AND GROWING NATIONAL CRISIS**

#### **A. A Nationwide Lack of Affordable Housing is a Primary Cause of Homelessness.**

Our nation is in the midst of an affordable housing crisis that has left low-wage workers, people with disabilities, seniors, families with children, and others without a safe and stable place to live. NAT'L LOW INCOME HOUS. COAL., OUT OF

REACH 4 (2020), [https://reports.nlihc.org/sites/default/files/oor/OOR\\_2020.pdf](https://reports.nlihc.org/sites/default/files/oor/OOR_2020.pdf)

[hereinafter *Out of Reach*]. High rents, wages that have not kept pace with the rising cost of housing<sup>1</sup>, and the decline of federally subsidized housing<sup>2</sup> have led to a critical shortage of affordable housing units. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 29 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>

[hereinafter *Housing Not Handcuffs*]. Nationwide, there are only 35 affordable housing units available for every 100 extremely low income (“ELI”)<sup>3</sup> renter households. *Housing Not Handcuffs*, *supra*, at 29. In Los Angeles, California, the affordable housing gap is even more severe with only 17 affordable and available units for every 100 ELI renter households. *Id.*

Without access to affordable housing, people pay more than they can sustainably afford on housing costs. Nearly half of the entire U.S. renter population

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<sup>1</sup> Homelessness increases when an area’s median rents exceed 22% of median income. *2020 Greater Los Angeles Homeless Count Results*, LOS ANGELES HOMELESS SERVICES AUTHORITY (June 12, 2020), <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results>. In Los Angeles, the median rent is nearly half of median income. *Id.*

<sup>2</sup> Federal housing subsidies have shrunk dramatically in recent decades, and only 24% of people eligible for housing assistance receive it. Erika C. Poethig, *One in Four: America’s Housing Assistance Lottery*, URB. INST. (May 28, 2014)

<sup>3</sup> Households defined as extremely low income (“ELI”) have incomes at or below the Poverty Guideline or 30% of AMI, whichever is higher. NAT’L LOW INCOME HOUS. COAL., *A SHORTAGE OF AFFORDABLE HOMES 2* (2018), [https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2018.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2018.pdf).

is housing “cost burdened”, meaning they pay more than 30% of their incomes toward housing costs. JT. CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION’S HOUSING 4* (2019),

[https://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2019.pdf](https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf) [hereinafter *State of the Nation’s Housing*]. The situation

is even more dire for California renter households where 55% are cost burdened and a third of all renters are severely cost-burdened, paying more than half of their total incomes on housing. Carrie B. Reyes, *Over Half of California Renters are Cost-Burdened*, *FIRST TUESDAY JOURNAL* (Jan. 7, 2019),

<https://journal.firsttuesday.us/over-half-of-california-renters-are-cost-burdened/66115/>. The devastating impact of the COVID-19 pandemic is projected

to dramatically worsen this problem. Michal Grinstein-Weiss et al., *Housing Hardships reach unprecedented heights during the COVID-19 Pandemic*, Brookings Inst. (June 1, 2020), [https://www.brookings.edu/blog/up-](https://www.brookings.edu/blog/up-front/2020/06/01/housing-hardships-reach-unprecedented-heights-during-the-covid-19-pandemic/)

[front/2020/06/01/housing-hardships-reach-unprecedented-heights-during-the-covid-19-pandemic/](https://www.brookings.edu/blog/up-front/2020/06/01/housing-hardships-reach-unprecedented-heights-during-the-covid-19-pandemic/).

Housing cost-burdened renters are left with little income for other necessities, like food, and they have no financial cushion against emergencies or

sudden interruptions in income from illness, job loss, or other destabilizing life events.<sup>4</sup> They face a constant risk of housing loss and homelessness.

“As is true in almost every aspect of American life, the greatest risks are borne by people of color.” *Out of Reach, supra*, at 1. Black and Latinx people are more likely to be renters than white people, they earn less than white workers across all income levels, *Out of Reach, supra*, at 7, and they struggle with a relatively larger affordable housing gap. *State of the Nation’s Housing* at 32. This contributes to gross overrepresentation of people of color in the nation’s homeless population. 40% of people experiencing homelessness in America is Black, even though Black people make up only 13% of the general population. U.S. DEP’T OF HOUS. & URBAN DEV., THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 10 (2019) [hereinafter AHAR]. Latinx, Native American, and Pacific Islander rates of homelessness are also disproportionately high. *Id.* The disproportionate rates of homelessness among people of color is equally striking in Los Angeles County. 1 in 3 homeless people in Los Angeles County is Black, even

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<sup>4</sup> Millions of U.S. workers have lost their employment in the wake of the COVID-19 pandemic. “The unemployment rate rose to 14.7% in April, the highest rate and the largest one-month increase since the Bureau of Labor Statistics started tracking monthly data in 1948. While the national rate fell slightly to 13.3% in May, unemployment did not improve among Black Americans at 16.8% or among Asian Americans at 15%...The unemployment rate for Latino Americans...remains even higher at 17.6%.” NAT’L LOW INCOME HOUS. COAL., OUT OF REACH HOUSING (2020).

though Black people make up only 8% of the general population. LOS ANGELES HOMELESS SERVICES AUTHORITY, 2020 GREATER LOS ANGELES HOMELESS COUNT, <https://www.lahsa.org/documents?id=4585-2020-greater-los-angeles-homeless-count-los-angeles-continuum-of-care-coc->.

People with disabilities are also significantly overrepresented among people experiencing homelessness in the United States and in greater Los Angeles.<sup>5</sup> NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS at 33.

### **B. People Without Housing Have Insufficient Options for Meeting Their Basic Human Needs**

Priced out of the housing market, people have exceedingly limited options for meeting their basic needs, such as shelter and a place to store their belongings. Emergency shelters are not available in every community and, even where shelters exist, they are generally full and routinely turn people away at the front door.<sup>6</sup> Moreover, emergency shelters offer only temporary shelter—sometimes only for a single night at a time—and many will not allow people to bring their personal

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<sup>5</sup> 1 in 10 people experiencing homelessness have a developmental disability, and 1 in 5 have a physical disability. LOS ANGELES HOMELESS SERVICE AUTHORITY, 2020 GREATER LOS ANGELES HOMELESS COUNT, <https://www.lahsa.org/documents?id=4585-2020-greater-los-angeles-homeless-count-los-angeles-continuum-of-care-coc->.

<sup>6</sup> In addition to waiting lists for admission, emergency shelters often have admission criteria that exclude people based on sex, family composition, lack of identification documents, age, religion, and disability. Suzanne Skinner & Sara Rankin, *Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter* (2016), <https://ssrn.com/abstract=2776421>.

property inside with them. Thus, emergency shelters are not an adequate replacement for housing nor a stable option for shelter.

Many people are left with no other option but to attempt to live and shelter themselves outside, often in public space. They are considered “unsheltered” under federal law and an estimated 211,293 people experience unsheltered homelessness in the United States – over one-third of all homeless people.<sup>7</sup> AHAR at 8.

Unsheltered homelessness has grown each of the last four years, and the largest increases were reported in Western states. AHAR at 14.

## **II. PEOPLE WITHOUT HOUSING ARE SUBJECT TO INEFFECTIVE AND HARMFUL POLICIES THAT PUNISH HOMELESSNESS.**

### **A. Cities Have Increasingly Taken Punitive Approaches to Homelessness**

As unsheltered homelessness has grown, so have laws that punish unsheltered people for surviving in public space, even when they lack other options. *Housing Not Handcuffs, supra*, at 37. Since 2006, the National Homelessness Law Center<sup>8</sup> has examined the codes of 187 cities nationwide to track laws that punish acts of

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<sup>7</sup> A 2001 study using administrative data collected from homeless service providers estimated that the annual number of homeless individuals is 2.5 to 10.2 times greater than can be obtained using a Point-in-Time count. NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, DON’T COUNT ON IT (2017), <https://nlchp.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf>.

<sup>8</sup> The National Law Center on Homelessness & Poverty has changed its name to the National Homelessness Law Center.

survival by unsheltered homeless people. Policies prohibiting “camping”<sup>9</sup> in public, for example, are common. *Id.* at 38. 72% of U.S. cities have at least one law prohibiting camping in public. *Id.* Prohibitions on storing property in public space are also common, with 55% of cities having at least one such law in effect. *Id.* at 46. L.A. Mun. Code § 56.11(3)(i) is a comparatively egregious property storage policy, however, because it targets and strips homeless people of their property and due process rights based on an arbitrary size limitation.

**B. Punishing Homelessness Serves no Legitimate Public Policy Goal and Worsens the Homelessness Crisis**

While taken in isolation each law may punish a limited range of behaviors, collectively they punish homelessness itself. Each punitive policy works together to place unhoused people at constant risk of arrest and incarceration<sup>10</sup>, expensive ticketing, displacement, and property loss. Although criminal and civil penalties are the most legally cognizable, the pervasive use of move along orders and evictions of homeless encampments, often done with little or no advance notice, effectively exiles unsheltered homeless people from society.

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<sup>9</sup> Camping bans are often written broadly to encompass a wide range of resting and sheltering arrangements, and they often punish people for using any resource to protect themselves from the outdoor elements, no matter the weather.

<sup>10</sup> In 2016, one in six arrest bookings in Los Angeles, California, were of homeless people. Gale Holland & Christine Zhang, *Huge Increase in Arrests of Homeless in L.A.—But Mostly for Minor Offenses*, L.A. TIMES (Feb. 4, 2018, 8:20 AM), <https://www.latimes.com/local/politics/la-mehomeless-arrests-20180204-story.html>.



Chris Herring, Dilara Yarbrough & Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness* 9-10, SOC'Y FOR STUDY SOC. PROBS. 2019,

[https://pdfs.semanticscholar.org/c84a/d5d7c016b7167f653d33ee75ba5e345fceb6.p](https://pdfs.semanticscholar.org/c84a/d5d7c016b7167f653d33ee75ba5e345fceb6.pdf)

[df](https://pdfs.semanticscholar.org/c84a/d5d7c016b7167f653d33ee75ba5e345fceb6.pdf) [hereinafter *Pervasive Penalty*]. Displacing people who lack access to housing from one outdoor location inevitably to another achieves no long-term gain, and, in fact, forced displacement often leaves homeless people worse off for having lost their personal property, connection to outreach workers or other social service providers, and/or protective social networks. *Housing Not Handcuffs*, *supra*, at 40-41. In recognition of these harms, the U.S. Interagency Council on Homelessness<sup>11</sup> and the Los Angeles Homeless Services Authority<sup>12</sup> have published guidance recommending ample advance outreach and assistance to unsheltered people before displacing people from their outdoor homes, along with clear and person-centered protocols when cleaning public space. Moreover, in recognition of the serious public health risk that forced displacement of unsheltered people presents

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<sup>11</sup> UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING HOMELESSNESS FOR PEOPLE LIVING IN ENCAMPMENTS: ADVANCING THE DIALOGUE, <https://www.usich.gov/toolsfor-action/ending-homelessness-for-people-in-encampments/> (Aug. 13, 2015).

<sup>12</sup> LOS ANGELES HOMELESS SERVICES AUTHORITY, GUIDING PRINCIPLES AND PRACTICES FOR UNSHELTERED HOMELESSNESS, <https://www.lahsa.org/documents?id=2951-guiding-principles-and-practices-for-unsheltered-homelessness.pdf>

during the COVID-19 pandemic, the U.S. Centers for Disease Control issued guidance urging governments not to clear encampments unless individual housing units are available. CENTER FOR DISEASE CONTROL AND PREVENTION, INTERIM GUIDANCE FOR RESPONDING TO CORONAVIRUS DISEASE 2019 (COVID-19) AMONG PEOPLE EXPERIENCING UNSHELTERED HOMELESSNESS (2019),

[https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-](https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html)

[shelters/unsheltered-homelessness.html](https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html). “Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” *Id.*

“Even though each quality-of-life ordinance, move-along order, and citation alone may seem inconsequential, collectively, the process of pervasive penalty produces a sequence of criminal justice contact that is more powerful than the sum of its parts and perpetuates homelessness and poverty.” *Pervasive Penalty, supra*, at 16. Indeed, punitive approaches to homelessness are universally ineffective, *Housing Not Handcuffs* at 63-64, wasteful of public resources, *Id.* at 71-73, harmful to public health, *Id.* at 67-70, harmful to public safety, *Id.* at 65-67, and make homelessness harder to escape. *Id.* at 64. They also often violate homeless people’s legal rights. NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS: A LITIGATION MANUAL (2018), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs-Litigation-Manual.pdf>. Yet, they

persist to enable governments to remove visibly poor people from public view and deter them from remaining in or returning to the community. Sara Rankin, *Civilly Criminalizing Homelessness*, Harv. C.R.-C.L. L. Rev. (forthcoming 2020) [hereinafter *Civilly Criminalizing Homelessness*].

**C. Government Seizures Cause the Loss of Homeless People's Property, Threatens their Survival and Dignity, and Undermines their Ability to Escape Unsheltered Homelessness**

Governmental seizure typically causes the permanent loss of unsheltered people's personal property, often, though not always, through summary destruction of their property at the moment of seizure. For many unsheltered homeless people, property loss is "the greatest threat" to their survival. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space* 790, AM. SOCIOLOGICAL REV. (2019). Because homeless people have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population, they are especially vulnerable to serious harm flowing from seizure and destruction of their survival gear, such as warm clothing, blankets, tarps, and tents. NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL, HOMELESSNESS & HEALTH: WHAT'S THE CONNECTION? 1–2 (2019), <https://www.nhchc.org/wp-content/uploads/2019/02/homelessness-and-health.pdf>.

Without their property to protect them from rain and cold, for example, unsheltered homeless people may suffer frostbite, amputation of extremities, or

even death from hypothermia.<sup>13</sup> Adding to the serious health risks flowing from property seizure is the loss of medications and even necessary medical equipment that similarly place already vulnerable people at heightened risk of needing an emergency room or hospitalization.

The loss of photo identification and legal documents to prove identity, citizenship, and military service is also devastating to homeless people, who may struggle to replace those documents and, consequently, be unable to vote, gain employment, or even become housed.

Avoiding the seizure and loss of essential personal property, as well as sentimental and often irreplaceable items, is a central feature of an unsheltered homeless person's life. Rather than risk seizure and destruction of their property—a risk that is heightened if property is temporarily unattended—unsheltered homeless people will avoid separating from their property, even at the expense of missing social service appointments, employment opportunities, and/or medical treatment. *Complaint-Oriented Policing* at 79. “In these ways, the criminalization

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<sup>13</sup> Hypothermia can set in when temperatures are as high as 50 degrees. Wet clothing (from exposure to rain after a person's shelter has been seized, for example) can significantly intensify loss of body heat loss and hypothermia risk. Despite its relatively warmer climate, Los Angeles had more hypothermia deaths in 2018 than New York City. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 37 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

of homelessness undermined other state efforts of socialization and medicalization, as well as individuals' personal efforts to pull themselves out of homelessness." *Id.*

The constant threat of property loss is not only threatening to health, safety, and constructive efforts to end homelessness, it is also traumatizing and demeaning to unsheltered homeless people. Dominion over personal property is core to American identity and dignity. Nestor M. Davidson, *Property and Identity: Vulnerability and Insecurity in the Housing Crisis*, 47 HARV. C.R. -C.L. L. REV. 119, 119 (2012); see also Sara Rankin, *Civilly Criminalizing Homelessness*, Harv. C.R.-C.L. L. Rev. (forthcoming 2020). "We feel and act about certain things that are ours very much as we feel and act about ourselves, and thus between what a man calls me and what he simply calls mine the line is difficult to draw." *Property and Identity* at 47. When people lack property, or the ability to protect property that is theirs from unreasonable governmental seizure and destruction, their identity and stability are fundamentally threatened. *Id.* This stigma is reinforced through policies punish homelessness. *Civilly Criminalizing Homelessness* at 42. The essential nature of this protection to Americans is why property rights are included in the Bill of Rights.

**III. THE BULKY ITEM PROVISION OF L.A. MUN. CODE § 56.11 VIOLATES BOTH THE FEDERAL AND CALIFORNIA CONSTITUTIONAL DEFINITIONS OF DUE PROCESS**

**A. The Constitution equally protects the property of housed and unhoused people**

The Bulky Item Provision violates the Fourth Amendment by allowing the warrantless seizure, and even summary destruction, of property based solely on its size. L.A. Mun. Code § 56.11(3)(i). The City cannot overcome the Fourth Amendment's protection against unreasonable seizures simply by writing an ordinance to outlaw a class of property. *See Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1030 (C.D. Cal. 2011). All residents of this country enjoy these protections, including those who are unhoused. *Id.* at 1031 (holding that the Fourth and Fourteenth Amendments forbid warrantless seizure of personal property left unattended on public land).

Here, the City attempts to regulate unhoused people's right to own property by dictating the size of property they may own and permitting warrantless seizure and destruction based solely on an arbitrary size limitation. None of the property storage ordinances directly cited by the City or California League of Cities in its amicus brief regulate property in this way. Indeed, the City does not regulate *any* other property this way. Only homeless people's "bulky" property is stripped of all constitutional protections under an ordinance that applies *only* to them, demonstrating that this law is aimed at restricting property rights for unhoused people rather than at property itself.

The City cannot justify enforcement of the Bulky Item Provision under the community caretaking exception, which allows seizure in response to an immediate threat to community safety. *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1137 (9th Cir. 2019). The only factor the Bulky Item Provision contemplates before authorizing immediate seizure, and even summary destruction, of an item is an arbitrary size limitation. L.A. Mun. Code § 56.11(3)(i). The provision allows any and all homeless people’s possessions over a forbidden size to be seized even if the item presents no safety risks, is tucked away, off streets and sidewalks, or even in the process of being moved.<sup>14</sup> Furthermore, the urgency interest in enforcement of the Bulky Item Provision is low because other provisions in the Los Angeles Municipal Code section on Storage of Personal Property allow the City to seize property that is obstructive or threatens public safety. L.A. Mun. Code § 56.11. In stark contrast, the individual property interests of unsheltered homeless people is at its height. Their property represents the last of their meager assets. Without their property they may be unable to prove their identity, to work, to

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<sup>14</sup> The Bulky Item Provision authorizes the removal and destruction of “any Bulky Item, whether Attended or Unattended, Stored in a Public Area”. L.A. Mun. Code § 56.11(3)(i). “Public Area” means all property owned, managed, or maintained by the City, including but not limited to any street, medial strip, space, group, building, or structure. L.A. Mun. Code § 56.11(2)(k). “Stored”, includes that “moving Personal Property to another location in a Public Area... shall be considered Storing”. L.A. Mun. Code § 56.11(2)(o).

access public benefits, and to access housing. Indeed, without possession of their property their health and very lives are at risk.

**B. The Bulky Property provision violates the 14<sup>th</sup> Amendment and Dignitary Interest under California’s Due Process Clause**

On its face, the Bulky Item Provision provides *no process*, much less adequate due process, before the City may seize and permanently deprive homeless people of their belongings if a City official, in her sole discretion, determines the property is “bulky.” L.A. Mun. Code § 56.11(3)(i). In addition to a standard due process analysis, the constitutionality of this provision should be viewed in light of the dignitary interest inherent in providing proper procedure under Article I, § 7 of the California Constitution, *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1190 n.15 (9th Cir. 2015) (internal quotation marks and citations omitted), as amended on denial of reh’g and reh’g en banc (Jan. 29, 2016), and international human rights obligations because these persuasive authorities shed light on why the Court should uphold the narrow injunction issued by the district court.

Here, the City has no process for giving notice to owners of “bulky property” that their property will be seized, no program for storing property so that it may later be recovered, and no opportunity to contest the seizure—a seizure which, by the City’s admission, must necessarily result in destruction. The connection between this inability to contest and the criminalization of homelessness is evident in the second enjoined provision of the Los Angeles



Municipal Code: it is a crime punishable by six months in jail or a \$1000.00 fine to resist or even delay enforcement of the Bulky Item Provision. L.A. Mun. Code § 56.11(10)(d).<sup>15</sup> By providing no process for and indeed criminalizing any objection to enforcement of a law that penalizes owning “bulky” property while homeless, the City ensures that its unhoused residents have fewer Constitutional protections than housed citizens, relegating unhoused people to lower status under law. Furthermore, preventing unhoused people from contesting seizure of their limited personal property robs them of the dignitary interest in being able to present their case before a government official. *See Today’s Fresh Start, Inc. v. Los Angeles Cnty. Off. of Educ.*, 57 Cal. 4th 197, 213 (2013). Adding to this indignity is the material harm that unsheltered people will suffer when their property is suddenly seized and summarily destroyed regardless of its condition, sentimental or practical value, or even if property loss threatens their health and very survival.

**C. The Bulky Item Provision of L.A. Mun. Code § 56.11 is Unreasonable in Light of International Human Rights Obligations**

Our nation’s lead agencies on homelessness, the Department of Housing & Urban Development (HUD) and the U.S. Interagency Council on Homelessness

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<sup>15</sup> While amicus curiae focuses its brief on the violations of unhoused people’s property and due process rights under the Bulky Item Provision, we note here that the district court’s order enjoining enforcement of LAMC 56.11(10)(d) is also proper for reasons described in the brief.

(USICH) have both affirmed that “[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.” UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS, 8 (2012), <https://www.usich.gov/tools-for-action/searching-out-solutions>. See also U.S. DEPT. OF HOUS. & URB. DEV., DECRIMINALIZING HOMELESSNESS, at <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness/>. Under the Constitution, human rights treaties have the same binding force as federal law (U.S. Const. art. VI, § 2; *Id.* art. II, § 2, cl. 2) and Supreme Court cases, as well as rulings by lower federal and state courts, including this Court, have relied on international standards and rulings as persuasive authority. See, e.g. *Roper v. Simmons*, 125 S. Ct. 1183, 1198 (2005).

In its March 2014 review of U.S. compliance with the Covenant on Civil and Political Rights cited above,<sup>16</sup> the U.N. Human Rights Committee called for the

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<sup>16</sup> International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 12, 99 U.N.T.S. 171 (entered into force 1976); U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992). (The Covenant, which was ratified by the U.S. in 1992, protects the right of freedom from “arbitrary or unlawful interference with his privacy, family, home or correspondence,” in Article 17, closely parallel to our own Fourth Amendment.)

abolition of punitive homelessness policies. HUMAN RIGHTS COMMITTEE, CONCLUDING OBSERVATIONS, CCPR/C/USA/CO/4, ¶ 19, Apr. 23, 2014. In 2017, the United Nations Special Rapporteur on Extreme Poverty and Human Rights called out Los Angeles specifically in his official report on his mission to the U.S. to the Human Rights Council:

Los Angeles failed to meet even the minimum standards the United Nations High Commissioner for Refugees sets for refugee camps ... Citizens and local authorities, rather than treating homeless persons as affronts to their sensibilities and neighbourhoods, should see in their presence a tragic indictment of community and government policies. Homelessness on this scale is far from inevitable and reflects political choices to see the solution as law enforcement rather than adequate and accessible low-cost housing, medical treatment, psychological counselling and job training.

U.N. HUMAN RIGHTS COUNCIL, *REPORT OF THE U.N. SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS ON HIS MISSION TO THE UNITED STATES OF AMERICA*, A/HRC/38/33/Add.1 (2018), available at [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/38/33/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/33/Add.1).

Numerous other U.N. human rights treaty bodies and other monitors have condemned criminalization of homelessness in the U.S., finding a clear and consistent standard that laws like the Bulky Item Provision violate our human rights obligations.<sup>17</sup> This Court should acknowledge the relevance of our human rights

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<sup>17</sup> See, e.g. Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/30/12, ¶ 176.309 (July 20, 2015); Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum, Views on Conclusions and/or Recommendations, Voluntary*

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*Commitments and Replies Presented by the State Under Review*, A/HRC/30/12/Add.1, ¶ 12 (Sept. 14, 2015). Committee Against Torture, Summary Record of the 1264<sup>th</sup> Session, CAT/C/SR.1264, ¶ 37, Nov. 17, 2014, [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT\\_C\\_SR\\_1264\\_22881\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT_C_SR_1264_22881_E.pdf); Committee Against Torture, List of Issues Prior to Submission of the Sixth Periodic Report of the United States of America, CAT/C/USA/QPR/6, ¶ 46, Dec. 19, 2016, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQPR%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQPR%2f6&Lang=en); U.N. Human Rights Committee, *Concluding Observations on the Fourth Report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014); U.N. Human Rights 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*, Raquel Rolnik, *Mission to the United States of America*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012); U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *USA: "Moving Away from the Criminalization of Homelessness, A Step in the Right Direction"* (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>; UNHRC, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum, Mission to the United States of America*, A/HRC/18/33/Add.4, Aug. 2, 2011; Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diéne, Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009).

obligations to the criminalization of homelessness, and read our Constitution consistent with these norms to show the world that the U.S. follows the same standards at home as it expects others to follow abroad.

#### **IV. REQUIRING CITY TO COMPLY WITH CONSTITUTION DOES NOT OVERSTEP**

The narrow preliminary injunction issued by the District Court does not overstep into municipal affairs. Indeed, prohibiting governments from depriving people of their constitutional rights is squarely within the court's core function.

The League of California Cities argues that preliminarily enjoining the City from enforcing the Bulky Item Provision renders the City unable to balance the needs of residents and the public at large to access clean and sanitary public areas with those who have nowhere but public spaces to store their personal property. Brief for League of California Cities as Amicus Curiae Supporting Appellant at 5, *Garcia v. City of Los Angeles*, No. 20-55522 (9th Cir. Aug. 7, 2020). Not only does this argument broadly overestimate the reach and effect of the preliminary injunction, it also falsely—and tellingly—suggests that homeless people are not residents and members of the public at large who also benefit from clean and sanitary public areas.

Even without the Bulky Items Provision, the City retains ample tools to preserve public space. L.A. Mun. Code § 56.11. It can still remove any property

that: obstructs City operations, *id.* § 56.11(3)(c); obstructs passage as required by the Americans with Disabilities Act, *id.* § 56.11(3)(d); obstructs operational entryways, exits, driveways, or loading docks, *id.* § 56.11(3)(e); remains after closing time in public areas that have posted closure times, *id.* § 56.11(3)(f); poses an immediate threat to public health or safety, *id.* § 56.11(3)(g); or constitutes contraband or evidence of a crime, *id.* § 56.11(3)(h). If bulky items fall under any of these provisions, the community caretaking exception allows that they may be immediately removed with or without prior notice. These provisions, unlike the Bulky Items provision, all indicate some interest in public health, safety, and use of public space and are a proper use of the community caretaking exception. The League of California Cities argues that the City will be “hamstrung in their efforts to craft solutions” to the growing homelessness crisis. Brief for League of California Cities as Amicus Curiae Supporting Appellant at 10, *Garcia v. City of Los Angeles*, No. 20-55522 (9th Cir. Aug. 7, 2020). But the narrow preliminary injunction leaves the City with numerous other provisions with which to carry out the same function. Far from being hamstrung, the City’s policymaking must merely comport with the Constitution.

While the City is free to regulate public space in line with the constitution and other applicable law, which the Bulky Item Provision is not, we note for the court that arbitrary property seizures, property destruction, and displacement will

not sustainably achieve any legitimate governmental objective. Like other punitive approaches to homelessness, it will result in public harm, waste precious public resources, and worsen the unsheltered homelessness crisis. In an era when the lack of affordable housing causes more people to become homeless in Los Angeles each day than are housed, it is advisable that the City adopt constructive, rather than destructive, policy solutions. Courts, of course, cannot force the City to pursue wise policies. But, courts can and should prohibit the City from pursuing unconstitutional policies.

### CONCLUSION

For the foregoing reasons, the Court should uphold the narrow injunction issued by the district court.

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Respectfully submitted,  
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